

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

43 CFR Parts 2800, 2860, 2880, and 2920

[LLHQ350000.L51020000.ER0000, 22X]

RIN 1004–AE60

Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its existing regulations to enhance the communications uses program, update its cost recovery fee schedules, and add provisions governing the development and approval of operations, maintenance, and fire prevention plans and agreements for rights-of-way (ROWs) for electric transmission and distribution facilities (powerlines). Communication uses and powerlines are two of many ROW activities authorized under the Federal Land Policy and Management Act of 1976, as amended (FLPMA). Cost recovery fees apply to most ROW activities authorized under either Title V of FLPMA or the Mineral Leasing Act of 1920, as amended (MLA), as well as to land use authorizations under Title III of FLPMA.

DATES: Please submit comments on or before January 6, 2023. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

Information Collection Requirements: This document includes proposed new information collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the new information collection requirements in this document, please note that such comments should be sent directly to the OMB, and that the OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information collection revisions is best assured of being given full consideration if the OMB receives it by January 6, 2023.

ADDRESSES:

Mail, personal, or messenger delivery: U.S. Department of the Interior, Director (HQ–630), Bureau of Land Management,

Room 5646, 1849 C St. NW, Washington, DC 20240, Attention: Regulatory Affairs; 1004–AE60.

Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004–AE60” and click the “Search” button. Follow the instructions at this website.

Information Collection Activities

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in the **DATES** section to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. If you submit comments on the information collection burdens, you should provide the BLM with a copy at one of the addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rulemaking. Please indicate “Attention: OMB Control Number 1004–NEW (RIN 1004–AE60).” Comments not pertaining to the proposed rule’s information collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB.

FOR FURTHER INFORMATION CONTACT:

Erica Pionke via email at epionke@blm.gov or via phone at (202) 570–2624; or Jennifer Noe via email at jnoe@blm.gov for information relating to the general rulemaking process. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
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 - B. Need for the Proposed Rule
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I. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BLM, marked with the number RIN 1004–AE60, by mail, personal or messenger delivery, or through <https://www.regulations.gov> (see the **ADDRESSES** section). Please note

that comments on this proposed rule’s information collection burdens should be submitted to the OMB as described in the **ADDRESSES** section.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under “**ADDRESSES**: Mail, personal, or messenger delivery” during regular business hours (7:45 a.m. to 4:15 p.m. EST), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. Background

A. Introduction

The subject matter of this proposed rule pertains principally to the BLM’s ROW program under 43 CFR parts 2800 and 2880, land use authorizations under part 2920, and newly proposed part 2860. Although the discussion in this preamble focuses on ROWs, and most revisions in the proposed rule relate to ROWs issued under parts 2800 and 2880, and proposed part 2860, similar revisions are being proposed that would apply to authorizations under part 2920.

In order for the reader to better understand the following discussion, as defined in 43 CFR 2801.5, a “grant” means any authorization or instrument (e.g., easement, lease, license, or permit) BLM issues under Title V of FLPMA. A

“right-of-way” means the public lands that the BLM authorizes a holder to use or occupy under a particular grant or lease.

In this rule, there are three distinct topics being considered. The first topic is communications uses. The second topic, cost recovery for the ROW program, addresses the reimbursement of costs, as authorized by FLPMA (43 U.S.C. 1701 *et seq.*) or the MLA (30 U.S.C. 185 *et seq.*), for the Federal Government’s expenses in undertaking ROW work. The third topic pertains to a recent amendment to add a new Section 512 to Title V of FLPMA (43 U.S.C. 1772) and addresses the risk of fires from powerline ROWs on public lands. Each of these topics is discussed in this preamble; however, proposed changes in regulations pertaining to these topics are discussed in the section-by-section discussion in the order in which they are or would be found in the regulatory text. The proposed revisions should be considered separately. If a court holds any provision of one part of this proposed rule invalid, it should not affect the other parts of the proposed rule. Additionally, this proposed rule adds a severability clause to part 2860 for consistency with similar existing provisions in parts 2800 and 2880. The BLM is especially interested in receiving public comments and information discussing the BLM’s proposed updates to its cost recovery fee categories for Federal ROW work activities, and whether the proposed regulations implementing the amendment to Title V of FLPMA effectively capture the statutory requirements.

Communications Uses

In the 21st century, broadband is just as vital as roads and bridges, electric lines, and sewer systems. At the community level, an advanced telecommunications network is critical for supporting growth, allowing small businesses to flourish, creating jobs, strengthening the first-responder network in remote areas, and making it possible for these areas to remain competitive in the information-age economy. At the individual level, access to broadband—and the expertise to use it—opens the door to employment opportunities, educational resources, health care information, government services, and social networks.

Although there have been great strides in expanding broadband services in the United States over the past several years, rural and Tribal areas lag behind in broadband deployment. Successive Presidential administrations and

Congress have made it a priority to increase broadband deployment in underserved areas. As the land management agency with the responsibility to manage the largest inventory of public land within the Federal Government, the BLM proposes to amend regulatory provisions for the processing and monitoring of various ROWs, including those for communications uses. Currently, there are approximately 1,500 communications sites on BLM lands. By making it easier for industry to collocate in and on existing communications facilities or build out new communications infrastructure on public lands, the BLM can play a strong role in increasing connectivity throughout the United States. Communications uses, including fiber optic and telephone, may be collocated within the 6,000 miles of energy corridors administered by the BLM and the U.S. Forest Service (USFS).

While communications companies, cooperatives, and other private entities ultimately make decisions on locations to construct and/or upgrade broadband infrastructure, from communications towers to linear ROWs for fixed terrestrial broadband access, the Department of the Interior (Department) administers a significant amount of land as well as existing permitted infrastructure that can be leveraged for increased connectivity in rural America.

This proposed rule would revise the existing regulations pertaining to communications uses by streamlining processes and establishing new customer service standards. The rule also proposes several technical changes to clarify the communications regulations.

Cost Recovery

Both the FLPMA and MLA authorize the Federal Government to collect fees, called cost recovery, for the costs that it expends in processing a ROW application, taking administrative actions, or monitoring the construction, operation, and termination of a facility authorized by a grant. In 2005, the BLM finalized regulations that established a cost recovery processing and monitoring fee schedule for ROW applications and grants and an annual process whereby the BLM updates the schedule to account for changes in the Implicit Price Deflator Gross Domestic Product (IPD–GDP). The IPD–GDP measures annual changes in the prices of goods and services produced in the United States. Despite those annual adjustments, the fee amounts in the current cost recovery schedule do not presently reflect the costs associated with the work. These

costs include both direct and indirect costs, exclusive of management overhead costs. The indirect administrative cost rate is determined at the beginning of each Fiscal Year (FY) and incorporates administrative support. Annual cost recovery adjustments are made to take effect at the beginning of each calendar year. BLM managers and employees, when engaged in either project or program activities where the indirect administrative cost rate assessment is applicable, must include the indirect costs when calculating the cost of providing services to another Federal agency, or ROW or grant applicant.

This proposed rule would increase the cost recovery fees to better reflect the current costs of processing and monitoring minor category ROWs. Additionally, minor category ROWs are those that take less than 50 hours under the current rule and would take less than 64 hours under the proposed rule for a BLM realty specialist to process. This would allow more applications to qualify as a minor category, eliminating the labor to establish, monitor, and maintain appropriate accounting of major category cost recovery accounts on those applications. The BLM believes this proposed change would increase operational efficiency. Lastly, this rule proposes several technical changes to 43 CFR parts 2800 and 2880, that would clarify and expedite other ROW tasks.

Section 512 of FLPMA

In March of 2018, Congress amended FLPMA to add Section 512 (43 U.S.C. 1772), which establishes requirements for the BLM and the USFS to develop and implement final regulations to govern review and approval of operations, maintenance, and fire prevention plans and agreements for vegetation and facility management on public lands within powerline ROWs and on abutting Federal lands. The proposed rule would revise regulations governing the issuance, renewal, and amendment of grants for powerlines. The BLM administers nearly 17,000 existing ROWs for powerlines on public lands. The USFS published a proposed rule on September 25, 2019 (84 FR 50698), a final rule on July 10, 2020 (85 FR 41387), an amendment to the final rule on August 11, 2020 (85 FR 48475), and draft policy on December 10, 2020 (85 FR 79463) to implement Section 512 of FLPMA on land managed by USFS.

The BLM’s proposed rule would add a definition for *hazard tree* consistent with the definition in Section 512, and make other changes intended to implement Section 512, including its provisions related to emergency

conditions. This proposed rule is consistent with the direction in Section 512(b)(1) for the BLM to issue guidance “[t]o enhance the reliability of the electric grid and reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution ROWs and abutting Federal land, including hazard trees.” Finally, this proposed rule is also consistent with the policies issued by each of the BLM State Offices regarding vegetation management on ROWs.

B. Need for the Proposed Rule

Communications Uses

It is an Administration priority to bring affordable, reliable, high-speed broadband to every American, including the more than 35 percent of rural Americans who lack access to broadband at minimally acceptable speeds.

On January 8, 2018, Executive Order (E.O.) 13821 was issued to promote better access to broadband internet service in rural America. E.O. 13821 states that “Americans need access to reliable, affordable broadband internet service to succeed in today’s information-driven, global economy” and establishes a policy “to use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity in rural America, including rural homes, farms, small businesses, manufacturing and production sites, Tribal communities, transportation systems, and healthcare and education facilities.”

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

On March 23, 2018, the Consolidated Appropriations Act, 2018 was signed into law. (Pub. L. 115–141, 132 Stat.

348.) Title VI of Division P of that law, called the “Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act” or “MOBILE NOW Act,” amended section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, 126 Stat. 156 (codified at 47 U.S.C 1455)).

This proposed rule would incorporate the new timing requirements established by the MOBILE NOW Act into the BLM’s regulations. As amended by the MOBILE NOW Act, 47 U.S.C. 1455(b)(3)(A) states:

In General—Not later than 270 days after the date on which an executive agency receives a duly filed application for an easement, right-of-way, or lease under this subsection, the executive agency shall—

- (i) grant or deny, on behalf of the Federal Government, the application; and
- (ii) notify the applicant of the grant or denial.

This proposed rule would provide for the electronic filing of ROW applications, along with other document submissions. E.O. 13821 states, “Federal property managing agencies shall use the GSA [General Services Administration] common form application for wireless service antenna structure siting developed by the [GSA] Administrator for requests to locate broadband facilities on Federal property.”

The MOBILE NOW Act also requires the use of a common form for all applications to install, construct, modify, or maintain communications facilities (including broadband infrastructure) on federally owned lands. The BLM provides Standard Form (SF)–299 for applicants seeking authorization for such purposes on public lands. The GSA, through collaboration with other agencies, decided the SF–299 would be the common form for Federal authorization of communications uses. The proposed rule would require use of the SF–299 for all communications uses grants, thereby making the proposed rule consistent with the MOBILE NOW Act.

By updating regulations, the BLM could improve response times and address the current lack of certainty in the communications uses grant process, which impacts industry construction schedules and may increase construction costs.

Cost Recovery

The current ROW regulations, found in 43 CFR parts 2800 and 2880, became effective June 21, 2005, and require the BLM to reevaluate its cost recovery fees

for each cost recovery category, and the categories themselves, within 5 years after their effective date and at 10-year intervals thereafter (43 CFR 2804.15 and 2884.15). The BLM completed its initial cost recovery reevaluation in December 2010 and has continued to evaluate data received through the end of FY 2020. These data show that the existing cost recovery fee collections do not adequately cover the costs incurred by the BLM for processing and monitoring ROW applications and grants under both the FLPMA and the MLA. These proposed regulations would revise the existing cost recovery fee categories to better reflect updates in technology, the procedures for processing applications and monitoring grants, and statutes and regulations relating to the ROW program.

The BLM reviewed current labor and other costs and the time required to perform work on minor category (currently Categories 1–4) ROW applications and grants. For applications or grants that would take the BLM more than 64 hours to process, the BLM would continue to collect cost recovery under Categories 5 or 6 under this rule. In addition, this rule proposes several technical changes to the previously cited regulations that would clarify and expedite completion of other ROW-related tasks.

This proposed rule, which would update cost recovery processes, addresses FLPMA grants for ROWs, MLA grants and temporary use permits (TUPs), and leases, permits, and easements that cross public lands. General provisions for ROW grants are found in 43 CFR subparts 2801 and 2881.

Most of the steps involved in performing necessary work pertaining to ROW authorizations, terminations, assignments, etc., are the same for both FLPMA and MLA ROWs. Typically, unless exempt, an applicant must reimburse the BLM for its reasonable costs incurred in processing and monitoring a FLPMA ROW activity, including conducting an environmental review as required by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). Unlike FLPMA, under the MLA, an applicant must reimburse the United States for its actual costs in completing ROW activities. The Federal Government collects cost recovery before the BLM begins tasks related to a ROW application or other ROW-related activity.

The existing ROW cost recovery fee structure is also applicable to leases, permits, and easements issued under Section 302(b) of FLPMA (43 U.S.C.

1732) and 43 CFR part 2920. The proposed rule would revise the regulations for these authorizations, found in § 2920.8(b), to provide consistency with the revisions made to the cost recovery provisions proposed to change under this rule in part 2800.

Section 512 of FLPMA

On March 23, 2018, Congress amended the FLPMA by adding Section 512, entitled “Vegetation Manag[e]ment, Facility Inspection, and Operation and Maintenance Relating to Electrical Transmission and Distribution Facility Rights of Way” (43 U.S.C. 1772). The proposed rule would add definitions for *hazard tree* and *operations, maintenance, and fire prevention plan*, as well as make other revisions pertaining to ROW administration to address fire risks on public lands. This proposed rule would define *operations, maintenance, and fire prevention plan* as a plan that provides for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of a ROW and on abutting Federal lands, including management of hazard trees, to enhance electric reliability, promote public safety, and avoid fire hazards.

The BLM’s mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The BLM administers approximately 245 million surface acres. According to the National Interagency Fire Center (NIFC), approximately 109 million acres across the United States (including both Federal and non-Federal lands) burned in wildfires between 2006 and 2020. Wildfire is a known risk to and from powerlines and may be caused by a variety of factors, including vegetation coming into contact with live powerlines or structural failures of powerline infrastructure.

Right-of-Way Renewals

Each year, about 500 oil and gas pipeline ROWs and 400 power transmission and distribution ROWs expire. Due to resources challenges, over the years the BLM has not kept pace renewing these authorizations. The updated provisions in the proposed rule would help expedite processing of expired and expiring ROWs.

C. Statutory Authority

Section 310 of FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate regulations to implement the statute with respect to public lands. The FLPMA also provides comprehensive authority for the administration and protection of the

public lands and their resources and directs that the public lands be managed “under principles of multiple use and sustained yield,” unless otherwise provided by law (43 U.S.C. 1732(a)). A similar authority for promulgating regulations to implement the MLA’s pipeline ROW provisions is found at 30 U.S.C. 185(f).

Both the FLPMA (43 U.S.C. 1734(b) and 1764(g)) and the MLA (30 U.S.C. 185(l)) authorize the BLM and other Federal agencies to require ROW applicants or holders to reimburse an agency for costs incurred processing a ROW application and inspecting and monitoring an authorized ROW.

The Consolidated Appropriations Act, 2018 amended FLPMA by adding a new Section 512 (43 U.S.C. 1772) and directed the Secretary to promulgate regulations to implement this new section.

III. Discussion of the Proposed Rule

43 CFR Part 2800 Rights-of-Way Authorized Under FLPMA

Part 2800 of title 43 of the Code of Federal Regulations describes requirements for general ROWs issued under the FLPMA and MLA. This proposed rule would revise the cost recovery fee schedule and its categories. The communications uses provisions found in this part would either be moved to new part 2860 or removed. Other minor modifications would correct or clarify existing regulations.

Subpart 2801—General Information

Section 2801.2 What is the objective of the BLM’s right-of-way program?

The proposed rule would add the words “wherever practical” to the objective described in § 2801.2(c). This proposed revision would more closely align the objective of promoting ROWs in common with the requirement described in Section 503 (43 U.S.C. 1763) of the FLPMA:

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical.

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

In section 2801.5, the proposed rule would move several terms associated with communications uses to the definitions section for a new part 2860, which specifically addresses communications uses.

The proposed rule would add the term and a definition of “complete

application” to clarify that an application is only complete when it contains all necessary information found under § 2804.12 and when the BLM notifies the applicant that it is complete. This is an important clarification, because the BLM’s customer service standards for processing applications apply only when an application is complete. This is consistent with existing BLM practice, but the proposed rule would clarify this requirement.

The proposed rule would add the term and a definition of “cost recovery” to clarify that it is a fee for the processing and monitoring associated with any proposed or authorized ROW.

The proposed rule would add the term and a definition of “exempt from rent” to clarify when an authorization would be automatically exempt from rental. This definition is consistent with existing § 2806.14 and proposed § 2866.14.

The proposed rule would revise the definition of the term “facility” by removing the last sentence. This part of the definition applies only to communications uses and would be moved into new § 2861.5, which is the definitions section for the new part 2860 that would be added by this proposed rule to consolidate provisions that address communications uses ROWs.

The proposed rule would add the statutory term “hazard tree,” and would define that term consistent with the definition in Section 512(a)(1) of FLPMA. The definition would apply in the limited context of powerline ROWs subject to newly proposed § 2805.22 and would help holders of such ROWs to understand what is required of them and what authorization their ROW provides. (See proposed § 2805.22(b)(3).)

The proposed rule would revise the term “monitoring” to be “monitoring activities” and would revise the definition of that term. Monitoring activities would mean those activities the Federal Government performs to ensure compliance with a ROW grant.

The proposed rule would also revise the explanation of the monitoring categories for consistency with the proposed revisions to § 2804.14(a).

The proposed rule would add the term and a definition of “operations and maintenance,” which would include activities conducted by a ROW holder to manage facilities and vegetation within and adjacent to the ROW boundary.

The proposed rule would add the term and a definition of “operations, maintenance, and fire prevention plan,” which would be a plan submitted to the BLM by the holder of a ROW that

describes how the holder plans to operate, maintain, and inspect the applicable ROW and facilities in a cost-effective, efficient, and timely manner to enhance electric reliability, promote public safety, and avoid fire hazards, including vegetation in or adjacent to the ROW.

The proposed rule would add the term and a definition of “processing activities.” Processing activities would be defined as work that the Federal Government undertakes to evaluate an application for a ROW grant. The principal outcome of ROW processing is a determination of whether to approve the application by issuance of a grant and identification of appropriate terms and conditions for each grant. The proposed definition also includes preparation of an environmental document, compliance with other legal requirements, and ROW administrative actions, such as assignments, amendments, and renewals, as different processing activities. This would not be a change from existing BLM practice but would clarify to the public that the BLM collects cost recovery for these ROW-related activities. This proposed definition would explain what activities would generally be associated with applications found under each cost recovery category.

The proposed rule would revise the definition of “substantial deviation” to clarify that general operation and maintenance activities, including safety-related activities, are not considered a substantial deviation. Additionally, the definition would clarify that activities to prevent or suppress wildfires on lands within or adjacent to the ROW are not considered a substantial deviation.

The proposed rule would revise the definition of “transportation and utility corridor” to clarify the process for establishing transportation and utility corridors. Furthermore, the amended definition would clarify the need for compatible uses.

The proposed rule would add the term and a definition of “waived from rent” to clarify the differences between being “waived from rent” and “exempt from rent.” While a holder may be exempted from rent by statute or regulation, the BLM may also waive a part or all of a holder’s rent (see §§ 2806.15 and 2866.15).

