

Bureau of Land Management, Interior

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may be imposed for all or any part of the right-of-way.

[45 FR 44526, July 1, 1980, as amended at 47 FR 12570, Mar. 23, 1982; 52 FR 25808, July 8, 1987]

§ 2802.5 Special application procedures.

(a) An applicant filing for a right-of-way within 4 years from the effective date of this subpart for an unauthorized right-of-way that existed on public land prior to October 21, 1976, is not:

(1) Required to reimburse the United States for the processing, monitoring or other costs provided for in subpart 2808 of this title.

(2) Required to pay rental fees for the period of unauthorized land use.

(b) In order to facilitate management of the public lands, any person or State or local government which has constructed public highways under the authority of R. S. 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer. Maps filed under this paragraph shall be in sufficient detail to show the location of the R. S. 2477 highway(s) on public lands in relation to State or county highway(s) or road(s) in the vicinity. The submission of such maps showing the location of R. S. 2477 highway(s) on public lands shall not be conclusive evidence as to their existence. Similarly, a failure to show the location of R. S. 2477 highway(s) on any map shall not preclude a later finding as to their existence.

[45 FR 44526, July 1, 1980, as amended at 47 FR 12570, Mar. 23, 1982; 47 FR 38806, Sept. 2, 1982; 52 FR 25808, July 8, 1987]

Subpart 2803—Administration of Rights Granted

§ 2803.1 General requirements.

§ 2803.1-2 Rental.

(a) The holder of a right-of-way grant or temporary use permit shall pay annually, in advance, except as provided in paragraph (b) of this section, the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. An-

nual rent billing periods shall be set or adjusted to coincide with the calendar year (January 1 through December 31) by proration on the basis of 12 months; the initial month shall not be counted for right-of-way grants or temporary use permits having an anniversary date of the 15th or later in the month and the terminal month shall not be counted if the termination date is the 14th or earlier in the month. Rental shall be determined in accordance with the provisions of paragraph (c) of this section; *Provided, however,* That in those instances where the annual payment is \$100 or less, the authorized officer may require an advance lump sum payment for 5 years.

(b)(1) No rental shall be collected where:

(i) The holder is a Federal, State, or local government, or agency or instrumentality thereof, except parties who are using the space for commercial purposes, and municipal utilities and cooperatives whose principal source of revenue is customer charges;

(ii) The right-of-way was issued pursuant to a statute that did not or does not require the payment of rental; or

(iii) The facilities constructed on a site or linear right-of-way are or were financed in whole or in part under the Rural Electrification Act of 1936, as amended, or are extensions from such Rural Electrification Act financed facilities.

(2) The authorized officer may reduce or waive the rental payment under the following instances:

(i) The holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise;

(ii) The holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary;

(iii) The holder holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under part 2880 of this title; and:

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(A) Needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; or

(B) Needs a right-of-way across the public lands outside the permit, lease, license or contract area in order to reach said area;

(iv) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental; and

(v) A right-of-way involves a cost share road or reciprocal right-of-way agreement not subject to part 2812 of this title. Any fair market value rental required to be paid under this paragraph (b)(2)(v) shall be determined by the proportion of use.

(c)(1)(i) Except for those linear right-of-way grants or temporary use permits that the authorized officer determines under paragraph (c)(1)(v) of this section to require an individual appraisal, an applicant shall, prior to the issuance of a linear right-of-way grant or temporary use permit, submit an annual rental payment in advance for such right-of-way grant or temporary use permit in accordance with the following schedule:

PER ACRE RENTAL FEE ZONE VALUE

Zone value	Oil and gas and other energy related pipelines, roads, ditches and canals	Electric transmission lines, telephone electric distribution, non-energy related pipelines, and other linear rights-of-way
\$50	\$2.56	\$2.24
100	5.13	4.49
200	10.26	8.97
300	15.38	13.46
400	20.51	17.95
500	25.64	22.44

PER ACRE RENTAL FEE ZONE VALUE—
Continued

Zone value	Oil and gas and other energy related pipelines, roads, ditches and canals	Electric transmission lines, telephone electric distribution, non-energy related pipelines, and other linear rights-of-way
600	30.77	26.92
1,000	51.28	44.87

(The values are based on zone value × impact adjustment × interest rate (6.41—1-year Treasury Securities “Constant Maturity” rate for June 30, 1986. The rate will remain constant except as provided in paragraphs (c)(1)(ii) and (iii) of this section.)

