

§ 2743.4 Patented disposal sites.

(a) Upon request by or with the concurrence of the patentee, the authorized officer may renounce the reversionary interests of the United States in land conveyed on or before November 9, 1988, and rescind any portion of any patent or other instrument of conveyance inconsistent with the renunciation upon a determination that such land has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

(b) If the patentee elects not to accept the renunciation of the reversionary interests, the provisions contained in §§ 2741.6 and 2741.9 shall continue to apply.

Group 2800—Use; Rights-of-Way

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY MANAGEMENT ACT

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AUTHORITY: 43 U.S.C. 1733, 1740, 1763, and 1764.

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Subpart 2801—General information

§ 2801.2 What is the objective of BLM's right-of-way program?

It is BLM's objective to grant rights-of-way under the regulations in this part to any qualified individual, business, or government entity and to direct and control the use of rights-of-way on public lands in a manner that:

- (a) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a government entity;
- (b) Prevents unnecessary or undue degradation to public lands;
- (c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans; and
- (d) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.

§ 2801.5 What acronyms and terms are used in the regulations in this part?

(a) *Acronyms.* As used in this part: *ALJ* means Administrative Law Judge.

BLM means the Bureau of Land Management.

CERCLA means the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601 *et seq.*).

EA means environmental assessment.

EIS means environmental impact statement.

IBLA means the Department of the Interior, Board of Land Appeals.

IPD-GDP means the Implicit Price Deflator, Gross Domestic Product, as published in the most recent edition of the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

RMA means the Rationally Metro Area Population Ranking as published in the most recent edition of the Rand McNally Commercial Atlas and Marketing Guide.

(b) *Terms.* As used in this part, the term:

Act means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

Actual costs means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in monitoring the construction, operation, and termination of a facility authorized by a grant or permit. Actual costs includes both direct and indirect costs, exclusive of management overhead costs.

Base rent means the dollar amount required from a grant or lease holder on BLM managed lands based on the communication use with the highest value in the associated facility or facilities, as calculated according to the communication use rent schedule. If a facility manager's or facility owner's scheduled rent is equal to the highest rent charged a tenant in the facility or facilities, then the facility manager's or facility owner's use determines the dollar amount of the base rent. Otherwise, the facility owner's, facility manager's, customer's, or tenant's use with the highest value, and which is not otherwise excluded from rent, determines the base rent.

Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. *Examples of casual use include:* Surveying, marking routes, and collecting data to use to prepare grant applications.

Commercial purpose or activity refers to the circumstance where a holder attempts to produce a profit by allowing

the use of its facilities by an additional party. BLM may assess an appropriate rent for such commercial activities. The holder's use may not otherwise be subject to rent charges under BLM's rental provisions.

Communication use rent schedule is a schedule of rents for the following types of communication uses, including related technologies, located in a facility associated with a particular grant or lease. All use categories include ancillary communications equipment, such as internal microwave or internal one-or two-way radio, that are directly related to operating, maintaining, and monitoring the primary uses listed below. The Federal Communications Commission (FCC) may or may not license the primary uses. The type of use and community served, identified on an FCC license, if one has been issued, do not supersede either the definitions in this subpart or the procedures in § 2806.30 of this part for calculating rent for communication facilities and uses located on public land:

(1) *Television broadcast* means a use that broadcasts UHF and VHF audio and video signals for general public reception. This category does not include low-power television (LPTV) or rebroadcast devices, such as translators, or transmitting devices, such as microwave relays serving broadcast translators;

(2) *AM and FM radio broadcast* means a use that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception. This category does not include low-power FM radio; rebroadcast devices, such as translators; or boosters or microwave relays serving broadcast translators;

(3) *Cable television* means a use that transmits video programming to multiple subscribers in a community over a wired or wireless network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems, such as private systems serving hotels and residences;

(4) *Broadcast translator, low-power television, and low-power FM radio* means a use of translators, LPTV, or low-power FM radio (LPFM). Translators receive

a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases the translator relays the true signal to an amplifier or another translator. LPTV and LPFM are broadcast translators that originate programming. This category also includes translators associated with public telecommunication services;

(5) *Commercial mobile radio service (CMRS)/facility manager* means commercial mobile radio uses that provide mobile communication service to individual customers. *Examples of CMRS include:* Community repeaters, trunked radio (specialized mobile radio), two-way radio voice dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and other two-way voice and paging services. "Facility Managers" are grant or lease holders that lease building, tower, and related facility space to a variety of tenants and customers as part of the holder's business enterprise, but do not own or operate communication equipment in the facility for their own uses;

(6) *Cellular telephone* means a system of mobile or fixed communication devices that use a combination of radio and telephone switching technology and provide public switched network services to fixed or mobile users, or both, within a defined geographic area. The system consists of one or more cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, or microwave communications link equipment. *Examples of cellular telephone include:* Personal Communication Service, Enhanced Specialized Mobile Radio, Improved Mobile Telephone Service, Airtto-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service;

(7) *Private mobile radio service (PMRS)* means uses supporting private mobile radio systems primarily for a single entity for mobile internal communications. PMRS service is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. *Examples of PMRS include:* Private local radio dispatch, private paging services, and ancillary microwave

communications equipment for controlling mobile facilities;

(8) *Microwave* means communication uses that:

(i) Provide long-line intrastate and interstate public telephone, television, and data transmissions; or

(ii) Support the primary business of pipeline and power companies, railroads, land resource management companies, or wireless internet service provider (ISP) companies; and

(9) *Other communication uses* means private communication uses, such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities;

Customer means an occupant who is paying a facility manager, facility owner, or tenant for using all or any part of the space in the facility, or for communication services, and is not selling communication services or broadcasting to others. We consider persons or entities benefitting from private or internal communication uses located in a holder's facility as customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent owed by a facility owner, facility manager, or tenant, except as noted in §§2806.34(b)(4) and 2806.42 of this part. *Examples of customers include:* Users of PMRS, users in the microwave category when the microwave use is limited to internal communications, and all users in the category of "Other communication uses" (see paragraph (a) of the definition of Communication Use Rent Schedule in this section).

Designated right-of-way corridor means a parcel of land with specific boundaries identified by law, Secretarial order, the land-use planning process, or other management decision, as being a preferred location for existing and future rights-of-way and facilities. The corridor may be suitable to accommodate more than one type of right-of-way use or facility or one or more right-of-way uses or facilities which are similar, identical, or compatible.

Discharge has the meaning found at 33 U.S.C. 1321(a)(2) of the Clean Water Act.

Facility means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the grant or lease holder within a right-of-way. For purposes of communication site rights-of-way or uses, facility means the building, tower, and related incidental structures or improvements authorized under the terms of the grant or lease.

Facility manager means a person or entity that leases space in a facility to communication users and:

(1) Holds a communication use grant or lease;

(2) Owns a communications facility on lands covered by that grant or lease; and

(3) Does not own or operate communications equipment in the facility for personal or commercial purposes.

Facility owner means a person or entity that may or may not lease space in a facility to communication users and:

(1) Holds a communication use grant or lease;

(2) Owns a communications facility on lands covered by that grant or lease; and

(3) Owns and operates his or her own communications equipment in the facility for personal or commercial purposes.

Grant means any authorization or instrument (e.g., easement, lease, license, or permit) BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.*, and those authorizations and instruments BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority. It does not include authorizations issued under the Mineral Leasing Act (30 U.S.C. 185).

Hazardous material means:

(1) Any substance or material defined as hazardous, a pollutant, or a contaminant under CERCLA at 42 U.S.C. 9601(14) and (33);

(2) Any regulated substance contained in or released from underground storage tanks, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. 6991;

(3) Oil, as defined by the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701(23); or

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(4) Other substances applicable Federal, state, tribal, or local law define and regulate as “hazardous.”

Holder means any entity with a BLM right-of-way authorization.

Management overhead costs means Federal expenditures associated with BLM’s directorate, including all BLM State Directors and the entire Washington Office staff, except where a State Director or Washington Office staff member is required to perform work on a specific right-of-way case.

Monetary value of the rights and privileges you seek means the objective value of the right-of-way or what the right-of-way grant is worth in financial terms to the applicant.

Monitoring means those actions the Federal government performs to ensure compliance with the terms, conditions, and stipulations of a grant.

(1) For Monitoring Categories 1 through 4, the actions include inspecting construction, operation, maintenance, and termination of permanent or temporary facilities and protection and rehabilitation activities until the holder completes rehabilitation of the right-of-way and BLM approves it;

(2) For Monitoring Category 5 (Master Agreements), those actions agreed to in the Master Agreement; and

(3) For Monitoring Category 6, those actions agreed to between BLM and the applicant before BLM issues the grant.

Public lands means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership, except lands:

(1) Located on the Outer Continental Shelf; and

(2) Held for the benefit of Indians, Aleuts, and Eskimos.

Reasonable costs has the meaning found at section 304(b) of the Act.

Release has the meaning found at 42 U.S.C. 9601(22) of CERCLA.

Right-of-way means the public lands BLM authorizes a holder to use or occupy under a grant.

Site means an area, such as a mountaintop, where a holder locates one or more communication or other right-of-way facilities.

Substantial deviation means a change in the authorized location or use which requires:

(1) Construction or use outside the boundaries of the right-of-way; or

(2) Any change from, or modification of, the authorized use. *Examples of substantial deviation include:* Adding equipment, overhead or underground lines, pipelines, structures, or other facilities not included in the original grant.

Tenant means an occupant who is paying a facility manager, facility owner, or other entity for occupying and using all or any part of a facility. A tenant operates communication equipment in the facility for profit by broadcasting to others or selling communication services. For purposes of calculating the amount of rent that BLM charges, a tenant’s use does not include:

(1) Private mobile radio or internal microwave use that is not being sold; or

(2) A use in the category of “Other Communication Uses” (see paragraph (a) of the definition of Communication Use Rent Schedule in this section).

Third party means any person or entity other than BLM, the applicant, or the holder of a right-of-way authorization.

Tramway means a system for carrying passengers, logs, or other material using traveling carriages or cars suspended from an overhead cable or cables supported by a series of towers, hangers, tailhold anchors, guyline trees, etc.

Transportation and utility corridor means a parcel of land, without fixed limits or boundaries, that holders use as the location for one or more transportation or utility rights-of-way.

Zone means one of eight geographic groupings necessary for linear right-of-way rent assessment purposes, covering all lands in the contiguous United States.

§ 2801.6 Scope.

(a) *What do these regulations apply to?*
The regulations in this part apply to:

(1) Grants for necessary transportation or other systems and facilities which are in the public interest and which require the use of public lands for the purposes identified in 43 U.S.C.

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1761, and administering, amending, assigning, renewing, and terminating them;

(2) Grants to Federal departments or agencies for transporting by pipeline and related facilities oil, natural gas, synthetic liquid or gaseous fuels, and any refined products produced from them; and

(3) Grants issued on or before October 21, 1976, under then existing statutory authority, unless application of these regulations would diminish or reduce any rights conferred by the original grant or the statute under which it was issued. Where there would be a diminishment or reduction in any right, the grant or statute applies.