The proposed rule would revise the definition of “zone” by removing the number “eight” from the description of the number of zones. The current linear rent schedule for ROWs has 15 zones, so the current definition is not accurate. Removing the number of zones would not affect the definition.

Section 2801.9 When do I need a grant?

The proposed rule would remove paragraph (a)(5) of this section and redesignate paragraphs (a)(6) and (7) as (a)(5) and (6). The paragraph to be removed requires the public to obtain a grant for systems for transmitting or receiving electronic signals and other means of communication. This is a communications uses-specific requirement that would be removed from part 2800. The uses described in the removed paragraph (a)(5) would be covered under proposed § 2861.9, which would describe the circumstances under which a holder must obtain a communications uses grant.

Subpart 2802—Lands Available for FLPMA Grants

Section 2802.10 What lands are available for grants?

The proposed rule would revise paragraph (c) of this section by removing the specific requirement to notify the BLM office nearest the lands you seek to use. The proposed rule instructs you to contact the BLM to determine the appropriate office with which you should coordinate. The appropriate office is the BLM office with jurisdiction over the lands you seek to use, which may not be the same as the BLM office nearest the lands you seek to use.

Subpart 2803—Qualifications for Holding FLPMA Grants

Section 2803.11 Can another person act on my behalf?

Proposed § 2803.11 would add new provisions that describe the process for the holder to notify the BLM when another person or entity is authorized to act on the holder’s behalf. This proposed revision would standardize what documents the BLM would require prior to allowing another person or entity to act on behalf of the holder. The BLM expects this change to streamline and expedite processing times for grant holders.

Proposed paragraph (a) would require the holder to follow several steps before designating another individual or entity to act on their behalf. These requirements are necessary for the BLM to understand the legal relationship between the holder and the third party acting on their behalf.

Proposed paragraph (a)(1) would explain which BLM office must be notified. The office with jurisdiction over a grant retains the official case file and therefore needs the official documentation. This proposed paragraph would also require the holder

to provide a copy of the power of attorney, if one exists. This is often the instrument used to authorize another party to act on the holder’s behalf. This requirement is not expected to create any additional burden because the requested information is simply a copy of documents already possessed by the holder.

Proposed paragraph (a)(2) would require the holder to provide and maintain current contact information for their intended agent. This requirement is important for when the BLM needs to contact the agent. Without updated and current contact information, processing times can be delayed. This requirement is anticipated to streamline interactions between the BLM and holders or their agents.

Proposed paragraph (b) would inform the ROW holder how the BLM would administer the grant. The BLM would like to simplify the formal communication process by establishing expectations of responsibility for any actions taken by an authorized agent. As a result of this proposed change, the BLM anticipates a reduction in processing times for requests related to a ROW application.

Section 2803.12 What happens to my grant if I die?

Because an application is not an inheritable interest, the BLM proposes to change the title of this section from “What happens to my application or grant if I die?” to “What happens to my grant if I die?” Paragraph (a) would also be revised to remove the reference to applications.

Subpart 2804—Applying for FLPMA Grants

Section 2804.12 What must I do when submitting my application?

In § 2804.12, the BLM proposes to change § 2804.12(a) by adding a sentence following the first sentence to read: “The application must include the applicant’s original signature or meet the BLM standards for electronic commerce.” This addition would clarify that when an application for a ROW is filed electronically, a manual signature may not be required.

Proposed revisions to § 2804.12(a)(4) would require an applicant to submit the project map and Geographic Information Systems (GIS) shapefiles for the project, as requested by the BLM. When a BLM office is conducting an analysis under NEPA, it is not uncommon for the various resource specialists to request that the applicant provide project data electronically in a GIS format to ensure that the correct

area for the proposed project is analyzed. It is likely the individual or entity responsible for the application already has the proposed project data in a GIS format, and therefore, the BLM is not adding a significant burden upon the applicant. This new requirement would be expected to reduce application processing times by allowing the BLM to integrate project locations into existing resource datasets and analyze the potential resource impacts more quickly.

Section 2804.14 What are the fee categories for cost recovery?

The proposed rule would revise the title of this section to read: "What are the fee categories for cost recovery?" The proposed cost recovery categories in this section would apply to both processing and monitoring activities, whereas the existing title of § 2804.14 refers only to processing fees for grant applications. The BLM proposes to amend § 2804.14(a) to clarify that cost recovery fees include both processing and monitoring activities. The BLM proposes to amend § 2804.14(a) to maintain consistency with the proposed changes in § 2804.16 that would provide for waiver of, rather than exemption from, processing and monitoring fees.

The United States, under the FLPMA, generally collects cost recovery fees from ROW holders and applicants for the reasonable costs of Federal work related to a ROW. Existing regulations contain a table of categories for "processing fees" under § 2804.14(b) and a table of "monitoring fees" under § 2805.16(a). The monitoring cost recovery fee schedule, currently found under § 2805.16(a), would be combined with the category description table located at existing § 2804.14(b) in a new table in proposed § 2804.14(b). This revised table would apply to all cost recovery fees.

The BLM determines which category a project falls into based on its estimate of the total Federal work hours associated with the project. If the project falls into a minor category, then the applicant is assessed the fee that corresponds to the appropriate category within the cost recovery schedule.

Following the methodology of the 2005 rule, the BLM proposes to update the fee schedule for minor cost recovery categories by multiplying a calculated average wage which includes both direct and indirect costs by the midpoint of the hours in each minor category. We describe that process in detail below.

Proposed § 2804.14(b) would remove the first sentence in § 2804.14(b), which states, "There is no processing fee if the BLM's work is estimated to take one hour or less." This change would address the fact that the time spent on ROW work activities generally is not less than 1 hour. Even simple actions, such as ROW assignments and name changes, take more than 1 hour to complete, except in very rare circumstances. The BLM would be interested in hearing from the public if this would create a burden on the industry for any particular actions that are frequently performed in under 1 hour.

The BLM conducted a review of ROW cases between FY 2012 and FY 2018, and found that the existing cost recovery schedule, which provides that projects with up to 50 estimated work hours may be considered for the "minor" cost recovery categories (Categories 1, 2, 3, or 4), should be expanded. The BLM is concerned that, due to the 50-work-hour limit, more projects are being assigned to Category 6, when it would be more efficient operationally to increase the "minor" cost recovery limit to 64 hours, or an even 8 workdays. This would allow more applications to qualify as a minor category, eliminating the labor to establish, monitor, and maintain appropriate accounting of major category cost recovery accounts on those applications. The BLM proposes a new schedule that would adjust the hours thresholds for Categories 1, 2, 3, and 4 to account for the expected type of workload and to set the minor category work hour cap at 64 hours.

Proposed Category 1 would apply to activities with an estimated workload of 8 Federal work hours or less. Proposed Category 2 would apply to activities with an estimated workload of 8 to 24 Federal work hours. Proposed Category 3 would apply to activities with an estimated workload of 24 to 40 Federal work hours. Proposed Category 4 would apply to activities with an estimated workload of 40 to 64 Federal work hours. By expanding the range of hours in the minor categories, it is anticipated that the BLM would have fewer major Category determinations, thereby giving the applicants with moderate projects some relief from the cost recovery fees and additional workload associated with such a determination. This proposed rule change would allow more applications to qualify as a minor category, eliminating the labor to establish major category cost recovery accounts on those applications.

The proposed rule would adjust the cost recovery fees for each of the minor categories to reflect the current reasonable cost of the associated hours. The process that the BLM uses currently to adjust the fees is detailed in Section 5 of the Economic and Threshold Analysis (or "economic analysis") that accompanies the proposed rule.

First, the BLM calculated an average wage (including pay additives and indirect costs) for processing and monitoring activities taking place from FY 2018 to FY 2020. The calculated average hourly wage over this three-year period was \$67.74.

The BLM then multiplied that average wage by the midpoint of the work hours in each of the proposed categories to determine the fee amounts for each category. During previous rulemakings on this subject, we received comments that most users felt more comfortable if a midpoint were used, as opposed to another statistical method or evaluation of the data. With this proposed rule, the BLM would maintain the use of midpoints for calculating the fees for the minor categories.

The result of this formulation is proposed fees of \$271, \$1,084, \$2,168, and \$3,522 for minor Categories 1, 2, 3, and 4 in the first FY of adoption, respectively. These fees would be applied in the base year and adjusted annually for changes in the IPD-GDP, per current practice. With the proposed increase in cost recovery fees, the BLM believes that it would be closer to recovering the reasonable costs for activities in Categories 1 through 4, as FLPMA requires.

The proposed rule would clarify that, for Master Agreements under Category 5, preliminary application review fees may be included in the Master Agreement. See the discussion of § 2804.18 in this preamble for further discussion of proposed changes to Master Agreements.

Under the proposed rule, Category 6 would cover any ROW for which the BLM estimates that Federal work will exceed 64 hours or which would result in the preparation of an Environmental Impact Statement (EIS). The BLM would continue to collect costs for work performed under this category, which would now specifically include preliminary application review. The cost recovery fees under both the existing and proposed category frameworks are shown in Table 1 below.

TABLE 1—EXISTING AND PROPOSED COST RECOVERY SCHEDULES

Existing cost recovery fee schedule (FY 2022)			Proposed cost recovery fee schedule		
Category	Estimated work hours	Fee amount	Category	Estimated work hours	Fee amount
1	> 1 ≤ 8	\$136	1	8 or less	\$271.
2	> 8 ≤ 24	\$480	2	> 8 ≤ 24	\$1,084.
3	> 24 ≤ 36	\$904	3	> 24 ≤ 40	\$2,168.
4	> 36 ≤ 50	\$1,296	4	> 40 ≤ 64	\$3,522.
5	Varies depending on agreement.	Determined by agreement	5	Varies depending on agreement	Determined by agreement.
6	> 50	All processing and monitoring costs.	6	>64	All processing and monitoring costs.

The adjustments in the fee schedule are driven by two factors. First, the BLM has proposed to expand the number of hours covered by Categories 3 and 4. Second, the average labor wage has risen significantly since the 2005 rule was promulgated.

For example, if the BLM determines your application would take 40 hours to process, currently you would be in Category 4 with an FY 2022 fee of \$1,296. Under the proposed rule, the same application would be in Category 3 with a fee of \$2,168. The \$2,168 would represent the midpoint between the range of hours in Category 3 (which is 32 hours), times the average wage calculation. The BLM coordinates with the USFS to provide consistency with respect to ROW cost recovery fees.

The proposed rule would revise § 2804.14(c) to update and re-order the locations where you can obtain a copy of the current cost recovery category fee schedule.

The proposed rule would revise § 2804.14(d) for consistency with other proposed changes and to reflect that these cost recovery categories would apply to all ROW activities including monitoring, not just the processing of applications.

Section 2804.15 When does the BLM reevaluate the cost recovery fees?

The proposed rule would revise the title of this section to change “processing and monitoring” to “cost recovery.” This proposed change is necessary for consistency with the proposed changes to § 2804.14.

Section 2804.16 When will the BLM waive cost recovery fees?

The proposed rule would amend § 2804.16 by revising the title to read “When will the BLM waive cost recovery fees?” rather than “Who is exempt from paying processing and monitoring fees?” Proposed § (a) of this section contains the undesignated introductory text of existing § 2804.16.

This language would be revised to refer to cost recovery fees, instead of processing and monitoring fees, and would change the existing definitive exemption from fees to a waiver of fees that the BLM has discretion to apply or not apply.

Proposed paragraph (a)(1) of this section contains the provision of existing § 2804.16(a) and would state that ROW cost recovery fees may be waived if an applicant is a State or local government, and the application is for governmental purposes that benefit the general public. Under this proposed paragraph, the waiver would not apply if charges levied on customers are similar to those of a profit-making entity. This is different from the existing exception which applies only when such charges are the “principal source of revenue.”

The waiver for governmental entities is intended to provide financial relief to governmental entities seeking to provide a benefit to the public. However, some of these entities are charging rent beyond the operating costs to use their facility. The proposed change would make the waiver unavailable to applicants who would otherwise receive an authorization at no charge and then collect fees from other users.

Proposed paragraph (a)(2) of this section contains the text from existing paragraph (b) of this section, which remains unchanged.

Proposed paragraph (a)(3) would allow the BLM to waive cost recovery fees for Federal agencies for applications belonging to cost recovery Categories 1 through 4. The current regulations require Federal agencies to pay cost recovery fees on all ROW applications. Under an earlier version of the regulations, Federal agencies were exempt from all cost recovery. The proposed rule strikes a middle path by allowing the BLM to waive fees for Federal agencies in some, but not all circumstances. Transferring funds between agencies is costly and

administratively slow. Costs associated with processing the transfer often exceed the fees being transferred. Therefore, it is not cost effective for the BLM to collect cost recovery fees from other Federal agencies for Categories 1 through 4. However, if a Federal agency’s action would take the BLM more than 64 hours to complete, the BLM would collect cost recovery fees under Category 5 or 6.

The proposed rule adds a new paragraph (b) to this section stating that the BLM will not waive your fees if you are in trespass. This paragraph makes existing BLM policy explicit in the regulations.

Section 2804.17 What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?

The proposed rule would modify § 2804.17(a) to change the cross-reference from § 2805.16 (currently the table for monitoring fees) to proposed § 2804.14, which would contain the combined cost recovery table for all ROW activities.

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

Section 2804.18 describes how Master Agreements function. Proposed § 2804.18(a)(2) would provide that a Master Agreement describes work to be done by the applicant and the BLM to complete a number of ROW permitting and monitoring activities. The revisions to this paragraph would allow Master Agreements to be used for any type of ROW activity, not just ROW processing. Proposed paragraph (a)(5) would make this language more consistent with other updates in the proposed rule. The BLM believes the expanded use of Master Agreements would streamline processing and monitoring activities. Master Agreements are designed to consolidate some of the processing and monitoring steps associated with ROWs,

including combining budgeting processes into one project work breakdown structure. Also, many Master Agreements fund or partially fund staffing of Realty Specialists and other key interdisciplinary teams which can help expedite processing when funds are not otherwise available (§ 2804.22).

Section 2804.18(c) would be amended to say, “cost recovery fees,” instead of “processing and monitoring fees.” These proposed changes would be consistent with the expanded definition of a Master Agreement.

Section 2804.19 How will the BLM manage my Category 6 project?

Section 2804.19 would be amended by revising the title from “How will BLM process my Processing Category 6 application?” to read “How will the BLM manage my Category 6 project?” This section would be revised to explain that cost recovery for Category 6 projects would include monitoring the grant in addition to processing the application. The proposed rule would make editorial changes for clarity and consistency with the other proposed changes.

Proposed § 2804.19(a) would eliminate the requirement for a work and financial plan for some Category 6 applications at the discretion of the authorized officer and would instead provide only that the BLM “may require” such plans. Preparing a work and financial plan takes an average of 6 months to complete. The preparation of a work and financial plan may not be necessary if both the applicant and the BLM authorized officer can agree, in writing, on the cost to process the action. This change would reduce the time associated with establishing a cost recovery account and improve the Category 6 cost recovery process, particularly for those actions close to 64 hours.

The proposed rule would add a new paragraph (b)(4) and redesignate existing paragraphs (b)(4) and (b)(5) as (b)(5) and (b)(6), respectively. Proposed paragraph (b)(4) of this section would state that the BLM may collect a deposit before beginning work on a Category 6 project. Currently, when an application falls under Category 6, it takes an average of 6 months to finalize the details of the agreement, which includes a work and financial plan. The communications industry has indicated that when they are charged a Category 6 cost recovery fee, the deposit is usually between \$11,000 and \$15,000. The advanced collection of a deposit would shorten the time for processing an application by allowing the BLM to begin processing the application during the 6 months it usually takes to finalize

a cost recovery agreement. If the BLM determines the deposit is not adequate, the applicant would prepare a work and financial plan to provide additional funds under a cost recovery agreement.

Section 2804.20 How does the BLM determine reasonable costs for Category 6 right-of-way activities?

Section 2804.20 would be amended by revising the title from “How does BLM determine reasonable costs for Processing Category 6 or Monitoring Category 6 applications?” to read “How does the BLM determine reasonable costs for Category 6 right-of-way activities?”

The proposed rule would revise the last sentence in the introductory text of this section, which states, “While we consider your written analysis, BLM will not process your Category 6 application.” Under the proposed rule, if the BLM requests additional information, we would continue to work on your application while you are responding to our request, as long as a deposit has been received by the BLM as provided in proposed § 2804.19(b)(4).

Paragraph (a) of this section describes how the BLM would apply the factors articulated in Section 304(b) of FLPMA to assess whether costs are “reasonable” for your project, to determine the actual costs owed to the BLM. The proposed rule would remove the reference to the BLM State Director and instead refer only to the BLM. This would not change how the BLM applies these factors, and the decision would still be appealable under § 2801.10. This proposed change would improve the cost recovery process by enabling the BLM to make this determination at the appropriate level on a case-by-case basis.

Section 2804.21 What other factors will the BLM consider in determining cost recovery fees?

The proposed rule would amend this section by revising the title, paragraph (a), paragraph (a)(2), and paragraph (a)(7) by removing references to “processing and monitoring” and replacing those references with more general references to all ROW activities to which cost recovery applies. This change would be consistent with the changes described in § 2804.14.

Paragraph (b) of this section describes how the BLM reviews your analysis of the factors for your project to determine the fees owed to the BLM. The proposed rule would remove the reference to the BLM State Director and instead refer only to the BLM.

Section 2804.25 How will the BLM process my application?

The proposed rule would amend paragraph (a)(1) of this section to add “unless your fees are exempt.” This clarifying edit is necessary because the BLM would not be required to identify your cost recovery fee if you are exempt from fees.

The proposed rule would redesignate paragraph (c)(2) of this section as (c)(3) and add a new paragraph (c)(2). Proposed paragraph (c)(2) of this section would require an operations, maintenance, and fire prevention plan for all powerline ROWs. Section 512 of FLPMA calls on the BLM to provide “owners and operators of electric transmission or distribution facilities located on public lands . . . with the option to develop and submit a plan” (43 U.S.C. 1772(c)(1)). Under existing § 2804.25(c), the BLM may require applicants to submit a plan of development (POD) for a ROW, as necessary. The operations, maintenance, and fire prevention plan may be included in the POD. The BLM generally requires PODs for large projects but believes the risk of wildfire associated with powerline ROWs merits an explicit requirement.

The BLM may also require other information to process the application. Under this proposed rule, the BLM relies on its general authority to condition ROW grants (43 U.S.C. 1761(b)(1)) to require applicants to submit operations, maintenance, and fire prevention plans for all new powerline ROWs. Applications to amend and renew ROWs must follow the same procedures as applications for new ROWs and, therefore, would also be subject to the proposed requirement for an operations, maintenance, and fire prevention plan.

However, if you already have an approved plan that meets the requirements of proposed § 2805.21(c) (“What is an operations, maintenance, and fire prevention plan for electric transmission and distribution rights-of-way?”), then you would not be required to submit a separate operations, maintenance, and fire prevention plan.

The proposed rule would revise paragraph (d) of this section by changing “completed application” to “complete application.” This proposed revision is consistent with the addition of this term in proposed § 2801.5. The proposed rule would also revise the table in paragraph (d) of this section by adding the word “Master” in front of the word “Agreement.”

Section 2804.26 Under what circumstances may the BLM deny my application?

The proposed rule would add paragraph (a)(9) to this section, which would state that the BLM could deny your ROW application if you fail to comply with a deficiency notice. The BLM inadvertently removed this paragraph when this section was amended by a rule to support solar and wind energy development (see 81 FR 92121, December 19, 2016).

