

**§ 2812.4-2**

**43 CFR Ch. II (10-1-06 Edition)**

a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(d) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

**§ 2812.4-2 Compensation payable by United States to permittee for use of road.**

In the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under § 2812.3-7 covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State Director, who shall base his determination upon the same standards established by this paragraph for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however,* That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cruise made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State Director.

**§ 2812.4-3 Agreements and arbitration between permittee and licensee respecting adjustment of road use.**

(a) When the United States exercises the right received under this paragraph

to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under § 2812.3-7 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4-4.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived therefrom; the extent to which each of the parties may practicably satisfy any of the aforesaid commitments from

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other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

### § 2812.4-4 Arbitration procedure.

(a) Within 10 days after the delivery of a written request for arbitration under § 2812.4-1 or § 2812.4-3 of this subpart each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(b) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 2812.4-1 and 2812.4-3.

(c) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 2812.4-1 and 2812.4-3, for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the authorized officer or the State Director, either personally or by registered mail.

(d) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the

parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matter as may appear relevant to the arbitrators.

[35 FR 9638, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

### § 2812.5 Payment to the United States, bond.

#### § 2812.5-1 Payment required for O. and C. timber.

An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

#### § 2812.5-2 Payment to the United States for road use.

(a) A permittee shall pay a basic fee of \$5 per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. If the term of the permit is for 5 years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than 5 years, the basic fee for each 5-year period or for the remainder of the last period, if less than 5 years, must be paid in advance at 5-year intervals: *Provided, however,* That in those cases where the permittee has executed under §§ 2812.3-1 to 2812.3-5 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under § 2812.3-1(b).

(b) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee