

Interior (1024-0125), Washington, D.C. 20503.

PART 14—RIGHTS-OF-WAY

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APPENDIX A TO PART 14

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

SOURCE: 45 FR 47092, July 11, 1980, unless otherwise noted.

Subpart A—Rights-of-Way: General

§ 14.1 Applicability.

The regulations contained in this part shall apply to all Federally owned or controlled lands administered by the National Park Service.

§ 14.2 Definitions.

(a) *Secretary* means the Secretary of the Interior.

(b) *Director* means the Director, National Park Service.

(c) *Authorized Officer* means the Superintendent.

(d) *Superintendent* means the person in charge of an area of the National Park System or his or her duly authorized representative.

(e) *Project* means the physical structures in connection with which the right-of-way is approved.

(f) *Construction work* means any and all work, whether of a permanent nature, done in the construction of the project.

(g) *Park* means any federally owned or controlled land within an area of the National Park System.

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(h) *Right-of-Way* includes license, permit, or easement, as the case may be, and, where applicable, includes “site”.

[45 FR 47092, July 11, 1980, as amended at 60 FR 55791, Nov. 3, 1995]

Subpart B—Nature of Interest

§ 14.5 Nature of interest granted; settlement on right-of-way; rights of ingress and egress.

§ 14.6 In form of easement, license, or permit.

No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

§ 14.7 Right of ingress and egress to a primary right-of-way.

In order to facilitate the use of a right-of-way granted or applied for under the regulations of this part, the authorized officer may grant to the holder of or applicant for such right-of-way an additional right-of-way for ingress and egress to the primary right-of-way, including the right to construct, operate, and maintain such facilities as may be necessary for ingress and egress. The holder or applicant may obtain such additional right-of-way only over lands for which the authorized officer has authority to grant a right-of-way of the type represented by the primary right-of-way held or requested by the applicant. He must comply with the same provisions of the regulations applicable to his primary

right-of-way with respect to the form of and place of filing his application for an additional right-of-way, the filing of maps and other information, and the payment of rental charges for the use of the additional right-of-way. He must also present satisfactory evidence that the additional right-of-way is reasonably necessary for the use, operation, or maintenance of the primary right-of-way.

§ 14.8 Unauthorized occupancy.

Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

§ 14.9 Terms and conditions.

An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent may specify.

(c) To take such soil and resource conservation and protection measures including weed control, on the land covered by the right-of-way as the superintendent may request.

(d) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

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(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(f) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way; except that where a right-of-way is granted hereunder to a state or other governmental agency whose power to assume liability by agreement is limited by law, such agency shall indemnify the United States as provided above to the extent that it may legally do so.

(g) To notify promptly the superintendent of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the National Park Service to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent.

(j) That he shall at all times keep the authorized officer informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management and administration by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

§ 14.10 Areas of National Park System.

(a) The Act of March 3, 1921 (41 Stat. 1353; 16 U.S.C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without the specific authority of Congress.

(b) Pursuant to any statute, including those listed in this subpart, applicable to lands administered by the National Park Service, rights-of-way over or through such lands will be issued by the Director of the National Park Service, or his delegate, under the regulations of this subpart.

Subpart C—Procedures

§ 14.20 Application.

§ 14.21 Form.

Application. The application shall be prepared and submitted in accordance with the requirements of this section. It should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purposes for which the right-of-way is to be used. Applications shall be filed with the superintendent. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

§ 14.22 Reimbursement of costs.

(a)(1) An applicant for a right-of-way or a permit incident to a right-of-way shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act (42 U.S.C. 4321-4347), before the right-of-way or permit will be issued under the regulations of this part.

(2) The regulations contained in this section do not apply to: (i) State or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and the lands and resources will continue to serve the general public; (ii) road use agreements or reciprocal road agreements; or (iii) Federal government agencies.

(3) An applicant must submit with each application a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way for crossing National Park System lands (e.g., for

powerlines, pipelines, roads, and other linear facilities).

Length	Payments
Less than 5 miles	\$50 per mile or fraction thereof.
5 to 20 miles	\$500.
20 miles and over	\$500 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in paragraph (a)(3)(i) of this section (e.g., for communication sites, reservoir sites, plant sites, and other non-linear facilities)—\$250 for each 40 acres or fraction thereof.

(iii) If a project has the features of paragraphs (a)(3) (i) and (ii) of this section in combination, the payment shall be the total of the amounts required by paragraphs (a)(3) (i) and (ii) of this section.