Section 2804.27 What fees must I pay if the BLM denies my application or if I withdraw my application or I relinquish my grant?

This rule would amend § 2804.27 by revising the title to read “What fees must I pay if the BLM denies my application or if I withdraw my application or I relinquish my grant?” This title revision would add the relinquishment of a grant to the situations where you may have to pay fees.

The proposed rule would make minor revisions to paragraphs (a) and (b) to make the language more consistent with the existing and proposed regulations. Proposed paragraph (c) would be added to explain how cost recovery fees would be applied under Category 5 or 6 if a holder relinquishes their grant. The holder would be liable for all costs the United States has incurred in connection with the grant, including relinquishment of the grant. Any outstanding fees would be due to the BLM within 30 days after the holder receives the bill. The holder would be refunded the amount of fees paid that the BLM does not use to process the holder’s grant.

This new paragraph is consistent with existing BLM practice but is necessary to clarify and make explicit the process for relinquishing a grant and explain to holders what is required of them.

Subpart 2805—Terms and Conditions of Grants

Section 2805.11 What does a grant contain?

The proposed rule would add a new § 2805.11(b) to provide that grants would include access (ingress and egress) rights to a ROW. The proposed rule would redesignate existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively. Many ROWs need access to and from the ROW from outside the boundaries of the ROW for operations and maintenance. The proposed rule would add an explicit requirement for the authorized officer to include rights of ingress and egress in

the grant. Prior to 2005, the regulations had included provisions for ingress and egress. The BLM is re-introducing these provisions to address the need for grants to include explicit provision for continued access throughout the term of the grant. While most projects include authorization for temporary access for initial construction, if those temporary access rights expire, then access for future operations and maintenance requires an additional authorization. The proposed requirement to include these rights of ingress and egress in the grant would ensure that the holder can engage in timely and efficient operation and maintenance of the grant.

The BLM may charge rent appropriate to the nature of these access routes outside the ROW boundary. For instance, where ROW access is facilitated by existing routes that are open to public use, rent would likely not be appropriate. By contrast, the BLM may charge appropriate rent for newly constructed roads or overland travel to authorized ROWs on public lands. See the preamble discussion of the proposed revisions to § 2806.15(b)(3) for more information.

Section 2805.12 With what terms and conditions must I comply?

Existing paragraph (a)(4) of this section requires holders to do everything reasonable to prevent and suppress wildfires on or within the immediate vicinity of the ROW. The language has been changed from “immediate vicinity” to “adjacent to” to be consistent with the proposed update to the definition of “substantial deviation.”

Section 2805.12(a)(8)(vi) requires holders to ensure that they construct, operate, maintain, and terminate facilities in accordance with the authorization, including the approved POD. The proposed rule would add “any approved operations, maintenance, and fire prevention plan” to incorporate the new requirements described in this proposed rule.

Section 2805.12(c)(5) and paragraph (d)(3) would be revised to provide that conditions associated with damaged and abandoned facilities that threaten human health or safety are not subject to the existing requirement that the BLM wait 3 months before requiring the holder to act. The BLM has experienced situations where grant holders create human health and safety hazards by abandoning facilities and equipment within their authorized ROW area. If a holder’s use is posing a health or safety hazard to the public, the BLM should be empowered to address it as soon as possible.

Section 2805.14 What rights does a grant provide?

The proposed rule would revise the title from “What rights does a grant convey?” to “What rights does a grant provide?” to eliminate any implication that a grant gives ownership rights.

The proposed rule would revise § 2805.14(d) by removing the word “minor” from the description of trimming, pruning, and removal of vegetation and by adding an allowance to undertake those activities to “protect public health and safety.” The term “minor” has caused confusion for the holders and is imprecise. The added allowance gives the BLM leeway to allow activity aimed at protecting public health and safety.

These proposed revisions provide the necessary detail for the holder as to what vegetation management they can and must do to operate and maintain their ROW or facility, including what does and does not constitute a substantial deviation.

Section 2805.14(e) would be revised to allow the holder to use vegetation removed during maintenance of the ROW. The use of existing vegetation would reduce non-native species intrusion and would expedite maintenance by the holder. The paragraph would also be revised to align with FLPMA’s statutory provision that stone, soil, or vegetation may be used only if any necessary authorization to remove or use such materials has been obtained pursuant to applicable laws (43 U.S.C. 1764(f)). The BLM is specifically seeking comment on the practical impact of this proposed change.

Section 2805.15 What rights does the United States retain?

The proposed rule rephrases paragraph (a) of this section to address the nature of BLM’s need for access to the lands and facilities covered by an authorization. Some authorizations may be for the use of a facility, while others would be for use of an area on the public lands. The proposed rule would retain the requirement for the BLM to be provided access to and within the lands or facilities.

Proposed § 2805.15(e) would add language to clarify that after a grant is executed, any modification of its terms and conditions generally requires the BLM to issue a new or amended ROW grant. The BLM conducts analyses, including under NEPA, before issuing a grant, and any changes to the terms or conditions of a grant would require the BLM to complete a new decision-making process, and may require the

BLM to conduct additional analyses. Any such new decision must comply with applicable laws, including NEPA, and could require the BLM to complete a new environmental analysis, utilize an existing environmental analysis, or rely on a categorical exclusion.

Under proposed paragraph (f) of this section, the BLM could terminate an authorization for non-compliance. Existing § 2805.12 describes the terms and conditions that a grant holder must comply with and provides that the BLM could terminate a grant for non-compliance. This proposed paragraph would reinforce that this is a potential outcome.

Under proposed paragraph (g) of this section, the BLM could require a holder to submit financial documents related to a holder's authorization. This would be consistent with the requirements of existing § 2805.12(a)(15).

Section 2805.16 If I hold a grant, what cost recovery fees must I pay?

The proposed rule would amend § 2805.16 by changing the word "monitoring" in the title to "cost recovery" such that the title would read, "If I hold a grant, what cost recovery fees must I pay?" The section would also be amended by revising § 2805.16(a), adding a new § 2805.16(b), revising current § 2805.16(b), and redesignating it as paragraph (c).

As previously discussed, the proposed rule would remove the monitoring cost recovery fee table currently located under § 2805.16(a). The proposed rule would add a sentence referring the reader to § 2804.14(b), where they could find the proposed cost recovery table.

Under new § 2805.16(b), the cost recovery fee schedule for Categories 1 through 4 would be updated on an annual basis based on the previous year's change in the IPD-GDP, and the fees for Category 5 would be updated according to the given project's Master Agreement.

Proposed § 2805.16(c), which contains the provisions of existing § 2805.16(b), would explain where to obtain a copy of the current year's cost recovery fee schedule. The proposed rule would provide updated contact information for the holder to request the schedule from the BLM's Division of Lands, Realty and Cadastral Survey.

Section 2805.21 What is an operations, maintenance, and fire prevention plan for electric transmission and distribution and other rights-of-way?

Proposed § 2805.21 would codify many of the provisions of Section 512 of FLPMA in the BLM regulations.

Section 512(c) of FLPMA describes the requirements for vegetation management, facility inspection, and operations and maintenance plans. This proposed § 2805.21 describes the requirements for "operations, maintenance, and fire prevention plans," which are consistent with the requirements of the plans described in Section 512 of FLPMA.

Under proposed § 2804.25(c)(2) of the proposed rule, and as reflected in proposed paragraph (a)(1), operations, maintenance, and fire prevention plans would be required for all new, renewed, or amended electric transmission and distribution ROWs. In addition, under proposed paragraph (a)(2), such plans may be submitted to the BLM on a voluntary basis by holders of existing electric transmission and distribution ROWs. Operations, maintenance, and fire prevention plans would be advantageous to both the BLM and the ROW holder by better defining authorized activities, schedules for maintenance, and wildfire risk reduction measures, and by introducing limits on a ROW holder's liability under the specific circumstances described in this section.

Proposed paragraph (b) of this section refers to Electric Reliability Organization (ERO) standards and would provide that those standards may be incorporated into operations, maintenance, and fire prevention plans developed under this section. The Energy Policy Act of 2005 created the ERO: an independent, self-regulating entity that enforces mandatory electric reliability rules on all users, owners, and operators of the nation's transmission system. The North American Electric Reliability Corporation (NERC) develops and enforces reliability standards for North America and is the ERO. NERC reliability standards define the reliability requirements for planning and operating the North American bulk power system. These standards only apply to holders who are a part of a bulk power system, and holders subject to these standards may incorporate them into their operations, maintenance, and fire prevention plan. The ERO reliability standards developed by NERC are requirements the holder must meet for operating and maintaining the ROW and facility, such as frequency of inspections and minimum distance of vegetation clearances from powerlines. Incorporating these industry-wide standards into the operations, maintenance, and fire prevention plan a holder submits to the BLM would help to provide consistency between the BLM and USFS.

Proposed paragraph (c) of this section describes the requirements for operations, maintenance, and fire prevention plans, consistent with Section 512(c) of FLPMA and with the USFS final rule implementing Section 512. Under proposed paragraph (c)(1) of this section, operations, maintenance, and fire prevention plans must identify the applicable facilities to be maintained.

Proposed paragraph (c)(2) of this section would require the operations, maintenance, and fire prevention plan to account for the holder's own operations and maintenance plans for the applicable facilities. Many ROW holders have existing, internal plans for their operations and maintenance that they have not previously been required to submit to the BLM for approval, including those who must comply with ERO standards. The holder may be able to submit these existing internal plans to satisfy the BLM's operations, maintenance, and fire prevention plan requirements. A holder would not need to submit a new operations, maintenance, and fire prevention plan if their existing plan meets the requirements of this section.

Proposed paragraph (c)(3) of this section would require that the plan describe how a holder would operate and maintain the ROW and facility, including for vegetation management. These operations, maintenance, and fire prevention methods may also be those required to comply with applicable law, including fire prevention measures, safety requirements, and reliability standards established by the ERO. While the ERO describes the standards that must be met, the holder must describe in the operations, maintenance, and fire prevention plan how they plan to meet those standards.

Under proposed paragraph (c)(4) of this section, an operations, maintenance, and fire prevention plan would be required to include schedules for the holder to notify the BLM about non-emergency maintenance, including when they must seek approval from the BLM and when the BLM must respond to that request. Non-emergency maintenance will be further discussed in the preamble for proposed § 2805.22.

Proposed paragraph (c)(5) of this section would require the operations, maintenance, and fire prevention plan to describe processes for identifying changes in conditions and modifying the approved operations, maintenance, and fire prevention plan, if necessary. Either the BLM or holder could determine that the conditions in the ROW, which may include environmental conditions or

accessibility, have changed. The operations, maintenance, and fire prevention plan would be required to describe how the BLM and holder would communicate and initiate any necessary plan modifications. (See the preamble discussion for proposed paragraph (e) of this section.)

Proposed paragraph (c)(6) of this section would require the operations, maintenance, and fire prevention plan to include provision for removal and disposal of cut trees and branches, including plans for sale of forest products.

Under proposed paragraph (d) and consistent with Section 512(c)(4)(A) of FLPMA, the BLM would, to the extent practicable, review and approve the operations, maintenance, and fire prevention plan within 120 days of receiving the plan.

Proposed paragraph (e) of this section describes how the BLM would notify the holder that an operations, maintenance, and fire prevention plan requires modifications. The BLM would provide advance reasonable notice to the holder that a modification is necessary, and the holder would submit the proposed modification to the BLM. The BLM would, to the maximum extent practicable, review and approve the proposed operations, maintenance, and fire prevention plan modification in the same 120-day timeframe that applies to approval of new plans. This timeframe would be consistent with the requirements of Section 512 of FLPMA.

Under paragraph (e)(4) of this section, a holder may, while a proposed plan modification is pending approval, continue to operate and maintain the ROW or facility in accordance with the approved operations, maintenance, and fire prevention plan, as long as the activity does not adversely affect the identified condition that necessitates the plan modification. Although a plan modification may be required, the BLM does not intend for operations and maintenance to be unnecessarily delayed in other areas of the ROW that are not impacted.

Proposed paragraph (f) of this section describes how certain holders may enter into an agreement with the BLM in lieu of an operations, maintenance, and fire prevention plan. An agreement must contain the same general requirements of operations, maintenance, and fire prevention plans described in this section. Agreements would need to include schedules, as described in proposed paragraph (c)(4) of this section and would be subject to the same modification requirements of proposed paragraph (e) of this section.

Proposed paragraph (g) of this section describes the criteria that a holder would be required to meet to be eligible to enter into an agreement. A holder could enter into an agreement with the BLM if they are not subject to the ERO reliability standards or if they sold less than 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years prior to enactment of Section 512 of FLPMA. These eligibility requirements are established by Section 512(d)(1) of FLPMA and would generally apply to rural electric cooperatives and other small entities.

Section 512(d)(2)(A) of FLPMA requires the Secretary to ensure that the minimum requirements of these agreements “reflect the relative financial resources of the applicable owner or operator compared to other owners or operators of an electric transmission or distribution facility.” The BLM is seeking comments from the public on how these agreements should be different from operations, maintenance, and fire prevention plans and how the BLM can ensure that it meets the requirements of Section 512(b)(2)(A).

Section 2805.22 Special Provisions for Vegetation Management for Electric Transmission and Distribution Rights-of-Way

Proposed § 2805.22 describes how holders could conduct vegetation management related activities and distinguishes between emergency and non-emergency conditions. This proposed section would implement the requirements of Section 512(c) and (e) of FLPMA.

Proposed paragraph (a) of this section describes the conditions that would be considered Emergency Conditions and what the holder would be allowed to do during Emergency Conditions without immediate notification to the BLM. An Emergency Condition would be if vegetation or hazard trees have contacted, or present an imminent danger of contacting, an electric transmission or distribution line. The proposed rule specifies that this threat could arise from vegetation or a hazard tree within or adjacent to a transmission line ROW. Under proposed paragraph (a)(1) of this section, holders could prune or remove the vegetation or hazard tree to avoid the disruption of electric service and to eliminate immediate fire and safety hazards. Proposed paragraph (a)(2) would require the holder to notify the BLM within one calendar day after conducting these activities.

Proposed paragraph (b) of this section describes Non-Emergency Conditions

for which the holder of a powerline ROW could conduct vegetation management activities. The holder could conduct activities without prior approval from the BLM if they are in compliance with the terms and conditions of the ROW grant, §§ 2805.12(a)(4) and 2805.14(d), and any BLM approved operations, maintenance, and fire prevention plan.

Proposed paragraph (b)(1) of this section describes the circumstances under which a holder would need to request approval to conduct vegetation management activities. Under proposed paragraph (b)(1)(i), a holder would need to seek approval from the BLM if the operations, maintenance, and fire prevention plan specifically requires prior approval. Prior approval for an activity may be required in an operations, maintenance, and fire prevention plan if the activity could have cultural or environmental impacts.

Prior approval would be required under proposed paragraph (b)(1)(ii) if the activity is not described in an approved operations, maintenance, and fire prevention plan. Proposed paragraph (b)(2) of this section describes how the BLM would be required to respond to requests under paragraph (b)(1) of this section. If the BLM does not respond to a request within the timeframe described in an approved operations, maintenance, and fire prevention plan, and the vegetation management activity is consistent with the holder’s approved operations, maintenance, and fire prevention plan, a holder may proceed with the vegetation treatment activities. This provision would enhance the approval process for vegetation management activities to further support the goals of reducing fire risk.

Holders who do not have a BLM approved operations, maintenance, and fire prevention plan would not be affected by paragraphs (b)(1) or (b)(2) of this section, which describe how activities would be required to comply with operations, maintenance, and fire prevention plans. Existing holders would not have an operations, maintenance, and fire prevention plan until they amend or renew their ROW grant, or until they voluntarily submit an operations, maintenance, and fire prevention plan. The terms and conditions of some existing grants do not sufficiently describe the vegetation management activities that a holder may take. In the absence of an operations, maintenance, and fire prevention plan, holders would be required to comply with the terms and conditions of the grant and §§ 2805.12(a)(4) and 2805.14(d). Even when not required,

holders would be encouraged to submit operations, maintenance, and fire prevention plans for existing ROWs to the BLM to improve coordination regarding vegetation management and wildfire risk reduction.

Proposed paragraph (c) mirrors § 2805.12(a)(4) but adds specific examples of reasonable actions that could be taken by the holder, including pruning or removal of vegetation and cooperation with the BLM to investigate, suppress, or respond to wildfires.

Subpart 2806—Annual Rents and Payments

Section 2806.13 What happens if I do not pay rents and fees or if I pay the rents or fees late?

In proposed § 2806.13(e), the provisions for uncollected or undercollected rent would be modified by removing paragraphs (e)(1), (e)(2), and (e)(3). The current regulations unnecessarily restrict the BLM to only collecting uncollected or undercollected rent in certain circumstances. The proposed rule would remove those conditions, and the BLM would be able to collect any rents and fees due to the United States.

In new proposed § 2806.13(h), the BLM is explicitly providing that rent would be due regardless of whether a courtesy bill has been sent or received. This addition would clarify current BLM practice to the public.

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

In proposed § 2806.14(a)(4), the provisions governing communications

sites would be deleted. The exemptions described in proposed § 2866.14(b) encapsulate the language that would be removed from § 2806.14.

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

The BLM received feedback from customers about inconsistencies in how waivers or reductions in rent are approved. Therefore, proposed § 2806.15(b) would clarify that a BLM State Director is the authorizing official with respect to rental reductions and waivers.

Under existing paragraph (b)(3) of this section, the BLM could reduce or waive rent if a holder has a ROW in connection with the grant at issue and for which the United States receives compensation. Proposed paragraph (b)(3) of this section would replace the existing provision to allow for a reduction or waiver of rent if a holder's grant describes the use of existing routes outside of the ROW that are used to access the ROW. These proposed revisions are consistent with proposed § 2805.11(b), which would require the grant to include and identify new and/or existing routes that would be used for ingress and egress. The BLM could charge rent appropriate to the nature of these access routes. For instance, where ROW access is facilitated by existing routes that are open to public use, rent would likely not be appropriate. By contrast, the BLM could charge appropriate rent for roads to ROWs on public lands newly constructed by a holder. See the preamble discussion of 2805.11 for more information.

Existing § 2806.15(c) would be redesignated as § 2806.15(b)(5) and revised to maintain consistency with the edits made in § 2806.15(b). With the added reference to the BLM State Director in proposed paragraph (b) of this section, it is appropriate to redesignate existing paragraph (c) as proposed paragraph (b)(5). Waiving or reducing rent under paragraphs (b)(1) through (b)(5), as revised by this proposed rule, would be at the discretion of the BLM State Director. This proposed revision is consistent with existing BLM practice.

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

The proposed section would revise paragraph (c) to update the contact address of the BLM and highlight availability of the Per Acre Rent Schedule on the BLM website.

Sections 2806.30 Through 2806.44

The proposed rule would remove §§ 2806.30 through 2806.44, including the header “COMMUNICATION SITE RIGHTS-OF-WAY” between §§ 2806.26 and 2806.30. Many of the requirements of these sections would be moved into new part 2860, which would consolidate all requirements for communications uses. Any substantive changes to those requirements are discussed in the sections of this preamble focused on new part 2860. The following table shows where the requirements of existing §§ 2806.30 through 2806.44 can be found in this proposed rule.

