

Bureau of Land Management



Final Regulations Linear Right-of-Way Rental Fee Schedule

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Executive Summary and Questions/Answers

Contact

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EXECUTIVE SUMMARY

The Bureau of Land Management (BLM) has published final regulations to revise the linear right-of-way rental fee schedule. The rental fee schedule covers most linear rights-of-way granted under Title V of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, and Section 28 of the Mineral Leasing Act (MLA) of 1920, as amended. These laws require the holder of a right-of-way grant to pay annually, in advance, the fair market value to occupy, use, or cross public lands for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches.

Section 367 of the Energy Policy Act of 2005 (the Act) directs the Secretary of the Interior to update the per acre rental fee schedule. The Act also requires the Secretary of Agriculture (Forest Service) to make the same revisions for rights-of-way on National Forest System (NFS) lands.

The BLM published on December 11, 2007 in the Federal Register a proposed rule to update the rental fee schedule, requesting public comment. The public comment period ended on February 11, 2008, with 12 comments received. The Final regulations were published in the Federal Register on October 31, 2008.

There are approximately 96,000 right-of-way authorizations on the public lands, of which over 45,000 are subject to the rental fee schedule for linear rights-of-way. Approximately half of the linear right-of-way authorizations are exempt from paying rent. The 2009 linear right-of-way rental receipts are expected to increase by 70 percent over the 2008 rental receipts.

All holders of linear rights-of-way will have a 25% reduction to their 2009 rental rates to help facilitate the implementation of the new rent schedule.

The new rental regulations will require payments for ten year periods of time if the annual rent for a linear right-of-way is less than \$100 for individuals and less than \$500 for organizations.

QUESTIONS AND ANSWERS

Q: How do the regulations affect permit holders?

A: The Bureau of Land Management (BLM) has issued final right-of-way regulations to update the linear right-of-way rental fee schedule in 43 CFR parts 2800 and 2880. The rent schedule covers most linear rights-of-way granted under Title V of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, and Section 28 of the Mineral Leasing Act (MLA) of 1920, as amended. Those laws require the holder of a right-of-way grant to pay annually, in advance, the fair market value to occupy, use, or traverse public lands for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches.

Q: Why is the BLM doing this, and not the FS?

A: Section 367 of the Energy Policy Act of 2005 (the Act) directs the Secretary of the Interior to update the per acre rental fee schedule found in 43 CFR 2806.20. The Act requires that the BLM revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way use to reflect current land values in each zone. The Act also requires the Secretary of Agriculture (Forest Service) to make the same revisions for rights-of-way on National Forest System (NFS) lands.

Q: What is covered under Section 367?

A: Under Section 367 the BLM is required to update the Linear Per Acre Rent Schedule in its right-of-way regulations at 43 CFR parts 2800 and 2880. The rent schedule covers most linear rights-of-way granted under Title V of FLPMA and Section 28 of the MLA. These laws require the holder of a right-of-way grant to pay annually, in advance, the fair market value to occupy, use, or traverse public lands for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches.

Q: How is the FS implementing the fees?

A: The United States Department of Agriculture, Forest Service (FS), will adopt the fee schedule to revise the linear right-of-way rental fees as published by the BLM. The rent for a linear right-of-way across NFS lands must be determined in accordance with BLM regulations at 43 CFR 2806.20

Q: Was this rulemaking process open to the public for comment?

A: Yes. The BLM published an advance notice of proposed rulemaking (ANPR) in the Federal Register on April 27, 2006 (see 71 FR 24836). The comment period for the ANPR ended on May 30, 2006. The purpose of the ANPR was to encourage members of the public to provide comments and suggestions to help with updating the BLM and the FS rent schedule, as described in the Act. The BLM received ten responses to the ANPR. The BLM utilized the comments received from the ANPR extensively in the development of the proposed rule which was published in the Federal Register on December 11, 2007, with the comment period closing on February 11, 2008. Twelve comments were received on the proposed rule.

Q: How was the previous rent schedule developed?

A: On July 8, 1987, and September 30, 1987, the BLM and FS published joint regulations establishing rent schedules for linear rights-of-way granted under Section 28 of the MLA and Title V of FLPMA (52 FR 25818 and 52 FR 36576). The FS uses the same schedule to charge rent for rights-of-way across NFS lands.

The 1987 rent schedule was developed to set fair market rent, while minimizing the need for individual real estate appraisals for each right-of-way requiring rent payments, as well as to avoid the costs, delays, and unpredictability of the appraisal process in reasonably setting fair market rent.

The 1987 rent schedule defines eight fee zones based on the distribution of average land values by county in each of the states. (The previous rent schedule did not apply to Alaska and Hawaii; the new rent schedule will apply. Linear right-of-way rental fees in Alaska were previously determined on a case-by-case basis based on local market values).

Under the 1987 regulations, a county was assigned to one of eight zones, based on land values in the county: lower-value counties are assigned lower-numbered zones. The eight zones were established for land values of \$50, \$100, \$200, \$300, \$400, \$500, \$600, and \$1,000 per acre. A county's zone value was translated into a per acre zone rent.

Q: Why use a Schedule?

A: Section 367 of the Act directs the Secretary of the Interior to "revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone." Therefore, the final rule retains the use of a schedule and no alternative rental fee approaches were considered.

