DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2810, 2880

[WO–350–1430–00–24–1A]

RIN 1004–AC12

Rights-of-Way, Rental Schedule for Communication Uses

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends right-of-way regulations containing procedures for setting rent for communication uses located on lands administered by the Bureau of Land Management. The final rule establishes procedures and a rental schedule for determining rent for nine categories of communication uses. The rental schedule is identical to one recently adopted by the U.S. Forest Service for use on National Forest System lands in the Western States.

These revisions establish a fair and consistent approach for determining rental payments for various communication uses, based on the population of the community nearest the site and reflective of fair market value as required by Title V of the Federal Land Policy and Management Act of 1976. The final rule encourages tenants in a communication facility to consolidate their separate authorizations under one authorization, reducing billing costs and minimizing agency involvement in managing use and occupancy of the facility. The schedules will reduce BLM costs associated with obtaining appraisals, and can be expected to reduce the number of disputes concerning rental values. Rental payments will be applied on a consistent basis and allow users to anticipate changes in rent for planning purposes. At the same time, the administrative process implementing the schedule has been simplified and includes sufficient flexibility and safeguards to minimize disruption in business relationships and service.

DATES: The effective date of the regulations is December 13, 1995.

ADDRESSES: Inquiries or suggestions should be sent to: Director (350), Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dave Cavanaugh, (202) 452–7774.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

At 43 U.S.C. 1701(a)(9), FLPMA states that it is the policy of the United States to receive the fair market value of the use of the public lands and their resources unless otherwise provided by statute.

At 43 U.S.C. 1761(a), FLPMA authorizes the Secretary of the Interior to grant, issue, or renew rights-of-way for communication uses, including systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals.

Section 504(g) of FLPMA (43 U.S.C. 1764(g)) requires the holder of a right-of-way to pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing the right-of-way. The Secretary may waive part or all of the payment when it is found to be equitable and in the public interest. Rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way.

The regulations implementing the right-of-way provisions of FLPMA are found in 43 CFR part 2800. Portions of these regulations relating to cost recovery were last amended in 1987. Provisions for rental payments are found in 43 CFR subpart 2803, and state in part that the holder of a right-of-way grant or temporary use permit is required to pay annually, in advance, with certain exceptions, the fair market value rental. The authorized officer determines the rental, applying sound business management principles and, so far as practicable and feasible, using practices used in commerce.

Payment of fair market rent is different from provisions of 43 CFR subpart 2808 on reimbursement of reasonable costs in processing applications. The payment of rent for the right to use land is separate from payment of fees for costs associated with processing an application.

Background

The BLM currently administers approximately 3,200 communication site authorizations and collects annually between $1.5 and $2.0 million dollars in rental payments. Approximately 50 percent of the authorized users pay no rent because they are exempt under existing regulations. Examples of holders who are exempt from rent include local law enforcement and emergency response groups; Federal, State, and county agencies; and public broadcast stations. The remaining communication use right-of-way holders pay an annual rental based upon BLM-approved appraisals.

Generally, BLM bases rents for new uses on a preliminary estimate of fair market value until an appraisal can be completed. As a customary practice, rents for existing users are updated every 5 years to ensure that the amounts reflect changes in market conditions. Many BLM appraisals are out-of-date because statutory language in successive appropriations bills from 1990 to 1994 limited the Secretary's authority to raise rents. The 1995 appropriations bill did not contain any limiting language.

In 1992, Congress directed both the Secretary of Agriculture and the Secretary of the Interior to establish a Radio and Television Use Fee Advisory Committee. The advisory committee report made several recommendations. These included use of rental schedules instead of individual appraisals for setting rental payments; acceptance of market ranking methods that relate to the population served; a phase-in period for rent increases greater than $1,000; a provision for charging 25 percent of the gross sublease income; and annual increases based on the Consumer Price Index, Urban Consumer, U.S. City Average (CPI–U). These recommendations were considered in developing the proposed rule.

The BLM and FS endorsed many of the Committee's recommendations on rental implementation and administration, but rejected its proposed rental schedule on the basis that it did not represent fair market rental.

In July 1993, the FS published a notice in the Federal Register (58 FR 37840, July 13, 1993) proposing a schedule for four categories of commercial uses and invited public comment. The uses included television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses. The FS proposed schedule for television and radio adopted many proposals of the advisory committee. However, the proposed rent was higher than the schedule proposed by the advisory committee. The comment period ended October 12, 1993. In order to coordinate with BLM, the FS decided to delay their final policy.

The FS and BLM jointly reviewed and considered the comments received by the FS on its July 1993 proposed policy. The FS decided to delay publishing their final notice pending BLM's publication of a proposed rule and review of comments.

On July 12, 1994, BLM published a proposed rule in the Federal Register (59 FR 46806). The BLM rule incorporated many of the comments

received by the FS regarding the four categories of commercial communication uses, and the ranges of population served by a facility, that serve as variables on the schedule to determine the rent to be charged. BLM's proposal expanded the number of site categories from 4 to 11, and increased the number of population ranges in the schedule to minimize impacts on holders located on sites serving populations at the lower end of the range. The proposed rule was drafted in cooperation with the FS. It was agreed that the BLM proposal would be the basis for the FS's final notice.

On July 12, 1994, the House of Representatives Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, and the Committee on Government Operations, Subcommittee on Environment, Energy, and Natural Resources, held a joint hearing on rents for communication sites on Federal lands. At the hearing, the General Accounting Office (GAO) released a report (GAO/RCED–94–248) and testified that fees being charged for the communication sites on Federal lands are, in most instances, significantly below fair market value. The Committee strongly encouraged BLM and FS to promulgate rental schedules as soon as possible.

The GAO report stated that FS rental payments are based on an outdated formula established 40 years ago, and that BLM rents are based on out-of-date appraisals. GAO recognized that agency efforts to raise rents had been prohibited by Congress, and warned that if these prohibitions continued, the Federal government would not obtain fair market value for communications sites for many years.

The GAO also found that BLM and FS do not have the basic information needed to manage communication sites effectively and to ensure that the agencies are collecting all of the revenues owed to the government. GAO recommended that the agencies develop and maintain complete and reliable program-wide data on the number and types of uses, and amount of rent that they generate.

The Proposed Rule

The proposed rule amending regulations for determining annual rent was published in the Federal Register (59 FR 35596) on July 12, 1994. The comment period closed on September 12, 1994. On September 12, the BLM extended the comment period to October 12, 1994.

The proposed rule contained amended procedures for setting annual rent for ten categories of communication uses on public lands, plus a category for facility managers. The rule proposed three major categories of use: broadcast, nonbroadcast, and other. Broadcast included television, FM radio, rebroadcast devices, and cable television. Nonbroadcast included commercial mobile radio service, cellular telephone, private mobile communications, common carrier microwave communications, private microwave, other communication uses, and facility management. The category ''other'' referred to small, unobtrusive, low power uses serving small numbers of customers. The rent for a facility with more than one category of use would have been based on its primary use authorized under terms of the right-of-way.

The proposed rule included different methods for setting the base rent for each of the categories. For instance, it proposed that rent for television and FM radio stations be based on the population of the principal community or communities primarily served by the transmitter. For cable television, the base rent was to be determined by the total number of subscribers as reported by the right-of-way holder.

The proposed rule provided that the base rent for nonbroadcast uses—commercial mobile radio service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager and miscellaneous uses—would be determined by different factors. For these uses, rent would be determined by the population of the county in which the transmitter is located or the population of an adjacent or nearby county served by the transmitter, whichever is greater.

In addition to a base rent for the authorized use of a facility, the proposed rule also included an assessment for additional users within the facility. The BLM proposed that right-of-way holders, typically the facility owner, be required to pay a percentage of gross rent received from the subleasing of space in the facility.

Increases in the base rent and the percentage of gross rent were to be phased in over 5 years. Initial increases in the base rent in excess of $1,000 or 20 percent of the current rent, whichever is greater, would have been phased in. The proposed rule included provisions that the percentage of gross rent received from additional tenants in the facility be phased in; 15% during the first five years, and 25% thereafter.

The proposed rule also required annual updates of the rental payments, required periodic review of the rental schedule, and reiterated BLM policy regarding waiver of rental.

As proposed, the rule would have adopted a new procedure that would have reduced agency costs of setting and updating rental payments for new and existing right-of-way holders. The final rule adopts the basic procedure, in which the rental schedule is applied, eliminating most individual appraisals, encouraging consolidated billing under a master right-of-way authorization, and providing a means for annually updating the rent. The BLM estimates appraisals to cost approximately $2,000 each. With more than 1,500 commercial communication site rights-of-way, each cycle of rent establishment could cost more than $3 million. The rule will eliminate much of this cost, although some appraisals will still be performed.