(b) *What don't these regulations apply to?* The regulations in this part do not apply to:

(1) Federal Aid Highways, for which Federal Highway Administration procedures apply;

(2) Roads constructed or used according to reciprocal and cost share road use agreement under subpart 2812 of this chapter;

(3) Lands within designated wilderness areas, although BLM may authorize some uses under parts 2920 and 6300 of this chapter;

(4) Grants to holders other than Federal departments or agencies for transporting by pipeline and related facilities oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them (see part 2880 of this chapter);

(5) Public highways constructed under the authority of Revised Statute (R.S.) 2477 (43 U.S.C. 932, repealed October 21, 1976);

(6) Reservoirs, canals, and ditches constructed under the authority of R.S. 2339 and R.S. 2340 (43 U.S.C. 661, repealed in part, October 21, 1976); or

(7)(i) Any project or portion of a project that, prior to October 24, 1992, was licensed under, or granted an exemption from, part I of the Federal Power Act (FPA) (16 U.S.C. 791a et seq.) which:

(A) Is located on lands subject to a reservation under section 24 (16 U.S.C. 818) of the FPA;

(B) Did not receive a grant under Title V of the Federal Land Policy and

Management Act (FLPMA) before October 24, 1992; and

(C) Includes continued operation of such project (license renewal) under section 15 (16 U.S.C. 808) of the FPA;

(ii) Paragraph (b)(7)(i) of this section does not apply to any additional public lands the project uses that are not subject to the reservation in paragraph (b)(7)(i)(A) of this section.

§ 2801.8 Severability.

If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.

§ 2801.9 When do I need a grant?

(a) You must have a grant under this part when you plan to use public lands for systems or facilities over, under, on, or through public lands. These include, but are not limited to:

(1) Reservoirs, canals, ditches, flumes, laterals, pipelines, tunnels, and other systems which impound, store, transport, or distribute water;

(2) Pipelines and other systems for transporting or distributing liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined products from them, or for storage and terminal facilities used in connection with them;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transporting and distributing solid materials and facilities for storing such materials in connection with them;

(4) Systems for generating, transmitting, and distributing electricity;

(5) Systems for transmitting or receiving electronic signals and other means of communication;

(6) Transportation systems, such as roads, trails, highways, railroads, canals, tunnels, tramways, airways, and livestock driveways; and

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way.

(b) If you apply for a right-of-way grant for generating, transmitting, and distributing electricity, you must also

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comply with the applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935, 16 U.S.C. 791a *et seq.*, and 18 CFR chapter I.

(c) See part 2880 of this chapter for information about authorizations BLM issues under the Mineral Leasing Act for transporting oil and gas resources.

§ 2801.10 How do I appeal a BLM decision issued under the regulations in this part?

(a) You may appeal a BLM decision issued under the regulations in this part in accordance with part 4 of this title.

(b) All BLM decisions under this part remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in this part. You may petition for a stay of a BLM decision under this part with the Office of Hearings and Appeals, Department of the Interior. Unless otherwise noted in this part, BLM will take no action on your application while your appeal is pending.

Subpart 2802—Lands Available for FLPMA Grants

§ 2802.10 What lands are available for grants?

(a) In its discretion, BLM may grant rights-of-way on any lands under its jurisdiction except when:

(1) A statute, regulation, or public land order specifically excludes rights-of-way;

(2) The lands are specifically segregated or withdrawn from right-of-way uses; or

(3) BLM identifies areas in its land use plans or in the analysis of an application as inappropriate for right-of-way uses.

(b) BLM may require common use of a right-of-way and may require, to the extent practical, location of new rights-of-way within existing or designated right-of-way corridors (*see* § 2802.11 of this subpart). Safety and other considerations may limit the extent to which you may share a right-of-way. BLM will designate right-of-way corridors through land use plan decisions.

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(c) You should contact the BLM office nearest the lands you seek to use to:

(1) Determine whether or not the land you want to use is available for that use; and

(2) Begin discussions about any application you may need to file.

§ 2802.11 How does BLM designate corridors?

(a) BLM may determine the locations and boundaries of right-of-way corridors during the land-use planning process described in part 1600 of this chapter. During this process BLM coordinates with other Federal agencies, state, local, and tribal governments, and the public to identify resource-related issues, concerns, and needs. The process results in a resource management plan or plan amendment, which addresses to what extent you may use public lands and resources for specific purposes.

(b) When determining which lands may be suitable for right-of-way corridors, the factors BLM considers include, but are not limited to, the following:

(1) Federal, state, and local land use plans, and applicable Federal, state, local, and tribal laws;

(2) Environmental impacts on cultural resources and natural resources, including air, water, soil, fish, wildlife, and vegetation;

(3) Physical effects and constraints on corridor placement due to geology, hydrology, meteorology, soil, or land forms;

(4) Costs of construction, operation, and maintenance and costs of modifying or relocating existing facilities in a proposed right-of-way corridor (i.e., the economic efficiency of placing a right-of-way within a proposed corridor);

(5) Risks to national security;

(6) Potential health and safety hazards imposed on the public by facilities or activities located within the proposed right-of-way corridor;

(7) Social and economic impacts of the right-of-way corridor on public land users, adjacent landowners, and other groups or individuals;

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(8) Transportation and utility corridor studies previously developed by user groups; and

(9) Engineering and technological compatibility of proposed and existing facilities.

(c) BLM may designate any transportation and utility corridor existing prior to October 21, 1976, as a transportation and utility corridor without further review.

(d) The resource management plan or plan amendment may also identify areas where BLM will not allow right-of-way corridors for environmental, safety, or other reasons.

Subpart 2803—Qualifications for Holding FLPMA Grants

§ 2803.10 Who may hold a grant?

To hold a grant under these regulations, you must be:

(a) An individual, association, corporation, partnership, or similar business entity, or a Federal agency or state, tribal, or local government;

(b) Technically and financially able to construct, operate, maintain, and terminate the use of the public lands you are applying for; and

(c) Of legal age and authorized to do business in the state where the right-of-way you seek is located.

§ 2803.11 Can another person act on my behalf?

Another person may act on your behalf if you have authorized the person to do so under the laws of the state where the right-of-way is or will be located.

§ 2803.12 What happens to my application or grant if I die?

(a) If an applicant or grant holder dies, any inheritable interest in an application or grant will be distributed under state law.

(b) If the distributee of a grant is not qualified to hold a grant under § 2803.10 of this subpart, BLM will recognize the distributee as grant holder and allow the distributee to hold its interest in the grant for up to two years. During that period, the distributee must either become qualified or divest itself of the interest.

Subpart 2804—Applying for FLPMA Grants

§ 2804.10 What should I do before I file my application?

(a) Before filing an application with BLM, we encourage you to make an appointment for a preapplication meeting with the appropriate personnel in the BLM field office having jurisdiction over the lands you seek to use. During the preapplication meeting, BLM can:

(1) Identify potential routing and other constraints;

(2) Determine whether or not the lands are located within a designated or existing right-of-way corridor;

(3) Tentatively schedule the processing of your proposed application; and

(4) Inform you of your financial obligations, such as processing and monitoring costs and rents.

(b) Subject to § 2804.13 of this subpart, BLM may share any information you provide under paragraph (a) of this section with Federal, state, tribal, and local government agencies to ensure that:

(1) These agencies are aware of any authorizations you may need from them; and

(2) We initiate effective coordinated planning as soon as possible.

§ 2804.11 Where do I file my grant application?

(a) You must file the grant application in the BLM field office having jurisdiction over the lands affected by your application.

(b) If your application affects more than one BLM administrative unit, you may file at any BLM office having jurisdiction over any part of the project. BLM will notify you where to direct subsequent communications.

§ 2804.12 What information must I submit in my application?

(a) File your application on Standard Form 299, available from any BLM office, and fill in the required information as completely as possible. Your completed application must include:

(1) A description of the project and the scope of the facilities;

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(2) The estimated schedule for constructing, operating, maintaining, and terminating the project;

(3) The estimated life of the project and the proposed construction and reclamation techniques;

(4) A map of the project, showing its proposed location and existing facilities adjacent to the proposal;

(5) A statement of your financial and technical capability to construct, operate, maintain, and terminate the project;

(6) Any plans, contracts, agreements, or other information concerning your use of the right-of-way and its effect on competition; and

(7) A statement certifying that you are of legal age and authorized to do business in the state(s) where the right-of-way would be located, and that you have submitted correct information to the best of your knowledge.

(b) If you are a business entity, you must also submit the following information:

(1) Copies of the formal documents creating the entity, such as articles of incorporation, and including the corporate bylaws;

(2) Evidence that the party signing the application has the authority to bind the applicant;

(3) The name and address of each participant in the business;

(4) The name and address of each shareholder owning 3 percent or more of the shares, and the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote;

(5) The name and address of each affiliate of the business;

(6) The number of shares and the percentage of any class of voting stock owned by the business, directly or indirectly, in any affiliate controlled by the business;

(7) The number of shares and the percentage of any class of voting stock owned by an affiliate, directly or indirectly, in the business controlled by the affiliate; and

(8) If you have already provided the information in paragraphs (b)(1) through (7) of this section to BLM and

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the information remains accurate, you need only reference the BLM serial number under which you previously filed it.

(c) BLM may require you to submit additional information at any time while processing your application. See § 2884.11(c) of this chapter for the type of information we may require.

(d) If you are a Federal oil and gas lessee or operator and you need a right-of-way for access to your production facilities or oil and gas lease, you may include your right-of-way requirements with your Application for Permit to Drill or Sundry Notice required under parts 3160 through 3190 of this chapter.

(e) If you are filing with another Federal agency for a license, certificate of public convenience and necessity, or other authorization for a project involving a right-of-way on public lands, simultaneously file an application with BLM for a grant. Include a copy of the materials, or reference all the information, you filed with the other Federal agency.

§ 2804.13 Will BLM keep my information confidential?

BLM will keep confidential any information in your application that you mark as “confidential” or “proprietary” to the extent allowed by law.

§ 2804.14 What is the processing fee for a grant application?

(a) Unless you are exempt under § 2804.16 of this subpart, you must pay a fee to BLM for the reasonable costs of processing your application before the Federal Government incurs them. The fees for Processing Categories 1 through 4 (see paragraph (b) of this section) are one-time fees and are not refundable. The fees are categorized based on an estimate of the amount of time that BLM will expend to process your application and issue a decision granting or denying the application.

(b) There is no processing fee if BLM’s work is estimated to take one hour or less. Processing fees are based on categories. These categories and fees for 2005 are:

2005 PROCESSING FEE SCHEDULE

Processing category	Federal work hours involved	Processing fee per application as of June 21, 2005. To be adjusted annually for changes in the IPD-GDP. See paragraph (c) of this section for update information
(1) Applications for new grants, assignments, renewals, and to existing grants assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are >1 ≤ 8.	\$97.
(2) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 8 ≤ 24.	\$343.
(3) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 24 ≤ 36.	\$644.
(4) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 36 ≤ 50.	\$923.
(5) Master agreements	Varies	As specified in the agreement.
(6) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 50.	Full reasonable costs.

(c) BLM will revise paragraph (b) of this section to update the processing fees for Categories 1 through 4 in the schedule each calendar year, based on the previous year's change in the IPD-GDP, as measured second quarter to second quarter. BLM will round these changes to the nearest dollar. BLM will update Category 5 processing fees as specified in the Master Agreement. You also may obtain a copy of the current schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000LS, Washington, DC 20240. BLM also posts the current schedule on the BLM Homepage on the Internet at <http://www.blm.gov>.

(d) After an initial review of your application, BLM will notify you of the processing category into which your application fits. You must then submit the appropriate payment for that category before BLM begins processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the processing category decision. If you disagree with the category that BLM has determined for your application, you may appeal the decision under § 2801.10 of this part. For Processing Categories 5 and 6 applications, see §§ 2804.17, 2804.18, and 2804.19 of this subpart. If you paid the processing fee and you appeal a Processing Category 1 through 4 or a Processing Category 6 determination, BLM will process your application while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your processing fee.