A per acre rental schedule by State, County, and type of linear right-of-way use, which will be updated annually, is available from any Bureau State or District office or may be obtained by writing: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

(ii) The schedule will be adjusted annually by multiplying the current year’s rental per acre by the annual change, second quarter to the second quarter (June 30 to June 30), in the Gross National Product Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis.

(iii) At such times as the cumulative change in the index used in paragraph (c)(1)(ii) of this section exceeds 30 percent or the change in the 3-year average of the 1-year interest rate exceeds plus or minus 50 percent, the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures. Measurements shall be taken at the end of the second quarter (June 30) of the year beginning with calendar year 1986. The initial bases (June 30, 1986) for these two indexes are: Gross National Product Price Implicit Price Deflator Index was 114.0 and the 3-year average of the 1-year Treasury interest rate was 8.86%.

(iv) Rental for the ensuing calendar year for any single right-of-way grant

or temporary use permit is the rental per acre from the current schedule multiplied by the number of acres embraced in the grant or permit, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

(v) The authorized officer will use the linear rental schedule unless the authorized officer determines:

(A) A substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10; and

(B) In the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal.

Once the rental for a right-of-way grant has been determined by use of the rental schedule, the provisions of this subparagraph shall not be used as a basis for removing it from the schedule.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder.

(ii) Where the new annual rental for linear rights-of-way exceeds \$100 and is more than a 100 percent increase over the current rental, the amount of increase in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3 year period.

(d) The annual rental payment for communication uses listed in paragraph (d)(1) of this section is based on rental payment schedules. The rental schedules apply to right-of-way holders and tenants authorized to operate and maintain communication facilities on public lands. They do not apply to holders who are public telecommunications service operators providing public television or radio broadcast services granted a waiver under § 2803.1-2(b)(2)(i). Nor do they apply to communication site uses, facilities, or devices located exclusively within the exterior boundaries of an oil and gas lease and directly associated with the operations of the oil and gas lease (subpart 2880).

(1) The schedules are applicable to communication uses that provide the following services:

(i) Television broadcast includes right-of-way holders that operate FCC-

licensed facilities used to broadcast UHF and VHF audio and video signals for general public reception, and communication equipment directly related to the operation, maintenance, and monitoring of the use. This category does not include holders licensed by the FCC to operate Low Power Television (LPTV) or rebroadcast devices such as translators, or transmitting devices such as microwave relays serving broadcast translators.

(ii) AM and FM radio broadcast includes rights-of-way that contain FCC-licensed facilities primarily used to broadcast amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception, and communication equipment directly related to the operation, maintenance, and monitoring of the use. This category is not applicable to holders licensed by the FCC as a low-power FM radio. This category also does not include rebroadcast devices such as translators, boosters, or microwave relays serving broadcast translators.

(iii) The broadcast translator and low power television category includes FCC-licensed translators and low power television, low power FM radio, and communication equipment directly related to the operation, maintenance, or monitoring of the use. Microwave facilities used in conjunction with LPTV and broadcast translators are included in this category.

(iv) Cable television includes FCC-licensed facilities that transmit video programming to multiple subscribers in a community over a wired or wireless network, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, personal or internal antenna systems such as private systems serving hotels or residences.

(v) Commercial mobile radio service/facility manager includes FCC-licensed commercial mobile radio facilities or their holders providing mobile communication service to individual customers, and communication equipment directly related to the operation, maintenance, or monitoring of the use. Such

services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment. Some holders in this category may not hold FCC licenses or operate communication equipment, but may lease building, tower, and related facility space to a variety of tenants as a part of their business enterprise, and may act as facility managers.

(vi) Private Mobile Radio includes FCC-licensed private mobile radio systems primarily used by a single entity for mobile internal communications, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for the control of the mobile facilities.

(vii) Cellular telephone includes FCC-licensed systems and related technologies used for mobile communications using a combination of radio and telephone switching technology, and providing public switched network services to fixed and mobile users within a defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and often microwave communications link equipment, and communication equipment directly related to the maintenance and monitoring of the use.

(viii) Microwave includes FCC-licensed facilities used for long-line intrastate and interstate public telephone, television, information, and data transmissions, or used by pipeline and power companies, railroads, and land resource management companies in support of the holder's primary business. Also included is communication equipment directly related to the operation, maintenance, or monitoring of the use.

