

Rights *of* Way

United States Department of the Interior
Bureau of Land Management
Washington, DC 20240

BLM

Dear Right-of-Way Holder:

The Bureau of Land Management (BLM) recently published (73 FR 65040) new right-of-way regulations (43 CFR Parts 2800, 2880, and 2920) that became effective on December 1, 2008. The major component of the new regulations was the revision of the rent schedule used to determine rental bills for linear right-of-way facilities such as electric transmission lines, telephone lines, and oil and gas pipelines.

Prior to publishing the final rule, the BLM solicited public input with the publication of an advanced notice of proposed rulemaking on April 27, 2006, and the publication of a proposed rule on December 11, 2007. The BLM considered all public comments in the development of the final rule and rent schedule. These regulations were developed in response to Section 367 of the Energy Policy Act of 2005 and were first used in the determination of rental bills due on January 1, 2009.

The purpose of this letter is to make you aware of two important sections of the regulations that could affect your rental payments for 2010 and 2011:

43 CFR 2806.21 - When and how are counties or other geographical areas assigned to a County Zone Number and Per Acre Zone Value?

Counties (or other geographical areas) are assigned to a County Zone Number and Per Acre Zone Value based upon 80 percent of their average per acre land and building value published in the Census of Agriculture (Census) by the National Agricultural Statistics Service (NASS). The initial assignment of counties to the zones will cover the years 2006 through 2010 of the Per Acre Rent Schedule and is based upon data contained in the most recent NASS Census (2002). Subsequent reassignments of counties will occur every 5 years (in 2011 based upon 2007 NASS Census data, in 2016 based upon 2012 NASS Census data, and so forth) following the publication of the NASS Census.

What you need to know: A list of counties (and other geographical areas) with their assigned per acre zone value for calendar years 2009 and 2010 (based on 2002 NASS Census data) and for calendar years 2011–2015 (based



on 2007 NASS Census data) has been posted to BLM's home page at <http://www.blm.gov/lr2000/rent.htm>. Counties have been reassigned to their appropriate per acre rental zone for 2011–2015 based on 2007 NASS Census data, which became available on February 4, 2009. Holders need to be aware that counties can change rental zones based on changes in the NASS Census data every 5 years. For example, San Juan County, New Mexico, is in Zone 2 for the 2009 and 2010 calendar years, but will move down to Zone 1 on the rent schedule for calendar years 2011 through 2015 because of a decrease in land values per the NASS Census data for 2007. Eddy County, New Mexico, on the other hand, will move from Zone 1 (2009–2010) to Zone 2 (2011–2015) because of an increase in land values per the NASS Census data for 2007. Making this information available at this time, yet waiting until 2011 to apply it, allows holders approximately 18 months to plan and budget for future rental payments.

43 CFR 2806.24 - How must I make rental payments for a linear grant?

(a) **Term grants.** For linear grants, except those issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) **One-time payments.** You may pay in advance the total rent amount for the entire term of the grant or any remaining years.

(2) **Multiple payments.** If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) **Payments by individuals.** If your annual rent is \$100 or less, you must pay at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than \$100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a remaining term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multiyear period.

(ii) **Payments by all others.** If your annual rent is \$500 or less, you must pay at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than \$500, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

(b) **Perpetual grants.** For linear grants issued in perpetuity (except as noted in sections 2806.25 and 2806.26), you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) **Payments by individuals.** If your annual rent is \$100 or less, you must pay at 10-year intervals, not to exceed 30 years. If your annual rent is greater than \$100, you may pay annually or at 10-year intervals, not to exceed 30 years.

(2) **Payments by all others.** If your annual rent is \$500 or less, you must pay at 10-year intervals, not to exceed 30 years. If your annual rent is greater than \$500, you may pay annually or at 10-year intervals, not to exceed 30 years.

(c) **Proration of payments.** The BLM considers the first partial calendar year in the initial rental payment period (the length of time for which the holder is paying rent) to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

What you need to know: Under final section 2806.24(a), holders retain the option to pay rent for the entire term of the grant, except for grants issued in perpetuity. The rent payment options for those holders who are considered "individuals" stayed the same as provided by previous regulations with the exception that if the annual rent is greater than \$100, holders may pay annually or at 10-year intervals, not to exceed the term of the grant. The final rule eliminated the option for individuals with annual rent greater than \$100 to pay at multiple-year intervals of their choice. The final rule does not define the term "individual," but the preamble states that an "individual" does not include any business entity, e.g., partnerships, corporations, associations, or any similar business arrangements.

Under the final rule, holders (non-individuals) whose annual rent exceeds \$500, have the option to pay their rent on an annual basis, or at 10-year intervals, not to exceed the term of the grant. This is a significant change from the 2005 rule, which did not provide for annual rental payments.

Final section 2806.24(b) explains that for linear grants issued in perpetuity (except as noted in sections 2806.25 and 2806.26), holders must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) **Payments by individuals.** If the annual rent is \$100 or less, the holder must pay at 10-year intervals, not to exceed 30 years. Under this provision, the holder has the option to pay for a 10-year term, a 20-year term, or a 30-year term. No other terms are available. If the annual rent is greater than \$100, the holder may pay annually or at 10-year intervals (10-year term, 20-year term, or 30-year term), not to exceed 30 years. Again, no other terms are available.

(2) **Payments by all others.** If the annual rent is \$500 or less, the holder must pay rent at 10-year intervals, not to exceed 30 years. Under this section, the holder has the option to pay for a 10-year term, a 20-year term, or a 30-year term. No other terms are available. If the annual rent is greater than \$500, the holder may pay annually or at 10-year intervals (10-year term, 20-year term, or 30-year term), not to exceed 30 years. No other terms are available.

Note: If a holder with a perpetual grant pays for a 30-year term, a new billing period would then begin with year 31.

Final section 2806.24(c) states that the BLM considers the first partial calendar year in the initial rental payment period (the length of time for which the holder is paying rent) to be the first year of the term or rental payment period. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

What you need to know: For billing purposes, the BLM will assume that the holder prefers the minimum allowable rental payment period provided by the new regulations in this section (either annual or 10-year), unless the holder notifies BLM in writing at least 3 months prior to the due date (by October 1 if the due date is January 1) of their desire to be billed for a greater period.

In addition to the changes described previously, we also want you to be aware that:

- The 25% phase-in reduction that was applied to all 2009 bills will not apply to rental bills due in calendar years 2010 and beyond [see 43 CFR 2806.23(b)]
- Rental zones will adjust upward by 1.9% [per 43 CFR 2806.22(a)] each year through 2015.

All these changes may affect the amount of rent payment per bill for 2011–2015 (either up or down), and may in turn influence the rental payment periods that holders could pay for bills due on January 1, 2010. In addition to this letter, we have posted the following documents to the BLM's Internet site (<http://www.blm.gov/lr2000/rent.htm>) to assist holders in managing their rental bills for 2010, through 2015:

- The linear rent schedule for calendar years 2009–2015
- A list of counties (and other geographical areas) with their assigned per acre zone value for calendar years 2009 and 2010 (based on 2002 NASS Census data) and for calendar years 2011–2015 (based on 2007 NASS Census data)
- Rent Schedule Worksheets for 2009, 2010, and 2011

What you must do prior to October 1, 2009: You must make written notification to the BLM Field Office that will issue your January 1, 2010 bills of your desire to be billed for a greater period than provided by the regulations. If you do nothing, the BLM will use the default billing periods described (either annual or 10-year) to determine your rent for bills due on January 1, 2010.

If you have additional questions, please contact Bil Weigand at 208-373-3862 or bil_weigand@blm.gov.

