

reference in the next update to the TIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the TIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated tribal rules/regulations which have been approved as part of the Tribal Implementation Plan as of August 13, 2009.

(3) Copies of the materials incorporated by reference may be

inspected at the New England Regional Office of EPA at One Congress Street, Suite 1100, Boston, MA 02114-2023; the U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, MC 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and the National Archives and Records Administration. If you wish to obtain material from the EPA Regional Office, please call 617-

918-1653; for materials from the docket in EPA Headquarters Library, please call the Office of Air and Radiation docket at 202-566-1742. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) EPA-approved regulations.

EPA-APPROVED MOHEGAN TRIBE OF INDIANS OF CONNECTICUT REGULATIONS

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Mohegan Tribal Resolution. 2009-28	Approval of Amended Tribal Air Program Area Wide NO _x Emission Limitation Regulation.	02/18/2009	09/29/09 [Insert Federal Register page number where the document begins].	Mohegan Tribal Resolution 2009-28 includes the "Area Wide NO _x Emission Limitation Regulation."
Mohegan Tribal Gaming Authority Resolution MTGA 2009-07.	Confirmation and Approval of Amended Tribal Air Program "Area Wide NO _x Emission Limitation Regulation."	2/18/2009	09/29/09 [Insert Federal Register page number where the document begins].	
Memorandum of Agreement.	Memorandum of Agreement dated December 26, 2006, between the Mohegan Tribe of Indians of Connecticut and the U.S. Environmental Protection Agency Region I.	12/26/06	11/14/07, 72 FR 63988..	

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000 and 3200

[L13100000 PP0000 LLWO310000; L1990000 PO0000 LLWO320000]

RIN 1004-AE01

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update some fees that cover the BLM's cost of processing certain documents relating to its mineral programs and some filing fees for mineral-related documents. These updates include fees for actions such as lease applications, name changes, corporate mergers, and lease consolidations.

DATES: This final rule is effective October 1, 2009.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, MS-LS 401, 1849 C Street, NW., Washington, DC 20240; Attention: RIN 1004-AE01.

FOR FURTHER INFORMATION CONTACT: Steve Salzman, Acting Chief, Division of Fluid Minerals, (202) 452-7777, or Faith Bremner, Regulatory Affairs Analyst, (202) 452-5042. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually

adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD-GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. Because the fee recalculations are simply based on a mathematical formula, we have changed the fees in this final rule without providing opportunity for notice and comment. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The public had an opportunity to comment on this procedure during the comment period on the original cost recovery rule, and this new rule simply administers the procedure set forth in those regulations. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the rule may be effective less than 30 days after publication.

II. Discussion of Final Rule

BLM publishes a fee update rule each year, which becomes effective on October 1 of that year. The fee updates are based on the IPD-GDP for the 4th

Quarter of the preceding calendar year. BLM's most recent fee update rule became effective on October 1, 2008, 73 FR 54717 (Sept. 23, 2008), based on the IPD-GDP for 4th Quarter 2007. This fee update rule is based on the IPD-GDP for 4th Quarter 2008, thus reflecting inflation over the four calendar quarters since 4th Quarter 2007.

This rule continues the BLM's past practice of rounding numbers to arrive at the final fee. Values equal to or

greater than \$1 are rounded to the nearest \$5, while values under \$1 are rounded to the nearest penny.

In the 2007 fee update rule, 72 FR 50882, Sept. 5, 2007, we attempted to move all references to fee amounts in specific program areas from the rule text to the fee table at 43 CFR 3000.12 for administrative convenience. While preparing this rule, we found that one reference to a specific fee amount remained at 43 CFR 3216.14, in an

example relating to fees for transfer of geothermal lease interests. In this final rule, we have revised the language of that provision to remove reference to a specific fee amount. This revision is for administrative convenience and has no substantive effect.

The calculations that resulted in the new fees are included in the table below.