TABLE 2—CURRENT SUBPART 2806 VS. PROPOSED SUBPART 2866

Current section	Current title	Proposed section	Proposed title
Subpart 2806	Annual Rents and Payments	Subpart 2866	Annual Rents and Payments.
§ 2806.30	What are the rents for communication site rights-of-way?	§ 2866.30	What are the rents for Communications Uses?
§ 2806.31	How will BLM calculate rent for a right-of-way for communication uses in the schedule?	§ 2866.31	How will the BLM calculate rent for Communications Uses in the schedule?
§ 2806.32	How does BLM determine the population strata served?	§ 2866.32	How does the BLM determine the population strata served for your facility?
§ 2806.33	How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?	§ 2866.33	How will the BLM calculate the rent for a single use communication facility?
§ 2806.34	How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?	§ 2866.34	How will the BLM calculate the rent for a grant for a multiple-use communication facility?
§ 2806.35	How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and “other” category uses?	§ 2866.35	How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and “other” category uses?
§ 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?	§ 2866.36	If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

TABLE 2—CURRENT SUBPART 2806 VS. PROPOSED SUBPART 2866—Continued

Current section	Current title	Proposed section	Proposed title
§ 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?	§ 2866.37	How will the BLM calculate rent for a grant 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?
§ 2806.38	Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?	§ 2866.38	Can I combine multiple grants for facilities located at one site into a single grant?
§ 2806.39	How will BLM calculate rent for an lease for a facility manager's use?	§ 2866.39	How will the BLM calculate rent for an grant for a facility manager's 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?	§ 2866.40	How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?
§ 2806.41	How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?	§ 2866.41	How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?
§ 2806.42	How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?	§ 2866.42	How will the BLM calculate rent for Communications Uses within a federally owned communications facility?
§ 2806.43	How does BLM calculate rent for passive reflectors and local exchange networks?	§ 2866.43	How does the BLM calculate rent for passive reflectors and local exchange networks?
§ 2806.44	How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses?	§ 2866.44	How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

Section 2806.52 Rents and Fees for Solar Energy Development Grants

The proposed section would revise paragraphs (a)(6) and (b)(2) to update the contact address of the BLM and highlight availability of the current solar energy acreage rent schedule and the current MW rate schedule for solar energy development on the BLM website.

Section 2806.62 Rents and Fees for Wind Energy Development Grants

The proposed section would revise paragraphs (a)(7) and (b)(2) to update the contact address of the BLM and highlight availability of the current wind energy acreage rent schedule and the current MW rate schedule for wind energy development on the BLM website.

Subpart 2807—Grant Administration and Operation

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

The proposed rule would redesignate existing paragraph (g) of this section as paragraph (h) and add a new paragraph (g). Proposed paragraph (g) of this section would codify the liability provisions at Section 512(g) of FLPMA and describe when the BLM may not impose strict liability.

Under proposed § 2805.21 of the proposed rule, the BLM would require operations, maintenance, and fire

prevention plans for all new, renewed, or amended electric transmission and distribution ROWs; plans could be submitted to the BLM on a voluntary basis by holders of existing electric transmission and distribution ROWs and other types of ROWs. Operations, maintenance, and fire prevention plans would be advantageous to both the BLM and the ROW holder by better defining authorized activities, schedules for maintenance, and wildfire risk reduction measures, and by introducing limits on the ROW holder's liability under the specific circumstances described in this section.

Under proposed paragraph (g)(1) of this section, the BLM could not impose strict liability for damages or injuries resulting when the BLM unreasonably withholds or delays approval of an operations, maintenance, and fire prevention plan. Under paragraph (g)(2) of this section, the BLM could not impose strict liability if the BLM fails to adhere to an applicable schedule in an approved operations, maintenance, and fire prevention plan or agreement.

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

The proposed rule would amend § 2807.17(b)(2) to change the word "terminate" to "relinquish." This change would make this section consistent with changes to § 2886.17 and would align with the nomenclature

that the BLM uses when processing ROWs. The proposed rule would also add § 2807.17(b)(3) to allow the BLM to terminate a ROW grant when a court terminates or requires the BLM to terminate the ROW. The proposed rule would redesignate paragraph (b)(3) as paragraph (b)(4).

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

The proposed rule would amend paragraph (b) of this section by replacing "processing and monitoring fees" with "cost recovery fees," for consistency with other revisions in this proposed rule.

Section 2807.20(d) explains that pre-FLPMA (before Oct. 21, 1976) grants cannot be amended, renewed, or reinstated.

Section 706 of the FLPMA repealed numerous laws to the extent they applied to the issuance of ROWs by the BLM. Once a law has been repealed, the BLM can no longer approve any actions under the repealed law. The proposed rule would combine existing language from different parts of paragraph (d), including paragraph (d)(2), as proposed paragraph (d)(1) and would revise the text to clarify that, when a holder seeks to amend a pre-FLPMA grant, the BLM would retain the holder's pre-FLPMA ROW for the portion of the holder's ROW not affected by the holder's amendment application unless the

holder agrees to accept a wholly new and comprehensive grant of the ROW under FLPMA.

Proposed paragraph (d)(2) would require a new application and grant for expiring authorizations. Proposed paragraph (d)(3) would require a new application and grant if a pre-FLPMA authorization is terminated due to non-compliance. Finally, existing paragraph (d)(1) is redesignated as proposed paragraph (d)(4) and notes that the BLM would issue any new authorization under the authority of the FLPMA and explains that the new authorization may have the same terms and conditions and annual rents as the original grant.

Section 2807.22 How do I renew my grant?

The proposed rule would establish new customer service standards for the BLM for renewal applications. The proposed rule would modify paragraph (f) of this section to establish a customer service standard of 60 days for the BLM to review an application for a renewal to determine if that application has been timely submitted and is complete and to notify the applicant in writing of the BLM's determination. If the BLM determines that a renewal application was timely submitted and is complete, then its written notice would confirm that, until the BLM issues a decision on the renewal application, the holder's existing grant would remain valid, provided that the holder of the authorization remains in compliance,

including with rent and bonding obligations.

The proposed rule would add a new paragraph (h) to this section to provide grant holders a clear understanding of when their renewal applications would be subject to the BLM's customer service standards. If grant holders do not comply with the existing requirement to submit their application at least 120 days before their grant expires, the BLM would not be held to the customer service standards for processing the application.

This proposed paragraph would not be a substantive change from existing practice.

Subpart 2809—Competitive Process for Leasing Lands for Solar and Wind Energy Development Inside Designated Leasing Areas

Section 2809.19 Applications in Designated Leasing Areas or on Lands That Later Become Designated Leasing Areas

The proposed rule would revise paragraph (d) of this section by updating a reference to a section that would be redesignated by this proposed rule. The reference to § 2805.11(b)(2) would be revised to read § 2805.11(c)(2). This change is necessary for consistency with proposed revisions to § 2805.11.

43 CFR Part 2860 Communications Uses

The proposed rule would establish part 2860, Communications Uses. This

proposed part would explain the requirements for communications uses grants and consolidate all communications use-specific provisions into one location. The requirements of part 2800 would apply to communications uses grants, unless otherwise described in this new part. Some sections in proposed part 2860 would contain the requirements of sections that would be removed from part 2800. Some sections in 2860 have a direct parallel to existing part 2800 but contain additional requirements that would apply specifically to communications uses. This preamble describes how the proposed rule differs from existing requirements. Proposed subparts 2861 through 2865 and 2868 are based on the requirements in existing subparts 2801 through 2805 and 2808, respectively, but contain additional communications use requirements. Table 3 shows the relationship between proposed subparts 2861 through 2865 and 2868 and existing subparts 2801 through 2805 and 2808. Most of the requirements pertaining to communications uses in existing subpart 2806 would be moved to proposed subpart 2866. Table 4 shows the relationship between proposed subpart 2866 and existing subpart 2806. This preamble describes proposed new or revised provisions. Provisions not discussed are substantially similar to their existing counterpart.

TABLE 3—SECTIONS OF THE PROPOSED RULE SUPPLEMENTING THE 2800 REGULATIONS FOR COMMUNICATIONS USES

Current section	Current title	Proposed section	Proposed title
Subpart 2801 New Section	General Information	Subpart 2861 § 2861.1	General Information. What requirements of part 2800 apply to my grant?
§ 2801.2	What is the objective of BLM's right-of-way program?	§ 2861.2	What is the objective of the BLM's Communications Uses program?
§ 2801.5(b)	What acronyms and terms are used in the regulations in this part?	§ 2861.5(b)	What acronyms and terms are used in the regulations in this part?
§ 2801.8	Severability.	§ 2861.8	Severability.
§ 2801.9(a)(5)	When do I need a grant?	§ 2861.9	When do I need a grant?
Subpart 2802	Lands Available for FLPMA Grants	Subpart 2862	Lands Available for Grants.
§ 2802.11	How does the BLM designate right-of-way corridors and designated leasing areas?	§ 2862.11	How does the BLM designate communications sites and establish communications site management plans?
Subpart 2804	Applying for FLPMA Grants	Subpart 2864	Applying for Grants.
§ 2804.10	Who may hold a grant?	§ 2864.10	What should I do before I file my application?
§ 2804.12	What must I do when submitting my application?	§ 2864.12	What must I do when submitting my application?
§ 2804.24	Do I always have to submit an application for a grant using Standard Form 299?	§ 2864.24	Do I always have to use Standard Form 299 when submitting my application for a grant?
§ 2804.25	How will BLM process my application?	§ 2864.25	How will the BLM process my Communications Uses application?
§ 2804.26	Under what circumstances may BLM deny my application?	§ 2864.26	Under what circumstances may the BLM deny my application?
§ 2804.35	How will the BLM prioritize my solar or wind energy application?	§ 2864.35	How will the BLM prioritize my Communications Uses application?
Subpart 2805	Terms and Conditions of Grants	Subpart 2865	Terms and Conditions of Grants.

TABLE 3—SECTIONS OF THE PROPOSED RULE SUPPLEMENTING THE 2800 REGULATIONS FOR COMMUNICATIONS USES—Continued

Current section	Current title	Proposed section	Proposed title
§ 2805.14	What rights does a grant provide?	§ 2865.14	What rights does a grant provide?
Subpart 2808	Trespass	Subpart 2868	Communications Uses Trespass.
§ 2808.10	What is a trespass?	§ 2868.10	What is a Communications Uses trespass?

Subpart 2861—General Information

Section 2861.1 What requirements of part 2800 apply to my grant?

This section explains that the requirements of part 2800 would apply to communications uses grants unless a provision in part 2860 provides otherwise. Part 2800 of the existing and proposed regulations describes requirements for general ROWs. Part 2860 describes requirements that would specifically apply to communications uses grants, which are generally in addition to the requirements described in part 2800.

Section 2861.2 What is the objective of the BLM’s Communications Uses program?

Proposed § 2861.2 describes the objectives of the communications uses program. It is based on existing § 2801.2.

Proposed paragraph (b) in this section describes the BLM’s objectives of administering the communications uses program through responsible development on the BLM-administered lands and providing a safe environment. This proposed paragraph would not constitute a substantive change from existing policy.

Proposed paragraph (d) of this section explains that the BLM would collect market value rent for communications uses authorized on public lands as required under 43 U.S.C. 1764.

Proposed paragraph (e) describes the BLM’s objective of promoting the expansion of communications uses in rural America. The proposed changes in this section reflect E.O. 13821, which directs the BLM to promote communications uses on public land in rural America. The words “wherever practical” would be included for consistency with the changes to the objectives in § 2801.2.

Section 2861.5 What acronyms and terms are used in the regulations in this part?

Proposed § 2861.5 defines terms that are specific to communications uses. The proposed section includes terms currently defined in existing § 2801.5. New definitions are proposed to be added to provide clarity for the public

when the BLM is administering an authorization for communications uses.

The definitions for “RMA,” “Base Rent,” “Customer,” “Facility Manager,” “Facility Owner,” “Site,” and “Tenant” would be moved from § 2801.5, the definitions of “Facility” and “Grant” would be copied from § 2801.5, and those definitions would be revised slightly to reflect their specific application in the context of communications uses.

The proposed rule would add the term and a definition of “Annual inventory certification” to clarify the nature of the document that a holder must provide on an annual basis (see existing § 2806.31(c) and proposed § 2866.31(c)).

The proposed rule would add the term and a definition of “collocation” to clarify when an occupant is collocated within or on a holder’s facility. This concept is relevant for communications uses rent (see proposed § 2866.31) and when a grant would be required (see proposed § 2866.36).

The proposed rule would add the term and a definition of “communications site” to establish what is meant when describing a communications site within an authorization document. The lack of a definition caused confusion because, often, the BLM and industry refer to a “communications site” when they really mean a “communications facility.” This definition clarifies the difference between the terms.

The proposed rule would add the term and a definition of “communications site management plans” to clarify that these plans guide development and operations at communications sites. These plans may be called “implementation level plans,” meaning that they take action to implement a land use plan (generally a Resource Management Plan (RMP)), which contains standards and guidelines and describes the communications uses that are allowed or restricted at a communications site. The BLM identifies and names communications sites through the preparation of a communications site management plan. Additionally, the communications site management plan

provides holders and future proponents with the development conditions for a particular site.

The proposed rule would add the term and a definition of “communications uses” to describe the types of uses considered to be a communications use. This definition includes all ROW uses to which part 2860 would apply.

The definition for the term “Communications uses rent schedule” would be moved here from § 2801.5. The change is necessary to maintain consistency in terminology throughout the new proposed part 2860. The term “communications uses rent schedule” would continue to apply to all types of communications uses identified in existing § 2801.5 for purposes of identifying and collecting rent, and it would also apply to the following additional uses proposed to be added to this definition: “facility manager,” “internet service provider (ISP),” “passive reflector,” and “local exchange network.”

The proposed rule would add the term and definition of “duly filed application” to explain that it is an application which includes all the elements required by § 2804.25.

The proposed rule would add the term and a definition of “occupant.” Occupants are entities, other than the holder of a grant, which use a facility covered by that authorization.

Section 2861.8 Severability

Proposed § 2861.8 is based on the existing § 2801.8 (and also parallels § 2881.9, which is proposed to be changed to § 2881.8) and would provide that any decision finding any provisions in part 2860 to be invalid would not affect the remaining provisions, which would remain in force.

Section 2861.9 When do I need a grant?

Proposed § 2861.9 is based on the existing § 2801.9 and would describe and provide some examples of when an authorization is needed to use public lands for communications uses.

Proposed paragraph (a) of this section provides that an authorization would be required when installing a facility that

is not under a current valid authorization. This is not a new requirement and is consistent with current BLM practice.

Proposed paragraph (b) of this section explains that an authorization would be required when installing a linear communications facility, such as a fiber optic cable. Due to the communications nature of fiber optic cables and telephone lines, proposed part 2860 is an appropriate location for regulations administering these communications uses.

Subpart 2862—Lands Available for Grants

Section 2862.11 How does the BLM designate communications sites and establish communications site management plans?

Proposed § 2862.11 would describe how the BLM designates communications sites and when communications site management plans are prepared.

This proposed section is based on existing § 2802.11, which describes how the BLM designates ROW corridors and designated leasing areas.

Under proposed § 2862.11(a), the BLM would coordinate in the preparation of the communications site management plans with other Federal agencies, State, local, and Tribal governments, and the public, consistent with the coordination requirements of existing § 2802.11(a).

Proposed paragraph (b) would identify factors the BLM considers when determining land suitability for communications uses, in addition to the factors described in existing § 2802.11(b).

Proposed paragraph (c) describes how the BLM would establish communications site management plans. As described under the definition for the plans, they are implementation-level plans that tier to the applicable RMP.

While communications site management plans are generally adopted outside the land use planning process, the BLM often refers to these plans in RMPs. The identification of communications sites and the adoption of their complementary management plans must be supported by appropriate NEPA analysis, which could take the form of an applicable categorical exclusion or determination of NEPA adequacy.

Subpart 2864—Applying for Grants
Section 2864.10 What should I do before I file my application?

Proposed § 2864.10 is based on existing § 2804.10.

Proposed § 2864.10(a) describes the purpose of a preliminary application review meeting. Preliminary application review meetings provide valuable information and reveal project constraints to proponents. This information should result in more thorough and complete applications that would streamline BLM application processing, consistent with E.O. 13821 and a Presidential Memorandum directed to the Secretary, both issued on January 8, 2018. A preliminary application review meeting is not a requirement but is strongly encouraged.

Proposed paragraph (b) would prompt applicants to ask the BLM for a copy of any applicable communications site management plan for the site of the proposed project. Having a communications site management plan would assist the applicant in developing a project proposal consistent with the communications site management plan and streamline the processing of an application.

Paragraph (c) would specify what an applicant should acquire before submitting an application to the BLM. A complete communications uses application almost always requires proof of an FCC license. If an applicant already has included a license as part of its application, it eliminates the need for the BLM to request that information, and thereby cuts down on processing times.

Section 2864.12 What must I do when submitting my application?

Proposed § 2864.12 would describe the supplemental information needed to accompany the SF-299, which is required for all communications uses applications. Proposed § 2864.12 is based on existing § 2804.12 but proposes additional specific communications uses requirements for applications. Existing § 2804.12(f) states that the BLM may require you to submit additional information during the processing of your application. This proposed section standardizes the requirements specific to communications uses, to streamline the application process for these types of authorizations.

Proposed paragraph (a) of this section would clarify that when an application for a ROW is filed electronically, an actual signature may not be required. Instead of a manual signature, the applicant could meet the BLM's

standards for electronic commerce. This proposed revision would allow applicants to file their applications electronically. These changes would streamline application submissions and allow for more flexibility in how applications are submitted.

Proposed paragraph (a)(1) of this section refers to § 2804.12 for a list of attachments that should be included in all applications.

Proposed paragraph (a)(2) would require an applicant to provide proof of their FCC license. This requirement is consistent with current BLM practice, and the BLM proposes to incorporate this requirement into the regulations to notify applicants what to expect. There is no expectation that this new language would create any additional burden for communications uses applicants.

Paragraph (a)(3) of this section would require an applicant to submit the GIS shapefiles for a map of the proposed project. That requirement is consistent with proposed changes to § 2804.12(a)(4), which already requires an applicant to submit a map of the proposed project and would further require the applicant to submit GIS shapefiles, upon request, under the proposed rule. When a BLM office is conducting a NEPA analysis, it is not uncommon for the various resource specialists to request that an applicant provide project data electronically in a GIS format. It is also likely the individual or entity responsible for the application already has the proposed project in a GIS format, and therefore, the BLM would not be adding a significant burden upon the applicant. This new requirement would be expected to reduce application processing times by allowing the BLM to integrate project locations into existing resource datasets and analyze the potential resource impacts more quickly.

Paragraph (a)(4) of this section would require an application to include draft engineering or construction drawings. By including these drawings, applicants could expect faster application processing times. An applicant usually produces draft construction drawings before an applicant intends to submit their application, so the BLM does not expect this requirement to create any additional burden. The BLM expects that the inclusion of this information in the application would streamline application processing times.

Paragraph (a)(5) of this section would require that a communications uses application include technical data related to communication equipment used in and on the proposed facility. The proposed rule would specify the

types of technical data, such as frequencies and power output of the proposed use, that applicants must submit to allow the BLM to determine whether the proposed use would be consistent with the applicable communications site management plan and would be compatible with existing communications uses at the proposed communications site. This provision is consistent with current BLM policy, which requires this information from applicants.

Paragraph (a)(6) would require an applicant to provide a communications uses plan of development (POD) in support of an application. The BLM may require a POD for an application under existing § 2804.25(c). The POD is an essential tool for the BLM to understand the scope and complexity of the proposed project. A complete POD can drastically reduce the time spent on processing an application, primarily during the NEPA process. Current BLM policy requires a POD be submitted with all applications and the proposed rule would not be expected to create any additional burden on the applicant.

Proposed paragraph (b) would state that the BLM may require additional information from an applicant about their application while it is being processed. For example, the BLM may require an applicant to submit information about the applicant's plans to comply with a visual plan included in the RMP for the area (e.g., paint color or stealth design). The proposed changes explain that the BLM would not process an application until the additional information has been submitted. The BLM anticipates this change would help expedite application review and processing. This proposed paragraph is based on existing § 2804.12(f).

Section 2864.24 Do I always have to use Standard Form 299 when submitting my application for a grant?

Proposed § 2864.24 would require that the SF-299 be used for all communications uses applications, consistent with Section 606(b)(2) of the MOBILE NOW Act. This proposed section would be consistent with current BLM practice, as well as that of many other Federal agencies, and would clarify requirements to the applicant.

Section 2864.25 How will the BLM process my Communications Uses application?

Proposed § 2864.25 provides that the BLM would process communications uses applications consistent with existing § 2804.25. In addition, this section would require the BLM to

approve or deny a duly filed application for a grant within 270 days. This is in accordance with the MOBILE NOW Act, which requires Federal agencies to approve or deny a communications facility installation application within 270 days of receiving a duly filed application. The BLM anticipates this new regulation would shorten application processing times and establish consistency among BLM offices.

Section 2864.26 Under what circumstances may the BLM deny my application?

Proposed § 2864.26 is based on existing § 2804.26 and describes when an application for communications uses may be denied. Reasons for denial include the provisions of existing § 2804.26, along with reasons specific to communications uses, such as interference with other communications users.

Proposed paragraph (a) of this section is based on § 2804.26(a)(1), which states that an application may be denied if the proposed use is inconsistent with any other previously authorized ROW, including communications uses on the public lands. It is the goal of the BLM to allow multiple communications uses within a communications site area if they are compatible with one another. Existing communications uses ROW authorization holders would be given the opportunity during the application process to provide evidence of potential interference with their use. The BLM would evaluate any such evidence to determine if the subsequently proposed communications uses might potentially interfere with the previously authorized communications uses, and if so, whether a denial is warranted under the circumstances.

Under proposed paragraphs (b) and (c) of this section, an application could be denied if the proposed use presents a public health or safety issue or is not in conformance with the RMP or communications site management plan.

Section 2864.35 How will the BLM prioritize my Communications Uses application?

Proposed § 2864.35 describes how the BLM would prioritize applications for grants. This section is based on existing § 2804.35, which describes how the BLM prioritizes solar and wind applications. Under this proposed section, the BLM would prioritize processing applications for grants that meet the needs of underserved, rural, and Tribal communities, as well as first responders. The BLM would like the public to comment on any further

criteria the BLM should consider when prioritizing processing communications uses applications.

This proposed section was added in response to E.O. 13821, discussed earlier in this preamble.

Subpart 2865—Terms and Conditions of Grants

Section 2865.14 What rights does a grant provide?

Proposed § 2865.14 would describe the rights provided by a grant, in addition to the rights described in existing § 2805.14.

Proposed paragraph (a) of this section is based on existing § 2805.14(a) and would be revised to clarify that only facilities explicitly allowed by an authorization are acceptable.

Proposed paragraph (b) of this section is based on existing § 2805.14(b) and would describe when the holder of an authorization may allow subleasing of their facilities to others. The term “subleasing” is added to maintain consistency with current BLM policy when administering grants. Currently, many authorizations are managed by another entity that was not approved by the BLM. This paragraph would clarify what an authorization may allow.

Proposed paragraph (c) of this section is based on existing § 2805.14(c) and states that the authorization holder may allow another entity to conduct day-to-day operations of the facility, as authorized by the BLM. The existing section describes access to lands, but the proposed rule would instead refer to “lands or facilities.” This change is consistent with other changes to the regulations proposed to be moved to part 2860, which are intended to acknowledge that an authorization may be either a grant to use a facility or a grant for the use of public lands.

Proposed paragraph (d) of this section would set the standard length for a grant at 30 years. The BLM considers a 30-year-term to be consistent with Section 504(b) of FLPMA's “reasonable term” limitation, and that interpretation would be carried forward for grants. The BLM could determine in a given case that a shorter term is appropriate for an authorization. For example, a BLM office could determine the resource issues at the proposed site, such as environmental or Tribal concerns, may warrant a shorter term for the authorization.

Subpart 2866—Annual Rents and Payments

Proposed subpart 2866 would contain the rental requirements for grants. Many of the sections would be moved from

existing subpart 2806 with no substantive changes from existing requirements. The proposed changes from existing requirements are intended

to streamline the rental process for communications uses and are discussed in detail in the following section-by-section analysis. The following chart

shows which sections of existing subpart 2806 would be moved into proposed subpart 2866.

TABLE 4—PROPOSED SUBPART 2866 VS EXISTING SUBPART 2806

Section 2866 based on or moved from 2806			
Current section	Current title	Proposed section	Proposed title
Subpart 2806	Annual Rents and Payments	Subpart 2866	Annual Rents and Payments.
Based on § 2806.14	Under what circumstances am I exempt from paying rent?	§ 2866.14	Under what circumstances am I exempt from paying rent?
Based on § 2806.15	Under what circumstances may BLM waive or reduce my rent?	§ 2866.15	Under what circumstances may the BLM waive or reduce my rent?
Based on § 2806.23	How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?	§ 2866.23	How will the BLM calculate my rent for linear rights-of-way for Communications Uses?
Moved from § 2806.30	What are the rents for communication site rights-of-way?	§ 2866.30	What are the rents for Communications Uses?
Moved from § 2806.31	How will BLM calculate rent for a right-of-way for communication uses in the schedule?	§ 2866.31	How will the BLM calculate rent for Communications Uses in the schedule?
Moved from § 2806.32	How does BLM determine the population strata served?	§ 2866.32	How does the BLM determine the population strata served for your facility?
Moved from § 2806.33	How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?	§ 2866.33	How will the BLM calculate the rent for a single use communication facility grant?
Moved from § 2806.34	How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?	§ 2866.34	How will the BLM calculate the rent for a multiple-use communication facility grant?
Moved from § 2806.35	How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?	§ 2866.35	How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?
Moved from § 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?	§ 2866.36	If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?
Moved from § 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?	§ 2866.37	How will the BLM calculate rent for a grant 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?
Based on § 2806.38	Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?	§ 2866.38	Can I combine multiple grants for facilities located at one site into a single grant?
Moved from § 2806.39	How will BLM calculate rent for a lease for a facility manager's use?	§ 2866.39	How will the BLM calculate rent for a grant for a facility manager's use?
Moved from § 2806.40	How will BLM calculate rent for a grant or lease for ancillary communication uses associated with communication uses on the rent schedule?	§ 2866.40	How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?
Based on § 2806.41	How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?	§ 2866.41	How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?
Based on § 2806.42	How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?	§ 2866.42	How will the BLM calculate rent for Communications Uses within a federally owned communications facility?
Moved from § 2806.43, but the terms would be moved to § 2861.5.	How does BLM calculate rent for passive reflectors and local exchange networks?	§ 2866.43	How does the BLM calculate rent for passive reflectors and local exchange networks?
Moved from § 2806.44	How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses?	§ 2866.44	How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

For a discussion of the sections in subpart 2806 that would be removed by this proposed rule, see the preamble discussion of subpart 2806.

Section 2866.14 Under what circumstances am I exempt from paying rent?

Proposed § 2866.14 describes when a holder would be exempt from paying rent. Proposed paragraph (a)(1) of this section states that Federal, State, and local governments, along with their instrumentalities, would be exempt from paying rent. Proposed paragraphs

(a)(2) and (a)(3) carry over from paragraphs (a)(3) and (a)(4) of § 2806.14. Proposed paragraph (b) describes the proposed exceptions to these exemptions.

Under paragraph (b)(1) of this section, a holder would not be exempt from paying rent if the holder is in trespass. This is not a change from existing requirements but would be added to the regulations to provide clarity to holders.

Proposed paragraphs (b)(2)(i) and (b)(2)(ii) would explain that a State or local government entity would not be exempt from paying rent when the

facility is being used for commercial purposes or when the principal source of revenue is generated from customer use charges. These requirements are consistent with existing § 2804.16(a).

Under new paragraph (b)(2)(iii), a State or local government entity would not be exempt from rent if it charges rent to the United States Government for occupancy within an exempt facility (above routine operation and maintenance costs). Currently, the BLM and other Federal agencies are often charged rent to occupy space in another governmental (State or local

government) facility when their authorization to occupy the public lands is exempt from rental. The BLM is proposing this change to reciprocate rent exemptions for the United States. The provisions of this section are intended to ensure that the Federal Government is charged reasonable rates for maintenance and operations only.

Section 2866.15 Under what circumstances may the BLM waive or reduce my rent?

Proposed § 2866.15 would include rental reduction or waiver provisions that would apply specifically to the communications uses program.

Under proposed paragraph (a) of this section, the BLM could waive or reduce rent for holders that are licensed by the FCC as non-commercial and educational broadcasters.

Under proposed paragraph (b) of this section, the BLM could waive or reduce rent for amateur radio clubs that provide a benefit to the general public or to the programs of the Secretary, for verified nonprofit organizations, or for entities that can demonstrate undue hardship and public interest. A holder could request a waiver or reduction in rent under proposed § 2806.15(b)(5).

Paragraph (c) of this section would describe when the BLM could not waive or reduce rent. These exceptions include when an organization operates for the benefit of its members; when any portion of the authorized facility is being used for commercial purposes; when the holder is charging the United States to occupy a facility; and when a holder charges fees beyond reasonable operation and maintenance for the occupants whose use is normally exempt or waived by the BLM. This provision would be consistent with proposed § 2866.14(b)(2).

Paragraph (d) of this section would describe when the BLM would revoke a holder's waiver of rent. Under paragraph (d) of this section, the BLM would revoke a holder's waiver if it determines that the authorization holder no longer meets the criteria for a waiver.

This proposed section would provide several additional ways by which the BLM could waive the rent of users who provide a public benefit and are not operating solely to make a profit. This proposed section would streamline our processes by demonstrating to the public when rent could be waived or reduced and by reducing the need for the BLM to further analyze a request.

Section 2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?

Proposed § 2866.23 is based on existing § 2806.23 and would provide some additional clarification that linear communications uses, such as for fiber optic and telephone cable, would be charged rent using the linear ROW rent schedule found in § 2806.23. The communications uses rent schedule is specific to small areas, while the linear schedule is used for long and narrow ROWs, such as pipelines or power lines. Since a linear communications use is a long and narrow facility, the linear rent schedule is more appropriate.

Section 2866.30 What are the rents for Communications Uses?

While much of proposed part 2860 is based on sections of part 2800, which would remain as part of the proposed rule, the communications site rent provisions (proposed §§ 2866.30 through 2866.44) contain the provisions that would be moved from subpart 2806 to new subpart 2866. Changes from existing provisions are discussed in the following sections of this preamble.

Proposed § 2866.30 contains the provisions of existing § 2806.30. This proposed section describes how the BLM would assess annual rent for communications uses. Only the address for the BLM would be updated.

Section 2866.31 How will the BLM calculate rent for Communications Uses in the schedule?

Proposed § 2866.31 contains the provisions of existing § 2806.31 and there would be no substantive changes from existing requirements.

Section 2866.32 How does the BLM determine the population strata served for your facility?

Proposed § 2866.32 contains the provisions of existing § 2806.32 and there would be no substantive changes from existing requirements.

Section 2866.33 How will the BLM calculate the rent for a single use communication facility grant?

Proposed § 2866.33 contains the provisions of existing § 2806.33 and there would be no substantive changes from existing requirements.

Section 2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?

Proposed § 2866.34 contains the provisions of existing § 2806.34, and there would be no substantive changes from existing requirements.

Section 2866.35 How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?

Proposed § 2866.35 contains the provisions of existing § 2806.35, and there would be no substantive changes from existing requirements.

Section 2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

Proposed § 2866.36 contains the provisions of existing § 2806.36, and there would be no substantive changes from existing requirements.

Section 2866.37 How will the BLM calculate rent for a grant 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?

Proposed § 2866.37 contains the provisions of existing § 2806.37, and there would be no substantive changes from existing requirements.

Section 2866.38 Can I combine multiple grants for facilities located at one site into a single grant?

Proposed § 2866.38 contains the provisions of existing § 2806.38 and would now require submittal of an SF 299 for BLM authorization to combine facilities into a single grant.

Section 2866.39 How will the BLM calculate rent for a grant for a facility manager's use?

Proposed § 2866.39 contains the provisions of existing § 2806.39, and there would be no substantive changes from existing requirements.

Section 2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?

Proposed § 2866.40 contains the provisions of existing § 2806.40, and there would be no substantive changes from existing requirements. The BLM considers "ancillary" communication facilities to be those used solely for the purpose of internal communications.

Section 2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?

Proposed § 2866.41 contains the provisions of existing § 2806.41, and there would be no substantive changes from existing requirements.

Section 2866.42 How will the BLM calculate rent for Communications Uses within a federally owned communications facility?

Proposed § 2866.42 contains the provisions of existing § 2806.42, and there would be no substantive changes from existing requirements.

Section 2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?

Proposed § 2866.43 contains the provisions of existing § 2806.43, except that the definitions for “passive reflector” and “local exchange network” have been added to proposed § 2861.5 instead.

Section 2866.44 How will the BLM calculate rent for a facility owner’s or facility manager’s grant which authorizes Communications Uses?

Proposed § 2866.44 contains the provisions of existing § 2806.44, and there would be no substantive changes from existing requirements.

Subpart 2868—Communications Uses Trespass

Section 2868.10 What is a Communications Uses trespass?

Proposed § 2868.10 is based on § 2808.10 but would provide for additional communications uses-specific circumstances that the BLM considers trespass. The intent of this section is to define a trespass so that facility owners and users understand how best to avoid unauthorized use.

Paragraph (a) would state that adding to or altering from the communications facilities described in the authorization without approval from the BLM would be a trespass.

Paragraph (b) of this section would state that facility owners who permit communications uses of other users by allowing them to sublease any portion of their facilities without approval would be considered a trespass.

Paragraph (c) would explain that natural structures, such as trees and rocks, may not be used to house or support equipment without the BLM’s prior approval, and that doing so constitutes trespass. Using trees and rocks leads to unacceptable resource damage and is not a sustainable practice.

All the provisions in this section have been a part of BLM policy for years, but it became clear that there was some confusion by users as to exactly what the BLM considered trespass. The BLM believes that publishing these provisions as regulations would lead to a reduction in unauthorized use.

43 CFR Part 2880 Rights-of-Way Under the Mineral Leasing Act

The MLA requires that the applicant reimburse the United States for administrative and other costs incurred in processing the application. The BLM refers to such costs as “actual costs” and defines that term to include the financial resources the BLM expends in processing and monitoring ROW activities under the MLA, including the direct and indirect costs, exclusive of management overhead costs.

Section 28 of the MLA (30 U.S.C. 185(l)) requires applicants for either MLA pipeline ROWs or temporary use permit (TUPs) to reimburse the United States for administrative and other costs incurred in processing applications and monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities.

The MLA does not limit or qualify the actual cost requirement, nor does it list any factors that the BLM may consider when determining reimbursable costs. The BLM bases actual cost information on Federal accounting and reporting systems. The BLM is proposing changes to part 2880 to provide consistency with the general ROW regulations of part 2800.

Subpart 2881—General Information

Section 2881.2 What is the objective of the BLM’s right-of-way program?

The proposed rule would add the words “wherever practical” to the objective described in § 2881.2(c). This proposed change would be consistent with proposed § 2801.2(c). For a more detailed discussion, please see the preamble discussion for § 2801.2(c).

Section 2881.5 What acronyms and terms are used in the regulations in this part?

The BLM proposes to amend § 2881.5(b) for consistency with proposed § 2801.5. For a detailed discussion of these changes, please see the preamble discussion of proposed § 2801.5.

Section 2881.7 Scope.

The BLM proposes to amend paragraphs (a) and (b)(1) in § 2881.7. These modifications would clarify when an action would be processed under the regulations of part 2880 and when an action would be processed under the application for permit to drill (APD) regulations (43 CFR part 3160). Within the APD lease area, the BLM would process “related facilities” under the APD as defined in § 2881.5. Once a pipeline or related facility leaves the APD lease area and is outside the

boundary of the APD lease area it would be considered “off lease” and, at the lease boundary, would become an activity processed under these regulations to the extent still on Federal land and subject to paragraph (b). Moreover, pipelines and related facilities operated by a party who is not the lessee or lease operator of a Federal oil and gas lease or that are downstream from a custody transfer metering device would be processed under these regulations regardless of whether the pipelines and related facilities are on or off lease.

These proposed changes would not impact oil and gas operators, who would still coordinate with the BLM to manage their pipelines and related facilities. The proposed rule would ensure consistency in BLM operations and how these facilities are managed under these regulations.

Section 2881.8 Severability.

The BLM proposes to redesignate § 2881.9 as 2881.8 to be consistent with the same sections in the 2800 and 2860 regulations.

Subpart 2883—Qualifications for Holding MLA Grants and TUPs

Section 2883.14 What happens to my grant or TUP if I die?

Because an application is not an inheritable interest, the BLM proposes to change the title of this section from “What happens to my application, grant, or TUP if I die?” to “What happens to my grant or TUP if I die?” Paragraph (a) would also be revised to remove the reference to the applicant and the application.

Subpart 2884—Applying for MLA Grants or TUPs

Section 2884.11 What information must I submit in my application?

The proposed rule would revise §§ 2884.11(a) and 2884.11(c)(6) for consistency with proposed § 2804.12. For a more detailed discussion of these proposed changes, see the preamble discussion of § 2804.12.

Section 2884.12 What are the fee categories for cost recovery?

The proposed rule would revise the title of this section to read, “What are the fee categories for cost recovery?” for consistency with proposed § 2804.14. For a detailed discussion of the other changes to this section, please see the preamble discussion of proposed § 2804.14.

Section 2884.13 When will the BLM waive cost recovery fees?

The proposed rule would revise the title of this section to read “When will the BLM waive cost recovery fees?” rather than “Who is exempt from paying processing and monitoring fees?” The BLM proposes to amend § 2884.13 for consistency with proposed § 2804.16. For a detailed discussion of these changes, please see the preamble discussion of proposed § 2804.16.

Section 2884.14 When does the BLM reevaluate the cost recovery fees?

The proposed rule would revise the title of this section to change “processing and monitoring” to “cost recovery.” This change is consistent with the proposed changes to § 2804.15.

Section 2884.15 What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?

The proposed rule would amend § 2884.15 to clarify the use of a Master Agreement and to replace the term “processing and monitoring” with “cost recovery” to be inclusive of administrative actions. These changes are consistent with the proposed changes to § 2804.17. For a more detailed discussion of these changes, please see the preamble discussion of § 2804.17.

Section 2884.16 What provisions do Master Agreements contain and what are their limitations?

The proposed rule would amend provisions in § 2884.16(a) that describe how processing and monitoring activities are included in a Master Agreement. Section 2884.16(c) would be added to clarify that a Master Agreement would waive a holder’s rights to request a reduction in cost recovery fees. This is the current practice of the BLM and is not a substantive change. These changes are consistent with the proposed amendments to § 2804.18. For a more detailed discussion of these revisions, please see the preamble discussion of § 2804.18.

Section 2884.17 How will the BLM manage my Category 6 project?

The proposed rule would amend § 2884.17 by revising the heading to read “How will the BLM manage my Category 6 project?” The BLM proposes to revise § 2884.17(a) to include processing and monitoring activities. Revised § 2884.17(b) would describe what the BLM would do in monitoring your grant. Proposed paragraph (b)(4) of

this section states that the BLM could collect a deposit before beginning work on a Category 6 project. These changes are consistent with the proposed amendments to § 2804.19. For a more detailed discussion of these revisions, please see the preamble discussion of § 2804.19.

