

## § 2800.0-2

of right-of-way grants issued on or before October 21, 1976, pursuant to then existing statutory authority.

[45 FR 44526, July 1, 1980, as amended at 51 FR 6543, Feb. 25, 1986]

### § 2800.0-2 Objectives.

It is the objective of the Secretary of the Interior to grant rights-of-way and temporary use permits, covered by the regulations in this part, to any qualified individual, business entity, or governmental entity and to regulate, control and direct the use of said rights-of-way on public land so as to:

(a) Protect the natural resources associated with the public lands and adjacent private or other lands administered by a government agency.

(b) Prevent unnecessary or undue environmental damage to the lands and resources.

(c) Promote the utilization of rights-of-way in common with respect to engineering and technological compatibility, national security and land use plans.

(d) Coordinate, to the fullest extent possible, all actions taken pursuant to this part with State and local governments, interested individuals and appropriate quasi-public entities.

### § 2800.0-3 Authority.

Sections 303, 310, and 501-511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1761-1771) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits, easements, and rights-of-way.

[54 FR 25854, June 20, 1989]

### § 2800.0-5 Definitions.

As used in this part, the term:

(a) *Act* means the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701 *et seq.*).

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

(c) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(d) *Public lands* means any lands or interest in land owned by the United

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States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(e) *Applicant* means any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations which applies for a right-of-way grant or a temporary use permit.

(f) *Holder* means any applicant who has received a right-of-way grant or temporary use permit.

(g) *Right-of-way* means the public lands authorized to be used or occupied pursuant to a right-of-way grant.

(h) *Right-of-way grant* means an instrument issued pursuant to title V of the act, or issued on or before October 21, 1976, pursuant to then existing statutory authority, authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

(i) *Temporary use permit* means a revocable non-possessory, non-exclusive privilege, authorizing temporary use of public lands in connection with construction, operation, maintenance, or termination of a project.

(j) *Facility* means an improvement constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant. For purposes of communication site rights-of-way, facility means the building, tower, and/or other related incidental improvements authorized under terms of the right-of-way grant.

(k) *Project* means the transportation or other system for which the right-of-way is authorized.

(l) *Designated right-of-way corridor* means a parcel of land either linear or areal in character that has been identified by law, by Secretarial Order, through the land use planning process or by other management decision as being a preferred location for existing and future right-of-way grants and suitable to accommodate more than 1 type of right-of-way or 1 or more

rights-of-way which are similar, identical or compatible; and

(m) *Casual use* means activities that involve practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources or improvements and, therefore, do not require a right-of-way grant or temporary use permit under this title.

(n) *Transportation and utility corridor* means a parcel of land, without fixed limits or boundaries, that is being used as the location for 1 or more transportation or utility right-of-way.

(o) *Actual costs* means the financial measure of resources expended or used by the Bureau of Land Management in processing a right-of-way application or monitoring the construction, operation and termination of a facility authorized by a grant or permit. *Actual costs* includes both direct and indirect costs, exclusive of management overhead.

(p) *Monetary value of the rights and privileges sought* means the objective value of the right-of-way or permit or what the right-of-way grant or temporary use permit is worth in financial terms to the applicant.

(q) *Cost incurred for the benefit of the general public interest* (public benefit) means funds expended by the United States in connection with the processing of an application for studies and data collection determined to have value or utility to the United States or the general public separate and apart from application processing.

(r) *Public service provided* means tangible improvements, such as roads, trails, recreation facilities, etc., with significant public value that are expected in connection with the construction and operation of the project for which a right-of-way grant is sought.

(s) *Efficiency to the Government processing* means the ability of the United States to process an application with a minimum of waste, expense and effort.

(t) *Management overhead costs* means costs associated with the Bureau directorate, including all State Directors and the entire Washington Office staff, except where a member of such staff is required to perform work on a specific

right-of-way or temporary use permit case.

(u) *Trespass* means any use, occupancy or development of the public lands or their resources without authorization to do so from the United States where authorization is required, or which exceeds such authorization or which causes unnecessary or undue degradation of the land or resources.

(v) *Willful trespass* means the voluntary or conscious trespass as defined at subpart 2801 of this title. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of mistake or inadvertence. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal.

(w) *Nonwillful trespass* means a trespass, as defined at §2801.3(a) of this title, committed by mistake or inadvertence.

(x) *Unnecessary or undue degradation* means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner that takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity. This disturbance may be either nonwillful or willful as described in §2800.0-5(v) through (w), depending upon the *circumstances*.

(y) *Written demand* means a request in writing for payment and/or rehabilitation in the form of a billing delivered by certified mail, return receipt requested or personally served.

(z) *Road use, amortization and maintenance charges* means the fees charged for commercial use of a road owned or controlled by the Bureau of Land Management. These fees normally include use fees, amortization fees and maintenance fees.

(aa) *Base rent* means the amount required to be paid by the holder of a right-of-way on public lands for the

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communication use with the highest assigned schedule rent in the facility, in accordance with terms of the right-of-way grant.

(bb) Tenant means an occupant who rents space in a facility and operates communication equipment in the facility to resell the communication service to others for a profit. For purposes of calculating rent, the term "tenant" does not include private mobile radio or those uses included in the category of Other Communication Uses.

(cc) Customer means a person who is paying the facility owner or tenant for communication services, and is not reselling communication services to others. Persons or entities benefiting from private or internal communication uses located in a CMRS facility are considered customers for purposes of calculating rent.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38805, Sept. 2, 1982; 51 FR 6543, Feb. 25, 1986; 52 FR 25808, July 8, 1987; 54 FR 25854, June 20, 1989; 60 FR 57070, Nov. 13, 1995]

**§ 2800.0-7 Scope.**

This part sets forth regulations governing:

(a) Issuing, amending or renewing right-of-way grants for necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through public lands, including but not limited to:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems for generation, transmission and distribution of electric energy, except that the applicant shall

also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935 (16 U.S.C. 791);

(5) Systems for transmission or reception of radio, television, telephone, telegraph and other electronic signals, and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through such lands; or

(8) Rights-of-way to any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom.

(b) Temporary use of additional public lands for such purposes as the Secretary determines to be reasonably necessary for construction, operation, maintenance or termination of rights-of-way, or for access to the project or a portion of the project.

(c) However, the regulations contained in this part do not cover right-of-way grants for: Federal Aid Highways, roads constructed or used pursuant to cost share or reciprocal road use agreements, wilderness areas, and oil, gas and petroleum products pipelines except as provided for in § 2800.0-7(a)(8) of this title.

**§ 2800.0-9 Information collection.**

(a) The information collection requirements contained in part 2800 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0102 and 1004-0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.