

43 CFR 2800 and 2880
BLM RIGHT-OF-WAY REGULATIONS
COMPARISON of MAJOR DIFFERENCES

Note: This is a quick-reference guide to the major changes in the 43 CFR 2800 and 2880 Federal regulations. It is not a complete listing. Please refer to the new regulations for specific questions and wording.

PRE-2005 (OLD)	REVISED 2005 (NEW)
<u>COST RECOVERY</u>	
5 Categories FLMPA, 6 Categories MLA	6 Categories (FLPMA and MLA)
Processing category determination based on Number of Field Trips and amount of original data to be generated	Processing category determination based on number of Federal (BLM) work hours required to process the application, including driving time to and from job site, resource specialists' time, staff coordination, administrative support, NEPA compliance, inventories, ESA consultation, contract preparation and administration, etc.
No Master Agreement Category	Master Agreement Category (Category 5) based on a written agreement between BLM and applicant covering processing and monitoring fees for multiple projects within a defined geographic area. Master agreements use a 5103 subactivity for cost accounting reimbursement.
Major Processing Categories: FLPMA Category 5 based on field trips and original data generated. MLA Category 6 based on processing costs over \$5000.	Major Processing Category 6 (FLPMA and MLA): based on any application requiring over 50 hours to process
Processing and Monitoring Category tied together	Processing and Monitoring Category separated (see below)
Federal agencies exempt from cost recovery	Federal agencies pay cost recovery
Processing category fees unchanged from adoption in 1987	Processing category fees updated to 2005 costs and re-adjusted annually according to the IPD (inflation index)

No Customer Service Standards in regulations (policy only)	Customer Service Standard a regulatory requirement and requires Field Office to process a minor category (1-4) application within 60 days of receiving a completed application. If application cannot be processed within 60 days, applicant must be notified within 30 th day. Applicant must be told 1) the reason for delay and 2) when a decision will be reached on application. For Category 6 (major) applications, applicant must be informed in writing within 60 days of the estimated processing time.
Customer Service policy begins when application is received	Customer Service Standard begins with receipt of completed application and required processing fees.
Monitoring Category automatically determined and is the same as Processing Category.	Monitoring Category is determined independently of Processing Category. Based on number of Federal (BLM) work hours required to monitor construction and implementation of authorization. Includes resource specialist time, contracting, administration, manager, etc. Category is determined after environmental analysis.
No separate Decision required for Monitoring category	Separate Decision required for Monitoring category.
Monitoring category fees unchanged from adoption in 1987	Monitoring category fees updated to 2005 costs and re-adjusted annually according to the IPD (inflation index)
No FERC provisions	Requires a FERC applicant to reimburse BLM for all BLM costs involved in processing their FERC application. Reimbursement based on Category determination.
Does not address competing applications	Provides procedures for processing competing applications
<u>TERMS AND CONDITIONS</u>	
No specific expiration date for grants	All grants, except those issued for a term of one year or less, expire Dec. 31 of the final year
Unless otherwise specified, bond amount is set for term of grant	Bond amount may increase or decrease amount during term of grant. Requires bond for hazardous materials.

No hazardous materials provisions	Requires holder to control and remove hazardous substances, and remediate any public lands affected.
No EPCRA provisions	By signing grant, holder certifies they will comply with Emergency Planning and Community Right-to-Know Act of 1986
Terms and conditions of grant cannot be changed	Terms and conditions of grant can be changed as a result of legislation, regulation, or otherwise necessary to protect public health, safety, or the environment
<u>RENT</u>	
Rent is charged based on day of month grant was issued	Rent is charged beginning first day of month following the effective date of the grant through the last day of the month when the grant terminates.
No charges for payment of late rent	<p>If rent is not received within 15 days of due date, late charge of \$25.00 or 10% of rent owed, whichever is greater</p> <p>If rent payment and late charges not received within 30 days of due date, other administrative fee apply</p> <p>If rent payment, late charges, and administrative fees not received within 90 days, BLM may terminate grant. If grant has been terminated, grant is not automatically reinstated by payment of fees; applicant must re-apply.</p>
Rent exemption for facilities that are financed by REA.	Clarifies rent exempt status of REA-financed facilities to include those eligible for REA financing.
Defines holders that are eligible for rent reduction or waiver.	<p>Clarifies those eligible for rent reduction or waiver. Requires non-profit organizations to provide a special benefit to the public or the Secretary.</p> <p>Clarifies that oil and gas lease holders are not eligible for rent reduction or waiver.</p>
Opportunity to estimate the advance rent is policy only.	BLM may estimate rent in advance, and rent may change once BLM issues the grant. Gives regulatory authority to old policy.

For linear grants, rent cannot be paid more than five years in advance	Rent may be optionally paid for the entire term of the linear grant (Formula: annual rent times term of grant).
If annual rent is over \$100, rent is paid annually; otherwise, rent is paid every five years	<u>For individuals:</u> If annual rent is \$100 or less, individuals pay at 10-year intervals. If annual rent is over \$100, rent may either be paid annually or in multi-year intervals <u>For all others:</u> Rent must be paid at 10-year intervals.
Rent cannot be paid in advance for perpetual grants [FLPMA only]	Rent must be paid in advance for perpetual grants, except for individuals who may continue periodic payments [FLPMA only]
<u>GRANT ADMINISTRATION AND OPERATION</u>	
Allows strict liability up to \$1 million	Clarifies conditions under which strict liability may be used and raises limit to \$2 million (adjusted annually by CPI)
No provisions for bonding state, local, and tribal governments	Allows BLM to require bonds from state, local, and tribal governments
No provisions to notify existing grant holders of other applications	Requires BLM to notify existing grant holders of any application to use land on or near holder's project.
No provision for easement	Allows BLM to issue an easement for an existing authorization if the lands involved are proposed for transfer out of BLM administration. [FLPMA only]
Assignment cost \$50 apiece	Cost for assignments are based on Processing category determination.
No customer service policy for assignments.	Customer Service Standard applies to assignments.
No cost for ROW grant renewals.	Cost for renewals are based on Processing Category determination.
No customer service policy for renewals.	Customer Service Standard applies to renewals.
<u>TRESPASS</u>	
Minimum penalty for trespass is equal to a Category 1 Processing fee.	Minimum penalty for trespass is equal to a Category 2 Processing fee.
No provisions for processing an action resolved under trespass provisions	Clarifies that a trespass action resolved under the new regulations is not automatically approved. Requires

	trespasser to apply to BLM under normal application procedures. Requires BLM to process the application as if it were a new use. Cost recovery applies.
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