(e) In processing your application, BLM may determine at any time that the application requires preparing an EIS. If this occurs, BLM will send you a decision changing your processing category to Processing Category 6. You may appeal this decision under § 2801.10 of this part.

(f) To expedite processing of your application, you may notify BLM in writing that you are waiving paying reasonable costs and are electing to pay the full actual costs incurred by BLM in processing your application and monitoring your grant.

§ 2804.15 When does BLM reevaluate the processing and monitoring fees?

BLM reevaluates the processing and monitoring fees (see § 2805.16 of this part) for each category and the categories themselves within 5 years after they go into effect and at 10-year intervals after that. When reevaluating processing and monitoring fees, BLM considers all factors that affect the fees, including, but not limited to, any changes in:

- (a) Technology;
- (b) The procedures for processing applications and monitoring grants;
- (c) Statutes and regulations relating to the right-of-way program; or
- (d) The IPD-GDP.

§ 2804.16 Who is exempt from paying processing and monitoring fees?

You are exempt from paying processing and monitoring fees if:

- (a) You are a state or local government, or an agency of such a government, and BLM issues the grant for

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governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt; or

(b) Your application under this subpart is associated with a cost-share road or reciprocal right-of-way agreement.

§ 2804.17 What is a Master Agreement (Processing Category 5) and what information must I provide to BLM when I request one?

(a) A Master Agreement (Processing Category 5) is a written agreement covering processing and monitoring fees (see § 2805.16 of this part) negotiated between BLM and you that involves multiple BLM grant approvals for projects within a defined geographic area.

(b) Your request for a Master Agreement must:

(1) Describe the geographic area covered by the Agreement and the scope of the activity you plan;

(2) Include a preliminary work plan. This plan must state what work you must do and what work BLM must do to process your application. Both parties must periodically update the work plan, as specified in the Agreement, and mutually agree to the changes;

(3) Contain a preliminary cost estimate and a timetable for processing the application and completing the projects;

(4) State whether you want the Agreement to apply to future applications in the same geographic area that are not part of the same projects; and

(5) Contain any other relevant information that BLM needs to process the application.

§ 2804.18 What provisions do Master Agreements contain and what are their limitations?

(a) A Master Agreement:

(1) Specifies that you must comply with all applicable laws and regulations;

(2) Describes the work you will do and the work BLM will do to process the application;

(3) Describes the method of periodic billing, payment, and auditing;

(4) Describes the processes, studies, or evaluations you will pay for;

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(5) Explains how BLM will monitor the grant and how BLM will recover monitoring costs;

(6) Contains provisions allowing for periodic review and updating, if required;

(7) Contains specific conditions for terminating the Agreement; and

(8) Contains any other provisions BLM considers necessary.

(b) BLM will not enter into any Agreement that is not in the public interest.

(c) If you sign a Master Agreement, you waive your right to request a reduction of processing and monitoring fees.

§ 2804.19 How will BLM process my Processing Category 6 application?

(a) For Processing Category 6 applications, you and BLM must enter into a written agreement that describes how BLM will process your application. The final agreement consists of a work plan and a financial plan.

(b) In processing your application, BLM will:

(1) Determine the issues subject to analysis under NEPA;

(2) Prepare a preliminary work plan;

(3) Develop a preliminary financial plan, which estimates the reasonable costs of processing your application and monitoring your project;

(4) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

(iii) Your options for the timing of processing and monitoring fee payments; and

(iv) Financial information you must submit; and

(5) Complete final scoping and develop final work and financial plans which reflect any work you have agreed to do. BLM will also present you with the final estimate of the reasonable costs you must reimburse BLM, including the cost for monitoring the project, using the factors in §§ 2804.20 and 2804.21 of this subpart.

(c) BLM retains the option to prepare any environmental documents related to your application. If BLM allows you to prepare any environmental documents and conduct any studies that BLM needs to process your application,

you must do the work following BLM standards. For this purpose, you and BLM may enter into a written agreement. BLM will make the final determinations and conclusions arising from such work.

(d) BLM will periodically, as stated in the agreement, estimate processing costs for a specific work period and notify you of the amount due. You must pay the amount due before BLM will continue working on your application. If your payment exceeds the reasonable costs that BLM incurred for the work, BLM will either adjust the next billing to reflect the excess, or refund you the excess under 43 U.S.C. 1734. You may not deduct any amount from a payment without BLM's prior written approval.

§ 2804.20 How does BLM determine reasonable costs for Processing Category 6 or Monitoring Category 6 applications?

BLM will consider the factors in paragraph (a) of this section and § 2804.21 of this subpart to determine reasonable costs. Submit to the BLM field office having jurisdiction over the lands covered by your application a written analysis of those factors applicable to your project, unless you agree in writing to waive consideration of reasonable costs and elect to pay full actual costs (*see* § 2804.14(f) of this subpart). Submitting your analysis with the application will expedite its handling. BLM may require you to submit additional information in support of your position. While we consider your written analysis, BLM will not process your Category 6 application.

(a) *FLPMA factors.* If your application is for a Processing Category 6, or a Monitoring Category 6 project, the BLM State Director having jurisdiction over the lands you are applying to use will apply the following factors set forth at section 304(b) of FLPMA, 43 U.S.C. 1734(b), to determine the amount you owe. With your application, submit your analysis of how each of the following factors applies to your application:

(1) Actual costs to BLM (exclusive of management overhead costs) of processing your application and of monitoring construction, operation, maintenance,

and termination of a facility authorized by the right-of-way grant;

(2) Monetary value of the rights or privileges you seek;

(3) BLM's ability to process an application with maximum efficiency and minimum expense, waste, and effort;

(4) Costs incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant. That is, the costs for studies and data collection that have value to the Federal Government or the general public apart from processing the application;

(5) Any tangible improvements, such as roads, trails, and recreation facilities, which provide significant public service and are expected in connection with constructing and operating the project; and

(6) Other factors relevant to the reasonableness of the costs (*see* § 2804.21 of this subpart).

(b) *Fee determination.* After considering your analysis and other information, BLM will notify you in writing of what you owe. If you disagree with BLM's determination, you may appeal it under § 2801.10 of this part.

§ 2804.21 What other factors will BLM consider in determining processing and monitoring fees?

(a) *Other factors.* If you include this information in your application, in arriving at your processing or monitoring fee in any category, the BLM State Director will consider whether:

(1) Payment of actual costs would:

(i) Result in undue financial hardship to your small business, and you would receive little monetary value from your grant as compared to the costs of processing and monitoring; or

(ii) Create such undue financial hardship as to prevent your use and enjoyment of your right-of-way for a non-commercial purpose.

(2) The costs of processing the application and monitoring the issued grant grossly exceed the costs of constructing the project;

(3) You are a non-profit organization, corporation, or association which is not controlled by or a subsidiary of a profit-making enterprise; and

(i) The studies undertaken in connection with processing the application or

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monitoring the grant have a public benefit; or

(ii) The facility or project will provide a benefit or special service to the general public or to a program of the Secretary;

(4) You need a grant to prevent or mitigate damages to any lands or property or to mitigate hazards or danger to public health and safety resulting from an act of God, an act of war, or negligence of the United States;

(5) You have a grant and need to secure a new or amended grant in order to relocate an authorized facility to comply with public health and safety and environmental protection laws, regulations, and standards which were not in effect at the time BLM issued your original grant;

(6) You have a grant and need to secure a new grant to relocate facilities which you have to move because a Federal agency or federally-funded project needs the lands and the United States does not pay the costs associated with your relocation; or

(7) For whatever other reason, such as public benefits or public services provided, collecting processing and monitoring fees would be inconsistent with prudent and appropriate management of public lands and with your equitable interests or the equitable interests of the United States.

(b) *Fee determination.* With your written application, submit your analysis of how each of the factors, as applicable, in paragraph (a) of this section pertain to your application. BLM will notify you in writing of the BLM State Director's fee determination. You may appeal this decision under §2801.10 of this part.

§ 2804.22 How will the availability of funds affect the timing of BLM's processing?

If BLM has insufficient funds to process your application, we will not process it until funds become available or you elect to pay full actual costs under §2804.14(f) of this part.

§ 2804.23 What if there are two or more competing applications for the same facility or system?

(a) If there are two or more competing applications for the same facil-

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ity or system and your application is in:

(1) *Processing Category 1 through 4.* You must reimburse BLM for processing costs as if the other application or applications had not been filed.

(2) *Processing Category 6.* You are responsible for processing costs identified in your application. If BLM cannot readily separate costs, such as costs associated with preparing environmental analyses, you and any competing applicants must pay an equal share or a proportion agreed to in writing among all applicants and BLM. If you agree to share costs that are common to your application and that of a competing applicant, and the competitor does not pay the agreed upon amount, you are liable for the entire amount due. The applicants must pay the entire processing fee in advance. BLM will not process your application until we receive the advance payments.

(b) *Who determines whether competition exists?* BLM determines whether the applications are compatible in a single right-of-way system or are competing applications for the same system.

(c) If BLM determines that competition exists, BLM will describe the procedures for a competitive bid through a bid announcement in a newspaper of general circulation in the area affected by the potential right-of-way and by a notice in the FEDERAL REGISTER.

§ 2804.24 Do I always have to submit an application for a grant using Standard Form 299?

You do not have to file an application using Standard Form 299 if:

(a) BLM determines that competition exists (*see* §2804.23(c) of this subpart); or

(b) You are an oil and gas operator. You may include your right-of-way requirements for a FLPMA grant as part of your Application for Permit to Drill or Sundry Notice under the regulations in parts 3160 through 3190 of this chapter.

§ 2804.25 How will BLM process my application?

(a) BLM will notify you in writing when it receives your application and will identify your processing fee described at §2804.14 of this subpart.

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(b) BLM may require you to submit additional information necessary to process the application. This information may include a detailed construction, operation, rehabilitation, and environmental protection plan, *i.e.*, a “Plan of Development,” and any needed cultural resource surveys or inventories for threatened or endangered species. If BLM needs more informa-

tion, we will identify this information in a written deficiency notice asking you to provide the additional information within a specified period of time. BLM will notify you of any other grant applications which involve all or part of the lands for which you applied.

(c) *Customer service standard.* BLM will process your completed application as follows:

Processing category	Processing time	Conditions
1-4	60 calendar days	If processing your application will take longer than 60 calendar days, BLM will notify you in writing of this fact prior to the 30th calendar day and inform you of when you can expect a final decision on your application.
5	As specified in the Master Agreement.	BLM will process applications as specified in the Agreement.
6	Over 60 calendar days	BLM will notify you in writing within the initial 60-day processing period of the estimated processing time.

(d) Before issuing a grant, BLM will:

(1) Complete a NEPA analysis for the application or approve a NEPA analysis previously completed for the application, as required by 40 CFR parts 1500 through 1508;

(2) Determine whether or not your proposed use complies with applicable Federal and state laws;

(3) If your application is for a road, determine whether it is in the public interest to require you to grant the United States an equivalent authorization across lands that you own;

(4) Consult, as necessary, with other governmental entities;

(5) Hold public meetings if sufficient public interest exists to warrant their time and expense. BLM will publish a notice in the FEDERAL REGISTER, a newspaper of general circulation in the vicinity of the lands involved, or both, announcing in advance any public hearings or meetings; and

(6) Take any other action necessary to fully evaluate and decide whether to approve or deny your application.