FIXED COST RECOVERY FEES FY09

Document/action	Existing fee ¹	Existing value ²	IPD-GDP increase ³	New value ⁴	New fee ⁵
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):					
Noncompetitive lease application	\$365	\$367.08	\$7.60	\$374.68	\$375
Competitive lease application	140	142.45	2.95	145.40	145
Assignment and transfer of record title or operating rights	80	82.18	1.70	83.88	85
Overriding royalty transfer, payment out of production	10	10.95	0.23	11.18	10
Name change, corporate merger or transfer to heir/devisee	190	191.75	3.97	195.72	195
Lease consolidation	405	405.43	8.39	413.82	415
Lease renewal or exchange	365	367.08	7.60	374.68	375
Lease reinstatement, Class I	70	71.22	1.47	72.69	75
Leasing under right-of-way	365	367.08	7.60	374.68	375
Geophysical exploration permit application—Alaska	25	25 ⁶
Renewal of exploration permit—Alaska	25	25 ⁷
Geothermal (part 3200):					
Noncompetitive lease application	365	367.08	7.60	374.68	375
Competitive lease application	140	142.45	2.95	145.40	145
Assignment and transfer of record title or operating right	80	82.18	1.70	83.88	85
Name change, corporate merger or transfer to heir/devisee	190	191.75	3.97	195.72	195
Lease consolidation	405	405.43	8.39	413.82	415
Lease reinstatement	70	71.22	1.47	72.69	75
Nomination of lands	105	102.57	2.12	104.69	105
plus per acre nomination fee	0.10	0.10257	0.00212	0.10469	0.10
Site license application	55	54.79	1.13	55.92	55
Assignment or transfer of site license	55	54.79	1.13	55.92	55
Coal (parts 3400, 3470):					
License to mine application	10	10.95	0.23	11.18	10
Exploration license application	300	301.33	6.24	307.57	310
Lease or lease interest transfer	60	60.27	1.25	61.52	60
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):					
Applications other than those listed below	35	32.87	0.68	33.55	35
Prospecting permit application amendment	60	60.27	1.25	61.52	60
Extension of prospecting permit	100	98.62	2.04	100.66	100
Lease modification or fringe acreage lease	25	27.40	0.57	27.97	30
Lease renewal	470	471.18	9.75	480.93	480
Assignment, sublease, or transfer of operating rights	25	27.40	0.57	27.97	30
Transfer of overriding royalty	25	27.40	0.57	27.97	30
Use permit	25	27.40	0.57	27.97	30
Shasta and Trinity hardrock mineral lease	25	27.40	0.57	27.97	30
Renewal of existing sand and gravel lease in Nevada	25	27.40	0.57	27.97	30
Multiple Use; Mining (Group 3700):					
Notice of protest of placer mining operations	10	10.95	0.23	11.18	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):					
Application to open lands to location	10	10.95	0.23	11.18	10
Notice of Location	15	16.43	0.34	16.77	15
Amendment of location	10	10.95	0.23	11.18	10
Transfer of mining claim/site	10	10.95	0.23	11.18	10
Recording an annual FLPMA filing	10	10.95	0.23	11.18	10
Deferment of assessment work	100	98.62	2.04	100.66	100
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	25	27.40	0.57	27.97	30
Mineral patent adjudication					
(more than 10 claims)	2,760	2,761.31	57.16	2,818.47	2,820
(10 or fewer claims)	1,380	1,380.65	28.58	1,409.23	1,410
Adverse claim	100	98.62	2.04	100.66	100

FIXED COST RECOVERY FEES FY09—Continued

Document/action	Existing fee ¹	Existing value ²	IPD–GDP increase ³	New value ⁴	New fee ⁵
Protest	60	60.27	1.25	61.52	60

¹ The Existing Fee was established by the 2008 cost recovery fee update rule published September 23, 2008 (73 FR 54717), effective October 1, 2008.

² The Existing Value is the figure from the “New Value” column in the rule published September 23, 2008 (73 FR 54717).

³ From 4th Quarter 2007 to 4th Quarter 2008 the IPD–GDP increased by 2.07%. The value in the IPD–GDP Increase column is 2.07% of the Existing Fee.

⁴ The sum of the Existing Value and IPD–GDP Increase is the New Value.

⁵ The New Fee for 2010 is the New Value rounded to the nearest 5.00 for values equal to or greater than 1.00, or to the nearest penny for values under 1.00.

⁶ Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that “the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.” In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854–58855. While the \$25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, we interpret the provision quoted as prohibiting us from increasing this \$25 fee.

⁷ We interpret the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting us from increasing this \$25 fee, as well. Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis.

III. How Fees Are Adjusted

The figures in the “New Value” column in the table above, not those in the “New Fee” column, will be used in the following year as the basis for calculating the annual adjustment to these fees. Because the new values are rounded to the nearest \$5.00, or the nearest penny for fees under \$1.00, in setting the new fees, future fees based on the figures in the “New Fee” column would become significantly over-or-under-valued over time. In today’s rule, the figures in the Existing Value column are from the New Value column in the final rule of September 23, 2008. However, if the “New Value” column is blank because the fee was not updated in this rule, future adjustments will be based on the figures in the “New Fee” column. Adjustments to future fees will be made by multiplying the annual change in the IPD–GDP by the reported New Value in the previous year’s rule. This calculation will define a new value for that year, which will then be rounded to the nearest \$5.00, or the nearest penny for fees under \$1.00, to establish the new adjusted fee.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are given below.