Organization of Rule

This final rule amends 43 CFR 2803.1–2 Rental. This section of the existing regulations includes a schedule for linear rights-of-way, including oil and gas pipelines, related pipeline roads, ditches, canals, electric transmission lines, telephone, electric distribution, non-energy pipelines, and other linear uses. This final rule adds procedures and authorizes a rental schedule for non-linear communication site rights-of-way. The schedule itself appears elsewhere in this issue of the Federal Register.

Many respondents to the proposed rule argued that the proposed rents were too high and would harm small entities, that the provision to charge a percent of the gross rent was unfair, and the different criteria in the schedules—population of the community or communities served or county population—were unworkable and would create inequities. Their overriding concern was that the procedure for setting rental payments was too complicated, that the schedule may not reasonably set rental payments, and that the new rental payments would potentially create problems unless there was some mechanism to alleviate them.

In response to the comments, BLM made a number of changes in the final rule for nonlinear communication site rights-of-way. The schedule in its final form more closely reflects market rent and minimizes impacts on holders of sites serving smaller population areas. Rents will correlate with the population of the local community where the facility is situated or that it serves, or both, rather than distant communities served by the facility. Instead of having several different methods for determining population, the final rule utilizes the Ranally Metro Areas

(RMA's) as identified in the ''Rand McNally Commercial Atlas and Marketing Guide, 1995'' for listed communities having a population of 50,000 or more. Rental payments for uses on sites serving communities not listed and having a population of less than 50,000 will be based on the category of use and the most recent census performed by the U.S. Census Bureau for the community. Therefore, the final schedule that BLM is adopting more directly correlates to the population of the local community where the facility is situated.

To simplify implementation further, the definitions for two categories have been broadened, resulting in the reduction of categories from 11 to 8. The Commercial Mobile Radio Service (CMRS) category has been broadened to include facility managers and ancillary microwave link equipment, and the microwave now includes common carrier microwave category.

To improve consistency in setting rents, the final rule adopts the concept of using the schedule to determine the primary use of the facility and assessing an additional amount for other users. The base rent is determined by the use that generates the highest rent on the schedule (highest valued use) of all uses in the facility, excluding those uses that would qualify for an exemption or waiver. To avoid having to keep track of rents received from tenants in the facility, the final rule assesses an additional amount for each tenant occupying space in the facility. This responds to the contention in many comments that it was not a widespread practice for landowners to charge a percentage of gross rent from tenants. In addition, the final rule defines ''tenant'' to alleviate the potential for charging occupants in the facility who are customers paying for a communication service.

In response to concerns that the rental schedule may be unfair, the final rule provides the authorized officer ample discretion to use other methods to set rental payments. Holders who believe the initial rents set by the schedule are unreasonable may ask the authorized officer to reconsider the initial rental assessment. The holder may request an individual appraisal or may provide recent leases for similar uses in similar locations to help BLM set appropriate rent. If agreement cannot be reached, the holder may appeal the rental determination. For those whose rent will increase more than $1,000 during the first year, the amount over $1,000 will be phased in over the next five years. Also, the authorized officer may consider hardship requests or give partial waivers to holders who provide, without charge or at reduced rates, a valuable benefit to the public or programs of the Secretary.

The final rule also simplifies the process for determining when the holder is eligible for phasing in increases in rent and the amount to be phased in. The final rule phases in increases of more than $1,000, removing the 20 percent or more calculation required in the proposed rule.

Finally, the final rule provides that rental payments will be updated annually based on the Consumer Price Index. This applies to all rents, whether initially determined through the schedules, appraisals, or some other means. Increases in rent based on the Consumer Price Index would be limited to 5 percent. This will reduce the likelihood that rental payments will drop below market levels or result in sharp increases when the schedule is updated.

The rule also adds sections 2800.0–9, 2812.0–9, and 2880.0–9 to the regulations. These sections merely codify the Notes on information collection currently found at the beginning of part 2800.

Section 2803.1–2 has been reorganized in part in the final rule, and paragraphs in the proposed rule have been redesignated in the final rule to reflect this. Mainly, subparagraphs within paragraph (c) of the existing regulation have reen redesignated as paragraphs (e) through (h), and paragraph (e) of the proposed rule, which introduced the rental schedules, has been redesignated (d) in the final rule.

Analysis of Comments

The BLM received a total of 61 comments on the proposed rule. All comments on the rule were shared and jointly analyzed by the BLM and FS.

In general, eight major issues were identified in the comments. (1) Do proposed rents reflect fair market value? (2) Format of schedule. (3) Additional users. (4) Use of appraisals to set fair market rent. (5) Administrative complexity. (6) Phase-in. (7) Updating rental payments. (8) Use categories.

1. Do Proposed Rents Reflect Fair Market Value?

Several respondents stated that the proposed rents were too high. Many of them objected to both the proposed rental payments and the proposal to charge an additional amount based on a percent of the gross receipts received from renting space in the facility. Several suggested that the proposed rental payments were unfair and would affect their economic survival.

A few comments suggested that preparing individual appraisals would more accurately reflect fair market value than use of a schedule, while others expressed concern that individual appraisals would be used instead of the schedule. Others stated that the base rents were acceptable but totally disagreed with adding on a percentage of the gross for rental of space in the facility. A smaller number commented that the proposed rents were far too low and in some cases would not possibly cover the costs of processing the billing. Other comments stated that the right-of-way authorization conveyed fewer rights and therefore should be less valuable than leases conveyed in the private sector.

The BLM intends the approach taken in developing the final schedule to achieve a reasonable estimate of fair market value, and believes that it succeeds in doing so. The BLM took information from a variety of sources into consideration in developing the schedule. These sources include (1) the report of the Radio and Television Broadcast Use Fee Advisory Committee, whose recommendations were discussed above, (2) information obtained by government appraisers, industry representatives, and private lessors, (3) market information provided by users and industry groups in response to the original FS notice and the BLM proposed rule, and (4) agency records showing current billings for new and existing users. The application of this information was described in the preamble to the proposed rule, and is revisited in this preamble in the discussion of public comments.

Appraisals may provide a more accurate indication of the fair market value of a particular use on a specific site. However, the costs of performing individual appraisals—estimated at $2,000 each—would be enormous compared to those of implementing uniformly applicable schedules, reducing the returns to the Treasury for use of public resources. There would be pressure to increase the rents charged to make up for these costs. Also, the lag time involved in performing a large number of appraisals would be so great that some holders would be paying rents disproportionately higher or lower than others for significant periods of time. This might impel holders to complain of unequal treatment under the law.

The rental process outlined in the final rule sets as reasonable a rent as possible for the type of use, its location, and rights granted. The rental market for communication sites varies

considerably. Also, terms of private lease agreements vary widely, and it is difficult to quantify the effect of lease provisions on rental value.

In response to concerns expressed by the comments, BLM has made the following changes in the final rule:

The originally proposed rents in several categories have been reduced to reflect information provided by respondents.

The proposal to base rent for tenants on a percentage of the annual gross receipts received from rental of space in the facility has been eliminated.

Current right-of-way holders will be notified of the new rent and given instructions for appealing the new rent in accordance with existing regulations.

Schedule rents, and rents determined by appraisal or other methods, may be adjusted by the authorized officer if the criteria in section 2803.1–2(b)(2) apply, e.g., the holder is a nonprofit business, provides a public service at reduced or no costs, or would suffer undue hardship from imposition of the schedule rent.

2. Format of Schedule

Several respondents requested that the basis in the proposed rule for setting rent for broadcast and nonbroadcast uses, i.e., U.S. Census Population for the principal community or communities served, or the county population, depending on circumstances and the type of use, be reconsidered. Comments suggested a variety of other methods, including market ranking services for broadcast radio and television, number of subscribers, size of building, the FCC-defined service contour of the individual facility, a percentage of the total value of the facility, number of transmitters, height of the tower, or a percentage of the rental income.

We considered all suggestions. Most of them would require site-specific studies, development of specific criteria and instructions for each type of use, or result in rental determinations that would be too subjective and create potential inconsistencies in application of the schedule. Other suggestions would require a system of information collection that would make the billing process less efficient. The final rule features a common schedule format for all uses based on population, because it represents the best way to obtain a reasonable estimate of fair market value with a tool that is evenhanded and economical to use.

