

## Bureau of Land Management, Interior

## § 2801.5

lands, whether private or administered by a government entity;

(b) Prevents unnecessary or undue degradation to public lands;

(c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans; and

(d) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.

### § 2801.5 What acronyms and terms are used in the regulations in this part?

(a) *Acronyms.* As used in this part:

*ALJ* means Administrative Law Judge.

*BLM* means the Bureau of Land Management.

*CERCLA* means the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601 *et seq.*).

*EA* means environmental assessment.

*EIS* means environmental impact statement.

*IBLA* means the Department of the Interior, Board of Land Appeals.

*IPD-GDP* means the Implicit Price Deflator, Gross Domestic Product, as published in the most recent edition of the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

*NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

*RMA* means the Rannally Metro Area Population Ranking as published in the most recent edition of the Rand McNally Commercial Atlas and Marketing Guide.

(b) *Terms.* As used in this part, the term:

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

*Actual costs* means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in 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 costs.

*Base rent* means the dollar amount required from a grant or lease holder on BLM managed lands based on the communication use with the highest value in the associated facility or facilities, as calculated according to the communication use rent schedule. If a facility manager's or facility owner's scheduled rent is equal to the highest rent charged a tenant in the facility or facilities, then the facility manager's or facility owner's use determines the dollar amount of the base rent. Otherwise, the facility owner's, facility manager's, customer's, or tenant's use with the highest value, and which is not otherwise excluded from rent, determines the base rent.

*Casual use* means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. *Examples of casual use include:* Surveying, marking routes, and collecting data to use to prepare grant applications.

*Commercial purpose or activity* refers to the circumstance where a holder attempts to produce a profit by allowing the use of its facilities by an additional party. BLM may assess an appropriate rent for such commercial activities. The holder's use may not otherwise be subject to rent charges under BLM's rental provisions.

*Communication use rent schedule* is a schedule of rents for the following types of communication uses, including related technologies, located in a facility associated with a particular grant or lease. All use categories include ancillary communications equipment, such as internal microwave or internal one-or two-way radio, that are directly related to operating, maintaining, and monitoring the primary uses listed below. The Federal Communications Commission (FCC) may or may not license the primary uses. The type of use and community served, identified on an FCC license, if one has been issued, do not supersede either the definitions in this subpart or the procedures in § 2806.30 of this part for calculating rent for communication facilities and uses located on public land:

(1) *Television broadcast* means a use that broadcasts UHF and VHF audio

and video signals for general public reception. This category does not include low-power television (LPTV) or re-broadcast devices, such as translators, or transmitting devices, such as microwave relays serving broadcast translators;

(2) *AM and FM radio broadcast* means a use that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception. This category does not include low-power FM radio; rebroadcast devices, such as translators; or boosters or microwave relays serving broadcast translators;

(3) *Cable television* means a use that transmits video programming to multiple subscribers in a community over a wired or wireless network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems, such as private systems serving hotels and residences;

(4) *Broadcast translator, low-power television, and low-power FM radio* means a use of translators, LPTV, or low-power FM radio (LPFM). Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases the translator relays the true signal to an amplifier or another translator. LPTV and LPFM are broadcast translators that originate programming. This category also includes translators associated with public telecommunication services;

(5) *Commercial mobile radio service (CMRS)/facility manager* means commercial mobile radio uses that provide mobile communication service to individual customers. *Examples of CMRS include:* Community repeaters, trunked radio (specialized mobile radio), two-way radio voice dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and other two-way voice and paging services. “Facility Managers” are grant or lease holders that lease building, tower, and related facility space to a variety of tenants and customers as part of the holder’s business enterprise, but do not own or operate communication equipment in the facility for their own uses;

(6) *Cellular telephone* means a system of mobile or fixed communication devices that use a combination of radio and telephone switching technology and provide public switched network services to fixed or mobile users, or both, within a defined geographic area. The system consists of one or more cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, or microwave communications link equipment. *Examples of cellular telephone include:* Personal Communication Service, Enhanced Specialized Mobile Radio, Improved Mobile Telephone Service, Air-to-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service;

(7) *Private mobile radio service (PMRS)* means uses supporting private mobile radio systems primarily for a single entity for mobile internal communications. PMRS service is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. *Examples of PMRS include:* Private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities;

(8) *Microwave* means communication uses that:

(i) Provide long-line intrastate and interstate public telephone, television, and data transmissions; or

(ii) Support the primary business of pipeline and power companies, railroads, land resource management companies, or wireless internet service provider (ISP) companies; and

(9) *Other communication uses* means private communication uses, such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities;

*Customer* means an occupant who is paying a facility manager, facility owner, or tenant for using all or any part of the space in the facility, or for communication services, and is not selling communication services or broadcasting to others. We consider persons or entities benefitting from private or internal communication

uses located in a holder's facility as customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent owed by a facility owner, facility manager, or tenant, except as noted in §§ 2806.34(b)(4) and 2806.42 of this part. *Examples of customers include:* Users of PMRS, users in the microwave category when the microwave use is limited to internal communications, and all users in the category of "Other communication uses" (see paragraph (a) of the definition of Communication Use Rent Schedule in this section).

*Designated right-of-way corridor* means a parcel of land with specific boundaries identified by law, Secretarial order, the land-use planning process, or other management decision, as being a preferred location for existing and future rights-of-way and facilities. The corridor may be suitable to accommodate more than one type of right-of-way use or facility or one or more right-of-way uses or facilities which are similar, identical, or compatible.