(e)(1) The BLM may segregate, if it finds it to be necessary for the orderly administration of the public lands, lands included within a right-of-way application under 43 CFR subpart 2804 for the generation of electricity from wind or solar sources. In addition, the BLM may also segregate public lands that it identifies for potential rights-of-way for electricity generation from

wind or solar sources under the BLM’s right-of-way regulations. Upon segregation, such lands will not be subject to appropriation under the public land laws, including location under the General Mining Law, but not from the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The BLM will effect such segregation by publishing a FEDERAL REGISTER notice that includes a description of the lands covered by the segregation. The Bureau of Land Management may impose a segregation in this way on both pending and new right-of-way applications.

(2) The segregative effect of the FEDERAL REGISTER notice terminates on the date that is the earliest of the following:

(i) Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period provided for in the FEDERAL REGISTER notice initiating the segregation, without further action by the authorized officer; or

(iii) Upon publication of a FEDERAL REGISTER notice of termination of the segregation.

(3) The segregation period may not exceed 2 years from the date of publication of the FEDERAL REGISTER notice initiating the segregation.

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(4) The effective period of this subsection of this part will not exceed two years from the date of its publication in the FEDERAL REGISTER.

[70 FR 21058, Apr. 22, 2005, as amended at 76 FR 23205, Apr. 26, 2011]

EFFECTIVE DATE NOTE: At 76 FR 23205, Apr. 26, 2011, §2804.25 was amended by adding paragraph (e), effective April 26, 2011 through April 26, 2013.

§ 2804.26 Under what circumstances may BLM deny my application?

(a) BLM may deny your application if:

(1) The proposed use is inconsistent with the purpose for which BLM manages the public lands described in your application;

(2) The proposed use would not be in the public interest;

(3) You are not qualified to hold a grant;

(4) Issuing the grant would be inconsistent with the Act, other laws, or these or other regulations;

(5) You do not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way; or

(6) You do not adequately comply with a deficiency notice (*see* §2804.25(b) of this subpart) or with any BLM requests for additional information needed to process the application.

(b) If BLM denies your application, you may appeal this decision under §2801.10 of this part.

§ 2804.27 What fees do I owe if BLM denies my application or if I withdraw my application?

If BLM denies your application or you withdraw it, you owe the processing fee set forth at §2804.14 of this subpart, unless you have a Processing Category 5 or 6 application. Then, the following conditions apply:

(a) If BLM denies your Processing Category 5 or 6 application, you are liable for all reasonable costs that the United States incurred in processing it. The money you have not paid is due within 30 calendar days after receiving a bill for the amount due.

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(b) You may withdraw your application in writing before BLM issues a grant. If you do so, you are liable for all reasonable processing costs the United States has incurred up to the time you withdraw the application and for the reasonable costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due. Any money you paid that is not used to cover costs the United States incurred as a result of your application will be refunded to you.

§ 2804.28 What processing fees must I pay for a BLM grant application associated with Federal Energy Regulatory Commission (FERC) licenses or re-license applications under part I of the Federal Power Act (FPA)?

(a) You must reimburse BLM for the costs which the United States incurs in processing your grant application associated with a FERC project, other than those described at §2801.6(b)(7) of this part. BLM also requires reimbursement for processing a grant application associated with a FERC project licensed before October 24, 1992, that involves the use of additional public lands outside the original area reserved under section 24 of the FPA.

(b) BLM will determine the amount you must pay by using the processing fee categories described at §2804.14 of this subpart and bill you for the costs. FERC will address other costs associated with processing a FERC license or relicense (*see* 18 CFR chapter I).

§ 2804.29 What activities may I conduct on the lands covered by the proposed right-of-way while BLM is processing my application?

(a) You may conduct casual use activities on the BLM lands covered by the application, as may any other member of the public. BLM does not require a grant for casual use on BLM lands.

(b) For any activities on BLM lands that are not casual use, you must obtain prior BLM approval.

Subpart 2805—Terms and Conditions of Grants

§ 2805.10 How will I know whether BLM has approved or denied my application?

(a) BLM will send you a written response on your application. If we do not deny the application, we will send you an unsigned grant for your review and signature that:

(1) Includes any terms, conditions, and stipulations that BLM determines to be in the public interest. This includes modifying your proposed use or changing the route or location of the facilities;

(2) May include terms that prevent your use of the right-of-way until you have an approved Plan of Development and BLM has issued a Notice to Proceed; and

(3) Will impose a specific term for the grant. Each grant that BLM issues for 20 or more years will contain a provision requiring periodic review at the end of the twentieth year and subsequently at 10-year intervals. BLM may change the terms and conditions of the grant as a result of these reviews in accordance with § 2805.15(e) of this subpart.

(b) If you agree with the terms and conditions of the unsigned grant, you should sign and return it to BLM with any payment required under § 2805.16 of this subpart. BLM will sign the grant and return it to you with a final decision issuing the grant if the regulations in this part, including § 2804.26, remain satisfied. You may appeal this decision under § 2801.10 of this part.

(c) If BLM denies your application, we will send you a written decision that will:

(1) State the reasons for the denial (see § 2804.26 of this part);

(2) Identify any processing costs you must pay (see § 2804.14 of this part); and

(3) Notify you of your right to appeal this decision under § 2801.10 of this part.

§ 2805.11 What does a grant contain?

The grant states what your rights are on the lands subject to the grant and contains information about:

(a) *What lands you can use or occupy.* The lands may or may not correspond to those for which you applied. BLM

will limit the grant to those lands which BLM determines:

(1) You will occupy with authorized facilities;

(2) Are necessary for constructing, operating, maintaining, and terminating the authorized facilities;

(3) Are necessary to protect the public health and safety;

(4) Will not unnecessarily damage the environment; and

(5) Will not result in unnecessary or undue degradation.

(b) *How long you can use the right-of-way.* Each grant will state the length of time that you are authorized to use the right-of-way.

(1) BLM will consider the following factors in establishing a reasonable term:

(i) The public purpose served;

(ii) Cost and useful life of the facility;

(iii) Time limitations imposed by licenses or permits required by other Federal agencies and state, tribal, or local governments; and

(iv) The time necessary to accomplish the purpose of the grant.

(2) All grants, except those issued for a term of 3 years or less and those issued in perpetuity, will expire on December 31 of the final year of the grant.

(c) *How you can use the right-of-way.* You may only use the right-of-way for the specific use the grant authorizes.

[70 FR 21058, Apr. 22, 2005, as amended at 73 FR 65071, Oct. 31, 2008]

§ 2805.12 What terms and conditions must I comply with?

By accepting a grant, you agree to comply with and be bound by the following terms and conditions. During construction, operation, maintenance, and termination of the project you must:

(a) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations and state laws and regulations applicable to the authorized use;

(b) Rebuild and repair roads, fences, and established trails destroyed or damaged by the project;

(c) Build and maintain suitable crossings for existing roads and significant trails that intersect the project;

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(d) Do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the right-of-way area;

(e) Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate;

(f) Pay monitoring fees and rent described in § 2805.16 of this subpart and subpart 2806 of this part;

(g) If BLM requires, obtain, and/or certify that you have obtained, a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property in connection with your use and occupancy of the right-of-way, including terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant;

(h) Assume full liability if third parties are injured or damages occur to property on or near the right-of-way (see § 2807.12 of this part);

(i) Comply with project-specific terms, conditions, and stipulations, including requirements to:

(1) Restore, revegetate, and curtail erosion or conduct any other rehabilitation measure BLM determines necessary;

(2) Ensure that activities in connection with the grant comply with air and water quality standards or related facility siting standards contained in applicable Federal or state law or regulations;

(3) Control or prevent damage to:

(i) Scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat;

(ii) Public and private property; and

(iii) Public health and safety;

(4) Protect the interests of individuals living in the general area who rely on the area for subsistence uses as that

term is used in Title VIII of Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111 *et seq.*);

(5) Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way in a manner consistent with the grant;

(6) When the state standards are more stringent than Federal standards, comply with state standards for public health and safety, environmental protection, and siting, constructing, operating, and maintaining any facilities and improvements on the right-of-way; and

(7) Grant BLM an equivalent authorization for an access road across your land if BLM determines the reciprocal authorization is needed in the public interest and the authorization BLM issues to you is also for road access;

(j) Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared;

(k) Not dispose of or store hazardous material on your right-of-way, except as provided by the terms, conditions, and stipulations of your grant;

(l) Certify your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, when you receive, assign, renew, amend, or terminate your grant;

(m) Control and remove any release or discharge of hazardous material on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the release or discharge is authorized under the grant. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;

(n) Comply with all liability and indemnification provisions and stipulations in the grant;

(o) As BLM directs, provide diagrams or maps showing the location of any constructed facility; and

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(p) Comply with all other stipulations that BLM may require.

§ 2805.13 When is a grant effective?

A grant is effective after both you and BLM sign it. You must accept its terms and conditions in writing and pay any necessary rent and monitoring fees as set forth in subpart 2806 of this part and § 2805.16 of this subpart. Your written acceptance constitutes an agreement between you and BLM that your right to use the public lands, as specified in the grant, is subject to the terms and conditions of the grant and applicable laws and regulations.

§ 2805.14 What rights does a grant convey?

The grant conveys to you only those rights which it expressly contains. BLM issues it subject to the valid existing rights of others, including the United States. Rights which the grant conveys to you include the right to:

(a) Use the described lands to construct, operate, maintain, and terminate facilities within the right-of-way for authorized purposes under the terms and conditions of the grant;

(b) If your grant specifically authorizes, allow other parties to use your facility for the purposes specified in your grant and you may charge for such use. If your grant does not specifically authorize it, you may not let anyone else use your facility and you may not charge for its use unless BLM authorizes or requires it in writing;

(c) Allow others to use the land as your agent in the exercise of the rights that the grant specifies;

(d) Do minor trimming, pruning, and removing of vegetation to maintain the right-of-way or facility;

(e) Use common varieties of stone and soil which are necessarily removed during construction of the project, without additional BLM authorization or payment, in constructing the project within the authorized right-of-way; and

(f) Assign the grant to another, provided that you obtain the BLM's prior written approval, unless your grant

specifically states that such approval is unnecessary.

[70 FR 21058, Apr. 22, 2005, as amended at 73 FR 65071, Oct. 31, 2008]

§ 2805.15 What rights does the United States retain?

The United States retains and may exercise any rights the grant does not expressly convey to you. These include BLM's right to:

(a) Access the lands covered by the grant at any time and enter any facility you construct on the right-of-way. BLM will give you reasonable notice before it enters any facility on the right-of-way;

(b) Require common use of your right-of-way, including subsurface and air space, and authorize use of the right-of-way for compatible uses. You may not charge for the use of the lands made subject to such additional right-of-way grants;

(c) Retain ownership of the resources of the land, including timber and vegetative or mineral materials and any other living or non-living resources. You have no right to use these resources, except as noted in § 2805.14(e) of this subpart;

(d) Determine whether or not your grant is renewable; and

(e) Change the terms and conditions of your grant as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

§ 2805.16 If I hold a grant, what monitoring fees must I pay?

(a) *Monitoring fees.* You must pay a fee to BLM for the reasonable costs the Federal government incurs in monitoring the construction, operation, maintenance, and termination of the project and protection and rehabilitation of the public lands your grant covers. BLM categorizes the monitoring fees based on the estimated number of work hours necessary to monitor your grant. Monitoring Category 1 through 4 fees are one-time fees and are not refundable. The work hours and fees for 2005 are as follows:

2005 MONITORING FEE SCHEDULE

Monitoring category	Federal work hours involved	Monitoring fee as of June 21, 2005. To be adjusted annually for changes in the IPD-GDP. See paragraph (b) of this section for update information
(1) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 1 ≤ 8.	\$97.
(2) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 8 ≤ 24.	\$343.
(3) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 24 ≤ 36.	\$644.
(4) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours > 36 ≤ 50.	\$923.
(5) Master Agreements	Varies	As specified in the Agreement.
(6) Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 50.	Full reasonable costs.