Section 2884.21 How will the BLM process my application?

The proposed rule would amend § 2884.21 for consistency with the proposed revisions to § 2804.25. For a more detailed discussion of these revisions, please see the preamble discussion of § 2804.25.

Section 2884.23 Under what circumstances may the BLM deny my application?

The proposed rule would revise paragraph (a)(6) of this section, which states that the BLM could deny your ROW application if you fail to comply with a deficiency notice. This revision would make this paragraph consistent with §§ 2804.26 and 2864.26.

Section 2884.24 What fees must I pay if the BLM denies my application, or if I withdraw my application or relinquish my grant or TUP?

The proposed rule would amend § 2884.24 to provide consistency with proposed § 2804.27. For a more detailed discussion of these amendments, please see the preamble discussion of § 2804.27.

Section 2884.27 What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?

The proposed rule would amend § 2884.27 by revising the title to read, “What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?” Also, this section would be revised to remove any reference to a temporary use permit (TUP). Currently, any time a new grant or TUP application is filed with the BLM and the project involves a pipeline 24 or more inches in diameter, the regulations say BLM must notify Congress of the filed application.

The reasons for removing TUPs from this section are as follows:

(1) Section 185(w) of the MLA, which is the statutory source of the notification requirement, does not mention TUPs, only ROWs;

(2) Congressional notification for TUPs creates a significant, unnecessary workload for BLM offices, the Department of the Interior, and Congress; and

(3) The TUPs are temporary in nature, unlike new grants.

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

Section 2885.12 What rights does a grant or TUP provide?

The proposed rule would amend the title of 2885.12 from “What rights does a grant or TUP convey?” to “What rights does a grant or TUP provide?” in order to be clear that the BLM does not convey any ownership rights to a ROW holder.

Section 2885.17 What happens if I do not pay rents and fees or if I pay the rents or fees late?

The proposed rule would amend § 2885.17 to provide consistency with proposed § 2806.13. For a more detailed discussion of these changes, please see the preamble discussion of § 2806.13.

Section 2885.19 What is the rent for a linear right-of-way grant?

The proposed rule would revise paragraph (b) to update the contact address of the BLM and highlight availability of the Per Acre Rent Schedule on the BLM website.

Section 2885.24 If I hold a grant or TUP, what cost recovery fees must I pay?

The proposed rule would amend the title for § 2885.24 to read, “If I hold a grant or TUP, what cost recovery fees must I pay?” to include permitting and monitoring activities. The proposed rule would revise §§ 2885.24(a) and 2885.24(b), and add a new § 2885.24(c). Section 2885.24(a) would refer you to § 2884.12(b) for the descriptions of the proposed minor category fees. Section 2885.24(b) would state that Categories 1 through 4 would be updated on an annual basis. Added § 2885.24(c) would explain how to obtain a copy of the current cost recovery fee schedule.

Subpart 2886—Operations on MLA Grants and TUPs

Section 2886.17 Under what conditions may the BLM suspend or terminate my grant or TUP?

Section 2886.17 would be revised to add a new paragraph (c)(3), which states that the BLM may terminate your grant or TUP if it is terminated by court order. If a court were to terminate a grant or TUP, the BLM must implement the court order. This is not a change to BLM practice but provides clarity to the public.

Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs

Section 2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?

Section 2887.10(b) would be revised to change the term “processing and monitoring” to “cost recovery,” consistent with proposed § 2807.20(b).

Section 2887.11 May I assign or make other changes to my grant or TUP?

Section 2887.11(i) would be added to clarify that an authorization amendment is necessary for a substantial deviation from location or use.

Section 2887.12 How do I renew my grant?

The proposed rule would amend § 2887.12 to provide consistency with proposed § 2807.22. For a more detailed discussion of these changes, please see the preamble discussion of § 2807.22.

PART 2920—LEASES, PERMITS AND EASEMENTS*Subpart 2920—Leases, Permits and Easements: General Provisions*

Section 2920.0–5 Definitions.

Section 2920.0–5 would be amended to add the term and a definition of “cost recovery” and would be reorganized to be in alphabetical order.

Section 2920.6 Payment of cost recovery fees.

The title of § 2920.6 would be amended from “Reimbursement of costs” to “Payment of cost recovery fees,” and the content of the section would be updated to reflect this change. The change better explains the process to collect estimated cost recovery fees before the work is performed rather than afterward through reimbursement.

Section 2920.8 Fees.

Section 2920.8 would be amended by revising § 2920.8(b) to say, “cost recovery fees,” to provide consistency with the revisions made to part 2800.

IV. Procedural Matters*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order (E.O.) 12866 (58 FR 51725, October 4, 1993) provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The OIRA has determined that this rule is not significant.

E.O. 13563 (76 FR 3821, January 11, 2011) reaffirms the principles of E.O.

12866 while calling for improvements in the nation’s regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this rule in a manner consistent with these requirements.

The BLM reviewed the proposed requirements and has determined that the proposed rule does not meet any of the E.O. 12866 criteria of significance. OIRA has also concluded that the proposed rule is not a significant regulatory action. Therefore, the proposed rule is not a significant regulatory action, and the BLM is not required to submit a regulatory impact analysis to OMB for review.

The proposed rule would not have a significant effect on the economy. The BLM estimated that the proposed rule would have distributional impacts in the form of transfer payments of about \$3.47 million per year from firms and individuals to the BLM. Transfer payments are monetary payments from one group to another that do not affect total resources available to society. While disclosing the estimated transfers are important for describing the distributional effects of the proposed rule, these payments should not be included in the estimated costs and benefits per OMB Circular A4.

For more detailed information, see the Economic and Threshold Analysis prepared for this proposed rule. The economic analysis has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004–AE60,” click the “Search” button, open the Docket Folder, and look under Supporting Documents.

Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (E.O. 12898)

E.O. 12898 (59 FR 7629, February 16, 1994) requires that, to the extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. E.O. 12898 provides that each

Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin. This rule streamlines the processing of ROWs and their associated fees and requires operations and maintenance plans for powerline ROWs. These proposed rule changes are not expected to have an effect on any particular population. Therefore, this rule is not expected to negatively impact any community and is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Regulatory Flexibility Act

This rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the “notice-and-comment” rulemaking requirements found in the Administrative Procedure Act (5 U.S.C. 500 *et seq.*) if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Size standards for the affected industries. We determined that a large share of the entities in the affected industries are small businesses as defined by the Small Business Act (SBA). However, the BLM believes that the impact on the small entities is not significant.

The proposed rule would benefit small businesses by streamlining the BLM’s processes. Cost recovery fees would increase, but the impact of the increases is not expected to be substantial for the small entities, nor would it fall disproportionately on small businesses.

For the purpose of carrying out its review pursuant to the RFA, the BLM believes that the proposed rule would

not have a “significant economic impact on a substantial number of small entities,” as that phrase is used in 5 U.S.C. 605. An initial regulatory flexibility analysis is therefore not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The proposed rule would result in additional cost recovery payments (or receipts to the United States Government) paid mostly by firms and individuals. These payments are “transfer payments.” Transfer payments are monetary payments from one group to another that do not affect total resources available to society.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The BLM determined that the relatively minor increase in minor category fees would not pose an impact to small businesses, because the proposed increase in fees represents a very minor percentage of the average annual receipts of these entities. Based on our review of these data, we believe that there is only a very small potential for the smallest of the small businesses to be impacted. Further, there are aspects of the rule that would provide operating flexibility for small businesses, likely allowing them to manage their powerline and communications site ROWs more efficiently or at reduced cost.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The proposed rule would not have adverse effects on any of these criteria, it would encourage the development of communications uses in rural areas in accordance with E.O. 13821 and the MOBILE NOW Act.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs, prior to issuing a proposed or final rule that

may result in aggregate expenditure by State, local, and Tribal governments, or by the private sector, of \$100 million or more in any one year.

This rule is not subject to the requirements under the UMRA. The rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any one year. The rule would not significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 (53 FR 8859, March 15, 1988) identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The proposed rule would not interfere with private property. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132 (64 FR 43255, August 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988 (61 FR 4729, February 5, 1996). Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior (DOI) strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to

consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty.

In accordance with E.O. 13175 (65 FR 67249, November 9, 2000), the BLM has evaluated this rulemaking and determined that it would not have substantial direct effects on federally recognized Indian tribes. Nevertheless, on a government-to-government basis we initiated consultation with Tribal governments that wish to discuss the rule.

In August 2021, the BLM sent a letter to federally recognized Indian Tribes notifying them about the BLM’s intent to pursue this rulemaking. In that letter, the BLM invited the tribes to government-to-government consultation. We look forward to continuing close interaction with Tribal leaders as we proceed through this rulemaking process.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This proposed rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and, notwithstanding any other provision of law, you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

The information collection activities associated with the application process in this proposed rule require the use of SF-299 (Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property) and the Communications Site Tenant/Customer Inventory Certification of Facility Owner or Manager. The OMB has previously approved the information collection requirements associated with BLM’s use of Common Form SF-299 as part of the application process (U.S. Department of Agriculture—U.S. Forest Service OMB Control Number 0596-0249, expires 02/28/2023). You may view our approved Request for Common Form at <http://www.reginfo.gov/public/do/PRAMain>. Additionally, § 2884.11 refers to BLM forms Application for Permit to Drill or Reenter (BLM Form 3160-3) and Sundry Notice and Report on Wells (BLM Form 3160-5). These forms are part of the requirements for applying for MLA Grants or TUPs. The information required as part of these applications is contained in the current regulations under this paragraph and is currently approved by OMB under OMB control number 1004-0137 (expires 01/31/2025). The proposed rule would not

change these forms or the associated information collected as part of the application requirements.

This proposed rule includes provisions pertaining to non-hour burdens authorized by the FLPMA and the MLA. The FLPMA is the only authority under which communications uses on BLM-managed lands may be authorized. However, both the FLPMA (43 U.S.C. 1734(b) and 1764(g)) and the MLA (30 U.S.C. 185(J)) authorize the BLM and other applicable Federal agencies to collect funds from ROW applicants or holders to reimburse an agency for expenses incurred while processing an application and monitoring a grant. If this proposed rule becomes effective, the BLM would include non-hour burdens for other uses (e.g., electric generation and pipelines) in requests to revise OMB Control Numbers 1004–0137 (Onshore Oil and Gas Operations and Production) and 1004–0206 (Competitive Processes, Terms and Conditions for Leasing of Public Lands for Solar and Wind Energy Development).

The information collection requirements identified below require approval by OMB:

(1) *Appeals/Petitions for a Stay* (43 CFR 2801.10 and 43 CFR 2881.10)—Current regulations at 43 CFR 2801.10 and 43 CFR 2881.10 provide a process for applicants to appeal a BLM decision issued under the regulations in parts 2800 and 2880, respectively, in accordance with part 4 of title 43. All BLM decisions under parts 2800 and 2880 remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in the respective part. The applicant may petition for a stay of a BLM decision under part 4 with the Office of Hearings and Appeals, Department of the Interior. Unless otherwise noted, the BLM would take no action on the application while the appeal is pending. (43 CFR 2801.10(b), 2881.10(b).)

(2) *Designation of Agent or Third Party* (43 CFR 2803.11)—Proposed amendments to § 2803.11 would require notification of an intent to designate another person or entity to act on behalf of a holder of a FLPMA grant (i.e., any authorization or instrument issued under FLPMA Title V, 43 U.S.C. 1761–1772). This is a new information collection activity, although existing § 2803.11 states that another person may act on the holder's behalf if the holder has “authorized the person to do so under the laws of the State where the ROW is or will be located.” The proposed amendments retain the existing language and, in addition,

require the following in a designation notification:

(A) Notify the BLM office having jurisdiction over the grant in writing of their intention and provide a copy of the Power of Attorney, if one exists; and

(B) Provide and maintain the current contact information for the intended agent.

If an applicant designates an agent or third party to act on their behalf, they are still responsible for following the terms and conditions of the grant. In addition, the proposed amendments require the holder of the grant to maintain current contact information for the intended agent.

(3) *Request for a Master Agreement* (43 CFR 2804.17 & 43 CFR 2884.15) Sections 2804.17 and 2884.15 describe the information a holder of a FLPMA grant, MLA grant, or Temporary Use Permit (TUP) must provide to the BLM when requesting a “Master Agreement (Cost Recovery Category 5).” A Master Agreement, as described in existing §§ 2804.17 and 2884.15, is a written agreement covering processing and monitoring fees negotiated between the BLM and the holder. The term “Cost Recovery Category 5” refers to agreements involving multiple BLM grant approvals within defined geographic areas. As amended, §§ 2804.17 and 2884.15 would further define Cost Recovery Category 5 as involving projects within defined geographic areas “or for a specific common activity for many projects.” These are the only proposed amendments for §§ 2804.17 and 2884.15.

Sections 2804.17 and 2884.15 require that a request for a Master Agreement include:

(A) A description of the geographic area covered by the Agreement and the scope of the activity the holder plans;

(B) A preliminary work plan that states what work the holder must do and what work the BLM must do to process the application;

(C) A preliminary cost estimate and a timetable for processing the application and completing the projects;

(D) A statement whether the holder wants the Agreement to apply to future applications in the same geographic area that are not part of the same projects; and

(E) Any other relevant information that the BLM needs to process the application (e.g., financial information, maps, environmental or cultural data about the area covered by the grants).

(4) *Written Agreements—Category 6 Projects* (43 CFR 2804.19 and 43 CFR 2884.17)—The term “Cost Recovery Category 6” refers to agreements

involving a large scale or highly complex FLPMA grant, MLA grant, or TUP approval. As amended, §§ 2804.14 and 2884.12 would define Cost Recovery Category 6 to include activities that will require more than 64 hours or require an environmental impact statement. For Category 6 applications, the applicant and the BLM must enter into a written agreement that describes how the BLM will process the application and monitor the grant. The BLM may require that the final agreement contains a work plan and a financial plan, and a description of any existing agreements they have with other Federal agencies for cost reimbursement associated with the application or grant.

For the BLM to determine reasonable costs associated with a Category 6 project, the written agreement must include a written analysis of those factors applicable to the project, unless the applicant agrees in writing to waive consideration of reasonable costs and elects to pay actual costs. The BLM may require the applicant to submit additional information in support of their position.

(5) *Analysis of Factors—Cost Recovery Fee Determination* (43 CFR 2804.21)—Along with the written application, applicants may submit their analysis of how each of the factors, as applicable, in § 2804.21(a), pertains to their application. The BLM will notify the applicant in writing of the fee determination.

(6) *Withdrawing Applications/ Relinquishing Grants* (43 CFR 2804.27 and 43 CFR 2884.24)—Applicants may withdraw their application in writing before the BLM issues a grant. Applicants may relinquish their grant in writing. If they withdraw their application or relinquish their grant, they are liable for all processing costs the United States has incurred up to the time of the withdrawal or relinquishment and for the reasonable costs of termination proceedings. Any money not paid by the applicant is due within 30 calendar days after receiving a bill for the amount due. Any money paid by the applicant that is not used to cover costs the United States incurred as a result of their application would be refunded to them.

(7) *Request for Alternative Requirement* (43 CFR 2804.40)—If the applicant is unable to meet any of the requirements in subpart 2804, they may request approval for an alternative requirement from the BLM. Any such request is not approved until the BLM provides their approval in writing. The request for alternative must:

(A) Show good cause for the applicant's inability to meet a requirement;

(B) Suggest an alternative requirement and explain why that requirement is appropriate; and

(C) Be received in writing by the BLM in a timely manner, before the deadline to meet a particular requirement has passed.

(8) *Request for Extension (43 CFR 2805.12(c)(5))*—Grant holders must take appropriate remedial action within 30 days after receipt of a written noncompliance notice unless they have been provided an extension of time by the BLM. Alternatively, they must show good cause for any delays in repairs, use, or removal; estimate when corrective action will be completed; provide evidence of diligent operation of the facilities; and submit a written request for an extension of the 30-day deadline. If they do not comply with this provision, the BLM may suspend or terminate the authorization.

(9) *Rights the United States Retains—Financial Documents (43 CFR 2805.15)*—A proposed amendment to § 2805.15 would add to the list of rights retained by the United States the right to require a holder to submit applicable financial documents and supporting documents including, but not limited to, contractual and subleasing agreements. This amendment would be consistent with the requirements of existing § 2805.12(a)(15).

(10) *Operations, Maintenance, and Fire Prevention Plans (43 CFR 2804.25(c)(2) and 43 CFR 2805.21(a))*—Proposed §§ 2804.25(c)(2) and 2805.21(a) would require an operations, maintenance, and fire prevention plan for all new powerline ROWs. Applications to amend and renew powerline ROWs must follow the same procedures as applications for new ROWs and would also be subject to this proposed requirement. Existing holders of powerline ROWs would not be required to submit an operations, maintenance, and fire prevention plan under the proposed rule until they renew or amend their grant but may submit such plans on a voluntary basis. Holders of ROWs may submit an operations, maintenance, and fire prevention plan to the BLM on a voluntary basis even if their ROW is not for a powerline.

Under existing § 2804.25(c), the BLM may require applicants to submit a POD for a ROW, as necessary. Proposed § 2805.21(c) describes requirements of the operations, maintenance, and fire prevention plans that powerline ROW applicants would also be required to submit, as follows:

(A) Plan requirements: An operations, maintenance, and fire prevention plan must:

(i) Identify the applicable facilities to be maintained;

(ii) Take into account the holder's own operating operations and maintenance plans for the applicable right-of-way;

(iii) Describe the vegetation management, inspection, and operation and maintenance methods that may be used to comply with applicable law, including fire safety requirements and reliability standards established by the ERO;

(iv) Include schedules for:

(a) The applicable owner or operator to notify the BLM about non-emergency routine and major maintenance;

(b) The applicable owner or operator to request approval from the BLM about undertaking non-emergency routine and major maintenance; and

(c) The BLM to respond to a request by an owner or operator;

(v) Describe processes for:

(a) Identifying changes in conditions; and

(b) Modifying the approved operations, maintenance, and fire prevention plan, if necessary; and

(vi) Additionally, § 2805.21 includes a requirement for a fire prevention plan (removal and disposal of cut trees and branches, including plans for sale of forest products).

(11) *Modification of Operations, Maintenance, and Fire Prevention Plans (43 CFR 2805.21(e))*—Proposed § 2805.21(e) describes how the BLM would notify the holder that an operations, maintenance, and fire prevention plan requires modifications. The BLM would provide advance reasonable notice to the holder that a modification is necessary, and the holder would submit the proposed modification to the BLM. The BLM would review and approve the proposed operations, maintenance, and fire prevention plan modification in the timeframe identified for submitting new approvals. Under § 2805.21(e)(4), the holder may continue to operate and maintain the ROW or facility in accordance with the approved operations, maintenance, and fire prevention plan, as long as the activity does not conflict with the identified condition that requires a plan modification.

(12) *Agreements in Lieu of Operations, Maintenance, and Fire Prevention Plans (43 CFR 2805.21(f))*—Proposed § 2805.21(f) provides that certain holders may enter into an agreement with the BLM in lieu of an operations, maintenance, and fire

prevention plan. Qualifications to enter into agreements, in lieu of operations, maintenance, and fire prevention plans, are described in § 2805.21(g). An agreement must contain the same general requirements of operations, maintenance, and fire prevention plans described in § 2805.21. Agreements would need to include schedules, as described in proposed § 2805.21(c)(4) and are subject to the same modification requirements of proposed § 2805.21(e).