The BLM has determined that the rule will not have an annual effect on the economy of \$100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or

communities. The changes in today’s rule are much smaller than those in the 2005 or 2007 final rules, which did not approach the threshold in E.O. 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section, above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies’ actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule does apply an inflation factor that increases some existing user fees for processing documents associated with the onshore minerals programs. However, most of these fee increases are less than 3 percent and none of the increases materially affects the budgetary impact of user fees.

Finally, this rule will not raise novel legal issues. As explained above, this rule simply implements an annual process to account for inflation that was proposed and explained in the 2005 cost recovery rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance

Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm’s length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of “small entity.”

The final rule will affect a large number of small entities since nearly all of them will face fee increases for activities on public lands. However, we have concluded that the effects will not be significant. Most of the fixed fee increases will be less than 3 percent as a result of this final rule. The adjustments result in no increase in the fee for the processing of 20 documents relating to the BLM’s minerals programs. The highest adjustment is for mineral patent adjudications involving more than 10 mining claims, which will be increased by \$60.00. For the 2005 final rule, the BLM completed a threshold analysis which is available for public review in the administrative record for that rule. (For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section, above.) The analysis for the 2005 rule concluded that the fees

would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than \$100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

Executive Order 13132, Federalism

This final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, therefore, we find that the final rule does not have significant Federalism effects. A Federalism assessment is not required.

The Paperwork Reduction Act of 1995

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The OMB approved the information collection requirements under the following Control Numbers:

Oil and Gas

- (1) 1004-0034 which expires July 31, 2012;
- (2) 1004-0137 which expires July 31, 2010;
- (3) 1004-0162 which expires May 31, 2012;
- (4) 1004-0185 which expired July 31, 2009, renewal pending;

Geothermal

- (5) 1004-0132 which expires July 31, 2010;

Coal

- (6) 1004-0073 which expires March 31, 2010;

Mining Claims

- (7) 1004-0025 which expires November 30, 2009;
- (8) 1004-0114 which expires February 28, 2010; and

Leasing of Solid Minerals Other Than Oil Shale

- (9) 1004-0121 which expires November 30, 2009.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the Department of the Interior has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely reports changes in service fees. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule is administrative and involves only procedural changes addressing fee requirements. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 516 DM 2.3A and 516 DM 2, Appendix 1, Items 1.7 and 1.10. In addition, the final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2.

Pursuant to Council on Environmental Quality regulation (40 CFR 1508.4 *et seq.*) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means categories of actions which do not individually or cumulatively have a significant effect on the human environment and which have been determined to have no such effect in procedures adopted by a Federal agency, and therefore require neither an

environmental assessment nor an environmental impact statement.

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, because it will not result in State, local, private sector, or Tribal government expenditures of \$100 million or more in any one year. 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have Tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian Tribes. The BLM has not found any substantial direct effects. Consequently, the BLM did not utilize the consultation process set forth in section 5 of the Executive Order.

Information Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this final rule. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Steve Salzman, Division of Fluid Minerals, assisted by Faith Bremner of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Parts 3000 and 3200

Public lands—mineral resources, Reporting and recordkeeping requirements.

Ned Farquhar,

Acting Assistant Secretary—Land and Minerals Management.

■ For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR Chapter II as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) and the table following paragraph (b) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to BLM for the services listed for Fiscal Year 2010. These fees are nonrefundable and must

be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register**, and will subsequently be posted on the BLM Web site (<http://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

* * * * *

FY 2010 PROCESSING AND FILING FEE TABLE

Document/action	FY 2010 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):	
Noncompetitive lease application	\$375
Competitive lease application	145
Assignment and transfer of record title or operating rights	85
Overriding royalty transfer, payment out of production	10
Name change, corporate merger or transfer to heir/devisee	195
Lease consolidation	415
Lease renewal or exchange	375
Lease reinstatement, Class I	75
Leasing under right-of-way	375
Geophysical exploration permit application—Alaska	25
Renewal of exploration permit—Alaska	25
Geothermal (part 3200):	
Noncompetitive lease application	375
Competitive lease application	145
Assignment and transfer of record title or operating rights	85
Name change, corporate merger or transfer to heir/devisee	195
Lease consolidation	415
Lease reinstatement	75
Nomination of lands	105
plus per acre nomination fee	0.10
Site license application	55
Assignment or transfer of site license	55
Coal (parts 3400, 3470):	
License to mine application	10
Exploration license application	310
Lease or lease interest transfer	60
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):	
Applications other than those listed below	35
Prospecting permit application amendment	60
Extension of prospecting permit	100
Lease modification or fringe acreage lease	30
Lease renewal	480
Assignment, sublease, or transfer of operating rights	30
Transfer of overriding royalty	30
Use permit	30
Shasta and Trinity hardrock mineral lease	30
Renewal of existing sand and gravel lease in Nevada	30
Multiple Use; Mining (part 3730):	
Notice of protest of placer mining operations	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):	
Application to open lands to location	10
Notice of location*	15
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing	10
Deferment of assessment work	100
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30
Mineral patent adjudication	2,820 (more than 10 claims). 1,410 (10 or fewer claims).
Adverse claim	100

