

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

#### 7 CFR Part 500

#### National Arboretum

**AGENCY:** Agricultural Research Service; Research, Education, and Economics; USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is revising a schedule of fees to be charged for certain uses of the facilities, grounds, and services at the United States National Arboretum (USNA).

**DATES:** This rule is effective May 28, 2003.

**ADDRESSES:** Address all correspondence to Thomas S. Elias, Director, U.S. National Arboretum, Beltsville Area, Agricultural Research Service, 3501 New York Avenue, NE., Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Thomas S. Elias, Director, National Arboretum, Beltsville Area, ARS, 3501 New York Avenue, NE., Washington, DC 20002; (202) 245-4539.

**SUPPLEMENTARY INFORMATION:** This final rule was published as a proposed rule for comment on April 10, 2002 (67 FR 17301). No comments were received. Accordingly, the proposed rule is published as the final rule without changes.

#### Classification

This final rule has been reviewed under Executive Order 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of \$100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local,

or Tribal governments or communities. This final rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

#### Regulatory Flexibility Act

The Department of Agriculture certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354, as amended (5 U.S.C. 601, *et seq.*).

#### Paperwork Reduction Act

This rule does not alter the reporting or recordkeeping requirements contained in the proposed rule. Those requirements have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB control number 0518-0024 for the use of facilities or the performance of photography/cinematography at the U.S. National Arboretum.

#### Background

Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127 (1996 Act), expands the authorities of the Secretary of Agriculture to charge reasonable fees for the use of USNA facilities and grounds as well as enter into a concession agreement for the provision of food services on the grounds. These new authorities include the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds in furtherance of the mission of the USNA. Also, authority is provided to charge fees for the use of USNA facilities and grounds for commercial photography and cinematography. All rules and regulations noted in 7 CFR 500, subpart A, Conduct on the U.S. National Arboretum Property, will apply to individuals or groups granted approval to use the facilities and grounds.

#### Fee Schedule for Tours

The USNA operates a 48-passenger tram (which accommodates 2 wheelchairs) to provide mobile tours throughout the USNA grounds. This rule changes the fee to be charged to all riders as well as the amount to be charged for pre-scheduled group tram tours. Additionally, a fee will be charged for providing tour guides for pre-scheduled non-tram tours. Fee amounts were determined after a survey of similar services provided by other Arboreta and Botanical Gardens and an analysis of costs associated with the program. Fees generated will be used to offset costs or for the purposes of promoting the mission of the USNA.

#### Fee Schedule for Use of Facilities and Grounds

This rule modifies the fees for temporary use by individuals or groups of USNA facilities and grounds. The fees are established based on actual costs (*i.e.*, electricity, heating, water, maintenance, security, scheduling, *etc.*). Facilities and grounds are available by reservation at the discretion of the USNA Director or designee and may be available to individuals or groups in furtherance of the mission of the USNA. Agency initiatives may be granted first priority. Reservation requests should be made as far in advance of the need as possible to ensure consideration.

#### Fee Schedule for Use of Facilities and Grounds for Purposes of Photography or Cinematography

This rule modifies the fee for the use of the facility or grounds for the purposes of commercial photography or cinematography. The fees are established based on comparable opportunities provided by other Arboreta and Botanical Gardens across the nation. USNA facilities and grounds are available for use for the purpose of commercial photography or cinematography at the discretion of the USNA Director. Requests for use should be made a minimum of two weeks in advance of required date. The USNA Director may waive fees, and the USNA does not intend for photography or cinematography relating to media stories concerning the USNA and its mission or for other noncommercial, First Amendment activity.