(4) When an application is received, the authorized officer shall estimate the costs expected to be incurred by the United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the paragraph (a)(3) of this section, payment by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(5) Prior to the issuance of any authorization for a right-of-way or permit incident to a right-of-way, the applicant will be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a) (3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a) (3) and (4) of this section shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(7) An applicant who withdraws its application before a decision is reached

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on it is responsible for costs incurred by the United States in processing such application up to the date upon which the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement of such costs shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a)(4) and (b)(3) of this section exceeds actual costs to the United States, a refund may be made by the authorized officer from applicable funds, under authority of 43 U.S.C. 1374, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(9) The authorized officer shall on request give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement will not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When two or more applications for rights-of-way are filed which the authorized officer determines to be in competition with each other, each shall reimburse the United States according to paragraphs (a) (3) through (7) of this section except that costs which are not readily identifiable with one of the applications, such as costs for an environmental impact statement on all the proposals, shall be paid by each of the applicants in equal shares.

(11) The authorized officer may require an applicant to furnish security, in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit, or other means acceptable to the authorized officer, for costs under §14.22. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(12) When an applicant for a right-of-way is a partnership, corporation, association, or other entity, and is owned or controlled, directly or indirectly, by one or more other entities, one or more of the owning or controlling entity or entities shall furnish security in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit or other means acceptable to the authorized officer, for costs under §14.22. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(13) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way, each such applicant shall be jointly and severally liable for costs under §14.22.

(14) When two or more noncompeting applications for rights-of-way are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under §14.22 for the entire system; subject, however, to the provisions of paragraphs (a) (11) through (13) of this section.

(15) The regulations contained in §14.22 are applicable to all applications for rights-of-way or permits incident for rights-of-way over the public lands pending on June 1, 1975.

(b)(1) After issuance of a right-of-way or permit incident to a right-of-way, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance, and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way or permit incident to a right-of-way must submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way, for crossing National Park System lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

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Length	Payment
Less than 5 miles	\$20 per mile or fraction thereof.
5 to 20 miles	\$200.
20 miles and over	\$200 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in paragraph (b)(2)(i) of this section (e.g., for communication sites, reservoir sites, plant sites, and other nonlinear facilities)—\$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of paragraphs (b)(2) (i) and (ii) of this section in combination, the payment shall be the total of the amounts required by paragraphs (b)(2) (i) and (ii) of this section.

(3) When a right-of-way or permit incident to a right-of-way is issued, the authorized officer shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the paragraph (b)(2) payment by an amount which is greater than the cost of maintaining actual cost records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(4) Following termination of a right-of-way or permit incident to a right-of-way, the former holder will be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b) (2) and (3) of this section.

§ 14.23 Showing as to organizations required of corporations.

(a) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(b) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(c) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(d) A copy of the resolution or bylaws of the corporation authorizing the filing of the application must also be filed.

(e) If the corporation shall have previously filed with the National Park Service the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

§ 14.24 Showing as to citizenship required.

(a) *Individuals.* An individual applicant applying for a right-of-way under any right-of-way act, except the Act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946 *et seq.*), and the Act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952-955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(b) *Association of Individuals.* An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

§ 14.25 Documents which must accompany application.

(a) *Maps.* Each application, other than an appropriation for Federal-aid highway purposes under Title 23, United States Code, section 317, must be accompanied by a map prepared on tracing linen, or on tracing paper having a 100 percent rag content, and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(1) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having a nominal voltage of less than 33 kV. map scales may at option of the applicant be 5,280 feet to the inch.

(2) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(3) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient

number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(4) If the right-of-way is across or within lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the land to the extent it would be required above to be made in terms of the public-land surveys.

(5) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(6) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. The total distance of the right-of-way on the Federal lands shall be stated.

(7) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2 (Appendix A) which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.

(8) Whenever it is found that a public land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(b) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water. Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance

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of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

§ 14.26 Payment required; exceptions; default; revision of charges.

(a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: *Provided*, That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than \$25. The amount to be so returned will be the difference between the total payments made and the value of the expired portion of the term calculated on the same basis as the original payments.

(b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than \$25 per five-year period for any permit, right-of-way, or easement issued.

(c) No charge will be made for the use and occupancy of lands under the regulations of this part:

(1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or non-profit or Rural Electrification Admin-

istration projects, or where the use is by a Federal governmental agency.