(b) *Updating the schedule.* BLM will revise paragraph (a) of this section annually to update Category 1 through 4 monitoring fees in the manner described at §2804.14(c) of this part. BLM will update Category 5 monitoring fees as specified in the Master Agreement. The monitoring cost schedule is available from any BLM state or field office or by writing: Director, Bureau of Land Management, 1849 C St., NW., Mail Stop 1000LS, Washington, DC 20240. BLM also posts the current schedule on the BLM Homepage on the Internet at <http://www.blm.gov>.

§ 2805.17 When do I pay monitoring fees?

(a) *Monitoring Categories 1 through 4.* Unless BLM otherwise directs, you must pay monitoring fees when you submit to BLM your written acceptance of the terms and conditions of the grant.

(b) *Monitoring Category 5.* You must pay monitoring fees as specified in the Master Agreement. BLM will not issue your grant until it receives the required payment.

(c) *Monitoring Category 6.* BLM may periodically estimate the costs of monitoring your use of the grant. BLM will include this fee in the costs associated with processing fees described at §2804.14 of this part. If BLM has underestimated the monitoring costs, we will notify you of the shortfall. If your payments exceed the reasonable costs that Federal employees incurred for monitoring, BLM will either reimburse you the difference, or adjust the next billing to reflect the overpayment. Unless BLM gives you written authoriza-

tion, you may not offset or deduct the overpayment from your payments.

(d) *Monitoring Categories 1–4 and 6.* If you disagree with the category BLM has determined for your grant, you may appeal the decision under §2801.10 of this part.

Subpart 2806—Rents

GENERAL PROVISIONS

§ 2806.10 What rent must I pay for my grant?

(a) You must pay in advance a rent BLM establishes based on sound business management principles and, as far as practical and feasible, using comparable commercial practices. Rent does not include processing or monitoring fees and rent is not offset by such fees. BLM may exempt, waive, or reduce rent for a grant under §§ 2806.14 and 2806.15 of this subpart.

(b) If BLM issued your grant on or before October 21, 1976, under then existing statutory authority, upon request, BLM will conduct an informal hearing before a proposed rent increase becomes effective. This applies to rent increases due to a BLM-initiated change in the rent or from initially being put on a rent schedule. You are not entitled to a hearing on annual adjustments once you are on a rent schedule.

§ 2806.11 How will BLM charge me rent?

(a) BLM will charge rent beginning on the first day of the month following the effective date of the grant through the last day of the month when the

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grant terminates. *Example:* If a grant became effective on January 10 and terminated on September 16, the rental period would be February 1 through September 30, or 8 months.

(b) BLM will set or adjust the annual billing periods to coincide with the calendar year by prorating the rent based on 12 months.

(c) If you disagree with the rent that BLM charges, you may appeal the decision under § 2801.10 of this part.

§ 2806.12 When do I pay rent?

(a) You must pay rent for the initial rental period before BLM issues you a grant.

(b) You make all other rental payments for linear rights-of-way according to the payment plan described in § 2806.23 of this subpart.

(c) After the first rental payment, all rent is due on January 1 of the first year of each succeeding rental period for the term of your grant.

§ 2806.13 What happens if I pay the rent late?

(a) If BLM does not receive the rent payment within 15 calendar days after the rent was due under § 2806.12 of this subpart, BLM will charge you a late payment fee of \$25.00 or 10 percent of the rent you owe, whichever is greater, not to exceed \$500 per authorization.

(b) If BLM does not receive your rent payment and late payment fee within 30 calendar days after rent was due, BLM may collect other administrative fees provided by statute.

(c) If BLM does not receive your rent, late payment fee, and any administrative fees within 90 calendar days after the rent was due, BLM may terminate your grant under § 2807.17 of this part and you may not remove any facility or equipment without BLM's written permission (*see* § 2807.19 of this part). The rent due, late payment fees, and any administrative fees remain a debt that you owe to the United States.

(d) If you pay the rent, late payment fee, and any administrative fees after BLM has terminated the grant, BLM does not automatically reinstate the grant. You must file a new application with BLM. BLM will consider the history of your failure to timely pay rent

in deciding whether to issue you a new grant.

(e) You may appeal any adverse decision BLM takes against your grant under § 2801.10 of this part.

§ 2806.14 Under what circumstances am I exempt from paying rent?

(a) You do not have to pay rent for your use if:

(1) BLM issues the grant under a statute which does not allow BLM to charge rent;

(2) You are a Federal, state, or local government or its agent or instrumentality, unless you are:

(i) Using the facility, system, space, or any part of the right-of-way area for commercial purposes; or

(ii) A municipal utility or cooperative whose principal source of revenue is customer charges;

(3) You have been granted an exemption under a statute providing for such; or

(4) Electric or telephone facilities constructed on the right-of-way were financed in whole or in part, or eligible for financing, under the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*), or are extensions of such facilities. You do not need to have sought financing from the Rural Utilities Service to qualify for this exemption. BLM may require you to document the facility's eligibility for REA financing. For communication site facilities, adding or including non-eligible facilities as, for example, by tenants or customers, on the right-of-way will subject the holder to rent in accordance with §§ 2806.30 through 2806.44 of this subpart.

(b) The exemptions in this section do not apply if you are in trespass.

[70 FR 21058, Apr. 22, 2005, as amended at 73 FR 65071, Oct. 31, 2008]

§ 2806.15 Under what circumstances may BLM waive or reduce my rent?

(a) BLM may waive or reduce your rent payment, even to zero in appropriate circumstances. BLM may require you to submit information to support a finding that your grant qualifies for a waiver or a reduction of rent.

(b) BLM may waive or reduce your rent if you show BLM that:

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(1) You are a non-profit organization, corporation, or association which is not controlled by, or is not a subsidiary of, a profit making corporation or business enterprise and the facility or project will provide a benefit or special service to the general public or to a program of the Secretary;

(2) You provide without charge, or at reduced rates, a valuable benefit to the public at large or to the programs of the Secretary of the Interior;

(3) You hold a valid Federal authorization in connection with your grant and the United States is already receiving compensation for this authorization. This paragraph does not apply to oil and gas leases issued under part 3100 of this chapter; or

(4) Your grant involves a cost share road or a reciprocal right-of-way agreement not subject to subpart 2812 of this chapter. In these cases, BLM will determine the rent based on the proportion of use.

(c) The BLM State Director may waive or reduce your rent payment if the BLM State Director determines that paying the full rent will cause you undue hardship and it is in the public interest to waive or reduce your rent. In your request for a waiver or rental reduction you must include a suggested alternative rental payment plan or timeframe within which you anticipate resuming full rental payments. BLM may also require you to submit specific financial and technical data or other information that corrects or modifies the statement of financial capability required by § 2804.12(a)(5) of this part.

§ 2806.16 When must I make estimated rent payments to BLM?

To expedite the processing of your grant application, BLM may estimate rent payments and collect that amount before it issues the grant. The amount may change once BLM determines the actual rent of the right-of-way. BLM will credit any rental overpayment, and you are liable for any underpayment. This section does not apply to rent payments made under a rent schedule in this part.

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LINEAR RIGHTS-OF-WAY

§ 2806.20 What is the rent for a linear right-of-way grant?

(a) Except as described in § 2806.26 of this chapter, the BLM will use the Per Acre Rent Schedule (see paragraph (c) of this section) to calculate rent for all linear right-of-way authorizations, regardless of the granting authority (FLPMA, MLA, and their predecessors). Counties (or other geographical areas) are assigned to an appropriate zone in accordance with § 2806.21. The BLM will adjust the per acre rent values in the schedule annually in accordance with § 2806.22(a), and it will revise the schedule at the end of each 10-year period in accordance with § 2806.22(b).

(b) The annual per acre rent for all types of linear right-of-way facilities is the product of 4 factors: The per acre zone value multiplied by the encumbrance factor multiplied by the rate of return multiplied by the annual adjustment factor (see § 2806.22(a)).

(c) You may obtain a copy of the current Per Acre Rent Schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at <http://www.blm.gov>.

[73 FR 65071, Oct. 31, 2008]

§ 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 years 2006 through 2010 of the Per Acre Rent Schedule and is based upon data contained in the most recent NASS Census (2002). Subsequent re-assignments of counties will occur every 5 years (in 2011 based upon 2007 NASS Census data, in 2016 based upon 2012

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NASS Census data, and so forth) following the publication of the NASS Census.

[73 FR 65071, Oct. 31, 2008]

§ 2806.22 When and how does the Per Acre Rent Schedule change?

(a) Each calendar year the BLM will adjust the per acre rent values in § 2806.20 for all types of linear right-of-way facilities in each zone based on the average annual change in the IPD-GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available. For example, the average annual change in the IPD-GDP from 1994 to 2003 (the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available) is 1.9 percent. This annual adjustment factor is applied to years 2006 through 2015 of the Per Acre Rent Schedule. Likewise, the average annual change in the IPD-GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data will become available) will be applied to years 2016 through 2025 of the Per Acre Rent Schedule.

(b) The BLM will review the NASS Census data from the 2012 NASS Census, and each subsequent 10-year period, and as appropriate, revise the number of county zones and the per acre zone values. Any revision must include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and must reasonably reflect the increases or decreases in the average per acre land and building values contained in the NASS Census.

[73 FR 65072, Oct. 31, 2008]

§ 2806.23 How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

(a) Except as provided by §§ 2806.25 and 2806.26, the BLM calculates your rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way area that fall in each zone and multiplying the result by the number of years in the

rental payment period (the length of time for which the holder is paying rent).

(b) The BLM will phase-in the initial implementation of the Per Acre Rent Schedule (see § 2806.20(c)) by reducing the 2009 per acre rent by 25 percent.

(c) If the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

[73 FR 65072, Oct. 31, 2008]

§ 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 multi-year period.

(ii) *Payments by all others.* If your annual rent is \$500 or less, you must pay rent 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 §§ 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

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10-year intervals, not to exceed 30 years.

(2) *Payments by all others.* If your annual rent is \$500 or less, you must pay rent 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.

[73 FR 65072, Oct. 31, 2008]

§ 2806.25 How may I make rental payments when land encumbered by my perpetual linear grant (other than an easement issued under § 2807.15(b)) is being transferred out of Federal ownership?

(a) *One-time payment option for existing perpetual grants.* If you have a perpetual grant and the land your grant encumbers is being transferred out of Federal ownership, you may choose to make a one-time rental payment. The BLM will determine the one-time payment for a perpetual grant by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data, where the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula in paragraphs (a)(1), (2), and (3) of this section. The formula for this calculation is: One-time Rental Payment = Annual Rent / (Y - CR), where:

(1) Annual Rent = Current Annual Rent Applicable to the Subject Property from the Per Acre Rent Schedule;

(2) Y = Yield Rate from the Per Acre Rent Schedule (5.27 percent); and

(3) CR = Annual Percent Change in Rent as Determined by the Most Recent 10-Year Average of the difference in the IPD-GDP Index from January of one year to January of the following year.

(b) *One-time payment for grants converted to perpetual grants under § 2807.15(b).* If the land your grant en-

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cumbers is being transferred out of Federal ownership, and you request a conversion of your grant to a perpetual right-of-way grant, you must make a one-time rental payment in accordance with § 2806.25(a).