(13) *Notifications—Emergency Conditions (43 CFR 2805.22(a))*—

Owners or operators of electric transmission or distribution lines shall notify the authorized officer not later than 1 day after the date of their response to emergency conditions.

(14) *Request for Approval—Non-Emergency Conditions (43 CFR 2805.22(b))*—Owners or operators must request approval from the BLM for a proposed activity if their plan:

(A) Requires them to seek specific approval for the proposed activity; or
(B) Does not address the proposed activity. They may also need to amend their operations, maintenance, and fire prevention plan if they anticipate conducting this activity on a recurring basis.

(15) *Phasing Rent—Hardship (43 CFR 2806.22 & 43 CFR 2866.31)*—The BLM uses separate rental schedules for linear ROWs (see § 2806.22) and for communications uses grants (see proposed § 2866.30). When the BLM adjusts its rental schedule under these sections, some holders' rents may increase dramatically. The proposed rule includes provisions in each of these sections (see proposed §§ 2806.22(c) and 2866.30) to provide holders experiencing undue hardship with the option to phase in the cost difference over a 3-year period. If a holder's rent would more than double from the previous year, the holder may request a phase-in of the increased rent in accordance with § 2806.15(b)(5).

(16) *Amendments (43 CFR 2807.20 and 43 CFR 2887.10)*—Applicants must amend their application or seek an amendment of their grant when there is a proposed substantial deviation in location or use. The requirements to amend an application or grant are the same as those for a new application, including paying cost recovery fees and rent according to §§ 2804.14, 2805.16, and 2806.10.

(17) *Renewals (43 CFR 2807.22 and 43 CFR 2887.12)*—Applicants must submit an application to renew their existing grant at least 120 days prior to grant expiration.

(18) *Request for Preliminary Application Review (43 CFR 2864.10)*—

In addition to the provisions listed in § 2804.10, before filing their application, the applicant should:

(A) Schedule a preliminary application review meeting with the appropriate personnel in the BLM field office with jurisdiction over the lands the applicant seeks to use. During the preliminary application review meeting, the BLM can:

(i) Identify potential constraints;
 (ii) Determine whether the lands are located inside a communications site management plan area;
 (iii) Tentatively schedule the processing of the proposed application; and
 (iv) Inform the applicant of financial obligations, such as processing and monitoring costs and rents.

(B) Request a copy of the most recent communications site management plan for that site, if one is available.

(C) Ensure the applicant has all other necessary licenses, authorizations, or permits required for the operation of the facility.

(19) *Request for Exemption (43 CFR 2806.14 and 43 CFR 2866.14)*—Applicants for or holders of an authorization for electric or telephone facilities may request an exemption if they were financed in whole or in part by, or were eligible for financing under, the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*) or if their facilities are extensions of facilities that are exempt from paying rental. This exemption may be requested during the application process for a new grant, or an existing grant holder may request an exemption if they are now eligible after a change in policy. The BLM issued an Instruction Memorandum in 2016 (IM–2016–122) after a Memorandum of Understanding in 2014 established the new policy. Holders do not need to have sought financing from the Rural Utilities Service to qualify for this exemption. Holders would need to document the facility's eligibility for REA financing.

(20) *Request for Waiver or Reduction in Annual Rent (43 CFR 2806.15, 43 CFR 2866.15, and 43 CFR 2866.30)*—A holder may request a rent waiver or reduction if paying the full rent would cause the holder undue hardship and it is in the public interest to waive or reduce the rent. For example, an undue hardship can be a financial impact on a small business, or it could involve situations where there is a need to relocate the facility to comply with public health and safety or environmental protection laws not in effect at the time the original grant issued. The holder would also need to submit information to support an undue

hardship claim. Several other sections of the proposed rule allow a holder to request a waiver or reduction to their rent under the provisions of §§ 2806.15, 2866.15, and 2866.30.

(21) *Annual Statement (43 CFR 2866.31(c))*—By October 15 of each year, communications uses grantees must submit to the BLM a certified statement listing any tenants and customers in their facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. The BLM may require grant holders to submit additional information to calculate their rent. The BLM would determine the rent based on the annual inventory certification statement provided. We require only facility owners or facility managers to hold a grant (unless they are an occupant in a federally owned facility as described in § 2866.42) and would charge rent for grants based on the total number of communications uses within the right-of-way and the type of uses and population strata the facility or site serves. Failure to submit the annual inventory certification (by electronic correspondence or postmarked) by October 15 may result in the grantee not receiving any discounts, reductions, exemptions, or waivers (see §§ 2866.14, 2866.15, and 2866.34), for which they may have been entitled.

(22) *Request to Authorize Facilities Under a Single Grant (43 CFR 2866.38)*—Applicants holding authorizations for two or more facilities on the same communications site may submit a written request to authorize those facilities under a single grant.

(23) *Request for Collocation within Ancillary Facilities (43 CFR 2866.41)*—Proposed § 2866.41 would add a regulation to require holders with ancillary facilities to request collocation. Under this proposed section, holders of a communications facility grant issued as an ancillary facility to a linear authorization could apply to the BLM for the right to allow subleasing within that facility. The BLM considers “ancillary” communication facilities to be those used solely for the purpose of internal communications for the grant. Once the BLM grants subleasing authority, the holder would not be charged any additional rent for the occupancy of additional uses in that facility.

If the BLM does not respond to a holder's request for collocation within 60 days from acceptance of a complete application, the request would be considered approved. This conditional approval would be consistent with the streamlining measures proposed in this rule. These new provisions would make

it easier for rural broadband providers to utilize existing infrastructure, thereby further facilitating the deployment of broadband in rural areas.

(24) *Environmental Impact Statement (43 CFR 2804.14(e), 43 CFR 2884.12(e))*—In processing your application, the BLM may determine at any time that an Environmental Impact Statement (EIS) is necessary to evaluate the application. The EIS may be prepared by the applicant, the BLM, or by both parties.

Title of Collection: Rights-of-Way Communications Uses, Cost Recovery, and 512 of FLPMA (Vegetation Management) 43 CFR parts 2800, 2860, 2880 AND 2920.

OMB Control Number: 1004-New.
Form Number: SF–299 (Burden approved by OMB in Request for Common Form under OMB Control No. 0596–0249); BLM Forms 3160–3 and 3160–5 (Burden approved by OMB under OMB Control No. 1004–0137).

Type of Review: New Collection (Request for a new OMB control number).

Respondents/Affected Public: Individuals, private sector, and State/local/Tribal governments who seek or hold rights-of-way on public lands.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion and annually for the Annual Statement required in 43 CFR 2866.31

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information would have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** and **ADDRESSES** sections above. Comments on the information collection aspects of

this proposed rule will be summarized, along with the BLM’s response to those comments, at the final rule stage of the rulemaking action.

You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>.

National Environmental Policy Act

The BLM has determined that the changes that would be made by this proposed rule are administrative or procedural in nature in accordance with 43 CFR 46.210(i). Therefore, the proposed action is categorically excluded from environmental review under the National Environmental Policy Act (NEPA).

We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under E.O. 13211 (66 FR 28355, May 22, 2001). Section 4(b) of E.O. 13211 defines a “significant energy action” as “any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of OIRA as a “significant energy action.”

The BLM reviewed the proposed rule and determined that it is not a significant energy action as defined by E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O.s 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments

by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The principal authors of this rule are: Karen Montgomery, BLM Division of Lands, Realty and Cadastral Survey; Erica Pionke, BLM Division of Lands, Realty and Cadastral Survey; Robert Wilson, BLM Division of Lands, Realty and Cadastral Survey; James Tichenor, BLM Division of Lands, Realty and Cadastral Survey, Business Management Office; Jeff Holdren, BLM Division of Lands, Realty and Cadastral Survey; Jennifer Noe, BLM Division of Regulatory Affairs; assisted by the DOI Office of the Solicitor.

Delegation of Authority

The action taken herein is pursuant to an existing delegation of authority.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

List of Subjects

43 CFR Part 2800

Electric power, Highways and roads, Penalties, Public lands and rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2860

Communications, Penalties, Public lands and rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedures, Common carriers, Pipelines, Federal lands and rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2920

Penalties, Public lands, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the BLM proposes to amend 43 CFR parts 2800, 2880, and 2920, and add a new 43 CFR part 2860 as set forth below:

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

- 1. The authority citation for part 2800 continues to read as follows:

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

- 2. Amend § 2801.2 by revising paragraph (c) to read as follows:

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

* * * * *

(c) Promotes the use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

* * * * *

- 3. Amend § 2801.5 by:
 - a. Removing the acronym “RMA”;
 - b. Removing the terms of “base rent” and “communication use rent schedule”;
 - c. Adding terms for “complete application” and “cost recovery”;
 - d. Removing the term of “customer”;
 - e. Adding the term of “exempt from rent”;
 - f. Revising the definition for “facility”;
 - g. Removing the terms of “facility manager” and “facility owner”;
 - h. Adding the term of “hazard tree”;
 - i. Removing the term of “monitoring”;
 - j. Adding the term of “monitoring activities”;
 - k. Adding the terms for “operations and maintenance,” “operations, maintenance, and prevention plan,” and “processing activities”;
 - l. Removing the term of “site”;
 - m. Revising the definition of “substantial deviation”;
 - n. Removing the term of “tenant”;
 - o. Revising the definition of “transportation and utility corridor”;
 - p. Adding the term of and “waived from rent”; and
 - q. Revising the definition of “zone.”
 The additions and revisions read as follows:

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

* * * * *

Complete application means the BLM has verified that your application contains all of the required information under § 2804.12. The BLM will notify you after it determines that your application is complete.

Cost recovery is a fee charged to an applicant or holder to pay the United States for processing and monitoring costs that concern applications and other documents relating to the public lands, or that are incurred when processing, inspecting, or monitoring any proposed or authorized rights-of-way located on the public lands.

* * * * *

Exempt from rent means that the BLM is precluded by statute or regulation from collecting rent.

Facility means an improvement or structure, whether existing or planned,

that is or would be owned and controlled by the grantee within a right-of-way.

* * * * *

Hazard tree, when used in § 2805.22 of this part, means any tree or part thereof (whether located inside or outside a right-of-way) that has been designated, prior to tree failure, by a certified or licensed arborist or forester under the supervision of the Secretary or the owner or operator of a transmission or distribution facility to be:

(1) Dead, likely to die within the routine vegetation management cycle, or likely to fail within the routine vegetation management cycle; and

(2) If the tree or part of the tree failed, likely to:

(i) Cause substantial damage or disruption to a transmission or distribution facility; or

(ii) Come within 10 feet of an electric power line.

Monitoring activities means those activities the Federal Government performs to ensure compliance with a right-of-way grant, including administrative actions, such as assignments, amendments, or renewals.

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

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

(3) For Monitoring Category 6, monitoring activities include those actions or activities agreed to between the BLM and the applicant

* * * * *

Operations and maintenance means activities conducted by the right-of-way holder to manage facilities and vegetation within and adjacent to the right-of-way. Activities must comply with right-of-way regulations of this Chapter and the terms and conditions of the right-of-way authorization.

Operations, maintenance, and fire prevention plan means a vegetation management, facility inspection, and operation and maintenance plan that:

(1) Is prepared by the owner or operator of one or more facilities to cover one or more rights-of-way; and

(2) Provides for the long-term, cost-effective, efficient, and timely management of facilities and vegetation on or adjacent to the right-of-way,

including hazard trees, to enhance electric reliability, promote public safety, and avoid fire hazards.

* * * * *

Processing activities means those actions or activities the Federal Government undertakes to evaluate an application for a right-of-way grant, including administrative actions, such as assignments, amendments, or renewals. It also includes preparation of an appropriate environmental document and compliance with other legal requirements in evaluating an application.

(1) For Processing Categories 1 through 4, processing activities include preliminary application reviews, application processing and administrative actions to the right-of-way or temporary use permit;

(2) For Processing Category 5 (Master Agreements), processing activities include those actions or activities agreed to in the Master Agreement; and

(3) For Processing Category 6, processing activities include those actions or activities agreed to between the BLM and the applicant.

* * * * *

Substantial deviation means a change in the authorized location or use that requires construction or use outside the boundaries of the right-of-way, or any change from, or modification of, the authorized use. The BLM may determine that there has been a substantial deviation in some of the following circumstances: When a right-of-way holder adds overhead or underground lines, pipelines, structures, or other facilities within the right-of-way not expressly included in the current grant. Operation and maintenance actions or safety-related improvements within an existing right-of-way are not considered a substantial deviation. Activities undertaken to reasonably prevent and suppress wildfires on or adjacent to the right-of-way do not constitute a substantial deviation.

* * * * *

Transportation and utility corridor means a parcel of land identified through a land use planning process as being a preferred location for existing and future linear rights-of-way and facilities. The corridor may be suitable to accommodate more than one right-of-way use or facility, provided that the uses are compatible with one another and the corridor designation.

Waived from rent means a discretionary decision by the BLM to reduce the rent. Waivers may result in a reduction in rent or no rent at all.

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

§ 2801.9 [Amended]

■ 4. Amend § 2801.9 by removing paragraph (a)(5) and re-designating paragraphs (a)(6) and (7) as paragraphs (a)(5) and (6).

■ 5. Amend § 2802.10 by revising paragraph (c) to read as follows:

§ 2802.10 What lands are available for grants?

* * * * *

(c) You should contact the BLM to:

(1) Determine the appropriate BLM office with which to coordinate;

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

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

■ 6. Revise § 2803.11 to read as follows:

§ 2803.11 Can another person act on my behalf?

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

(a) If you intend to designate another person or entity to act on your behalf or operate as your third-party agent, you must first:

(1) Notify the BLM office having jurisdiction over your grant in writing of your intention and provide a copy of the Power of Attorney, if one exists; and

(2) Provide and then maintain the current contact information for the intended agent.

(b) If you designate an agent or third-party to act on your behalf after you have been issued a grant, you will still be held responsible to follow the terms and conditions of the grant.

■ 6. Amend § 2803.12 by revising the section heading and paragraph (a) to read as follows:

§ 2803.12 What happens to my grant if I die?

(a) If a grant holder dies, any inheritable interest in a grant will be distributed under State law.

* * * * *

■ 7. Amend § 2804.12 by revising paragraphs (a) and (a)(4) to read as follows:

§ 2804.12 What must I do when submitting my application?

(a) File your application on Standard Form 299, available from any BLM office or at <https://www.blm.gov>, and fill in the required information. The application must include the applicant's

original signature or meet the BLM standards for electronic commerce.

Your complete application must include the following:

(1) * * *

(4) A map of the project showing its proposed location and existing facilities adjacent to the proposal, and Geographic Information Systems (GIS) shapefiles, or equivalent format, when requested by the BLM;

* * * * *

■ 8. Revise § 2804.14 to read as follows:

§ 2804.14 What are the fee categories for cost recovery?

(a) Unless your fees are waived under § 2804.16, you must pay cost recovery fees for the reasonable costs associated with your application and grant. Subject to applicable laws and regulations, if your application involves Federal

agencies other than the BLM, your fee may also include the reasonable costs estimated to be incurred by those Federal agencies. Instead of paying the BLM a fee for the reasonable costs incurred by other Federal agencies in processing your application, you may pay other Federal agencies directly. The fees for Categories 1 through 4 (see paragraph (b) of this section) are one-time fees and are not refundable. Reasonable costs are those costs defined in Section 304(b) of FLPMA (43 U.S.C. 1734(b)). The fees are categorized based on an estimate of the amount of time that the Federal Government will expend to process your application, issue a decision granting or denying the application, and monitor that land use authorization.

(b) The BLM bases cost recovery fees on categories. The BLM will update the

fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD-GDP, as measured second quarter to second quarter rounded to the nearest dollar. The BLM will update Category 5 fees, which may include preliminary application review, processing, and monitoring, as specified in the applicable Master Agreement. Category 6 fees are for situations when a right-of-way activity will require more than 64 hours, or when an environmental impact statement (EIS) is required and may include preliminary application review costs. The cost recovery categories and the estimated range of Federal work hours for each category are:

Cost Recovery Categories

FLPMA right-of-way cost recovery category descriptions	Federal work hours involved
Category 1. Processing and monitoring associated with an application or existing grant.	Estimated Federal work hours are ≤8.
Category 2. Processing and monitoring associated with an application or existing grant.	Estimated Federal work hours are > 8 ≤24.
Category 3. Processing and monitoring associated with an application or existing grant.	Estimated Federal work hours are > 24 ≤40.
Category 4. Processing and monitoring associated with an application or existing grant.	Estimated Federal work hours are > 40 ≤64.
Category 5. Master Agreements *	Varies, depending on the agreement.
Category 6. Processing and monitoring associated with an application or existing grant, including preliminary-application reviews *.	Estimated Federal work hours are >64.

* Preliminary application review costs are those expenses related to meetings held between a Federal agency and the applicant to discuss a right-of-way application. These reviews are required only when an application is for a wind or solar right-of-way but are encouraged for other right-of-way application filings. A Master Agreement may include preliminary application review costs.

(c) You may obtain a copy of the current year's cost recovery fee schedule at <https://www.blm.gov>, by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Director (HQ-350), Bureau of Land Management, Room 5625, C Street NW, Washington, DC 20240.

(d) After an initial review of your application, the BLM will notify you of the cost recovery category into which your application fits. You must then submit to the BLM the appropriate payment for that category before the BLM will begin processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the cost recovery category decision. If you disagree with the category that the BLM has determined for your application, you may appeal the decision under § 2801.10 of this part. For Category 5 and 6 applications or grants, see §§ 2804.17, 2804.18, and 2804.19 of this subpart. If you paid the cost recovery fee and you appeal a Category 1 through 4

or Category 6 determination, the BLM will work on your application or grant while the appeal is pending. If the Interior Board of Land Appeals (IBLA) finds in your favor, you will receive a refund or adjustment of your cost recovery fee.

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

(f) To expedite processing of your application, you may notify the BLM in writing that you are waiving application of the factors identified in §§ 2804.20(a) and 2804.21 of this subpart to determine reasonable costs and are electing to pay the actual costs incurred by the BLM in processing your application and monitoring your grant.

■ 9. Amend § 2804.15 by revising the section heading to read as follows:

§ 2804.15 When does the BLM reevaluate the cost recovery fees?

* * * * *

■ 10. Revise § 2804.16 to read as follows:

§ 2804.16 When will the BLM waive cost recovery fees?

(a) The BLM may waive your cost recovery fees if:

(1) You are a State or local government, or an agency of such a government, and the BLM issues the grant for governmental purposes benefitting the general public. However, if you collect revenue from charges you levy on customers for services similar to those of a profit-making corporation or business, or you assess similar fees to the United States for similar purposes, cost recovery fees will not be waived;

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

(3) You are a Federal agency, and your cost recovery category determination is Category 1 to 4.

(b) The BLM will not waive your cost recovery fees if you are in trespass.

■ 11. Amend § 2804.17 by revising the section heading and paragraph (a) to read as follows:

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

(a) A Master Agreement (Cost Recovery Category 5) is a written agreement covering processing and monitoring fees (see § 2804.14 of this part) negotiated between the BLM and you that involves multiple BLM grant approvals for projects within defined geographic areas or for a specific common activity for many projects.

* * * * *

■ 12. Amend § 2804.18 by revising paragraphs (a)(2), (a)(5), and (c) to read as follows:

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

(a) * * *

* * * * *

(2) Describes the work you will do and the work the BLM will do to complete right-of-way activities.

* * * * *

(5) Explains how the BLM will monitor a grant and how the BLM will receive payment for this work;

* * * * *

(c) If you sign a Master Agreement, you waive your right to request a reduction of cost recovery fees.