(2) Where the permit, right-of-way, or easement is granted under the regulations in Subpart D.

(d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way, or easement. After default has occurred, structures, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer.

(e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year.

(f) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department.

§ 14.27 Application and use procedure.

§ 14.28 Incomplete application and reports.

Where an application is incomplete or not in conformity with the law or regulations the authorized officer may, in his discretion, (1) notify the applicant of the deficiencies and provide the applicant with an opportunity to correct the deficiencies; or (2) the authorized officer may reject the application.

§ 14.29 Timely construction.

(a) Unless otherwise provided by law, a period of up to five years from the date a right-of-way is granted is allowed for completion of construction. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the authorized officer.

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(b) The time for filing proof of construction may be extended by the authorized officer, unless prohibited by law, upon a satisfactory showing of the need therefor and the filing of a progress report, demonstrating that due diligence toward completion of the project is being exercised, for reasonable lengths of time not to exceed a total of ten years from the date of issuance of the right-of-way.

§ 14.30 Nonconstruction, abandonment or nonuse.

Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

§ 14.31 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way shall be undertaken without the prior written approval of the authorized officer. The authorized officer may require the filing of an amended application in accordance with §14.20 wherein the authorized officer's judgment the deviation is substantial.

§ 14.32 Revocation or cancellation.

§ 14.33 Order of cancellation.

All rights-of-way approved pursuant to this part, shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of the terms or conditions of the right-of-way. No right-of-way shall be deemed to be cancelled except on the issuance of a specific order of cancellation.

§ 14.34 Change in jurisdiction over lands.

A change in jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will however, change the administrative jurisdiction over the right-of-way.

§ 14.35 Transfer of right-of-way.

§ 14.36 Method of filing.

Any proposed transfer in whole or in part of any right, title or interest in a

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right-of-way, or permit incident to a right-of-way acquired under any law, except the Act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946-949), must be filed in accordance with §14.20 for approval, must be accompanied by the same showing of qualifications of the transferee as is required of the applicant, and must be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way. No transfer will be recognized unless and until it is first approved in writing by the authorized officer.

§ 14.37 Reimbursement of costs.

All filings for transfer approval made pursuant to this section, except as to rights-of-way or permits incident to rights-of-way excepted by §14.22(a)(4), must be accompanied by a nonrefundable payment of \$25.

§ 14.38 Disposal of property on termination of right-of-way.

Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all monies due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

Subpart D—Under Title 23, U.S.C. (Interstate and Defense Highway System)

§ 14.50 Authority.

(a) Title 23, United States Code, section 107, paragraph (d), provides that whenever rights-of-way, including control of access, on the National System of Interstate and Defense Highways are required over lands or interests in lands owned by the United States, Secretary of Transportation may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or

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other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands. It directs any such agency to cooperate with the Secretary of Transportation in this connection.

(b) Title 23, United States Code, section 317, provides that:

(1) If the Secretary of Transportation determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway constructed on the Federal-aid primary system, the Federal-aid secondary system and the National System of Interstate and Defense Highways, or under Title 23, United States Code, Chapter 2, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary of Transportation shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(2) If within a period of 4 months after such filing the Secretary of such department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such lands or materials have been reserved or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such lands and materials may be appropriated and transferred to the State highway department or its nominee, for such purposes and subject to the conditions so specified.

§ 14.51 Extent of grant.

By decision of the Secretary, Nevada Department of Highways, A.24151, September 1945, it was held that the law imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the

Government may reserve the right to dispose of leasable minerals.

§ 14.52 Termination of right-of-way no longer needed.

If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Transportation and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated. Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau which granted the rights.

§ 14.53 Application.

§ 14.54 General.

Applications for rights-of-way and material sites under title 23, U.S.C., for lands under the jurisdiction of the National Park Service, together with four copies of a durable and legible map shall be filed by the appropriate State highway department with the Director, National Park Service, Department of Interior, Washington, D.C. 20240. Maps should accurately describe the land or interest in land desired, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the requirements of § 14.25(a).

§ 14.55 Consultation with local bureau officials, program values.

An applicant will be expected, at the earliest possible date prior to the filing of an application, to consult with the local officials of the National Park Service to ascertain whether or not the use or appropriation of the lands for right-of-way purposes is consistent with the Service's management program and to agree to such measures as may be necessary to maintain program values. Failure to do so may lead to an unresolvable conflict of interest and necessitate disallowance of the application.