(c) In paragraphs (a) and (b) of this section, the annual rent is determined from the Per Acre Rent Schedule (see § 2806.20(c)) as updated under § 2806.22. However, the per acre zone value and zone number used in this annual rental determination will be based on the per acre land value from acceptable market information or the appraisal report, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census. You may also submit an appraisal report on your own initiative in accordance with paragraph (d) of this section.

(d) When no acceptable market information is available and no appraisal report has been completed for the land transfer action or when the BLM requests it, you must:

(1) Prepare an appraisal report using Federal appraisal standards, at your expense, that explains how you estimated the land value per acre, the rate of return, and the encumbrance factor; and

(2) Submit the appraisal report for consideration by the BLM State Director with jurisdiction over the lands encumbered by your authorization.

[73 FR 65072, Oct. 31, 2008]

§ 2806.26 How may I make rental payments when land encumbered by my perpetual easement issued under § 2807.15(b) is being transferred out of Federal ownership?

(a) The BLM will use the appraisal report for the land transfer action (i.e., direct or indirect land sales, land exchanges, and other land disposal actions) and other acceptable market information to determine the one-time rental payment for a perpetual easement issued under § 2807.15(b).

(b) When no acceptable market information is available and no appraisal report has been completed for the land transfer action or when the BLM requests it, you must prepare an appraisal report as required under

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§ 2806.25(d). You may also submit an appraisal report on your own initiative in accordance with § 2806.25(d).

[73 FR 65072, Oct. 31, 2008]

COMMUNICATION SITE RIGHTS-OF-WAY

§ 2806.30 What are the rents for communication site rights-of-way?

(a) *Rent schedule.* (1) BLM uses the rent schedule for communication uses found in paragraph (b) of this section to calculate the rent for communication site rights-of-way. The schedule is based on nine population strata (the population served), as depicted in the most recent version of the Ranally Metro Area Population Ranking, and the type of communication use or uses for which BLM normally grants communication site rights-of-way. These uses are listed as part of the definition of “communication use rent schedule,” set out at § 2801.5(b) of this part. You may obtain a copy of the current schedule from any BLM state or field

office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. BLM also posts the current communication use rent schedule on the BLM Home Page on the Internet at <http://www.blm.gov>.

(2) BLM will revise paragraph (b) of this section annually to update the schedule based on two sources: the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI-U), as of July of each year (difference in CPI-U from July of one year to July of the following year), and the RMA population rankings.

(3) BLM will limit the annual adjustment based on the Consumer Price Index to no more than 5 percent. At least every 10 years BLM will review the rent schedule to ensure that the schedule reflects fair market value.

(b) The annual rent schedule for communication uses for calendar year 2005 is as follows:

COMMUNICATION USE RENT SCHEDULE ANNUAL FEES
[Calendar year 2005]

Population	Television broadcast	Am/FM radio broadcast ¹	Cable television	Broadcast translator/LPTV/LPFM	CMRS/facility manager	Cellular telephone	Private mobile radio service	Microwave	Other communication uses
5,000,000 plus	\$55,861.13	\$42,206.21	(2)	(2)	\$14,896.30	\$14,896.30	\$12,413.59	\$12,413.59	\$93.10
2,500,000 to 4,999,999	37,240.76	26,068.54	(2)	(2)	12,413.59	12,413.59	7,448.15	9,930.88	93.10
1,000,000 to 2,499,999	22,344.46	17,379.01	(2)	(2)	9,930.88	9,930.88	7,448.15	8,689.51	93.10
500,000 to 999,999	17,379.01	12,413.59	(2)	(2)	6,206.79	7,448.15	4,965.43	6,827.47	93.10
300,000 to 499,999	14,896.30	9,930.88	(2)	(2)	4,965.43	6,206.79	3,103.39	3,103.39	93.10
100,000 to 299,999	7,448.15	4,965.43	2,979.25	2,979.25	3,724.08	4,965.43	2,482.72	2,482.72	93.10
50,000 to 99,999	3,724.08	2,482.72	1,489.63	1,489.63	1,489.63	3,724.08	1,241.36	1,862.03	93.10
25,000 to 49,999	1,862.03	1,489.63	1,241.36	620.68	1,241.36	3,103.39	744.81	1,862.03	93.10
Less Than 25,000	1,489.63	1,117.22	744.81	124.14	744.81	3,103.39	434.47	1,862.03	93.10

¹ Rent for AM Radio is 70% of the FM Scheduled Rent.
² Fee to be determined by appraisal or other methods.

(c) *Uses not covered by the schedule.* The communication use rent schedule does not apply to:

- (1) Communication site uses, facilities, and devices located entirely within the exterior boundaries of an oil and gas lease, and directly supporting the operations of the oil and gas lease (see parts 3160 through 3190 of this chapter);
- (2) Communication facilities and uses ancillary to and authorized under a linear grant, such as a railroad grant or an oil and gas pipeline grant;
- (3) Communication uses not listed on the schedule, such as telephone lines, fiber optic cables, and new technologies;

(4) Grants for which BLM determines the rent by competitive bidding; or

(5) Communication facilities and uses for which the BLM State Director concurs that:

- (i) The expected annual rent, as BLM estimates from market data, exceeds the rent from the rent schedule by five times; or
- (ii) The communication site serves a population of one million or more and the expected annual rent for the communication use or uses is more than \$10,000 above the rent from the rent schedule.

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§ 2806.31 How will BLM calculate rent for a right-of-way for communication uses in the schedule?

(a) *Basic rule.* BLM calculates rents for:

(1) Single-use facilities by applying the rent from the communication use rent schedule (*see* § 2806.30 of this subpart) for the type of use and the population strata served; and

(2) Multiple-use facilities, whose authorizations provide for subleasing, by setting the rent of the highest value use in the facility or facilities as the base rent (taken from the rent schedule) and adding to it 25 percent of the rent from the rent schedule for all tenant uses in the facility or facilities, if a tenant use is not used as the base rent (rent = base rent + 25 percent of all rent due to additional tenant uses in the facility or facilities) (*see also* §§ 2806.32 and 2806.34 of this subpart).

(b) *Exclusions.* When calculating rent, BLM will exclude customer uses, except as provided for at §§ 2806.34(b)(4) and 2806.42 of this subpart. BLM will also exclude those uses exempted from rent by § 2806.14 of this subpart, and any uses whose rent has been waived or reduced to zero as described in § 2806.15 of this subpart.

(c) *Annual statement.* By October 15 of each year, you, as a grant or lease holder, must submit to BLM a certified statement listing any tenants and customers in your facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. BLM may require you to submit any additional information needed to calculate your rent. BLM will determine the rent based on the certified statement provided. We require only facility owners or facility managers to hold a grant or lease (unless you are an occupant in a federally-owned facility as described in § 2806.42 of this subpart), and will charge you rent for your grant or lease based on the total number of communication uses within the right-of-way and the type of uses and population strata the facility or site serves.

§ 2806.32 How does BLM determine the population strata served?

(a) BLM determines the population strata served as follows:

(1) If the site or facility is within a designated RMA, BLM will use the population strata of the RMA;

(2) If the site or facility is within a designated RMA, and it serves two or more RMAs, BLM will use the population strata of the RMA having the greatest population;

(3) If the site or facility is outside an RMA, and it serves one or more RMAs, BLM will use the population strata of the RMA served having the greatest population;

(4) If the site or facility is outside an RMA and the site does not serve an RMA, BLM will use the population strata of the community it serves having the greatest population, as identified in the current edition of the Rand McNally Road Atlas;

(5) If the site or facility is outside an RMA, and it serves a community of less than 25,000, BLM will use the lowest population strata shown on the rent schedule.

(b)(1) BLM considers all facilities (and all uses within the same facility) located at one site to serve the same RMA or community. However, BLM may make case-by-case exceptions in determining the population served at a particular site by uses not located within the same facility and not authorized under the same grant or lease. BLM has the sole responsibility to make this determination. For example, when a site has a mix of high-power and low-power uses that are authorized by separate grants or leases, and only the high-power uses are capable of serving an RMA or community with the greatest population, BLM may separately determine the population strata served by the low-power uses (if not collocated in the same facility with the high-power uses), and calculate their rent as described in § 2806.30 of this subpart.

(2) For purposes of rent calculation, all uses within the same facility and/or authorized under the same grant or lease must serve the same population strata.

(3) For purposes of rent calculation, BLM will not modify the population rankings published in the Rand McNally Commercial Atlas and Marketing Guide or the population of the community served.

§ 2806.33 How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?

BLM calculates the rent for a grant or lease authorizing a single-use communication facility from the communication use rent schedule (see § 2806.30 of this subpart), based on your authorized single use and the population strata it serves (see § 2806.32 of this subpart).

§ 2806.34 How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?

(a) *Basic rule.* BLM first determines the population strata the communication facility serves according to § 2806.32 of this subpart and then calculates the rent assessed to facility owners and facility managers for a grant or lease for a communication facility that authorizes subleasing with tenants, customers, or both, as follows:

(1) *Using the communication use rent schedule.* BLM will determine the rent of the highest value use in the facility or facilities as the base rent, and add to it 25 percent of the rent from the rent schedule (see § 2806.30 of this subpart) for each tenant use in the facility or facilities;

(2) If the highest value use is not the use of the facility owner or facility manager, BLM will consider the owner's or manager's use like any tenant or customer use in calculating the rent (see § 2806.35(b) for facility owners and § 2806.39(a) for facility managers);

(3) If a tenant use is the highest value use, BLM will exclude the rent for that tenant's use when calculating the additional 25 percent amount under paragraph (a)(1) of this section for tenant uses;

(4) If a holder has multiple uses authorized under the same grant or lease, such as a TV and a FM radio station, BLM will calculate the rent as in paragraph (a)(1) of this section. In this case, the TV rent would be the highest value use and BLM would charge the FM portion according to the rent schedule as if it were a tenant use.

(b) *Special applications.* The following provisions apply when calculating rents for communication uses exempt-

ed from rent under § 2806.14 of this subpart or communication uses whose rent has been waived or reduced to zero under § 2806.15 of this subpart:

(1) BLM will exclude exempted uses or uses whose rent has been waived or reduced to zero (see §§ 2806.14 and 2806.15 of this subpart) of either a facility owner or a facility manager in calculating rents. BLM will exclude similar uses (see §§ 2806.14 and 2806.15 of this subpart) of a customer or tenant if they choose to hold their own grant or lease (see § 2806.36 of this subpart) or are occupants in a Federal facility (see § 2806.42(a) of this subpart);

(2) BLM will charge rent to a facility owner whose own use is either exempted from rent or whose rent has been waived or reduced to zero (see §§ 2806.14 and 2806.15 of this subpart), but who has tenants in the facility, in an amount equal to the rent of the highest value tenant use plus 25 percent of the rent from the rent schedule for each of the remaining tenant uses subject to rent;

(3) BLM will not charge rent to a facility owner, facility manager, or tenant (when holding a grant or lease) when all of the following occur:

(i) BLM exempts from rent, waives, or reduces to zero the rent for the holder's use (see §§ 2806.14 and 2806.15 of this subpart);

(ii) Rent from all other uses in the facility is exempted, waived, or reduced to zero, or BLM considers such uses as customer uses; and

(iii) The holder is not operating the facility for commercial purposes (see § 2801.5(b) of this part) with respect to such other uses in the facility; and

(4) If a holder, whose own use is exempted from rent or whose rent has been waived or reduced to zero, is conducting a commercial activity with customers or tenants whose uses are also exempted from rent or whose rent has been waived or reduced to zero (see §§ 2806.14 and 2806.15 of this subpart), BLM will charge rent, notwithstanding section 2806.31(b), based on the highest value use within the facility. This paragraph does not apply to facilities exempt from rent under § 2806.14(d) of this subpart except when the facility also includes non-eligible facilities.

