

# **Communications Use, Cost Recovery and Vegetation Management Rulemaking**

## **Fact Sheet**

### **BACKGROUND**

On January 8, 2018, and in association with the release of Executive Order (EO) 13821, a Presidential Memorandum was issued to the Secretary of the Interior (Secretary) entitled, Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed by the DOI. This memorandum states that it is the policy of the Executive branch to make Federal assets more available for rural broadband deployment, with due consideration for national security concerns. The memorandum directs the Secretary to "...develop a plan to support rural broadband development and adoption by increasing access to tower facilities and other infrastructure assets managed by the Department of the Interior (DOI)" and to "identify assets that can be used to support rural broadband deployment and adoption."

In response to the Presidential memorandum, DOI's Deputy Assistant Secretary for Lands and Minerals (ASLM) directed the BLM to work in coordination with all appropriate DOI agencies in order to provide decision makers with specific actions that will directly improve the deployment of rural broadband infrastructure on public holdings.

The BLM maintains about 114,000 rights-of-way in either an active or expired status. About 79,000 of these rights-of-way are authorized under the Federal Land Policy and Management Act of 1976 (FLPMA) or pre-FLPMA authorities, while the remaining 35,000 are authorized under the Mineral Leasing Act of 1920 (MLA). In addition, the BLM maintains about 883 leases and permits issued under authority of Section 302(b) of FLPMA (43 CFR 2920).

Both FLPMA (43 U.S.C. 1734(b)) and the MLA (30 U.S.C. 185(l)) authorize the BLM and other applicable Federal agencies to collect funds from right-of-way applicants or holders to reimburse an agency for expenses incurred while working on a right-of-way. The reimbursement of costs, called cost recovery, is the monetary value of the resources the Federal Government expends or uses in processing a right-of-way application, taking administrative actions, or monitoring the construction, operation, and termination of a facility authorized by a grant, lease, or permit. These costs include both direct and indirect costs, and locality pay, exclusive of management overhead costs.

Typically, unless exempt, an applicant must reimburse the BLM for its reasonable costs in processing and monitoring a right-of-way activity, including an environmental review as required by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). If the BLM approves a project, the BLM will issue a right-of-way grant or lease to an applicant for a specified term. The BLM collects cost recovery before beginning a right-of-way, grant, or lease activity. A similar methodology for recovery of reasonable costs is provided for leases and permits issued under the authority contained in 43 CFR 2920.

The BLM last revised its right-of-way processing and monitoring fee schedule regulations on April 22, 2005 (70 FR 20970). The existing right-of-way cost recovery fee schedule for the minor categories is based on an estimate of the amount of time that a Federal entity would allocate to process an application or monitor compliance to ensure consistency with the terms and conditions of a right-of-way grant, lease, or Temporary Use Permit (TUP), and does not reflect actual costs incurred by the BLM.

On March 23, 2018, the Congress amended the Federal Land Policy and Management Act (FLPMA) by adding Section 512, entitled ‘Vegetation Management, Facility Inspection, and Operation and Maintenance Relating to Electrical Transmission and Distribution Facility Rights of Way’ (codified at 43 USC 1772). The Act states, ‘To enhance the reliability of the electric grid and reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution rights-of-way..., the Secretary concerned shall issue and periodically update guidance to ensure that provisions are appropriately developed and implemented for utility vegetation management, facility inspection, and operation and maintenance of rights-of-way....’

In the proposed rule, the BLM will clarify rules regarding authorized maintenance activities by electric utilities for powerline ROWs. The rule will include legislated definitions of hazard trees and emergency conditions, limits on liability, and agency requirements for reviewing and approving maintenance plans submitted by the ROW holder.

## DISCUSSION

The BLM believes that it can propose modification to the rule in a manner that reduces the rule’s regulatory burden while still streamlining the Communications Uses, collecting the appropriate cost recovery, and clarifying rules regarding vegetation management. The BLM will prepare an economic analysis for the proposed rule, but the costs of the rule are expected to either be minimal or even less than zero, making it a deregulatory action.

General approaches to streamline permitting for communication uses, collection of cost recovery that more accurately represents our actual costs and vegetation management include:

- Facilitating the continued growth of communication markets and services, especially in rural areas;
- Designing a process that is cost effective and sets cost recovery payments that are reflective of the actual costs to process an application;
- Providing incentives for improved and streamlined management of communication sites; and
- Clarify rules regarding authorized vegetation maintenance activities by electric utilities for powerline ROWs.

The Communications Use proposed rule will be removing language specific to telecommunications from the 2800 regulations and establishing a 2860 chapter. This proposed rule is a revision of the existing telecommunication provisions with aspects of deregulation, and not a new rule. Following are the major areas of the **Communications Uses Proposed Rule** and specific suggestions for policy revision where applicable.

**Communications Uses (2860)** – All of the provisions revolving around communications uses, including communications facilities, will have a new section to make locating these regulations easy.

**Applications must include (§ 2864.12)** – In addition to all of the provisions in §2804.12, communications uses applications will require: (1) Federal Communications Commission (FCC) license, when applicable; (2) Geographic Information System (GIS) shapefiles; (3) engineered/ construction drawings; and (4) technical data information. Having all of the information at the time of application will expedite application processing.

**Application Processing/Customer Service Standard (§ 2864.25)** – If processing an application will take longer than 180 calendar days, the BLM will notify the applicant in writing of this fact within 30

days of receipt of the complete application. This processing timeframe is more aggressive than is established in the Consolidated Appropriations Act, 2018, Division P, Title VI, SEC. 606, - COMMUNICATIONS FACILITIES DEPLOYMENT ON FEDERAL PROPERTY (b)(3)(A), also known as the Mobile Now Act. The notification of the customer service standard to an applicant when the BLM is not able to meet the 270 days, will function much like the right-of-way 29-day letter. This provision is consider a deregulation.