Several of the respondents opposed using the population of the principal communities served for setting the rent for television and radio stations. One comment expressed concern that, based on the total population of the principal communities served in the Boise, Idaho, market, television and radio stations would be paying $16,000 and $11,000 respectively, instead of the $6,000 and $4,000 amounts in the example included in the proposed rule. The major concern was that the original proposal would be difficult to implement and create inequities because of differences in identifying the principal communities served and calculating their populations. The respondents argued that the concept was too vague and that it would be difficult to determine the population served using census information. We agree with the comments and have dropped the idea of calculating rental payments based solely on the U.S. census population of the principal communities served, except for small communities as discussed below.

Television and radio broadcasters preferred that BLM adopt industry-recognized market ranking methods: Nielsen Designated Market Areas for television and Arbitron Company Metro Area rankings for radio.

For several reasons, the final rule does not incorporate the suggestion that the schedule for television and radio uses be based on an industry-recognized market ranking system.

First, radio market rankings are not nationwide, and there are significant gaps in coverage. Therefore, other methods must be developed to establish rent in those areas not covered by the market ranking services.

Second, the television market ranking system does not measure the households or audience reached by the broadcast transmitter. Instead, it includes households reached by a combination of microwave technology and translators that serve other smaller markets. This inadvertently inflates rental payments for those stations that have an extensive network of translators that serve communities outside the area normally reached by the transmitter. Also, translators on public land themselves pay rent based on populations served.

Third, television market rankings do not include satellite or affiliate stations that serve smaller communities within the dominant market area (DMA).

Fourth, having separate market ranking systems for each category of use would complicate implementation of the schedule.

Other respondents questioned using county population for nonbroadcast uses, stating that there was little relationship between county population and rent for nonbroadcast uses. They also believed that in geographically large counties, such as Riverside and San Bernardino, California, using county population would result in overpayment of rent for uses in more remote, sparsely populated areas of the county. One comment suggested that the population considered be more narrowly defined and consideration be given to the population of the nearest community.

Several respondents stated that there was no correlation between the rent paid for microwave and private mobile radio sites and population, and that this would be an inappropriate method for setting rent.

There are various factors that influence rent but that are not necessarily related to population. For example, microwave facilities provide a system for transporting information from one point to another point. They operate on a linear, line-of-sight basis and, in many instances, do not serve nearby population areas, and therefore rent may not have any relationship to population. However, in those instances where the microwave facility is located on a site that serves a nearby population area, land rents are more directly correlated to nearby population. The same reasoning applies to private mobile radio users.

The final rule bases scheduled rent on populations of the community where facilities are situated, rather than of entire counties or other arbitrary political subdivisions containing them. That is, the populations upon which the schedules are based are those that in many cases are being served by the facilities, or are those of the community near or containing the facility (because population is usually causally related to land value) or in some cases where the people working at the facility live, or all of these. Although the concept may not be universally applicable, BLM believes this to be an appropriate basis for developing a schedule, especially compared with other options that would be more difficult to implement.

We disagree with comments that there is no correlation between population and rent charged for a communication site. We recognize there may be no direct relationship between the private communication use and population, since the service is not sold. However, market information gathered by BLM shows that land rents are generally higher for sites near metropolitan areas than for those sites in less populated areas.

Our primary goal has been to develop a schedule that is easy to implement and facilitates the calculation of a reasonable rent. As a result of the comments, the final rule adopts a

formula for calculating the rental based on the population of the community nearest the site, served by the site, affected by the site, or all of these, depending on the nature of the facility. Some facilities affect the environment of or provide employment for a local community while providing communication service to a distant metropolis, while others serve only the locality where they are situated. In calculating rents using the schedules, distant population centers served by the facility will not be considered.

The population base for the site is determined in three ways. The first step is to determine whether the facility is situated in or near a community listed as a Ranally Metro Area (RMA) as identified in the ''Rand McNally Commercial Atlas and Marketing Guide, 1995.'' An RMA represents Rand McNally's definition of metropolitan areas in the United States. There are 452 RMA's. Four hundred and seventeen have a population of 50,000 or more. Thirty-five listed RMA's have a population near 50,000 and are included as RMA's because they include a central city of an official Metropolitan Statistical Area. If the community is listed as an RMA, the population of the community as shown in the Rand McNally publication will be used to set the scheduled rent. RMA's are updated every year, and are more useful than U.S. Census reports on cities in providing accurate counts of the population affected by, serving, served by, or related to a communication facility.

Second, if the site does not serve a listed RMA, the scheduled rent will be based on the most recent Rand McNally Road Atlas population of the largest nearby community.

Third, for sites located in or serving a community of less than 25,000 people, the rent that will be charged is the minimum rent shown on the schedule for the type of facility.

Consideration was given to using statistical definitions of Metropolitan Statistical Areas (MSA), as defined by the Office of Management and Budget (OMB Bulletin No. 93–17), for determining the population of nearby communities. MSA's are defined in terms of entire counties, except in the six New England States where they are defined in terms of cities and towns. In many of the Western States the counties are very large: Maricopa County, Arizona, and Clark County, Nevada, for example. As a result, use of MSA's would result in unfair rents for those holders serving a portion of a larger county. Therefore, BLM decided not to use this method.

In response to the public comments, the final rule includes the following changes:

The final rule bases the rental schedule on a ranking of RMA's as identified in the *Rand McNally Commercial Atlas and Marketing Guide, 1995.*

The rents for uses located on sites serving RMA's will be based on the population of the RMA's served by the site.

Rents for those uses located on sites not serving an RMA will be based on the most recent U.S. census population of the community.

We made minor changes in the description of ''other communication uses'' in response to comments. The description is clarified by including other small, low-power devices used to operate, monitor, or control remote activities such as wireless telephone or mobile radio service to sparsely populated areas, in order more accurately to depict the uses covered by the category.

3. Additional Users

A majority of the comments opposed assessing rent for additional users in the building based on a percentage of the gross rent received. The proposal was criticized as unfair, not supported by market data, exorbitant in view of the proposed base rent, and too difficult and costly to implement. Others pointed out that, with few exceptions, private landowners do not receive an additional amount from the primary lessee for tenants in the building. One respondent suggested that BLM provide data to support its position that payment of a percentage of gross rent is common in the marketplace.

Respondents stated that the term ''gross sublease rent'' was not clear, and worried that the holder would be assessed a charge for all occupants in the facility, customers as well as tenants. There was also concern that it would be difficult for holders to report rent received accurately, making them vulnerable to charges of underpayment of rent. Others argued that, since several BLM State Offices currently charge each tenant separately, this provision would reduce total public revenues.

In view of the comments, the final rule no longer charges 25 percent of the gross rent received from tenants in the facility. We agree the provision would be intrusive for most businesses and would be difficult to implement. Therefore the original proposal has been amended to charge the holder the full schedule rent for the principal use of the facility, even if a tenant's use is the principal use, plus 25 percent of the schedule rent for the other uses, whether of tenants or the holder.

Generally, multiple user facilities located on public lands are more valuable than single user facilities, and an additional amount of rent should be paid. Ignoring tenant use of the facility when setting rent, while allowing the holder nearly exclusive use of the site by no longer requiring agency approval for other tenants in the facility, prevents recovery of fair market value. Also, the BLM and FS in some States authorize tenants in facilities, and charge them rent. Dispensing with that practice entirely, as some respondents suggested by implication (in arguing against the collection of a percentage of actual gross rent), would result in a significant reduction in revenue.

The BLM's statutory responsibility is to obtain fair market value for the use of public lands, and this includes obtaining a rent for secondary uses in the facility. Charging secondary users is in the public interest, and as a business practice is supported by policies of other land managing agencies and companies.

One comment made the observation that setting the base rent on the authorized use without adjusting for other users in the building would encourage lower rent users to obtain an authorization and then rent to higher rent users. For example, a holder having an authorization for internal mobile radio would sublease to a television or radio broadcaster, collecting high rent from the sublessee under the schedule in the proposed rule and paying low rent to the Government under the same schedule. The comment suggested that the rent should be based on all of the actual users in the facility, rather than just the holder's use.

As a result of the comment, BLM realized that the existing provision in section 2801.1–1, which was not addressed in the proposed rule, limits uses of rights-of-way to those ''specified in'' the authorization and prevents BLM from basing rent on the principal use of the facility in cases where tenants of the holder actually operate the primary or higher valued uses. In practice, most BLM authorizations are for a ''communication use'' and do not specify a particular type of communication use. Therefore, in a technical amendment in the final rule, we have removed the reference in section 2801.1–1(b) to purposes ''specified in'' the authorization.