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§ 2806.35 How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and “other” category uses?

If an entity engaged in a PMRS, internal microwave, or “other” use is:

(a) Using space in a facility owned by either a facility owner or facility manager, BLM will consider the entity to be a customer and not include these uses in the rent calculation for the facility; or

(b) The facility owner, BLM will follow the provisions in § 2806.31 of this subpart to calculate rent for a lease involving these uses. However, we include the rent from the rent schedule for a PMRS, internal microwave, or other use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. BLM excludes these uses in the 25 percent calculation (*see* § 2806.31(a) of this subpart) when their value does not exceed the highest value in the facility.

§ 2806.36 If I am a tenant or customer in a facility, must I have my own grant or lease and if so, how will this affect my rent?

(a) You may have your own authorization, but BLM does not require a separate grant or lease for tenants and customers using a facility authorized by a BLM grant or lease that contains a subleasing provision. BLM charges the facility owner or facility manager rent based on the highest value use within the facility (including any tenant or customer use authorized by a separate grant or lease) and 25 percent of the rent from the rent schedule for each of the other uses subject to rent (including any tenant or customer use a separate grant or lease authorizes and the facility owner’s use if it is not the highest value use).

(b) If you own a building, equipment shelter, or tower on public lands for communication purposes, you must have an authorization under this part, even if you are also a tenant or customer in someone else’s facility.

(c) BLM will charge tenants and customers who hold their own grant or lease in a facility, as grant or lease holders, the full annual rent for their use based on the BLM communication

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use rent schedule. BLM will also include such tenant or customer use in calculating the rent the facility owner or facility manager must pay.

§ 2806.37 How will BLM calculate rent for a grant or lease involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?

BLM will include the single use in calculating rent for each grant or lease authorizing that use. For example, a television station locates its antenna on a tower authorized by grant or lease “A” and locates its related broadcast equipment in a building authorized by grant or lease “B.” The statement listing tenants and customers for each facility (*see* § 2806.31(c) of this subpart) must include the television use because each facility is benefitting economically from having the television broadcast equipment located there, even though the combined equipment is supporting only one single end use.

§ 2806.38 Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?

If you hold authorizations for two or more facilities on the same site, you can combine all those uses under one grant or lease, with BLM’s approval. The highest value use in all the combined facilities determines the base rent. BLM then charges for each remaining use in the combined facilities at 25 percent of the rent from the rent schedule. These uses include those uses we previously calculated as base rents when BLM authorized each of the facilities on an individual basis.

§ 2806.39 How will BLM calculate rent for a lease for a facility manager’s use?

(a) BLM will follow the provisions in § 2806.31 of this subpart to calculate rent for a lease involving a facility manager’s use. However, we include the rent from the rent schedule for a facility manager’s use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. BLM excludes the facility manager’s use in the

25 percent calculation (*see* § 2806.31(a) of this subpart) when its value does not exceed the highest value in the facility.

(b) If you are a facility owner and you terminate your use within the facility, but want to retain the lease for other purposes, BLM will continue to charge you for your authorized use until BLM amends the lease to change your use to facility manager or to some other communication use.

§ 2806.40 How will BLM calculate rent for a grant or lease for ancillary communication uses associated with communication uses on the rent schedule?

If the ancillary communication equipment is used solely in direct support of the primary use (*see* the definition of communication use rent schedule in § 2801.5 of this part), BLM will calculate and charge rent only for the primary use.

§ 2806.41 How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?

When a communication facility is ancillary to, and authorized by BLM under, a grant for a linear use, or some other type of use authorization (e.g., a mineral lease or sundry notice), BLM will determine the rent using the linear rent schedule (*see* § 2806.20 of this subpart) or rent scheme associated with the other authorization, and not the communication use rent schedule.

§ 2806.42 How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?

(a) If you are an occupant of a federally-owned communication facility, you must have your own grant or lease and pay rent in accordance with these regulations.

(b) If a Federal agency holds a grant or lease and agrees to operate the facility as a facility owner under § 2806.31 of this subpart, occupants do not need a separate BLM grant or lease and BLM will calculate and charge rent to the Federal facility owner under §§ 2806.30 through 2806.44 of this subpart.

§ 2806.43 How does BLM calculate rent for passive reflectors and local exchange networks?

(a) BLM calculates rent for passive reflectors and local exchange networks by using the same rent schedules for passive reflectors and local exchange networks as the Forest Service uses for the region in which the facilities are located. You may obtain the pertinent schedules from the Forest Service or from any BLM state or field office in the region in question. For passive reflectors and local exchange networks not covered by a Forest Service regional schedule, BLM uses the provisions in § 2806.50 of this subpart to determine rent. *See* Forest Service regulations at 36 CFR chapter II.

(b) For the purposes of this subpart, the term:

(1) *Passive reflector* includes various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and a terminal. A passive reflector commonly serves a microwave communication system. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power; and

(2) *Local exchange network* means radio service which provides basic telephone service, primarily to rural communities.

§ 2806.44 How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses subject to the communication use rent schedule and communication uses whose rent BLM determines by other means?

(a) BLM establishes the rent for each of the uses in the facility that are not covered by the communication use rent schedule using § 2806.50 of this subpart.

(b) BLM establishes the rent for each of the uses in the facility that are covered by the rent schedule using §§ 2806.30 and 2806.31 of this subpart.

(c) BLM determines the facility owner or facility manager's rent by identifying the highest rent in the facility of those established under paragraphs (a) and (b) of this section, and adding to it 25 percent of the rent of all other uses subject to rent.

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§ 2806.50 How will BLM determine the rent for a grant when neither the linear rent schedule at § 2806.20 nor the communication use rent schedule at § 2806.30 applies?

When neither the linear nor the communication use rent schedule is appropriate, BLM determines your rent through a process based on comparable commercial practices, appraisals, competitive bid, or other reasonable methods. BLM will notify you in writing of the rent determination. If you disagree with the rent determination, you may appeal BLM's final determination under § 2801.10 of this part.

Subpart 2807—Grant Administration and Operation**§ 2807.10 When can I start activities under my grant?**

When you can start depends on the terms of your grant. You can start activities when you receive the grant you and BLM signed, unless the grant includes a requirement for BLM to provide a written Notice to Proceed. If your grant contains a Notice to Proceed requirement, you may not initiate construction, operation, maintenance, or termination until BLM issues you a Notice to Proceed.

§ 2807.11 When must I contact BLM during operations?

You must contact BLM:

- (a) At the times specified in your grant;
- (b) When your use requires a substantial deviation from the grant. You must obtain BLM's approval before you begin any activity that is a substantial deviation;
- (c) When there is a change affecting your application or grant, including, but not limited to, changes in:
 - (1) Mailing address;
 - (2) Partners;
 - (3) Financial conditions; or
 - (4) Business or corporate status;
- (d) When you submit a certification of construction, if the terms of your grant require it. A certification of construction is a document you submit to BLM after you have finished constructing a facility, but before you

begin operating it, verifying that you have constructed and tested the facility to ensure that it complies with the terms of the grant and with applicable Federal and state laws and regulations; or

(e) When BLM requests it. You must update information or confirm that information you submitted before is accurate.

§ 2807.12 If I hold a grant, for what am I liable?

(a) If you hold a grant, you are liable to the United States and to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way.

(b) You are strictly liable for any activity or facility associated with your right-of-way area which BLM determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant any activity or facility posing such hazard or risk, and the financial limitations on damages commensurate with such hazard or risk.

(1) BLM will not impose strict liability for damage or injury resulting primarily from an act of war, an act of God, or the negligence of the United States, except as otherwise provided by law.

(2) As used in this section, strict liability extends to costs incurred by the Federal government to control or abate conditions, such as fire or oil spills, which threaten life, property, or the environment, even if the threat occurs to areas that are not under Federal jurisdiction. This liability is separate and apart from liability under other provisions of law.

(3) You are strictly liable to the United States for damage or injury up to \$2 million for any one incident. BLM will update this amount annually to adjust for changes in the Consumer Price Index for All Urban Consumers, U.S. City Average (CPI-U) as of July of each year (difference in CPI-U from July of one year to July of the following year), rounded to the nearest \$1,000. This financial limitation does not apply to the release or discharge of hazardous substances on or near the grant, or where liability is otherwise

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not subject to this financial limitation under applicable law.

(4) BLM will determine your liability for any amount in excess of the \$2 million strict liability limitation (as adjusted) through the ordinary rules of negligence.

(5) The rules of subrogation apply in cases where a third party caused the damage or injury.

(c) If you cannot satisfy claims for injury or damage, all owners of any interests in, and all affiliates or subsidiaries of any holder of, a grant, except for corporate stockholders, are jointly and severally liable to the United States.

(d) If BLM issues a grant to more than one person, each is jointly and severally liable.

(e) By accepting the grant, you agree to fully indemnify or hold the United States harmless for liability, damage, or claims arising in connection with your use and occupancy of the right-of-way area.

(f) We address liability of state, tribal, and local governments in § 2807.13 of this subpart.

(g) The provisions of this section do not limit or exclude other remedies.

§ 2807.13 As grant holders, what liabilities do state, tribal, and local governments have?

(a) If you are a state, tribal, or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that BLM issues your grant. If you do not have the legal power to assume full liability, you must repair damages or make restitution to the fullest extent of your powers.

(b) BLM may require you to provide a bond, insurance, or other acceptable security to:

(1) Protect the liability exposure of the United States to claims by third parties arising out of your use and occupancy of the right-of-way;

(2) Cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way; and

(3) Cover any damages or injuries resulting from the release or discharge of hazardous materials incurred in con-

nection with your use and occupancy of the right-of-way.

(c) Based on your record of compliance and changes in risk and conditions, BLM may require you to increase or decrease the amount of your bond, insurance, or security.

(d) The provisions of this section do not limit or exclude other remedies.

§ 2807.14 How will BLM notify me if someone else wants a grant for land subject to my grant or near or adjacent to it?

BLM will notify you in writing when it receives a grant application for land subject to your grant or near or adjacent to it. BLM will consider your written recommendations as to how the proposed use affects the integrity of, or your ability to operate, your facilities. The notice will contain a time period within which you must respond. The notice may also notify you of additional opportunities to comment.

§ 2807.15 How is grant administration affected if the land my grant encumbers is transferred to another Federal agency or out of Federal ownership?

(a) If there is a proposal to transfer the land your grant encumbers to another Federal agency, BLM may, after reasonable notice to you, transfer administration of your grant for the lands BLM formerly administered to another Federal agency, unless doing so would diminish your rights. If BLM determines your rights would be diminished by such a transfer, BLM can still transfer the land, but retain administration of your grant under existing terms and conditions.

(b) The BLM will provide reasonable notice to you if there is a proposal to transfer the land your grant encumbers out of Federal ownership. If you request, the BLM will negotiate new grant terms and conditions with you. This may include increasing the term of your grant to a perpetual grant or providing for an easement. These changes, if any, become effective prior to the time the land is transferred out of Federal ownership. The BLM may then, in conformance with existing policies and procedures:

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(1) Transfer the land subject to your grant or easement. In this case, administration of your grant or easement for the lands BLM formerly administered is transferred to the new owner of the land;

(2) Transfer the land, but BLM retains administration of your grant or easement; or

(3) Reserve to the United States the land your grant or easement encumbers, and BLM retains administration of your grant or easement.

(c) You and the new land owner may agree to negotiate new grant terms and conditions any time after the land encumbered by your grant is transferred out of Federal ownership.