FY 2010 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2010 fee
Protest	60

* To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833

PART 3200—GEOTHERMAL RESOURCE LEASING

■ 3. The authority citation for part 3200 continues to read as follows:

Authority: 30 U.S.C. 1001–1028; 43 U.S.C. 1701 *et seq.*; and Pub. L. 109–58.

Subpart 3216—Transfers

■ 4. Amend § 3216.14 by revising the third sentence of the first paragraph to read as follows:

§ 3216.14 What filing fees and forms does a transfer require?

* * * For example, if you are transferring record title for three leases, submit three times the fee for “Assignment and transfer of record title or operating rights” in the fee schedule in § 3000.12 of this chapter. * * *

[FR Doc. E9–23268 Filed 9–25–09; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 03–66; FCC 09–70]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses two issues with respect to two petitions for reconsideration filed in response to the *Fourth Memorandum Opinion and Order*. First, the Commission changes its policy regarding the “start date” of Educational Broadband Service (EBS) excess capacity lease agreements. Second, the Commission amends its rules to permit BRS 1 and 2/2A licensees to simultaneously operate, post-transition, in the 2.1 GHz band and in the 2.5 GHz band. The Commission makes these changes to facilitate the provision of the broadband and other new and innovative wireless services in the 2.5 GHz band, to ensure that the

spectrum is put in use, and to promote rapid service to the public.

DATES: Effective October 28, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek, Wireless Telecommunications Bureau, Broadband Division, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0274 or via the Internet to Nancy.Zaczek@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Fifth Memorandum Opinion and Order*, FCC 09–70, adopted on September 8, 2009 and released on September 11, 2009. The full text of this document, including attachments and related documents is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of these documents and related Commission documents may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or (800) 378–3160, contact BCPI at its Web site: <http://www.bcpweb.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 09–70. The complete text of these documents is also available on the Commission’s Web site at http://wireless.fcc.gov/edocs_public/attachment/FCC-09-70A1doc. This full text may also be downloaded at: <http://wireless.fcc.gov/releases.html>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to bmillin@fcc.gov.

Summary

I. Introduction

1. In this *Fifth Memorandum Opinion and Order*, the Commission grants, in part, two petitions for reconsideration of the Broadband Radio Service (BRS)/ Educational Broadband Service (EBS) *Fourth Memorandum Opinion and*

Order adopted on March 18, 2008 and released on March 20, 2008, 73 FR 26032 (May 8, 2008).

2. The first issue we address on reconsideration concerns how the Commission should implement the 15-year term limit for grandfathered EBS leases (*i.e.* leases entered into before January 10, 2005) that it established in the *BRS/EBS Fourth MO&O*. The item adopts an unopposed compromise proposal negotiated between the National EBS Association (NEBSA)—which represents educational interests that hold EBS licenses—and the Wireless Communications Association International, Inc. (WCA)—which represents commercial operators that lease spectrum from EBS licensees. Our adoption of the NEBSA/WCA Proposal balances the concerns of both educators and commercial lessees.

3. The second issue we address on reconsideration concerns whether the Commission should permit BRS 1 and 2/2A licensees to simultaneously operate, *post-transition*, in the 2.1 GHz band and in the 2.5 GHz band until all of their customers have migrated to the 2.5 GHz band. This determination is consistent with the Commission’s decision in the *BRS/EBS Fourth Memorandum Opinion and Order* to permit such simultaneous operation *pre-transition* in order to avoid requiring BRS operators to flash cut subscribers to the new band plan.

II. Issues on Reconsideration

A. Grandfathered EBS Leases

4. *Background.* The Commission established the Instructional Television Fixed Service (ITFS) in the 2500–2690 MHz band in 1963 and later adopted rules for the Multipoint Distribution Service (MDS). ITFS was generally used for one-way video service for students. MDS was generally used to provide wireless cable service to subscribers. In 1983, noting that the ITFS was being underutilized, the Commission permitted ITFS licensees to lease excess channel capacity to commercial MDS operators. In 2004, the Commission renamed ITFS as the Educational Broadband Service (EBS) and MDS as the Broadband Radio Service (BRS).

5. The Commission’s policy regarding the length of EBS leases has evolved