The rent for a holder of a facility with tenants will be the highest rent the rental schedule assigns to any one of the uses in the facility. An additional amount for the other tenants covered by

the authorization will be 25 percent of the scheduled rent for each of those categories of use. The total rent paid by the holder will be the schedule rent for the highest valued use plus 25 percent of the schedule rent for each of the other tenant uses in the facility, including the holder's use if it is not the highest valued. In some cases, the rent paid by the holder under the final rule will be higher than the rent that would have been required under the proposed rule, depending on the amount of rent actually paid by tenants to the holder. However, the total rent will still be less than it would be if the full rent for all uses were assessed individually.

In response to the comments, the final rule makes the following changes from the proposed rule:

Prior written approval from the authorized officer for other tenants in the communications facility is no longer required.

The BLM will adjust the rent assessed the holder to reflect the principal occupancy and use in the facility instead of basing it only on the holder's use authorized by the existing right-of-way.

The certified statement of rents collected from sublessees, provided for in section 2803.1–2(e)(6) of the proposed rule, has been revised (section 2803.1–2(d)(6) in the final rule) to require only a listing of tenants, by category of use, in the facility on September 30 of the current year. Provision for reporting the amount of rent collected has been removed. The BLM reserves the right to conduct spot audits.

The base rent for an authorized multiple use facility will be charged for the use generating the highest schedule rent.

The terms ''tenant'' and ''customer'' have been defined to help make clear which occupants in the facility would be subject to an additional amount of rent under terms of the holder's authorization.

Existing tenants maintaining a separate authorization will be subject to paying their full schedule rent. Applicants for rights-of-way on land already subject to rights-of-way may obtain separate authorizations from BLM. However, they will be subject to paying their full scheduled rent, plus appropriate administrative costs. Users are encouraged to combine same-site rights-of-way under a single right-of-way authorization, and the final rule provides a rent reduction incentive for such combinations.

4. Use of Appraisals To Set Fair Market Rent

Several respondents opposed permitting the authorized officer to set rent payments based on individual appraisals instead of using the schedule. They feared that the agency would seek to rely on appraisals instead of uniformly implementing the schedule. One respondent asked BLM to provide guidance on when individual appraisals would be needed. Two respondents stated that the proposed rule would allow the authorized officer to have unfettered discretion to set rental payments different from the schedule, and another stated that the proposed rule could result in significant abuse. Another comment suggested that BLM establish criteria or standards to be applied when the rental schedule does not yield fair market rent.

In response to the comments, section 2803.1–2(e)(4) of the proposed rule (section 2803.1–2(d)(7) in the final rule) has been clarified and criteria established in the final rule for allowing the authorized officer to use appraisals or otherwise deviate from the schedule. Under this section, the authorized officer may use appraisals or other means if the holder is eligible for a waiver or reduction in rent, if payment of the rent will cause undue hardship, if the right-of-way is a cost-share road or reciprocal right-of-way, if the original right-of-way authorization has been or will be issued under a competitive bidding process, or if the State Director concurs in a determination made by the authorized officer that the expected rent exceeds the schedule rent by 5 times, or the communication site serves a population of 1 million or more and the expected rent based on comparable leases for the communication use is more than $10,000 above the schedule rent. To accommodate this change, paragraph 2803.1–2(c)(1)(v) of the existing regulation is amended in the final rule to allow BLM to use methods other than the schedule in establishing rents for communication uses.

5. Administrative Complexity

Several respondents stated that the proposed rule would not improve processing or reduce costs. One argued that the new procedure would increase administrative processing and associated costs. The major problems identified included how to categorize uses properly, the difficulty of requesting and obtaining information from holders on a timely basis to calculate a rental, whether to rely on the accuracy of information provided by the holder regarding population served, number of subscribers, or listings of tenants; and how to calculate the rent accurately during the phase-in period. Some comments stated that audits and inspections might be necessary to ensure enforcement, and feared that the agencies would not have the resources to manage the changes effectively.

Several comments complained that it takes too long to process an application for use of public lands. One comment suggested that we need to stop emphasizing the issue of fair market rent and get on to more important matters, such as excessive delays and unnecessary requirements for processing authorizations for use of Federal lands. Others said that Government should not regulate or require rent for secondary users, because of the length of time it takes to authorize additional users in an existing building. However, one of the main purposes of this rule is to streamline the process. This is accomplished, for example, by removing appraisals from the process in most instances, and removing the requirement for prior written approval of tenants. No changes are made in the final rule in response to these comments.

The BLM is committed to improving administration of communication site uses and to full implementation of new, streamlined rental procedures. Once they are implemented, rental payments will be calculated consistently and updated annually to reflect fair market value, and both administrative costs to the Government and non-rental costs to users should decline, while service to the public improves. At the same time, BLM will have more complete information on who is authorized to be on public lands and what uses they may make of the lands, and will be able to assess rental payments more accurately.

In response to the public comments, the final rule has been revised in an effort to streamline implementation of the schedule. These changes include:

The number of use categories is reduced from 11 to 9.

Use categories are defined more broadly to include other related uses associated with the maintenance and monitoring of the use. For example, internal mobile radio is often associated with other uses and, therefore, is included in the definition of each category of use.

Commercial mobile radio service is redefined to include internal and private communication used by commercial concerns but not sold for a profit. When commercial mobile radio service is the highest valued in the facility, the holder will not be assessed a percentage of the scheduled rent for

internal and private communication uses.

The rule is amended to provide that occupants owning and operating communication equipment in a commercial mobile radio service facility for internal use only, and not re-selling their service for a profit, are considered customers, not tenants. The base rent assessed (that is, the rent paid by the holder for the holder's use and all tenant uses) does not include any added rent for customers.

Facility owners and tenants may decide whether to consolidate their authorizations.

Except as otherwise provided in Section 504(g) of FLPMA, the requirement that the holder obtain written consent from the authorized officer before allowing other parties to use the facility is removed.

The final rule allows phase-in of new rental payments if the holder shows that the increase will exceed the previous year's rental by $1,000 or more.

The information collection burdens placed on users in the original BLM proposal are drastically reduced. For example, the final rule eliminates the requirements that cable television users provide the number of basic subscribers, that broadcasters provide a 1 millivolt contour map or a list of communities served, and that holders account to BLM for all rent actually received from sublessees.

Differences in the methods used to determine rent for each category of use are minimized.

New applicants are encouraged to co-locate in existing facilities in order to reduce surface disturbances for new roads and buildings and avoid the proliferation of buildings and towers.

6. Phase-in

The proposed rule included provisions for reducing potential impacts of large increases in rent. As proposed, increases in the base rent of more than $1,000, or 20 percent of the current rent, whichever is greater, were to be phased in over a 5-year period. Additional rent from tenants based on a percent of the gross rent was proposed to be set at 15 percent during the first 5 years and 25 percent thereafter.

Many of the respondents stated that the proposed procedure phasing in increases in the base rent was reasonable. One person argued that the 5-year phase-in was too generous, and another wondered why the agency should provide a financial break for users who have not paid fair market value for many years.

In response to general suggestions that the rental determination process be simplified, we have changed the proposed phase-in procedure.

The final rule eliminates the dual standard test to determine eligibility for phase-in of increases in rent. Instead, the final rule requires that any increase of more than $1,000 or more will be phased in over a five-year period. The original proposal would have required the agency to make two separate calculations: determine if the new rent exceeds the current rent by (1) $1,000 or (2) 20 percent of the current rent. We have simplified the process by only requiring a determination of whether the new rent exceeds the old by more than $1,000.

The phase-in adjustment works in this manner: if the current base rent is $700 and the new rent based on the schedule will be $2,700, the first year's rent will be $1,700, and the rent for years 2 through 5 will be increased $250 per year, plus the inflation adjustment increase or decrease. Assuming a 2 percent annual increase in the CPI-U during the 5-year phase-in period, the base rents will be calculated as follows:

Year 1 $700+$1,000=$1,700
Year 2 ($1,700+$250)×1.02=$1,989
Year 3 ($1,989+$250)×1.02=$2,283.78
Year 4
($2,283.78+$250)×1.02=$2,584.46
Year 5
($2,584.46+$250)×1.02=$2,891.15
Year 6 ($2,891.15×1.02)=$2,948.97

7. Updating Rental Payments

Under the current regulations, rental payments are based on appraisals, and the appraisals are supposed to be updated every 5 years. Because of delays in performing appraisals, increases in rent have often been substantial, resulting in complaints and more appeals. All too often, rental assessments had not been updated for 10 to 15 years. Legislated limitations on agency authority to increase rents have made the problem worse.

The proposed rule included provisions to update payments annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average, published in July of each year, in order to avoid larger increases in rent and the possible economic disruptions that would be caused by longer update intervals.