[70 FR 21058, Apr. 22, 2005, as amended at 73 FR 65073, Oct. 31, 2008]

§ 2807.16 Under what conditions may BLM order an immediate temporary suspension of my activities?

(a) If BLM determines that you have violated one or more of the terms, conditions, or stipulations of your grant, we can order an immediate temporary suspension of activities within the right-of-way area to protect public health or safety or the environment. BLM can require you to stop your activities before holding an administrative proceeding on the matter.

(b) BLM may issue the immediate temporary suspension order orally or in writing to you, your contractor or subcontractor, or to any representative, agent, or employee representing you or conducting the activity. When you receive the order, you must stop the activity immediately. BLM will, as soon as practical, confirm an oral order by sending or hand delivering to you or your agent at your address a written suspension order explaining the reasons for it.

(c) You may file a written request for permission to resume activities at any time after BLM issues the order. In the request, give the facts supporting your request and the reasons you believe that BLM should lift the order. BLM must grant or deny your request within 5 business days after receiving it. If BLM does not respond within 5 business days, BLM has denied your request. You may appeal the denial under § 2801.10 of this part.

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(d) The immediate temporary suspension order is effective until you receive BLM's written notice to proceed with your activities.

§ 2807.17 Under what conditions may BLM suspend or terminate my grant?

(a) BLM may suspend or terminate your grant if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant (such as rent payments), or if you abandon the right-of-way.

(b) A grant also terminates when:

(1) The grant contains a term or condition that has been met that requires the grant to terminate;

(2) BLM consents in writing to your request to terminate the grant; or

(3) It is required by law to terminate.

(c) Your failure to use your right-of-way for its authorized purpose for any continuous 5-year period creates a presumption of abandonment. BLM will notify you in writing of this presumption. You may rebut the presumption of abandonment by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control, such as acts of God, war, or casualties not attributable to you.

(d) You may appeal a decision under this section under § 2801.10 of this part.

§ 2807.18 How will I know that BLM intends to suspend or terminate my grant?

(a) Before BLM suspends or terminates your grant under § 2807.17(a) of this subpart, it will send you a written notice stating that it intends to suspend or terminate your grant and giving the grounds for such action. The notice will give you a reasonable opportunity to correct any noncompliance or start or resume use of the right-of-way, as appropriate.

(b) To suspend or terminate a grant issued as an easement, BLM must give you written notice and refer the matter to the Office of Hearings and Appeals for a hearing before an ALJ under 5 U.S.C. 554. No hearing is required if the grant provided by its terms for termination on the occurrence of a fixed or agreed upon condition, event, or time. If the ALJ determines that

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grounds for suspension or termination exist and such action is justified, BLM will suspend or terminate the grant.

§ 2807.19 When my grant terminates, what happens to any facilities on it?

(a) After your grant terminates, you must remove any facilities within the right-of-way within a reasonable time, as determined by BLM, unless BLM instructs you otherwise in writing, or termination is due to non-payment of rent (*see* § 2806.13(c) of this part).

(b) After removing the facilities, you must remediate and restore the right-of-way area to a condition satisfactory to BLM, including the removal and clean up of any hazardous materials.

(c) If you do not remove all facilities within a reasonable period as determined by BLM, BLM may declare them to be the property of the United States. However, you are still liable for the costs of removing them and for remediating and restoring the right-of-way area.

§ 2807.20 When must I amend my application, seek an amendment of my grant, or obtain a new grant?

(a) You must amend your application or seek an amendment of your grant when there is a proposed substantial deviation in location or use.

(b) The requirements to amend an application or grant are the same as those for a new application, including paying processing and monitoring fees and rent according to §§ 2804.14, 2805.16, and 2806.10 of this part.

(c) Any activity not authorized by your grant may subject you to prosecution under applicable law and to trespass charges under subpart 2808 of this part.

(d) If your grant was issued prior to October 21, 1976, and there is a proposed substantial deviation in the location or use or terms and conditions of your right-of-way grant, you must apply for a new grant consistent with the remainder of this section. BLM may respond to your request in one of the following ways:

(1) If BLM approves your application, BLM will terminate your old grant and you will receive a new grant under 43 U.S.C. 1761 *et seq.* and the regulations

in this part. BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so; or

(2) Alternatively, BLM may keep the old grant in effect and issue a new grant for the new use or location, or terms and conditions.

(e) You must apply for a new grant to allow realignment of your railroad and appurtenant communication facilities. BLM must issue a decision within 6 months after it receives your complete application. BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if:

(1) These terms are in the public interest;

(2) The lands are of approximately equal value; and

(3) The lands involved are not within an incorporated community.

§ 2807.21 May I assign my grant?

(a) With BLM's approval, you may assign, in whole or in part, any right or interest in a grant.

(b) In order to assign a grant, the proposed assignee must file an application and satisfy the same procedures and standards as for a new grant, including paying processing fees (*see* subpart 2804 of this part).

(c) The assignment application must also include:

(1) Documentation that the assignor agrees to the assignment; and

(2) A signed statement that the proposed assignee agrees to comply with and be bound by the terms and conditions of the grant that is being assigned and all applicable laws and regulations.

(d) BLM will not recognize an assignment until it approves it in writing. BLM will approve the assignment if doing so is in the public interest. BLM may modify the grant or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment. BLM may decrease rents if the new holder qualifies for an exemption (*see*

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§ 2806.14 of this part), or waiver or reduction (see § 2806.15 of this part) and the previous holder did not. Similarly, BLM may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If BLM approves the assignment, the benefits and liabilities of the grant apply to the new grant holder.

(e) The processing time and conditions described at § 2804.25(c) of this part apply to assignment applications.

§ 2807.22 How do I renew my grant?

(a) If your grant specifies that it is renewable, and you choose to renew it, you must apply to BLM to renew the grant at least 120 calendar days before your grant expires. BLM will renew the grant if you are complying with the terms, conditions, and stipulations of the grant and applicable laws and regulations.

(b) If your grant does not address whether it is renewable, you may apply to BLM to renew the grant. You must send BLM your application at least 120 calendar days before your grant expires. In your application you must show that you are complying with the terms, conditions, and stipulations of the grant and applicable laws and regulations. BLM has the discretion to renew the grant if doing so is in the public interest.

(c) Submit your application under paragraph (a) or (b) of this section and include the same information necessary for a new application (see subpart 2804 of this part). You must reimburse BLM in advance for the administrative costs of processing the renewal in accordance with § 2804.14 of this part.

(d) BLM will review your application and determine the applicable terms and conditions of any renewed grant.

(e) BLM will not renew grants issued before October 21, 1976. If you hold such a grant and would like to continue to use the right-of-way beyond your grant's expiration date, you must apply to BLM for a new FLPMA grant (see subpart 2804 of this part). You must send BLM your application at least 120 calendar days before your grant expires.

(f) If BLM denies your application, you may appeal the decision under § 2801.10 of this part.

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Subpart 2808—Trespass

§ 2808.10 What is trespass?

(a) Trespass is using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

(b) Trespass includes acts or omissions causing unnecessary or undue degradation to the public lands or their resources. In determining whether such degradation is occurring, BLM may consider the effects of the activity on resources and land uses outside the area of the activity.

(c) There are two kinds of trespass, willful and non-willful.

(1) *Willful trespass* is voluntary or conscious trespass and includes trespass committed with criminal or malicious intent. It includes a consistent pattern of actions taken with knowledge, even if those actions are taken in the belief that the conduct is reasonable or legal.

(2) *Non-willful trespass* is trespass committed by mistake or inadvertence.

§ 2808.11 What will BLM do if it determines that I am in trespass?

(a) BLM will notify you in writing of the trespass and explain your liability. Your liability includes:

(1) Reimbursing the United States for all costs incurred in investigating and terminating the trespass;

(2) Paying the rental for the lands, as provided for in subpart 2806 of this part, for the current and past years of trespass, or, where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee for unauthorized use of any BLM-administered road; and

(3) Rehabilitating and restoring any damaged lands or resources. If you do not rehabilitate and restore the lands and resources within the time set by BLM in the notice, you will be liable for the costs the United States incurs in rehabilitating and restoring the lands and resources.

(b) In addition to amounts you owe under paragraph (a) of this section, BLM may assess penalties as follows:

(1) For willful or repeated non-willful trespass, the penalty is two times the rent. For roads, the penalty is two times the charges for road use, amortization, and maintenance which have accrued since the trespass began.

(2) For non-willful trespass not resolved within 30 calendar days after receiving the written notice under paragraph (a) of this section, the penalty is an amount equal to the rent. To resolve the trespass you must meet one of the conditions identified in 43 CFR 9239.7-1. For roads, the penalty is an amount equal to the charges for road use, amortization, and maintenance which have accrued since the trespass began.

(c) The penalty will not be less than the fee for a Processing Category 2 application (*see* §2804.14 of this part) for non-willful trespass or less than three times this amount for willful or repeated non-willful trespass. You must pay whichever is the higher of:

(1) The amount computed in paragraph (b) of this section; or

(2) The minimum penalty amount in paragraph (c) of this section.

(d) In addition to civil penalties under paragraph (b) of this section, you may be tried before a United States magistrate judge and fined no more than \$1,000 or imprisoned for no more than 12 months, or both, for a knowing and willful trespass, as provided at 43 CFR 9262.1 and 43 U.S.C. 1733(a).

(e) Until you comply with the requirements of 43 CFR 9239.7-1, BLM will not process any of your applications for any activities on BLM lands.

(f) You may appeal a trespass decision under §2801.10 of this part.

(g) Nothing in this section limits your liability under any other Federal or state law.

§ 2808.12 May I receive a grant if I am or have been in trespass?

Until you satisfy your liability for a trespass, BLM will not process any applications you have pending for any activity on BLM-administered lands. A history of trespass will not necessarily disqualify you from receiving a grant. In order to correct a trespass, you must apply under the procedures described at subpart 2804 of this part. BLM will process your application as if it were a

new use. Prior unauthorized use does not create a preference for receiving a grant.

Subpart 2809—Grants for Federal Agencies

§ 2809.10 Do the regulations in this part apply to Federal agencies?

The regulations in this part apply to Federal agencies to the extent possible, except that:

(a) BLM may suspend or terminate a Federal agency's grant only if:

(1) The terms and conditions of the Federal agency's grant allow it; or

(2) The agency head holding the grant consents to it; and

(b) Federal agencies are generally not required to pay rent for a grant (*see* §2806.14 of this part).

PART 2810—TRAMROADS AND LOGGING ROADS

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

Sec.

2812.0-3 Authority.

2812.0-5 Definitions.

2812.0-6 Statement of policy.

2812.0-7 Cross reference.

2812.0-9 Information collection.

2812.1 Application procedures.

2812.1-1 Filing.

2812.1-2 Contents.

2812.1-3 Unauthorized use, occupancy, or development.

2812.2 Nature of permit.

2812.2-1 Nonexclusive license.

2812.2-2 Right of permittee to authorize use by third parties.

2812.2-3 Construction in advance of permit.

2812.3 Right-of-way and road use agreement.

2812.3-1 Rights over lands controlled by applicant.

2812.3-2 Other roads and rights-of-way controlled by applicant.

2812.3-3 Form of grant to the United States, recordation.

2812.3-4 Where no road use agreement is required.

2812.3-5 Use by the United States and its licensees of rights received from a permittee.

2812.3-6 Duration and location of rights granted or received by the United States.

2812.3-7 Permittee's agreement with United States respecting compensation and adjustment of road use.

2812.4 Arbitration and agreements.