Q: How were County Land Values determined?

A: The BLM used National Agricultural Statistics Service (NASS) data to determine county land values. The expense of appraisals to determine land values is eliminated and instead existing published information from NASS is used.

Q: What is this NASS data?

A: The NASS publishes two reports:

- (1) The Census of Agriculture published every 5 years (NASS Census); and
- (2) The annual Land Values and Cash Rents Summary (Annual Report).

The NASS Census includes average per acre land and building values by county for each state. The land values are reported for cropland, woodland, permanent pasture, and rangeland and include non-commercial, non-residential buildings.

The NASS data in the Annual Report includes average per acre values for cropland, pastureland, and farm real estate, but only on a statewide basis, and not on a countywide basis. You can find more detailed information about these two reports at the NASS website at: <http://www.nass.usda.gov/index.asp>.

Q: The previous rent schedule split some counties, why not continue this approach?

A: In the final rule, the BLM does not split any county into more than one zone because there is no published data, easily obtainable, that would support making such a split.

Q: Did other components in the rent formula change?

A: Yes. In the final rule BLM uses an encumbrance factor of 50 percent and a rate of return of 5.27 percent.

Q: What about Alaska?

A: Alaska is now included in the rental fee schedule because the NASS Census data includes average per acre land and building values for five geographical areas in Alaska: Fairbanks, Anchorage, Kenai Peninsula; Aleutian Islands; and Juneau.

Q: Why are 12 Zones used in the new rent schedule?

A: The statistical analysis of NASS data supports having 12 rental zones, in order to accommodate the range of 3,080 county land values (which range from \$75 per acre to nearly \$100,000 per acre).

Q: What are the zones?

A:

Zone Thresholds

Zone	2002 County Land and Building Value	
Zone 1	\$1 to	\$250
Zone 2	\$251 to	\$500
Zone 3	\$501 to	\$1,000
Zone 4	\$1,001 to	\$1,500
Zone 5	\$1,501 to	\$2,000
Zone 6	\$2,001 to	\$3,000
Zone 7	\$3,001 to	\$5,000
Zone 8	\$5,001 to	\$10,000
Zone 9	\$10,001 to	\$20,000
Zone 10	\$20,001 to	\$30,000
Zone 11	\$30,001 to	\$50,000
Zone 12	\$50,001 to	\$100,000

Q: What are the annual per acre rent values by zone for 2009?

A:

Zone	2009 Per Acre Rent Values
Zone 1	\$5.78
Zone 2	\$11.55
Zone 3	\$23.10
Zone 4	\$34.66
Zone 5	\$46.21
Zone 6	\$69.31
Zone 7	\$115.52
Zone 8	\$231.02
Zone 9	\$462.05
Zone 10	\$693.08
Zone 11	\$1,155.13
Zone 12	\$2,310.26

Q: When and how are counties assigned to a County Zone and Per Acre Zone Value?

A: Counties are assigned to a Zone and Per Acre Zone Value based upon 80 percent of their average per acre land and building value published in the NASS Census report. The initial assignment of counties to a Zone is based upon data contained in the most recent NASS Census report (2002). Subsequent assignments of counties will occur every 5 years following the publication of the NASS Census report.

Q How will the BLM calculate rent for linear rights-of-way using the Rent Schedule?

A: The BLM calculates the rent by multiplying the rent per acre for the appropriate county zone from the new rent schedule by the number of acres in the right-of-way area that fall in each zone. A 25 percent across the board discount has been built into the 2009 rental rates for all holders to facilitate implementation of the new rates.

Q: Were any other changes made in BLM's right-of-way rules other than the revision of the linear rent schedule?

A: Yes. In addition to revising the Per Acre Rent Schedule, the final rule makes minor amendments to parts 2800 and 2880 to bring the previous regulations into compliance with the new rent schedule. The final rule:

- (1) Makes clear that the rent exemptions listed in section 2806.14 do not apply if the applicant/holder is in trespass;
- (2) Provides that only the Per Acre Rent Schedule will be used to determine rent for linear right-of-way grants, unless the land encumbered by the grant is to be transferred out of Federal ownership;
- (3) Provides for an annual rent payment term when the annual rent for non-individuals is greater than \$500;
- (4) Provides for a one-time rent payment for grants and easements when the land encumbered by the grant or easement is to be transferred out of Federal ownership;
- (5) Provides for a limited phase-in provision to all holders for calendar year 2009;
- (6) Revises section 2920.6 to require reimbursement of processing and monitoring costs under sections 2804.14 and 2805.16 for applications for leases and permits issued under Title III of FLPMA;
- (7) Amends section 2920.8(b) to assess a non-refundable processing fee and monitoring fee under sections 2804.14 and 2805.16 for each request for renewal, transfer, or assignment of a lease or easement;
- (8) Amends sections 2805.11(b)(2) and 2885.11(a) so that all grants, except those issued for a term of 3 years or less and those issued in perpetuity under FLPMA, expire on December 31 of the final year of the grant; and
- (9) Amends sections 2805.14(f) and 2885.12(e) to make it clear that a holder may assign a grant, without the BLM's prior written approval, if the authorization so provides.

Q: How do I get more information?

A: For more information, contact Bil Weigand at (208) 373-3862 or Rick Stamm at (202) 452-5185.