**Ancillary facilities (§ 2866.30)** - Communications facilities ancillary to a linear grant, such as a railroad grant or an oil and gas grant who want to sublease shall be granted authorization to allow for co-location. Having existing facilities on public lands may provide opportunity for rural broadband uses. Currently an ancillary facility is authorized under the 2800 right-of-way grant and no additional rent is collected from the ancillary uses.

**Calculating rents (§ 2866.31)** - Failure to submit the use certification by January 1 each year, the holder may lose any exemptions, waivers or discounts they would be due. This provision applies to all authorization holders including rental waived or exempt authorization holders.

BLM will also allow 30 days after the rental is due before late fees are assessed. The current ROW regulations only allows a 15 day grace period. This is considered a deregulation.

**Special applications - Rent reciprocity (§ 2866.34(a))** - The BLM will exempt governments and instrumentalities from rent payments unless the holder of the authorization charges the United States for occupancy (rent) within their facility.

**Assignments (§ 2867.21)** - Processing times for assignments shall be reasonable and cannot exceed 180 days. If the BLM cannot complete the assignment within this timeframe and the applicant has complied with all of the application provisions and are in compliance with all of the terms in their grant, the assignment is considered complete. The BLM will establish new policy to make 30 days the reasonable timeframe to act, unless circumstances dictate a longer processing time. This is a deregulation.

**Communications Use Renewals (§ 2867.22)** - If the BLM has not issued a decision to approve or deny the application for an expired grant within 180 days of expiration, and the applicant has complied with all of the application provisions and are in compliance with all of the terms in their grant, the authorization is automatically renewed for a new 10 year period from the date of expiration, and all prior terms and conditions will apply. This is a deregulation.

Following are the major areas of the **Cost Recovery Proposed Rule** and specific suggestions for policy revision where applicable.

**Application Filing (§ 2804.12)** - Electronic filing of the SF-299 application will be allowable and GIS data will be required with each application.

**Cost Recovery Schedule (§ 2804.14)** - The new cost recovery schedule still consists of four (4) minor categories, but now covers actions taking 0 to 64 hours, whereas the current schedule covers actions between 1 to 50 hours.

**COST RECOVERY PROVISIONS**

<b>PROPOSED FOR CALENDAR YEAR 2020</b>			<b>CURRENT COSTS FOR 2019</b>		
<i>Category 1.</i> Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 1 ≤ 8.	\$254.84	1. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 1 ≤ 8.	\$126
<i>Category 2.</i> Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 8 ≤ 24.	\$1,019.36	2. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 8 ≤ 24.	\$451
<i>Category 3.</i> Applications for new or existing grants, or TUPs, and administrative and monitoring actions.	Estimated Federal work hours are > 16 ≤ 40.	\$2,038.72	3. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 24 ≤ 36.	\$850
<i>Category 4.</i> Applications for new or existing grants, or TUPs, and administrative and monitoring actions.	Estimated Federal work hours are > 48 ≤ 64.	\$4,077.44	4. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 36 ≤ 50.	\$1,218
<i>Category 5.</i> Master Agreements, including new and existing grants, preliminary-application reviews, and administrative and monitoring actions.	Varies, depending on the signed agreement.	As specified in the agreement	5. Master Agreements	Varies	As specified in the agreement
<i>Category 6.</i> Applications for new or existing grants or TUPs, preliminary-application reviews and administrative and monitoring actions.	Estimated Federal work hours are > 80 (more than 10 working days).	Full actual costs	6. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 50.	Full reasonable costs (FLPMA) Full actual costs (MLA)

**Federal Exemptions (§ 2804.16)** - An exemption from cost recovery for all Federal agencies when cost recovery is in minor categories. This is considered a deregulation.

**Category 6 Cost Recovery (§ 2804.19)** – Collect an advance deposit to initiate work on applications. If the BLM Field Office requires additional funds to complete the application processing or monitoring, it may prepare a financial estimate and work plan to request additional funds from the applicant. Applicants in the communications industry indicated that Category 6 determinations were approximately \$11,000 to \$15,000, and it took several months to prepare the estimates and establish the

cost recovery agreement. This will streamline processing of Category 6 applications and is considered a deregulation.

Following are the major areas of the **Vegetation Management Proposed Rule** and specific suggestions for policy revision where applicable to be in compliance with the law.

**Vegetation Management (§ 2801.5)** - New definitions for “Hazard Tree” and “Operations and Maintenance” are added.

**Vegetation Management (§ 2805.11)** - Rights-of-way grants will need to include the locations for ingress or egress needed for the long term operations and maintenance of the facility.

**Vegetation Management (§ 2805.12)** - Treatment of hazardous vegetation is pruning or removal of the vegetation as either an emergency situation or as part of the regular operations and maintenance of the facility in order to decrease fire risk.

**Vegetation Management (§ 2805.21)** - Holders must provide a maintenance plan which includes vegetation management. This plan had many required sections regarding the treatment of vegetation. The BLM will have 120 days to review and approve the plan. If the BLM fails to respond within this timeframe the plan is deemed approved.

**Vegetation Management (§ 2806.15)** - Access routes for ingress and egress to a facility that were not constructed for the purpose of the right-of-way may request a rental waiver for these routes.

**Vegetation Management (§ 2807.12)** - Clarify the responsibility of the holder and the BLM regarding liability for any activity or facility posing a hazard or risk, and the financial limitations on damages commensurate with such hazard or risk