Two respondents expressed concern over when the agency would re-evaluate the schedule. The proposed rule provided that the schedule would be re-evaluated and if necessary updated periodically. One respondent asked what was meant by ''periodically.'' The other comment suggested that the rental schedule should be re-evaluated every 5 years. The comment noted that the rent for communication uses has surged over the last several years, and that unless there was a mechanism to update market information, rents under the schedule would fall below fair market value.

In response to the comments, we have included in section 2803.1–2(d)(2) of the final rule a provision that the rental schedule will be reviewed for possible update no later than 10 years after it becomes effective, and at least every 10 years thereafter, to ensure that the schedule reflects a reasonable estimate of fair market value. Also, individual rights-of-way may be reviewed after the first 10 years, and no more often than once every 5 years thereafter, on holder request, to determine whether rents are appropriate.

Many of the respondents generally supported use of the Consumer Price Index-Urban (CPI–U) to index the rental payments. One respondent stated that the CPI–U may not relate to local market conditions. Others suggested the CPI–U be limited so that increases would not be too dramatic. One suggested that increases be limited to no more than 5 percent, and others suggested they be limited to 1 percentage point below the annual level of inflation.

In response to these comments, the final rule limits subsequent increases based on changes in the consumer price index to 5 percent. We believe this limitation, along with the notification and appeal process and hardship provisions contained in section 2803.1–2(b)(2)(iv), should reduce the potential for overcharging. One of the inherent problems with schedules is that, over the long term, they may not adequately reflect fair market rent. Market rents in specific areas may be more or less than rents set by a schedule. Periodic reviews of the schedule itself will help ensure that the rents do not become too low.

One respondent suggested that the example included in the proposed rule was incorrect. The proposed rule provided that the first year's base rent would be adjusted to reflect any increase in the consumer price index. We agree with the comment. Any increase in the Consumer Price Index (CPI–U) not exceeding 5 percent for the year will be applied for the first time during the second year.

Along with updating rents based on the CPI–U, the RMA rankings will be updated annually to reflect changes in estimated population. Of course, this may also result in rent adjustments.

8. Comments Pertaining to Use Categories

Television and FM Radio Broadcast

In response to comments made by the Arizona Broadcasters Association (ABA), BLM met with the Administrative Assistant, City of Phoenix, Parks and Recreation, on October 12, 1994. The purpose of the meeting was to gather information regarding rental payments paid on South Mountain, a major communications site within the City of Phoenix, and administrative procedures used by the city. The ABA suggested that the proposed rents for Phoenix and Tucson were too high and that consideration should be given to recently negotiated rents charged by the Phoenix City Parks Department on South Mountain.

The information obtained was useful in preparing the final rule. The City of Phoenix grants a license to each user, including tenants within the facilities. The facility owner and tenants pay individual rental payments. The BLM final rule establishes a different process. The facility owner is allowed to manage the facility without any interference from the agency. BLM will no longer require prior written approval to allow other parties to use the facility and tenants will be encouraged to relinquish their separate authorization, thereby reducing agency billing costs and user administrative costs. Although the schedule rent for the primary use of the facility is slightly higher, the additional rent assessed for tenants will be less. Overall, total revenues generated by the City of Phoenix for multiple user facilities will be greater than those obtained on a similar BLM facility because of greater management involvement by the city.

The BLM also considered examples of rent levels in other typical locations to arrive at the final schedule rents.

Land rents for television facilities in similar markets vary considerably. There is also a difference between rents paid for communication sites based on Ranally Metro Area (RMA) populations and rents based on Nielsen market rankings. In response to the comments, the final rule lowers the rent for television and FM radio stations serving areas with an RMA population of 500,000 to 999,999 from $16,000 for television and $12,000 for FM radio to $14,000 and $10,000 respectively.

The proposed rule included FM (frequency modulation) radio only. Several respondents wondered if AM (amplitude modulation) stations were also included. The rule has been amended to include BLM authorizations for the location of AM stations on public lands.

One respondent asked how an AM station would be handled if it is in an FM broadcast facility. AM and FM radio stations located in the same facility will be considered two radio stations in determining rent, with one considered the primary holder and the other as a tenant, even if co-owned.

In response to the public comments, the following changes have been included in the final regulation:

- AM broadcast radio stations have been included in the schedule. Rents will be based on 70 percent of the FM scheduled rental payment in recognition of the lower profit generally derived from AM broadcasting. Co-located AM and FM stations will pay the full FM radio rent, plus 25 percent of the AM rent.
- The scheduled rent for television and radio stations serving RMA's with a population of 1,000,000 to 2,499,999 is reduced in the notice published today elsewhere in this issue of the Federal Register. Typical cities within this population range are Phoenix, AZ, San Diego, CA, and Portland, OR.

Broadcast Translator and Low Power Television (LPTV)

Broadcast translators are low-power devices that transmit television and radio signals originated elsewhere to remote areas, and LPTV serves the same function, but may originate programming on a limited basis.

Several respondents suggested that the BLM final rule should adopt the fee schedule for broadcast translator stations previously approved by the FS. The FS regional offices had adopted a schedule supported by the National Translator Association.

The BLM proposed rule was different from the FS rule in two respects. First, it included LPTV, an FCC-licensed facility that has limited authority to originate programming, as well as broadcast translators. Second, it set a schedule to be applied to all markets, regardless of population, whereas the FS schedule was limited to communities having a population of less than 60,000. The scheduled rents for population ranges less than 50,000 were essentially the same as those adopted by the FS.

Two FM translator operators argued that the proposed rental payment schedule would have an enormous impact on holders and result in an elimination or reduction of service. FCC regulations effective June 1, 1994, prohibit television stations from supporting the operation or maintenance of a translator either directly or indirectly. The new FCC rules allow the owners to solicit contributions from listeners for the operation and maintenance of the FM translator. The comments stated that the recent changes in FCC regulations, along with the proposed increase in rents imposed by the BLM, will eliminate or reduce service in some areas.

In response to the comments, we have substantially revised the schedule for broadcast translator and LPTV in the final rule. Because of insufficient market information and the concerns expressed in the comments, the schedule will be applied only to the 4 lowest population groups. Rental for holders located on sites serving a community of 200,000 population or more will be based on other methods, including separate appraisals.

Another respondent suggested that a distinction in the rent be made for the difference between a translator and LPTV. LPTV stations are essentially translators that are permitted by the FCC to originate programming. They cannot interfere with full-power stations and are limited to 10 watts VHF and 1,000 watts UHF. Both LPTV and translators serve remote areas, and there is little information to suggest that there should be a difference in land rent between the two uses. Therefore, BLM has kept LPTV stations and translators in the same category on the schedule.

One respondent suggested that the term ''Rebroadcast Device'' be clarified, because microwave relays and repeaters are also rebroadcast devices. Because of the potential confusion, we have changed the name of the category to ''Broadcast Translators and Low Power Television'' in the final rule.

Cable Television

Cable television uses on public lands include facilities for receiving and transmitting television programming over a wired or wireless network.

Respondents raised concerns about basing the schedule on the total number of basic subscribers. One suggested that there should be a provision for increasing the rent as the population served increases. Another suggested that requiring the holder to report the number of basic subscribers would exclude those that subscribe to other program packages that include basic programming. Another suggested that the standard for determining rent should be based on the actual number of households subscribing to the cable television service at a given time.

The proposed schedule would have imposed annual reporting requirements on cable television authorization holders. The comments indicated potential confusion over the reporting of

the number of basic subscribers. Also, it is administratively more complicated for BLM to set different information requirements for each category of use when preparing a billing. As a result the format of the cable television schedule was amended in the final rule to reflect the population of areas served by the cable television station. Cable television holders serving a metropolitan area should pay rents similar to those paid by other broadcast users in the same market, based on the cost to the public and the impact on the land of similar uses, rather than market shares enjoyed by the holder.

One respondent disagreed with the proposed $2,400 rent for a cable user having 2,500 or more subscribers. The respondent stated that in larger markets the proposed rent was too low. He concluded the rents should be similar to rents paid by broadcasters on sites serving larger metropolitan areas.

A review of market information revealed that most of the data available to BLM came from leases in smaller, rural areas. Since in the final rule the schedule format has been changed to population instead of number of basic subscribers as in the proposed rule, and because we have limited comparable lease data for cable use in larger markets, the cable schedule is limited to those locations serving less than 200,000 population. In larger population markets, rent will be established through appraisals or other methods.

Commercial Mobile Radio Service (CMRS)

CMRS businesses provide mobile radio service to individual customers by operating interconnected network of transmitters linking contiguous coverage areas, and ranging in power from 10 to 1000 watts.

As to CMRS, the BLM proposal included: (1) Rents based on the population of the largest county predominantly served by the transmitter, (2) a separate category for facility managers (building owners), and (3) adjusting rents in most levels to reflect additional analysis.

