

## § 2802.5

## 43 CFR Ch. II (10–1–99 Edition)

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or State or local government which has constructed public highways under the authority of R. S. 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer.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. Annual 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:

**Bureau of Land Management, Interior**

**§ 2803.1-2**

(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