(ix) Other communication uses include holders of FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

(2)(i) The rental schedules will be adjusted annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U, U.S. City Average, published in July of each year), and Rannally Metro Area population rankings. Annual adjustments based on the CPI-U will be limited to no more than 5 percent. The rental schedule will be reviewed for possible update no later than 10 years after December 13, 1995, and at least every 10 years thereafter, to ensure that the schedule reflects fair market value.

(ii) Rights-of-way may be reviewed on a case-by-case basis 10 years after issuance or beginning [10 years and 30 days after the date of publication], whichever is later, and no more often than every 5 years thereafter, on holder request, to determine whether rents are appropriate.

(3) Rent is based on the actual users in the facility. For a facility with a single user, the base rent is the schedule rent for the use. Base rent for authorizations that include more than one user will be based on the use in the facility with the highest rent as shown on the schedule. An additional amount will be assessed based on 25 percent of the schedule rent for all other users. (A facility manager is not considered a separate use for purposes of calculating the additional amount for tenants in the facility.)

(4) Increases in base rental payments over 1996 levels in excess of \$1,000 will be phased in over a 5-year period. In 1997, the rental payment will be the 1996 rental, plus \$1,000. The amount exceeding \$1,000 will be divided into 4 equal installments, and beginning in 1998 the installment, plus the annual adjustment in the total rent, will be added to the previous year's rent.

(5) Annual rental payments will be calculated and provided to the holder

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by December 31 for each ensuing calendar year based on the schedules published from time to time as necessary in the FEDERAL REGISTER.

(6) Also, the right-of-way holder must submit a certified statement by October 15 of each year listing tenants in the facility and the category of use for each tenant as of September 30 of that year, and pay 25 percent of the schedule rent for the category of use. Tenants occupying space in the facility under terms of the holder's right-of-way authorization will not be required to have a separate BLM authorization.

(7) Other methods may be used to set rental payments for communication uses when the authorized officer determines one of the following:

(i) The holder is eligible for a waiver or reduction in rent in accordance with § 2803.1-2(b)(2);

(ii) Payment of the rent will cause undue hardship under § 2803.1-2(b)(2)(iv);

(iii) The original right-of-way authorization has been or will be issued pursuant to a competitive bidding process;

(iv) The State Director concurs in a determination made by the authorized officer that the expected rent exceeds the schedule rent by 5 times, or the communication site serves a population of 1 million or more and the expected rent for the communication use is more than \$10,000 above the schedule rent; or

(v) The communication facilities are ancillary to and authorized under a right-of-way grant for a linear facility. In such cases, rent for the associated communication facilities is to be determined in accordance with the linear fee schedule.

(e)(1) The rental for right-of-way grants and temporary use permits not covered by the right-of-way schedule in § 2803.1-2(d)(5) will be determined by the authorized officer and paid annually in advance. Rental for communication site rights-of-way not covered by the schedule, except those issued pursuant to Section 28 of the Mineral Leasing Act (30 U.S.C. 185), will be based on comparative market surveys, appraisals, or other reasonable methods. All such rental determinations shall be documented, supported, and approved

by the authorized officer. Where the authorized officer determines that a competitive interest exists for site type right-of-way grants such as for wind farms, communication sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1-3.

(2) To expedite the processing of any grant or permit covered by paragraph (e)(1) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit will be adjusted according to the final fair market rental value determination.

(f) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(g) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(h) If the rental required by this section is not paid when due, and such default for nonpayment continues for 30 days after notice, action may be taken to terminate the right-of-way grant or temporary use permit. After default has occurred, no structures, buildings or other equipment may be removed from the subservient lands except upon written permission from the authorized officer.

[52 FR 25818, July 8, 1987; 52 FR 36576, Sept. 30, 1987, as amended at 60 FR 57070, Nov. 13, 1995]

§ 2803.1-3 Competitive bidding.

(a) The authorized officer may identify and offer public lands for competitive right-of-way use either on his/her own motion or as a result of nomination by the public. Competitive bidding shall be used only for site-type right-of-way grants such as wind farms and communication sites. The authorized officer shall give public notice of such decision through publication of a notice of realty action as provided in paragraph (c)(1) of this section. The decision to offer public lands for competitive right-of-way use shall conform to the requirements of the Bureau's land use planning process. The authorized officer shall not offer public lands for competitive right-of-way use where equities such as prior or related use of