

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to approve eight source-specific RACT determinations established and imposed by the Commonwealth of Pennsylvania pursuant to its SIP-approved generic RACT regulations does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 19, 2006.

**William C. Early,**

*Acting Regional Administrator, Region III.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Parts 2800 and 2880

[WO-350-06-1430-PP]

RIN 1004-AD87

#### Update of Linear Right-of-Way Rental Schedule

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** The Bureau of Land Management (BLM) requests comments and suggestions to assist in the writing of a proposed rule to update the linear right-of-way rental schedule in 43 CFR parts 2800 and 2880. The rental schedule covers most linear rights-of-way granted under section 28 of the Mineral Leasing Act of 1920, as amended (MLA), and Title V of the Federal Land Policy and Management Act of 1976, as amended (FLPMA). Both laws require the holder of a right-of-way 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.

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. This update is to be completed not later than one year after the date of enactment of the Act, which occurred on August 8, 2005. 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 lands. We encourage members of the public to provide comments and suggestions to help with updating the BLM's and the Forest Service's rental schedule, as described in the Act.

**DATES:** We will accept comments and suggestions on the Advance Notice of Proposed Rulemaking until May 30, 2006.

**ADDRESSES:** You may submit comments by any of the following methods listed below.

**Mail:** Director (630) Bureau of Land Management, Administrative Record, Room 401 LS, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

**Personal or messenger delivery:** Room 401, 1620 L Street, NW., Washington, DC 20036.

**Federal eRulemaking Portal:** <http://www.regulations.gov>.

**E-mail:** [comments\\_washington@blm.gov](mailto:comments_washington@blm.gov). (Include "Attn: AD87").

**FOR FURTHER INFORMATION CONTACT:** For information on the substance of the Advance Notice, please contact Christian Crowley at (202) 208-3799. For information on procedural matters, please contact Ian Senio at (202) 452-

5049. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, to contact the above individuals during business hours. FIRS is available twenty-four hours a day, seven days a week.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Comment Procedures

##### *Commenting on the Advance Notice of Proposed Rulemaking*

Written comments or suggestions should:

- Be specific;
- Explain the reasoning behind your comments and suggestions;
- Address the issues outlined in the Notice; and
- Where possible, reference the specific section or paragraph of existing laws or regulations that you are addressing.

For comments and recommendations to be most useful, and most likely to influence decisions on the content of the proposed rule, they should:

- Be substantive;
- Facilitate development of a uniform, cost effective administrative process for calculating rental payments;
- Result in a fair and reasonable payment of fair market rent; and
- Include citations to, and analyses of, applicable laws and regulations.

The BLM is particularly interested in receiving comments and suggestions about the topics listed in Section III of this Notice. All communication on these topics should refer to RIN 1004-AD87, and may be submitted by several methods listed under the **ADDRESSES** section of this Notice.

Comments received after the close of the comment period (see **DATES**) need not be considered or included in the Administrative Record for the proposed rule. Likewise, comments delivered to an address other than those listed above (see **ADDRESSES**) need not be considered or included in the Administrative Record for the proposed rule.

##### *Reviewing Comments Submitted by Others*

Comments, including names and street addresses of respondents, will be available for public review at the address listed under "**ADDRESSES: Personal or messenger delivery**" during regular business hours (7:45 a.m. to 4:15 a.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which will be honored to the extent allowable by law. Those wishing to withhold their name or address (except for the city or town)

must state this prominently at the beginning of their comment. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

## II. Background

### Statutory

Section 367 of the Act, Fair Market Value Determinations for Linear Rights-of-Way Across Public Lands and National Forests, directs the Secretary of the Interior to: (1) Update 43 CFR 2806.20, which contains the per-acre rent schedule for linear rights-of-way; (2) revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way uses to reflect current values of land in each zone; and (3) complete the update within one year of enactment of the Act. The Act also directs the Secretary of Agriculture to make the same revisions to the regulations that apply to rights-of-way granted on National Forest System (NFS) lands. This provision supplements existing Secretarial authority to assess and collect fair market value of the right to use, cross, or traverse public or NFS lands.

### Current Linear Rent Schedule

On July 8, 1987, and September 30, 1987, the BLM published regulations establishing rental 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 Forest Service uses these same schedules to charge rent for rights-of-way across NFS lands. Therefore, updates to these schedules would also impact the Forest Service and users of NFS lands.

The 1987 rental 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 rental schedule defines eight fee zones based on the distribution of average land values by county in each of the states, except Alaska. (The existing rent schedule does not apply to Alaska. Linear right-of-way rental fees in Alaska are currently determined on a case-by-case basis based on local market values.) A county was assigned to one of the eight Zone Values, based on land values in the county: lower-value counties were assigned lower-numbered zones. The eight Zone Values were set

at \$50, \$100, \$200, \$300, \$400, \$500, \$600, and \$1,000 per acre. A county's Zone Value is translated into a per-acre Zone Rent by use of the adjustment formula described below. To calculate the annual right-of-way rental payment, the Zone Rent is multiplied by the total acreage within the right-of-way. The formula for Zone Rent is:

$$\text{Zone Rent} = (\text{Zone Value}) \times (\text{Impact Adjustment}) \times (\text{Price Index}) \times (\text{Treasury Security Rate})$$

The Zone Value term in the formula is the land value that was established for each of the eight zones. The Zone Values established in 1987 have not been updated since that time; however, it is generally recognized that land values have increased in most areas over the past 20 years.

