



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Oregon State Office

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**In Reply Refer to:**

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EMS TRANSMISSION 07/21/2008

Instruction Memorandum No. OR-2008-075

Expires: 9/30/2009

To: District Managers: Lakeview, Salem, Eugene, Roseburg, Medford, and Coos Bay

From: State Director, Oregon/Washington

Subject: Reissuance of Mineral Hauling Policy under Reciprocal Right-of-Way Agreements and Permits

**Program Area:** Engineering and Oregon and California (O&C) Logging Road Rights-of-Way (43 CFR 2812)

**Purpose:** The purpose of this instruction memorandum is to extend previous policy guidance on the reporting and payment of road maintenance fees for permittee mineral hauling on Bureau of Land Management (BLM) roads in western Oregon.

**Policy/Action:** Authorized Officers will continue to follow the policy guidance in Instruction Memorandum No. OR-2006-034, dated March 16, 2006, entitled "Mineral Hauling Under Reciprocal Right-of-Way Agreements and Permits." This policy applies to all existing and future reciprocal right-of-way agreements and permits in western Oregon entered into under the 43 CFR 2812 regulations.

It is anticipated that this policy will be superseded by an alternative road maintenance fee model to be implemented after December 31, 2010, at which time, the interim road maintenance fee schedule will expire. Reference Information Bulletin OR 2007-062, dated February 22, 2007, for further information. Until such time, the following procedures will be implemented to ensure adequate maintenance on BLM roads used for mineral hauling:

1. The Authorized Officers will notify permittees within their jurisdictions to report mineral hauling activities on BLM-controlled roads on Report of Road Use Forms, OR 2812-6 or equivalent. The mineral volume hauled will be reported in cubic yards based on estimated truck measures. Permittees (and the BLM) shall report their volumes of mineral hauling on June 30 and December 31 of each year.

2. Permittees will be required to report all mineral hauling on BLM-controlled roads regardless of road maintenance responsibility. Road maintenance rock quantities associated with mineral material hauling used for patch rock, pothole repair, culvert replacement, and bridge renovation and replacement will be exempt from this reporting requirement. The BLM will report mineral hauling in the same manner as Permittees.
3. The Authorized Officer will either charge maintenance fees or receive maintenance/rock replacement in lieu of fees for Permittee mineral hauling using the fees in effect during the period of use.
4. If a Permittee is responsible for maintaining BLM roads for his/her mineral hauling, the BLM will inspect the roads in advance of and after use to ensure that adequate road maintenance is being performed. If multiple users are hauling on the same BLM-controlled road, the BLM shall elect to perform maintenance and collect current road maintenance fees from all Permittees using that road for mineral hauling.
5. If the BLM is responsible for maintaining Permittee roads for mineral hauling, the Permittee will be required to inspect the roads in advance and after use to ensure that adequate road maintenance is being performed. If multiple users are hauling on the same Permittee-controlled road, the BLM shall request the permittee to pay the current road maintenance fee for mineral hauling on that road.
6. The Authorized Officer will make allowances and include provisions in all BLM timber sale contracts for Purchaser payment of maintenance and/or surface replacement fees involved with mineral hauling over Purchaser-maintained roads. All BLM timber sale license agreements will identify the quantities of mineral hauling over Permittee roads along with the associated maintenance fees.
7. Authorized Officers will continue to charge road maintenance and surface replacement fees on BLM-maintained roads used for the hauling of mineral materials not associated with the transportation of timber. This requirement applies to commercial mineral hauling by entities other than Permittees and BLM timber sale Purchasers.

**Timeframe:** Immediate upon release.

**Budget Impact:** Implementation of this policy will not impact agency budget allocations or annual work plan directives.

**Background:** The hauling of mineral materials (i.e., sand, gravel, rip-rap, etc.) used for the maintenance and construction of forest roads in western Oregon is an integral part of the O&C Right-of-Way program. Authorization to haul mineral materials over BLM-controlled roads is provided through reciprocal right-of-way agreements and permits under the regulations in 43 CFR 2812.

The terms and conditions of reciprocal right-of-way agreements entered into between the United States and private parties in western Oregon provide that the party who performs the maintenance on a road shall be entitled to recover pro rata maintenance expenses from others

who use the road for the removal of forest products. The 43 CFR 2812 regulations include the following provisions related to road maintenance and fee collections:

43 CFR 2812.6-2 Terms and conditions of permit.

“(b) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefore with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.”

The above regulation authorizes the BLM to recover expenses for the maintenance of BLM roads during periods of use. This will be accomplished either through: 1) collecting maintenance and rockwear fees, 2) operator maintenance/rock replacement in lieu of fees, or 3) any combination of 1 and 2.

The BLM is responsible for maintaining roads under its control at standards set forth in BLM 9100 Series Manual and the Best Management Practices listed in each district’s approved Resource Management Plan. The right-of-way provisions in Section 502 of the Federal Land Management and Policy Act of 1976, as amended, authorizes the Secretary of the Interior to provide for the maintenance of roads within and near the public lands and perform that work, in part, by cooperative financing with other public agencies and with private agencies and persons in proportion to their use.

**Manual/Handbook Sections Affected:** O&C Logging Road Right-of-Way Handbook H-2812-1, Release 2-165.

**Coordination:** Coordinated with Branch of Engineering, Branch of Lands and Mineral Resources, Branch of Biological Resources, and the BLM Western Oregon Transportation Team.

**Contact:** For questions or additional information, contact John Styduhar, BLM Realty Specialist, Oregon State Office, at 503-808-6454.

**Districts with Unions** are reminded to notify their unions of this Instruction Memorandum and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by  
James G. Kenna  
Associate State Director

Authenticated by  
Paj Shua Cha  
Records Section

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