Right-of-way holders providing commercial mobile radio service were strongly opposed to the schedule. Their comments stated that the schedule was unfair and the rents too high, and that many small businesses would be driven out of the market. They objected to using county population as a basis for setting rent, and were opposed to paying 25 percent of the gross rents received from tenants in the building. Several likened the revenue sharing proposal to a tax. Others were dismayed at the prospect of the Government being a partner in their businesses. Their primary argument was that revenue sharing with the landowner is not a widespread practice. One comment stated that since CMRS and facility manager uses were so similar they should be combined into one category.

In response to the proposed rule, industry groups submitted extensive market data to support lower schedule rents. Their comments provided lease data, appraisals, and references to lease information, and concluded that there was very little difference in the land rent paid by common carrier and industrial microwave users. Further, they asserted that the difference between microwave (all types) and mobile radio-commercial communications was less than 4 percent.

Several respondents objected to the proposed rents in Maricopa County, Arizona as being too high. One comment provided information from a real estate listing for a 10,000 square foot undeveloped site on Shaw Butte, 10 miles north of downtown Phoenix. The site was offered at $350 per month rent or $4,200 per year. On Usery Mountain east of Phoenix undeveloped parcels are available for $1,200 per month. The comment argued that the listed rent on Usery Mountain was too high. The comment suggested that the fair market rent for sites serving the Phoenix metropolitan area should be $9,000 per year or 25 percent of gross rent as it was defined in the proposed rule, whichever is greater.

Another comment suggested BLM take into consideration rents paid by local users on South Mountain, a mountain managed by the City of Phoenix. The comment reported that CMRS providers pay $5,400 per year on South Mountain, in contrast to the $12,000 proposed in the schedule.

The rent paid to the City of Phoenix on South Mountain was set by agreement dated February 7, 1992. It is our understanding that the City of Phoenix Parks and Recreation Board set a rent of $750 per month, or $9,000 per year, for building owners and $450 per month, or $5,400 per year, for commercial tenants.

The BLM final schedule sets the rent for CMRS users serving the Phoenix RMA at $8,000 per year. The rent for CMRS tenants included under the building owner's authorization is based on 25 percent of the scheduled rent, or $2,000 per year.

A number of other respondents also provided market data. One suggested that comparable leases for a CMRS user in Bonneville County, Idaho, were $1,000, not $1,500 as proposed. This information supports the scheduled rent of $1,200 for a site serving Idaho Falls.

A user in South Dakota objected to the minimum rents of $600 per year proposed in rural areas and suggested that a minimum rent of $300 per year would be more equitable. The respondent indicated that on 16 sites in South Dakota rents vary from $50 $300 per year. Market research by BLM showed that rents at these levels would be too low, and the comment is not adopted in the final schedules. However, rents can be adjusted on a case-by-case basis under the final rule, and thus hardships proven to be caused by the schedule rent can be mitigated.

Comments stated that the commercial mobile radio service (CMRS) category should have included microwave communication equipment. The comment stated that CMRS facilities are dependent on microwave communication equipment similar to cellular telephone facilities. We agree and have added microwave communications link equipment to the CMRS definition.

The definition of CMRS contained in the proposed rule included two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, and public switched network (telephone/data) interconnect service. It did not include cellular telephone or personal communication service (PCS). The final rule maintains the distinction between the two wireless forms of communication because market information indicates that cellular telephone companies pay more for sites than CMRS users.

Based on the comments, the following changes were included in the final rule, and in the notice accompanying the final rule containing the rental schedule:

The proposed rental payments have been adjusted to coincide more closely with rental payments for cellular telephone in larger markets. In less populated areas, rents for CMRS use are generally less than rents for cellular telephone, and this relationship has been maintained in the final rule.

The definition of CMRS has been broadened to include facility managers and ancillary microwave link equipment.

The definition was also broadened to include microwave link equipment.

Rents in 6 of the 9 population categories were reduced.

Facility Manager

The proposed rule included a separate category for facility managers. Because many facility managers do not sell,

operate, or maintain communication systems or equipment, BLM considered them separate and distinct from CMRS providers.

The comments received in response to the proposed rule contended that the proposed rental schedule was discriminatory and inequitable. The respondents stated that since the facility manager derives income only from the rental of space in the building, the proposed schedule would unfairly reduce their gross income by charging a percentage of all revenues over and above the base rent. By contrast, rents assessed holders that provide CMRS are not adjusted to reflect their revenues from services such as dispatch, cellular subscriptions, or broadcast advertising.

There were questions concerning the similarity between CMRS and that provided by the facility manager, and possible confusion in applying the schedule. Others expressed concern that we may have inadvertently created a loophole by setting the rent for the facility manager lower than that for CMRS. One comment suggested that the category be eliminated and incorporated into the CMRS. Another expressed support for the category of use, but argued that it was unfair for the Government to take 25 percent of their revenue since their only source of revenue was from the rental of space in the facility.

BLM agrees there are many similarities between the CMRS category and facility manager. To eliminate potential inequities and confusion in applying the schedule, the facility manager category has been removed and included under the CMRS category for purposes of setting the base rent on the empty facility.

Cellular Telephone

Cellular telephone is a means of providing mobile telephone service to subscribers. Current cellular telephone systems are based on analog signal transmission. The next generation of cellular telephones will be based on digital transmission and is sometimes referred to as personal communication service (PCS).

Two comments suggested that the cellular telephone category should include systems providing similar wireless telecommunications services to the public, such as specialized mobile radio. They pointed out that Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 directed that similar wireless telecommunications services should be regulated consistently.

The FCC has made recent regulatory changes to establish a level playing field for competitive mobile communications market. The Budget Act outlined three criteria for determining commercial mobile radio service: the service must be provided for profit, it must be interconnected to the public switched network, and it must be available to a substantial portion of the public. Under FCC regulations, mobile services not included under the CMRS definition are classified as private mobile radio services (PMRS).

The suggestion in the comments was not adopted in the final rule. Other wireless communication users were not included under cellular telephone. In large metropolitan markets cellular telephone companies and commercial mobile radio providers often pay similar rents for privately owned space. In small to medium size markets, mobile radio service providers pay less than cellular telephone companies. Therefore, for purposes of assessing rent, separate schedules are included in the notice accompanying the final rule.

Two comments objected to including PCS, a new digital wireless telephone technology, in the schedule with cellular telephone. One comment suggested that this category be dropped until the technology is more fully developed. The other comment explained that the PCS licensees network will be far more concentrated and require more sites than a cellular network. The comment warned that it would be a serious mistake to require PCS licensees to pay the same rental as a cellular carrier.

PCS is similar to cellular telephone services. The major differences are that it is low power and provides coverage to a smaller area. The service is not yet available. In December 1994, the FCC began auctioning licenses, and it is likely that PCS service will be available in some markets as early as mid-1996.

Therefore, we have removed PCS from the cellular telephone definition. Once we know what the site requirements will be for PCS facilities, we will consider amending the regulation to include them. However, we have broadened the definition of cellular telephone to include other technologies in the event PCS facilities prove to be similar. It is our intent to apply the schedule to similar, emerging technologies when practical. Meanwhile, appraisals or other methods will be used to set rents for PCS and other advanced technologies.

Another respondent suggested establishing a separate rent category for microcell facilities. The comment letter explained that these facilities efficiently serve small, distinct communities. In contrast to conventional cellular facilities that operate at 10 watts and use larger antenna, the microcell antenna is much smaller, usually mounted on a pole, and the equipment operates at 5 watts or less. It also suggested that the rent for these facilities be $2,500 per year. We have not adopted the suggestion because it cannot be incorporated in the final rule without further opportunity for public comment.

In response to the comments, we have made the following changes:

We removed personal communication service use from the definition of cellular telephone.

Rental payments in the top population levels were adjusted to coincide with rents paid by CMRS users.

Adjustments were made in the proposed rent to reflect more recent market information.

Private Mobile Radio

The definition of ''Private Mobile Communications'' was inadvertently omitted from the proposed rule, but this use was discussed in the preamble and included in the proposed rent schedule. In the final rule, this category of use has been renamed Private Mobile Radio (PMR), a discussion of it has been inserted as section 2803.1–2(e)(1)(vi), and the remaining paragraphs have been redesignated. Holders in this category are subject to a rent if they own and operate the facility for their own use. If they are located in an authorized facility, they are considered customers and no additional amount will be assessed for their use.

One comment pointed out that the proposed rule did not make it clear which use is primary for holders using both microwave and private mobile communications. Many microwave sites are also used for private mobile communications. To eliminate possible confusion, the comment suggested that when microwave and mobile facilities are at the same site, the primary use should be defined as private mobile if the microwave ends at the site and is primarily for the control of the mobile facility.