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§ 14.56 Concurrence by Federal Highway Administration.

The appropriate State highway department will forward a copy of each application and map filed with the National Park Service to the authorized officer of the Federal Highway Administration for a determination whether the lands and interests in lands are necessary for the purposes of Title 23, United States Code.

§ 14.57 Approval.

After receipt of such determination that the lands or interests in lands under application are reasonably necessary for the purposes of Title 23, U.S.C., the authorized officer of the National Park Service will notify the applicant and the authorized officer of the Federal Highway Administration either (a) that the approval of the application would be contrary to the public interest or inconsistent with the purposes for which the lands or materials have been reserved or (b) that he proposes to grant the right-of-way under the regulations of this part, subject to said regulations and to such conditions which he indicates in his notice.

§ 14.58 Terms and conditions of allowance.

Grants of rights-of-way under Title 23, U.S.C., by the authorized officer of the National Park Service will be made to the appropriate State highway department or to its nominee and based upon considerations of adequate protection and utilization of Federal lands and interests in lands will be subject to (a) all the pertinent regulations of this part except those which the authorized officer, upon formal request of the applicant may modify or dispense with, in whole or in part, upon a finding that it is in the public interest and in conformity with the purposes of Title 23, U.S.C., and (b) any conditions which he deems necessary. Grants of highway right-of-way under this subpart may include an appropriation and release to the State or its nominee of all rights of the United States, as owner of underlying and abutting lands, to cross over or gain access to the highway from its lands crossed by or abutting the right-of-way, subject to such terms and con-

ditions and for such duration as the authorized officer of the National Park Service deems appropriate.

§ 14.59 Additional rights-of-way within highway rights-of-way.

A right-of-way granted under this subpart confers upon the grantee the right to use the lands within the right-of-way for highway purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such rights-of-way for other purposes. Additional rights-of-way will be subject to the highway rights-of-way. Future relocation or change of the additional right-of-way made necessary by the highway use will be accomplished at the expense of the additional right-of-way grantee. Prior to the granting of an additional right-of-way the applicant therefor will submit to the authorized officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way.

§ 14.60 General.

No application under the regulations of this part is required for a right-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, for facilities usual to a highway, except (a) where terms of the grant or a provision of law specifically requires the filing of an application for a right-of-way, (b) where the right-of-way is for electric transmission facilities which are designed for operation at a nominal voltage of 33 KV or above or for conversion to such operation, or (c) where the right-of-way is for oil or gas pipelines which are part of a pipeline crossing other public lands, or if not part of such a pipeline, which are more than two miles long. When an application is not required under the provisions of this subparagraph, qualified persons may appropriate rights-of-way for such usual highway facilities with the consent of the holder of the highway right-of-way, which holder will be responsible for compliance with §14.9, in connection with the construction and maintenance of such facilities.

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§ 14.61 Terms of grant.

Except as modified by § 14.60 of this subpart, rights-of-way within the limits of a highway right-of-way granted pursuant to Title 23 U.S.C., and applications for such rights-of-way, are subject to all the regulations of this part pertaining to such rights-of-way.

Subpart E—Power Transmission Lines, General

§ 14.70 Statutory authority.

(a) The Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

(b) The Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to

exercise the use permitted under the Act.

§ 14.71 Lands subject to grant.

Permission may be given under the Act of February 15, 1901, and the Act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

Subpart F—Principles and Procedures, Power Transmission Lines

§ 14.75 Nature of interest.

§ 14.76 Terms and conditions.

(a) By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 14.9.

(1) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(2) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

(3) Each application for authority to survey, locate, commence construction work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 33 kilovolts or higher under this subpart shall be referred by the authorized officer to

the Secretary of the Interior to determine the relationship of the proposed facility to the power marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided however*, That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(4) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive or conductive interference.

(5) An applicant for a right-of-way for a transmission facility having a voltage of 66 kilovolts or more must, in addition to the requirements of Subpart C, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(i) In the event the United States, pursuant to law, acquires the appli-

cant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(ii) The Department of the Interior shall be allowed to utilize for the transmission of electric power and energy and surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as "holder") for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(A) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish to the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(B) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(C) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

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(D) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(E) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may by mutual consent open any switch where necessary or desirable for maintenance, repair or construction.

(F) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner, as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(G) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the application for a grant, other than statutory preference customers including agencies of the Federal Government.