The Impact Adjustment term in the formula reflects the differences in land-use impacts between (1) oil, gas, and other energy-related pipelines, roads, ditches, and canals, and (2) electrical transmission and distribution lines, telephone lines, and non-energy related pipelines. Energy-related pipelines and roads were considered as having a greater surface disturbance impact on the land, and were adjusted to 80 percent of the Zone Value. Electrical transmission and distribution lines, phone lines, and non-energy related pipelines with a smaller area of disturbance, were adjusted to 70 percent of the Zone Value.

The Price Index term in the formula allows the rental values to increase with inflation. This number changes annually reflecting the change in the Gross Domestic Product, Implicit Price Deflator Index.

The Treasury Security term in the formula reflects a reasonable rate of return to the United States for the use of the land within the right-of-way. The 1987 regulations were based on a rate of return of 6.41 percent for a one year Treasury Security.

### BLM Right-of-Way Program and Revenues

The BLM generated over \$15 million in right-of-way rental receipts for fiscal year 2005. The BLM administers nearly 90,000 rights-of-way, of which over 48,000 are subject to a rental payment. Wyoming and New Mexico together account for slightly more than 30,000 of the rights-of-way subject to rent. Seventy-five percent of all right-of-way revenues were collected by five BLM State Offices. These five State Offices and the revenues collected are listed in Table 1 below.

TABLE 1.—RIGHT-OF-WAY RENTAL RECEIPTS FOR "TOP FIVE" BLM STATE OFFICES

State office	Rental receipts (FY 2005)
Nevada .....	\$3,678,823
California .....	2,946,170
Wyoming .....	1,804,274
New Mexico .....	1,661,834
Arizona .....	1,272,795
Total .....	11,363,896

Non-linear rights-of-way, including communication site authorizations, account for nearly 3,500 authorizations generating over \$5 million in revenue. Subtracting the communication site revenue from the \$15 million reported for all rights-of-way results in an average rent of approximately \$250 for linear rights-of-way. The average rental payment in 2005, including communication site authorizations, was approximately \$320.

### Description of Issues

The rental schedule is a cost-effective means for calculating and billing right-of-way holders for the use of public lands. In general, the rental schedule must be fair and reasonable and rent must be calculated in a consistent manner, depending on the type of authorized use.

To facilitate the billing process, the rental schedule itself must be a cost-effective way to administer the right-of-way program relative to the amount of revenue collected. In addition, right-of-way holders should be able to estimate rental payments and forecast changes in billed rent in accordance with the terms and conditions of the right-of-way. Updating the rental schedule formula will require changes to current rental payments; depending on the magnitude of the changes in various components of the formula, rents are likely to increase as a result of the general increase in land values. Impacts on groups or individual holders ultimately depend on the formula options considered.

As part of the rulemaking process, impacts of any increase in rent on current holders and small businesses will be evaluated. In addition, the proposed regulation will likely include a phase-in period and other provisions designed to facilitate the transition to the new rents. In cases where the applicant feels that the calculated rent is excessive, additional relief may include provisions for reduction or waiver of rent as is currently provided for by 43 CFR 2806.15 or for an alternative calculation of rent, based on an appraisal report. For such an

appraisal report to be admissible, the applicant would be required to follow applicable Departmental and Agency instructions, pay for the cost of the appraisal report, and ensure that the report meets Federal standards.

The BLM is considering using existing published information or statistical data for updating the rental schedule, such as information published by the National Agricultural Statistic Service (NASS). NASS publishes two reports: (1) The Census of Agriculture published every five years (Five Year Census), and (2) the annual Land Values and Cash Rents Summary (Annual Report).

The Five Year Census includes land values by county for each state. The land values are reported for cropland, woodland, permanent pasture, and rangeland and includes buildings.

The NASS data in the Annual Report includes state average pastureland values. The statewide average for pastureland may approximate rural

agricultural types of land (woodlands and rangelands) that are administered by the BLM. You can find more detailed information about these two reports at the NASS Web site at: <http://www.nass.usda.gov/index.asp>.

### III. Description of Information Requested

The BLM is particularly interested in receiving comments on the following questions:

1. What available published information, statistical data, or reports should BLM use to update the current linear right-of-way rental fee Zone Values?

2. What, if any, other terms, *e.g.*, impact adjustment or rate of return, used in the 1987 rental formula should BLM update, clarify, or revise? Should the one-year Treasury Rate (rate of return) used in the current formula, *i.e.*, 6.41 percent, be revised to reflect the current rate? If yes, should the rate be updated annually?

3. What, if any, provisions should BLM include in the proposed regulation to provide relief from large, unexpected increases in individual rental payments?

4. How should the number of rental zones be changed in the new linear right-of-way rental schedule, if at all?

5. Should the new linear right-of-way rental schedule split some states and counties into more than one zone?

6. Should the new linear right-of-way rental schedule apply to BLM-administered lands in Alaska?

The BLM further solicits public comments on other approaches for updating the 1987 linear right-of-way rental schedule. Other suggestions will be considered inasmuch as they may facilitate updating the current schedule.

Dated: April 17, 2006.

**Chad Calvert,**

*Acting Assistant Secretary of the Interior.*

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