We agree. If the microwave and mobile radio are ancillary to each other, the holder should not be subject to paying separate rents. To correct the potential problem, we have broadened the definition of PMR to include other equipment for the control of the facility, such as private local radio dispatch, private paging services, and ancillary microwave communications equipment for facility control.

Microwave

One comment observed that there is little difference in the schedule rent for private or common carrier microwave facilities and suggested that the two categories be combined. We agree with the comment and have consolidated the two categories in an effort to simplify implementation.

Other Communication Uses

The rental schedule for ''other communication uses'' was intended to include small, unobtrusive, low-power uses that monitor or provide communication service to a small number of customers. The definition of ''other communication uses'' has been clarified to include low-power monitoring or controlling devices. The definition explicitly excludes communication devices and related facilities appurtenant to either a BLM oil and gas lease or pipeline right-of-way authorized under the Mineral Leasing Act.

Holders in this category are subject to a rent if they own and operate the facility for their own use. If they are located in a facility authorized to another holder, they are considered customers and no additional amount will be assessed for their use.

The definition of other communication uses has been rewritten to include FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other low power monitoring or controlling devices, excluding communication devices and related facilities appurtenant to either a BLM oil and gas lease or pipeline right-of-way authorized pursuant to the Mineral Leasing Act of 1920. Passive reflector has been removed from the schedule—the use is not common on the public lands, and appropriate rent will be determined based on appraisals or other methods.

The rental schedule has been changed to correct a misprint for amateur radio and remove the local exchange carrier use from this category. The amateur radio use rental should be $75 instead of $.75.

The local exchange carrier category of use has been removed from other uses in the final rule, because of a misunderstanding regarding the appropriate name for this service. The term ''local exchange carrier'' is generally understood to mean the local telephone company. It was our intent that we include basic exchange telephone radio service (BETRS), a microwave radio service that provides telephone service to remote areas. We were unable to get sufficient information to establish a schedule rent for this use, and appropriate rent will be determined based on appraisals or other methods.

Impact of Schedule on Existing Rental Payments

Several selected authorizations were reviewed in Idaho, New Mexico, Arizona, and California to assess the potential impact of the final rule on existing rental payments.

Impacts on current rents varied because current rents vary considerably. In some areas communication rental payments have been low historically or have not been updated for many years. In other areas, rental payments that have been updated recently by site-specific appraisals are higher than those in the final rule. Complicating this analysis are assumptions about the number of tenants who will relinquish their authorization and no longer pay full rent, and questions about how to determine the number of tenants in existing buildings. As a consequence, it is difficult to draw any reliable conclusions as to what the impact may be on total revenues.

There are situations where rental payments based on a schedule may be substantially lower than the current rent. When this occurs the authorized officer may use provisions of section 2803.1–2(c)(1)(iv).

Rental Determination

Rental payments for communication sites will be calculated as follows:

1. The authorized officer requests that the holder provide a certified statement by October 15 of each year containing a list of tenants, by category of use, in the facility on September 30 of that year.

2. Using information submitted by the holder, the schedule will be used to determine the highest schedule use.

If the highest schedule rent is a ''tenant'' rent, the ''tenant'' rent becomes the base rent and the building owner's schedule rent is used as a tenant rent for calculating the total rent for the facility.

Tenants located in a CMRS facility who provide internal and private communication services are considered customers, not tenants, and therefore no additional amount is assessed for their use. This is only applicable to CMRS providers holding a right-of-way authorization.

3. The base rent will be calculated from the schedule based on the category of use and the population of the community served by the site, or determined by appraisal or other methods, such as negotiating rents for new sites, extrapolating from current rent paid, or using comparable lease information provided by the holder, in appropriate circumstances.

4. To the base rent, add 25 percent of the schedule rent applicable to each tenant located in the facility on September 30 of that year, to get the total rent.

5. Compare the total rent to existing rent and determine whether the holder is eligible for phase-in. If eligible, calculate the first year's rent.

6. Compare total estimated rent against expected or current rent to determine whether the rent should be exempted from the schedule.

7. If the rent as calculated from the schedule is not applicable, it will be set following an appraisal or using other methods as determined by the authorized officer.

The following examples show how schedule rents are calculated:

Example 1: A communications facility serving an RMA population of 200,000, with CMRS provider (building owner), one TV broadcaster, two FM broadcasters, one cellular telephone, and two private mobile radio users.

Base rent = $6,000 (TV broadcast is the highest value use in the facility) + $750 (25% CMRS provider (building owner)), + $2,000 (25% of two FM broadcasters) + $1,000 (25% cellular telephone + $0.00 (no charge for PMRS)) = Total first year rent for the facility: $9,750.

Example 2: A microwave facility located in a remote, sparsely populated community with no tenants in the facility would pay a first year rent of $1,500.

Example 3: A television station located on a site serving a RMA listed community with a population of 60,000 with two tenants; a FM radio station, and a paging company. Current rent is $1,000.

Base rent = $3,000 (television station is highest schedule rent) + $500 (25% of schedule rent for FM station) + $300 (25% of $1,200 since paging is covered under CMRS) = $3,800. $3,800 (schedule rent) − $1,000 (current rent) = $2,800. First year's rent is $1,560 ($1,000 + one fifth of $2,800).

Implementation Plan

The BLM plans the following to implement the final rule:

1. The BLM and FS will adopt a format for communication use authorizations to be used by both agencies. The new authorization will allow the holder to have tenants in the facility, eliminating the requirement for prior written consent of the agency.

2. A notice will be sent to all authorized communication site users. This notice will advise them of regulatory changes affecting assessment of communication site rental payments,

and the option to convert to a new authorization. Holders will have 60 days to respond to the authorized officer indicating their intention.

3. Tenants in a facility who have a separate BLM authorization will be given an option to retain their separate authorization, or relinquish their authorization and be included in the facility owner's authorization. Tenants electing to maintain their existing authorization will be billed the full rental in accordance with the schedule.

4. Holders will be notified by December 1 each year what their rent would be for the next calendar year.

Procedural Matters

The principal author of this final rule is David Cavanaugh of the Special Area/Land Tenure Team, assisted by the Regulatory Management Team, BLM. Other persons who have made significant contributions include Ellen Heath and Mark Scheibel of the FS, Ron Appel, Dan Nowell, Larry Shiflet, and Bil Weigand of BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, being a regulation of an administrative, financial, legal, technical, or procedural nature, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866. The BLM expects the rule will result in savings estimated at $3,000,000 per rent cycle. These savings will result primarily from a significant reduction in the number of communication site appraisal reports that will have to be prepared and reviewed. Under current policy rents for communication sites are established based upon appraisals, which are to be updated every five years. Through the establishment of rental schedules applicable to categories of communications users, the final rule will eliminate the need for individual appraisal reports for most communication site rights-of-way. The BLM estimates appraisals of this type to cost approximately $2,000 each. With more than 1,500 communication site rights-of-way, the savings for each cycle of rent is estimated to be more than $3,000,000.

The BLM expects the rule to bring annual rental payment charged holders to fair market value as required by statute. The current rental payments for most current holders have not been reviewed or updated in the last five years, with many not adjusted for 10–15 years. The payments that would be placed in effect by this final rule would bring existing rental charges for communication holders on public lands more into line with those who lease land from private landowners. Revenues are expected to initially increase modestly to $2,000,000 annually and keep pace with inflation. Increases may be greater depending on the number of tenants in the building that would be assessed a rent under the schedule. At this time we are unable to project the impact of charging holders for tenants since we currently have no data on tenants in authorized facilities.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The final rule, with its fee schedule, affects only that segment of the communications industry operating on the public lands. There are 57 FM radio broadcast sites, 26 television broadcasting facilities, and approximately 3,200 other permits in effect on these lands. Available records do not indicate how many of these permits are held by small entities. The phase-in of annual fees proposed in this rule will allow any small entities that may be affected to adjust to the new fees over a period of time and thereby minimize the risk of adverse impact due to the magnitude of some fee increases under the rule.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0102 and 1004–0107, with the exception of the annual collection of information concerning tenants and tenants' category of use from right-of-way holders.

In compliance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the Federal Register concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Accordingly, none of the information proposed to be collected as described below will be required until comments have been received and analyzed and approval has been obtained from OMB under 44 U.S.C. 3501 *et seq.* and a clearance number assigned.