*Discharge* has the meaning found at 33 U.S.C. 1321(a)(2) of the Clean Water Act.

*Facility* means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the grant or lease holder within a right-of-way. For purposes of communication site rights-of-way or uses, facility means the building, tower, and related incidental structures or improvements authorized under the terms of the grant or lease.

*Facility manager* means a person or entity that leases space in a facility to communication users and:

- (1) Holds a communication use grant or lease;
- (2) Owns a communications facility on lands covered by that grant or lease; and
- (3) Does not own or operate communications equipment in the facility for personal or commercial purposes.

*Facility owner* means a person or entity that may or may not lease space in a facility to communication users and:

- (1) Holds a communication use grant or lease;
- (2) Owns a communications facility on lands covered by that grant or lease; and

- (3) Owns and operates his or her own communications equipment in the facility for personal or commercial purposes.

*Grant* means any authorization or instrument (e.g., easement, lease, license, or permit) BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.*, and those authorizations and instruments BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority. It does not include authorizations issued under the Mineral Leasing Act (30 U.S.C. 185).

*Hazardous material* means:

- (1) Any substance or material defined as hazardous, a pollutant, or a contaminant under CERCLA at 42 U.S.C. 9601(14) and (33);

- (2) Any regulated substance contained in or released from underground storage tanks, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. 6991;

- (3) Oil, as defined by the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701(23); or

- (4) Other substances applicable Federal, state, tribal, or local law define and regulate as "hazardous."

*Holder* means any entity with a BLM right-of-way authorization.

*Management overhead costs* means Federal expenditures associated with BLM's directorate, including all BLM State Directors and the entire Washington Office staff, except where a State Director or Washington Office staff member is required to perform work on a specific right-of-way case.

*Monetary value of the rights and privileges you seek* means the objective value of the right-of-way or what the right-of-way grant is worth in financial terms to the applicant.

*Monitoring* means those actions the Federal government performs to ensure compliance with the terms, conditions, and stipulations of a grant.

- (1) For Monitoring Categories 1 through 4, the actions include inspecting construction, operation, maintenance, and termination of permanent or temporary facilities and protection and rehabilitation activities until the holder completes rehabilitation of the right-of-way and BLM approves it;

## § 2801.6

## 43 CFR Ch. II (10–1–06 Edition)

(2) For Monitoring Category 5 (Master Agreements), those actions agreed to in the Master Agreement; and

(3) For Monitoring Category 6, those actions agreed to between BLM and the applicant before BLM issues the grant.

*Public lands* means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership, except lands:

(1) Located on the Outer Continental Shelf; and

(2) Held for the benefit of Indians, Aleuts, and Eskimos.

*Reasonable* costs has the meaning found at section 304(b) of the Act.

*Release* has the meaning found at 42 U.S.C. 9601(22) of CERCLA.

*Right-of-way* means the public lands BLM authorizes a holder to use or occupy under a grant.

*Site* means an area, such as a mountaintop, where a holder locates one or more communication or other right-of-way facilities.

*Substantial deviation* means a change in the authorized location or use which requires:

(1) Construction or use outside the boundaries of the right-of-way; or

(2) Any change from, or modification of, the authorized use. *Examples of substantial deviation include:* Adding equipment, overhead or underground lines, pipelines, structures, or other facilities not included in the original grant.

*Tenant* means an occupant who is paying a facility manager, facility owner, or other entity for occupying and using all or any part of a facility. A tenant operates communication equipment in the facility for profit by broadcasting to others or selling communication services. For purposes of calculating the amount of rent that BLM charges, a tenant's use does not include:

(1) Private mobile radio or internal microwave use that is not being sold; or

(2) A use in the category of "Other Communication Uses" (see paragraph (a) of the definition of Communication Use Rent Schedule in this section).

*Third party* means any person or entity other than BLM, the applicant, or

the holder of a right-of-way authorization.

*Tramway* means a system for carrying passengers, logs, or other material using traveling carriages or cars suspended from an overhead cable or cables supported by a series of towers, hangers, tailhold anchors, guyline trees, etc.

*Transportation and utility corridor* means a parcel of land, without fixed limits or boundaries, that holders use as the location for one or more transportation or utility rights-of-way.

*Zone* means one of eight geographic groupings necessary for linear right-of-way rent assessment purposes, covering all lands in the contiguous United States.

### § 2801.6 Scope.

(a) *What do these regulations apply to?* The regulations in this part apply to:

(1) Grants for necessary transportation or other systems and facilities which are in the public interest and which require the use of public lands for the purposes identified in 43 U.S.C. 1761, and administering, amending, assigning, renewing, and terminating them;

(2) Grants to Federal departments or agencies for transporting by pipeline and related facilities oil, natural gas, synthetic liquid or gaseous fuels, and any refined products produced from them; and

(3) Grants issued on or before October 21, 1976, under then existing statutory authority, unless application of these regulations would diminish or reduce any rights conferred by the original grant or the statute under which it was issued. Where there would be a diminishment or reduction in any right, the grant or statute applies.

(b) *What don't these regulations apply to?* The regulations in this part do not apply to:

(1) Federal Aid Highways, for which Federal Highway Administration procedures apply;

(2) Roads constructed or used according to reciprocal and cost share road use agreement under subpart 2812 of this chapter;