(H) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy the payment to be an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined

in accordance with the system of accounts prescribed by the Federal Power Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(I) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(J) If the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(K) As used in this section, the term "transmission facility" includes (1) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (2) the entire transmission line and associated facilities, from substation or interconnection point to

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substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(L) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

(b) Unless otherwise specified in a right-of-way granted under the Act of March 4, 1911, and unless sooner cancelled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with §14.20, a written application to renew the right-of-way, and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

§ 14.77 Procedures. [Reserved]

§ 14.78 Applications.

(a) *Applications filed.* Application under the Act of February 15, 1901, or the Act of March 4, 1911, for permission to use the desired right-of-way through National Park Service areas must be filed and approved before any rights can be claimed thereunder.

(b) *Required showings.* (1) A description of the plant or connecting generating plants which generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the authorized officer, the character, capacity, and location of such plants.

(2) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for which the line is designed and at which it is to be operated initially, and a statement as to whether it is to serve

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a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps).

(3) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the centerline unless sufficient justification is furnished for a greater width and it is otherwise authorized by law.

(4) If the line is to have a nominal voltage of 66 kilovolts or more, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed line showing construction dimensions and list of materials.

(5) Any application under the Act of March 4, 1911, for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(6)(i) A detailed description of the environmental impact of the project shall be included with the application. It shall provide, among other things, information about the impact of the project on airspace, air and water quality, scenic and esthetic features, historical and archeological features, and wildlife, fish, and marine life.

(ii) The proposed site, design, and construction of the project shall be consistent with the "Environmental Criteria for Electric Transmission Lines," prescribed jointly by the Secretary of Agriculture, as well as such other environmental criteria and guidelines as the National Park Service shall from time to time prescribe. "Environmental Criteria for Electric Transmission Systems" is available

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from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(iii) If all other requirements are met, the application may be approved if it is determined that the beneficial purposes and effects of the project will not be outweighed by an adverse environmental impact. If the authorized officer determines that the application cannot be approved as proposed, he will, whenever possible, suggest alternative routes or methods of construction, or other modifications which if adopted by the applicant would make the application acceptable.

Subpart G—Radio and Television Sites

§ 14.90 Authority.

The Act of March 4, 1911, (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

§ 14.91 Procedures.

(a) Any application under the Act of March 4, 1911, for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(b) When an application is made for a right-of-way for a site for a water plant

or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the Act of March 4, 1911. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land survey.

Subpart H—Telephone and Telegraph Lines

§ 14.95 Authority.

(a) The Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipelines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or

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corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

(b) The Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed 400 feet by 400 feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

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Any application under the Act of March 4, 1911, for line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

APPENDIX A TO PART 14

Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act involved, and to the nature of the project.

FORM

References should be made to the appropriate section of the regulations to determine when each of the forms is required.

Form No. 2 may be signed by any officer or employee of the company who is authorized to sign it. However, if it is executed by a person other than the President, it must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Forms 1 and 2 to be placed on maps. See § 14.25(a)(7).

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ENGINEER'S STATEMENT

(FORM 1)

_____(Name of engineer) states he is by occupation a _____(Type of engineer) employed by the _____(Company) to make the survey of the _____(Kind of works) as described and shown on this map; that the survey of said works made by him (or under his supervision) and under authority, commencing on the _____ day of _____, 19____ and ending on the _____ day of _____, 19____; and that such survey is accurately represented upon this map.

Engineer

APPLICANT'S CERTIFICATE

(FORM 2)

This is to certify that _____(Engineer), who subscribed the statement hereon, is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown, and that this map is filed as a part of the complete application, and in order that the applicant may obtain the benefits of _____(Cite statute); and I further certify that the right-of-way herein described is desired for _____(state purpose) _____
(Seal)

Signature of Applicant

Title

Company
Attest:

PART 17—CONVEYANCE OF FREE-HOLD AND LEASEHOLD INTERESTS ON LANDS OF THE NATIONAL PARK SYSTEM

- Sec.
- 17.1 Authority.
- 17.2 Definitions.
- 17.3 Lands subject to disposition.
- 17.4 Notice.
- 17.5 Bids.
- 17.6 Action at close of bidding.
- 17.7 Preference rights.
- 17.8 Conveyance.

AUTHORITY: Sec. 5(a), of the Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 4601-22(a).

SOURCE: 42 FR 46302, Sept. 15, 1977, unless otherwise noted.

§ 17.1 Authority.

Section 5(a) of the Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 4601-22(a),