In this rule, BLM is establishing procedures for setting rent for communication uses located on lands administered by BLM as required by FLPMA. Generally, multiple-user facilities located on public lands involve tenants, and under this rule, the holder will be assessed an additional amount for certain categories of tenants. Ignoring tenant use of the facility when setting rent, while allowing the holder nearly exclusive use of the site, prevents recovery of fair market value. Thus, BLM's statutory responsibility to obtain fair market value for the use of public lands includes obtaining a rent for tenant uses in the facility.

In response to comments on the proposed rule, BLM changed the original proposal (at § 2803.1–2(d)(6) in the final rule) from charging 25 percent of the gross rent received from tenants

in the facility because it would be too intrusive and difficult to implement. The final rule has been amended to charge the holder of the right-of-way the full schedule rent for the highest valued use in the facility, plus 25 percent of the schedule rent for the other uses. To implement this provision, BLM must obtain from the holder a listing of tenants by category of use on an annual basis. The information collected will allow BLM to calculate the rent for the communications facility. The information is mandatory to obtain a benefit, use of public lands for communications facilities.

The public reporting burden for this collection of information is estimated to average one hour per response. The respondents are holders of right-of-way grants or temporary use permits. The estimated number of respondents is 1,500. The estimated number of responses per respondent is one per year. The estimated total annual burden on respondents is 1,500 hours.

Elsewhere in this issue of the Federal Register, BLM is publishing a separate notice soliciting comments on this proposed information collection.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2810

Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2880

Public lands—rights-of-way, Reporting and recordkeeping requirements.

Dated: October 2, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

Under the authority of Sections 303, 310, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1740, and 1760–1771), and for the reasons stated in the preamble, 43 CFR Parts 2800, 2810, and 2880 are amended as follows:

PART 2800—[AMENDED]

1. The Note at the beginning of Group 2800 is removed.

2. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, and 1760–1771.

Subpart 2800—Rights-of-Way; General

3. Section 2800.0–5 is amended by revising paragraph (j) and adding paragraphs (aa) through (cc) to read as follows:

§ 2800.0–5 Definitions.

* * * * *

(j) *Facility* means an improvement constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant. For purposes of communication site rights-of-way, facility means the building, tower, and/or other related incidental improvements authorized under terms of the right-of-way grant.

* * * * *

(aa) *Base rent* means the amount required to be paid by the holder of a right-of-way on public lands for the communication use with the highest assigned schedule rent in the facility, in accordance with terms of the right-of-way grant.

(bb) Tenant means an occupant who rents space in a facility and operates communication equipment in the facility to resell the communication service to others for a profit. For purposes of calculating rent, the term ''tenant'' does not include private mobile radio or those uses included in the category of Other Communication Uses.

(cc) Customer means a person who is paying the facility owner or tenant for communication services, and is not reselling communication services to others. Persons or entities benefiting from private or internal communication uses located in a CMRS facility are considered customers for purposes of calculating rent.

4. Section 2800.0–9 is added to read as follows:

§ 2800.0–9 Information collection.

(a) The information collection requirements contained in part 2800 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 41.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0102 or 1004–0107, Washington, DC 20503.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

5. Section 2801.1–1 is amended by revising the first sentence of paragraph (b) and adding a sentence to the end of paragraph (f) to read as follows:

§ 2801.1–1 Nature of right-of-way interest.

* * * * *

(b) A right-of-way grant or temporary use permit may be used only for the purposes authorized. * * *

* * * * *

(f) * * * However, the holder of a right-of-way grant for communication purposes may authorize other parties to use a facility, without prior written consent of the authorized officer, if so provided by terms and conditions of the grant.

* * * * *

Subpart 2803—[Amended]

6. Section 2803.1–2 is amended by revising paragraph (b)(1)(i), paragraph (c)(1)(iv), the introductory text of paragraph (v), and paragraph (c)(2), by redesignating paragraphs (c)(3)(i), (c)(3)(ii), (c)(4), (c)(5), and (d) as paragraphs (e)(1), (e)(2), (f), (g), and (h) respectively, and by adding paragraph (d) and revising newly designated paragraph (e), to read as follows:

§ 2803.1–2 Rental.

* * * * *

(b)(1) * * *

(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:

* * * * *

(c)(1) * * *

(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:

* * * * *

(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 services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment. Some holders in this category may not hold FCC licenses or operate communication equipment, but may lease building, tower, and related facility space to a variety of tenants as a part of their business enterprise, and may act as facility managers.

(vi) Private Mobile Radio includes FCC-licensed private mobile radio systems primarily used by a single entity for mobile internal communications, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for the control of the mobile facilities.

(vii) Cellular telephone includes FCC-licensed systems and related technologies used for mobile communications using a combination of radio and telephone switching technology, and providing public switched network services to fixed and mobile users within a defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and often microwave communications link equipment, and communication equipment directly related to the maintenance and monitoring of the use.

(viii) Microwave includes FCC-licensed facilities used for long-line intrastate and interstate public telephone, television, information, and data transmissions, or used by pipeline and power companies, railroads, and land resource management companies in support of the holder's primary business. Also included is communication equipment directly related to the operation, maintenance, or monitoring of the use.

(ix) Other communication uses include holders of FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

(2)(i) The rental schedules will be adjusted annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U, U.S. City Average, published in July of each year), and Ranally Metro Area population rankings. Annual adjustments based on the CPI–U will be limited to no more than 5 percent. The rental schedule will be reviewed for possible update no later than 10 years after December 13, 1995, and at least every 10 years thereafter, to ensure that the schedule reflects fair market value.

(ii) Rights-of-way may be reviewed on a case-by-case basis 10 years after issuance or beginning [10 years and 30 days after the date of publication], whichever is later, and no more often than every 5 years thereafter, on holder request, to determine whether rents are appropriate.

(3) Rent is based on the actual users in the facility. For a facility with a single user, the base rent is the schedule rent for the use. Base rent for authorizations that include more than one user will be based on the use in the facility with the highest rent as shown on the schedule. An additional amount will be assessed based on 25 percent of the schedule rent for all other users. (A facility manager is not considered a separate use for purposes of calculating

the additional amount for tenants in the facility.)

(4) Increases in base rental payments over 1996 levels in excess of $1,000 will be phased in over a 5-year period. In 1997, the rental payment will be the 1996 rental, plus $1,000. The amount exceeding $1,000 will be divided into 4 equal installments, and beginning in 1998 the installment, plus the annual adjustment in the total rent, will be added to the previous year's rent.

(5) Annual rental payments will be calculated and provided to the holder by December 31 for each ensuing calendar year based on the schedules published from time to time as necessary in the Federal Register.

(6) Also, the right-of-way holder must submit a certified statement by October 15 of each year listing tenants in the facility and the category of use for each tenant as of September 30 of that year, and pay 25 percent of the schedule rent for the category of use. Tenants occupying space in the facility under terms of the holder's right-of-way authorization will not be required to have a separate BLM authorization.

(7) Other methods may be used to set rental payments for communication uses when the authorized officer determines one of the following:

(i) The holder is eligible for a waiver or reduction in rent in accordance with § 2803.1–2(b)(2);

(ii) Payment of the rent will cause undue hardship under § 2803.1–2(b)(2)(iv);

(iii) The original right-of-way authorization has been or will be issued pursuant to a competitive bidding process;

(iv) The State Director concurs in a determination made by the authorized officer that the expected rent exceeds the schedule rent by 5 times, or the communication site serves a population of 1 million or more and the expected rent for the communication use is more than $10,000 above the schedule rent; or

(v) The communication facilities are ancillary to and authorized under a right-of-way grant for a linear facility. In such cases, rent for the associated communication facilities is to be determined in accordance with the linear fee schedule.

(e)(1) The rental for right-of-way grants and temporary use permits not covered by the right-of-way schedule in § 2803.1–2(d)(5) will be determined by the authorized officer and paid annually in advance. Rental for communication site rights-of-way not covered by the schedule, except those issued pursuant to Section 28 of the Mineral Leasing Act (30 U.S.C. 185), will be based on comparative market surveys, appraisals, or other reasonable methods. All such rental determinations shall be documented, supported, and approved by the authorized officer. Where the authorized officer determines that a competitive interest exists for site type right-of-way grants such as for wind farms, communication sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1–3.

(2) To expedite the processing of any grant or permit covered by paragraph (e)(1) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit will be adjusted according to the final fair market rental value determination.

* * * * *

PART 2810—TRAMLOADS AND LOGGING ROADS

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

7. Section 2812.0–9 is added to read as follows:

§ 2812.0–9 Information collection.

The information collection requirements contained in part 2810 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

PART 2880—[AMENDED]

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities: General

8. Section 2880.0–9 is added to read as follows:

§ 2880.0–9 Information collection.

The information collection requirements contained in part 2880 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

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