■ 13. Amend § 2804.19 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 2804.19 How will the BLM manage my Category 6 project?

(a) For Category 6 applications, you and the BLM must enter into a written agreement that describes how the BLM will process your application and monitor your grant. The BLM may require that the final agreement contain a work plan and a financial plan, and a description of any existing agreements you have with other Federal agencies for cost reimbursement associated with your application or grant.

(b) In processing your application, the BLM will:

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

(2) Prepare a preliminary work plan, if applicable;

(3) Develop a preliminary financial plan, if applicable, which estimates the reasonable costs of processing your

application and monitoring your project;

(4) Collect, in advance and at BLM's discretion, a deposit for your Category 6 project to initiate processing your application while all of the plans and agreements are being completed;

(5) 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

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

* * * * *

■ 14. Amend § 2804.20 by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 2804.20 How does the BLM determine reasonable costs for Category 6 right-of-way activities?

The 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 those factors and elect to pay actual costs (see § 2804.14(f) of this subpart). Submitting your analysis with the application will expedite its handling. The BLM may require you to submit additional information in support of your position. The BLM will continue to work on your application while you are responding to our request, as long as a deposit has been received by the BLM as provided in § 2804.19(a)(4).

(a) *FLPMA factors.* If the BLM determines that a Category 6 cost recovery fee is appropriate for your project, the BLM will apply the following factors as set forth in Section 304(b) of FLPMA, 43 U.S.C. 1734(b), to determine the amount you owe:

* * * * *

■ 15. Amend § 2804.21 by revising the section heading and paragraphs (a),

(a)(2), (a)(7), and (b) to read as follows: § 2804.21 What other factors will the BLM consider in determining cost recovery fees?

(a) *Other factors.* If you include this information in your application, in arriving at your cost recovery fee in any category, the BLM will consider whether:

(1) * * *

(2) The costs of performing any or all right-of-way activities grossly exceed the costs of constructing the project;

* * * * *

(7) For whatever other reason, such as public benefits or public services provided, cost recovery 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, pertains to your application. The BLM will notify you in writing of the fee determination. You may appeal this decision under § 2801.10 of this part.

■ 16. Amend § 2804.25 by:

■ a. Revising the section heading and paragraphs (a)(1);

■ b. Redesignating paragraph (c)(2) as (c)(3);

■ c. Adding a new paragraph (c)(2), and

■ d. Revising paragraph (d).

The revisions and additions read as follows:

§ 2804.25 How will the BLM process my application?

(a) * * *

(1) Identify your cost recovery fee described at § 2804.14, unless your fees are exempt; and

* * * * *

(c) * * *

(2) For all powerline rights-of-way, you must submit an operations, maintenance, and fire prevention plan, unless you have an approved plan that meets the requirements of § 2805.21; or

(3) If you are unable to meet any of the requirements of this section, you must show good cause and submit a request for an alternative under § 2804.40.

(d) *Customer service standard.* The BLM will process your complete application as follows:

Processing category	Processing time	Conditions
1–4	60 calendar days	If processing your application will take longer than 60 calendar days, the 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	The BLM will process applications as specified in the Master Agreement.
6	Over 60 calendar days	The BLM will notify you in writing within the initial 60-day processing period of the estimated processing time.

* * * * *

■ 17. Amend § 2804.26 by adding a new paragraph (a)(9) to read as follows:

§ 2804.26 Under what circumstances may the BLM deny my application?

(a) * * *

* * * * *

(9) You do not comply with a deficiency notice (see § 2804.25(c) of this subpart) or with a BLM request for additional information needed to process your application.

* * * * *

■ 18. Revise § 2804.27 to read as follows:

§ 2804.27 What fees must I pay if the BLM denies my application or if I withdraw my application or I relinquish my grant?

If the BLM denies your application, you withdraw it, or you relinquish your grant, you owe the current fees for the applicable cost recovery category as set forth at § 2804.14, unless you have a Category 5 or 6 application, in which case, the following conditions apply:

(a) If the BLM denies your Category 5 or 6 right-of-way 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;

(b) You may withdraw your Category 5 or 6 application in writing before the 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; and

(c) You may relinquish your grant in writing. If you do so, you are liable for all reasonable costs the United States has incurred up to the time you relinquish the grant and for the reasonable costs of closing your grant. Any cost recovery fees you have not previously paid are due within 30 calendar days after receiving a bill for the amount due. The BLM will refund

any cost recovery fees you paid in Categories 5 or 6 that were not used to cover costs the United States incurred as a result of your grant.

■ 19. Amend § 2805.11 by redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows:

§ 2805.11 What does a grant contain?

* * * * *

(b) *Right of ingress and egress to a right-of-way.* To facilitate the use of a right-of-way, the authorized officer must include in the grant rights of ingress and egress, as may be necessary for access to the right-of-way. Access routes must be identified in the grant and may include existing roads or other infrastructure.

* * * * *

■ 20. Amend § 2805.12 by revising the section heading, paragraphs (a)(4), (a)(8)(vi), (c)(5) and (d)(3) to read as follows:

§ 2805.12 With what terms and conditions must I comply?

* * * * *

(a) * * *

(4) Do everything reasonable to prevent and suppress wildfires on or adjacent to the right-of-way;

* * * * *

(8) * * *

(vi) 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, including the approved POD, if one was required, or any approved operations, maintenance, and fire prevention plan;

* * * * *

(c) * * *

(5) Repair and place into service, or remove from the site, damaged or abandoned facilities that (i) have been inoperative for any continuous period of 3 months and present a hazard to the public lands; or (ii) present a hazard to human health or safety. You must take appropriate remedial action within 30 days after receipt of a written noncompliance notice unless you have been provided an extension of time by the BLM. Alternatively, you must show good cause for any delays in repairs,

use, or removal; estimate when corrective action will be completed; provide evidence of diligent operation of the facilities; and submit a written request for an extension of the 30-day deadline. If you do not comply with this provision, the BLM may suspend or terminate the authorization under §§ 2807.17 through 2807.19; and

* * * * *

(d) * * *

(3) You must repair and place into service, or remove from the site, damaged or abandoned facilities that

(i) have been inoperative for any continuous period of 3 months and present a hazard to the public lands; or

(ii) present a hazard to human health or safety; and

* * * * *

■ 21. Amend § 2805.14 by revising the section heading and paragraphs (d) and (e) to read as follows:

§ 2805.14 What rights does a grant provide?

* * * * *

(d) Do trimming, pruning, and removal of vegetation to maintain the right-of-way or facility and protect public health and safety;

(e) Use common varieties of stone and soil which are necessarily removed during construction of the project in constructing the project within the authorized right-of-way, or use vegetation removed during maintenance of the right-of-way, so long as any necessary authorization to remove or use such materials has been obtained from the BLM pursuant to applicable laws;

* * * * *

■ 22. Amend § 2805.15 by revising paragraphs (a) and (e) and adding new paragraphs (f) and (g) to read as follows:

§ 2805.15 What rights does the United States retain?

* * * * *

(a) Access the lands and enter the facilities described in the authorization. The BLM will give you reasonable notice before it enters any facility on the right-of-way;

* * * * *

(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. After a grant is signed by the BLM, any modification of the terms and conditions generally requires the BLM to issue a new or amended grant;

(f) Terminate your authorization for non-compliance; and

(g) Require you to provide applicable financial documents and supporting documents including, but not limited to, contractual and subleasing agreements.

■ 23. Amend § 2805.16 by revising it to read as follows:

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

(a) You must pay a fee to the BLM for the reasonable costs the Federal Government incurs in processing, inspecting, and monitoring the construction, operation, maintenance, and termination of the project and protection and rehabilitation of the public lands that your grant covers. Instead of paying the BLM a fee for the reasonable costs incurred by other Federal agencies in processing or monitoring your grant, you may pay the other Federal agencies directly for such costs. The BLM will annually adjust the Category 1 through 4-cost recovery fees in the manner described at § 2804.14(b). The BLM will update Category 5 cost recovery fees as specified in the applicable Master Agreement. Category 6 cost recovery fees are addressed at § 2805.17(c). The BLM categorizes the cost recovery fees based on the estimated number of work hours necessary to process and monitor your grant. Category 1 through 4 cost recovery fees are not refundable. The Federal work hours for each category and their descriptions are found at § 2804.14(b).

(b) The BLM will update the cost recovery fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD-GDP, as measured second quarter to second quarter and rounded to the nearest dollar. The BLM will update Category 5 cost recovery fees as specified in the applicable Master Agreement.

(c) You may obtain a copy of the current year's cost recovery fee schedule from any BLM state, district, or field office, or by writing: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5625, Attention: Division of Lands, Realty and Cadastral Survey, Washington, DC 20240. The BLM also

posts the current cost recovery fee schedule at <https://www.blm.gov>.

■ 24. Add new §§ 2805.21 and 2805.22 to read as follows:

§ 2805.21 What is an operations, maintenance, and fire prevention plan for electric transmission and distribution and other rights-of-way?

(a) *Operations, maintenance, and fire prevention plans.*

(1) Are required for all new, renewed, and amended powerline rights-of-way (see § 2804.25(c)(2)); and

(2) May be submitted on a voluntary basis by:

(i) Holders of powerline rights-of-way not subject to paragraph (a)(1); and

(ii) Holders of ROWs other than powerline rights-of-way.

(b) *Electric Reliability Organization (ERO) standards:* Holders subject to mandatory reliability standards established by the ERO (or superseding standards) may use those standards as part of the operations, maintenance, and fire prevention plan.

(c) *Plan requirements:* An operations, maintenance, and fire prevention plan must:

(1) Identify the applicable transmission or distribution facilities to be maintained;

(2) Take into account the holder's own operations and maintenance plans for the applicable right-of-way;

(3) Describe the vegetation management, inspection, and operation and maintenance methods that may be used, including methods to comply with applicable law, such as fire safety requirements and reliability standards established by the ERO;

(4) Include schedules for:

(i) The holder to notify the BLM about routine and major maintenance;

(ii) The holder to request approval from the BLM about undertaking routine and major maintenance; and

(iii) The BLM to respond to a request by a holder under paragraph (c)(4)(ii) of this section; and

(5) Describe processes for:

(i) Identifying changes in conditions; and

(ii) Modifying the approved operations, maintenance, and fire prevention plan, if necessary.

(6) Provide for removal and disposal of cut trees and branches, including plans for sale of forest products.

(d) *Review and approval process.* The BLM will, to the extent practicable, review and decide whether to approve operations, maintenance, and fire prevention plans within 120 days.

(e) *Operations, maintenance, and fire prevention plan modifications:* The BLM may notify a holder that changed

conditions warrant a modification to the operations, maintenance, and fire prevention plan.

(1) The BLM will provide advance reasonable notice that the holder must submit an operations, maintenance, and fire prevention plan modification.

(2) The holder must submit a proposed operations, maintenance, and fire prevention plan modification to the BLM to address the changed condition identified by the BLM.

(3) The BLM will, to the extent practicable, review and approve modifications in the same 120-day timeframe that applies to new operations, maintenance, and fire prevention plans.

(4) The holder may continue to implement any element of an approved operations, maintenance, and fire prevention plan that does not directly and adversely affect the condition precipitating the need for modification.

(f) *Agreements, in lieu of operations, maintenance, and fire prevention plans:* Certain holders meeting the requirements described in paragraph (g) of this section may enter into an agreement with the BLM in lieu of an operations, maintenance, and fire prevention plan.

(g) *Eligibility to enter into an agreement:* Holders of a right-of-way for an electric transmission or distribution facility are eligible to enter into an agreement with the BLM if they:

(1) Are not subject to the mandatory reliability standards established by the ERO; or

(2) Sold less than or equal to 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years prior to submitting a request to the BLM.

§ 2805.22 Special provisions for vegetation management for electric transmission and distribution rights-of-way.

(a) *Emergency Conditions.*—If vegetation or hazard trees have contacted or present an imminent danger of contacting an electric transmission or distribution line from within or adjacent to an electric transmission or distribution right-of-way, the electric transmission or distribution line holder:

(1) May prune or remove the vegetation or hazard tree to avoid the disruption of electric service or to eliminate immediate fire and safety hazards; and

(2) Shall notify the authorized officer not later than 1 day after the date of the response to emergency conditions.

(b) *Non-Emergency Conditions.*—For non-emergency conditions, the holder of a right-of-way for an electric

transmission or distribution facility must conduct vegetation management activities in accordance with the terms and conditions of the grant, §§ 2805.12(a)(4) and 2805.14(d), and any approved operations, maintenance, and fire prevention plan.

(1) You must request approval from the BLM for a proposed activity if your plan:

- (i) Requires you to seek specific approval for the proposed activity; or
- (ii) Does not address the proposed activity. You may also need to amend your operations, maintenance, and fire prevention plan if you anticipate conducting this activity on a recurring basis.

(2) If the BLM does not timely respond to your request according to the schedule set forth in the approved operations, maintenance, and fire prevention plan, if your request pertains to vegetation management activities, including the removal of hazard trees or other wildfire risk reduction activities, and if the proposed action does not conflict with your approved operations, maintenance, and fire prevention plan, you may proceed with the proposed activity.

(c) *Reasonable measures for prevention and suppression.* You must do everything reasonable to prevent and suppress wildfires on or adjacent to the right-of-way. Reasonable actions include:

(1) Pruning or removal of vegetation or hazard trees to prevent fire ignition from electric transmission and distribution facilities during emergency conditions or cyclic maintenance; and

(2) Cooperating with the BLM in its efforts to investigate, suppress, and respond to fires within and near the right-of-way.

■ 25. Amend § 2806.13 by revising paragraph (e) and adding paragraph (h) to read as follows:

§ 2806.13 What happens if I do not pay rents and fees or if I pay the rents or fees late?

* * * * *

(e) Subject to applicable laws and regulations, we will retroactively bill for uncollected or under-collected rent, fees, and late payments.

* * * * *

(h) You must pay rent even if you have not been sent or received a courtesy bill.

■ 26. Amend § 2806.14 by removing the fourth sentence of paragraph (a)(4) to read as follows.

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

(a) * * *

(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.

* * * * *

■ 27. Amend § 2806.15 by revising paragraphs (b), (b)(3), and (4), redesignating paragraph (c) as paragraph (b)(5), and revising new paragraph (b)(5) to read as follows:

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

* * * * *

(b) A BLM State Director may, on a case-by-case basis, evaluate and approve any requests for waiver or reduction in the annual rent for grants if you show the BLM that:

* * * * *

(3) Your grant describes your intended use of new and existing routes to access your right-of-way (see § 2805.11(b)). This paragraph does not apply to oil and gas leases issued under part 3100 of this chapter;

(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, the BLM will determine the rent based on the proportion of use; or

(5) 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. The 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.

■ 28. Amend § 2806.20 by revising paragraph (c) to read as follows:

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

* * * * *

(c) You may obtain a copy of the current Per Acre Rent Schedule at <https://www.blm.gov>, from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5625, Washington, DC 20240.

§§ 2806.30 through 2806.44 [Removed]

■ 29. Remove the undesignated heading "Communication Site Rights-of-Way" and

§§ 2806.30 through 2806.44.

■ 30. Amend § 2806.52 by revising paragraphs (a)(6) and (b)(2) as follows:

§ 2806.52 Rents and fees for solar energy development grants.

* * * * *

(a) * * *

(6) *Contact address.* You may obtain a copy of the current per acre zone rates for solar energy development (solar energy acreage rent schedule) at <https://www.blm.gov>, from your local BLM state, district, or field office, or by writing: Attention to the National Renewable Energy Coordination Office, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5625, Washington, DC 20240.

(b) * * *

(2) *MW rate schedule.* You may obtain a copy of the current MW rate schedule for solar energy development at <https://www.blm.gov>, from your local BLM state, district, or field office, or by writing: Attention to the National Renewable Energy Coordination Office, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

* * * * *

■ 31. Amend § 2806.62 by revising paragraphs (a)(7) and (b)(2) as follows:

§ 2806.62 Rents and fees for wind energy development grants.

* * * * *

(a) * * *

(7) *Wind energy acreage rent schedule.* You may obtain a copy of the current per acre zone rates for wind energy development at <https://www.blm.gov>, by contacting your local BLM state, district, or field office, or by writing: Attention to the National Renewable Energy Coordination Office, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5625, Washington, DC 20240.

(b) * * *

(2) *MW rate schedule.* You may obtain a copy of the current MW rate schedule for wind energy development at <https://www.blm.gov>, by contacting your local BLM state, district, or field office, or by writing: Attention to the National Renewable Energy Coordination Office, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5625, Washington, DC 20240.

* * * * *

■ 32. Amend § 2807.12 by redesignating paragraph (g) as paragraph (h) and

adding a new paragraph (g) to read as follows:

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

* * * * *

(g) The BLM will not impose strict liability for damages or injuries resulting from:

(1) The BLM unreasonably withholding or delaying approval of an operations, maintenance, and fire prevention plan submitted under § 2805.21 of this part; or

(2) The BLM failing to adhere to an applicable schedule in an approved plan (see § 2805.21(d)).

* * * * *

■ 33. Amend § 2807.17 by revising paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3) to read as follows:

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

* * * * *

(b) * * *

* * * * *

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

(3) A court terminates it or requires the BLM to terminate it; or

* * * * *

■ 34. Amend § 2807.20 by revising paragraphs (b) and (d) to read as follows:

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

* * * * *

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

* * * * *

(d) Grants issued prior to October 21, 1976:

(1) If 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. The BLM may keep the old grant in effect for the portion of the right-of-way not amended and issue a new grant for the new use or location, or terms and conditions.

(2) If you wish to renew your grant, you must apply for a new grant.

(3) If the BLM has terminated your grant due to non-compliance with the terms and conditions of your grant, you must apply for a new grant.

(4) If the BLM approves your application for an amendment, the 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. The 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 the BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so.

* * * * *

■ 35. Amend § 2807.22 by revising paragraph (f) and adding a new paragraph (h) to read as follows:

§ 2807.22 How do I renew my grant or lease?

* * * * *

(f) If you make a timely and sufficient application for a renewal of your existing grant, in accordance with this section, and you are in conformance with applicable laws, regulations, and terms and conditions in your grant, the existing grant does not expire until we have issued a decision to approve or deny the renewal application. Within 60 days of receiving an application for a renewal, the BLM will notify you in writing of its determination regarding the timeliness and sufficiency of your application. If the BLM determines that your application is timely and sufficient, the BLM's written notice will confirm that until the BLM issues a decision on your renewal application, your existing grant will remain valid, provided that you remain in compliance with applicable laws, regulations, and terms and conditions.

* * * * *

(h) If you do not submit your application under paragraph (a) or (b) of this section at least 120 days prior to grant expiration, it is considered delinquent; the BLM will not be subject to the customer service standards in this section; and it will be processed only as the BLM has time and resources available.

■ 36. Amend § 2809.19 by revising paragraph (d) to read as follows:

§ 2809.19 Applications in designated leasing areas or on lands that later become designated leasing areas.

* * * * *

(d) You may file a new application under part 2804 for testing and monitoring purposes inside designated leasing areas. If the BLM approves your application, you will receive a short term grant in accordance with §§ 2805.11(c)(2)(i) or (ii), which may qualify you for an offset under § 2809.16.

■ 37. Add a new part 2860 to read as follows:

PART 2860—COMMUNICATIONS USES

Subpart 2861—General Information

§ 2861.1 What requirements of part 2800 apply to my grant?

§ 2861.2 What is the objective of the BLM's Communications Uses program?

§ 2861.5 What acronyms and terms are used in the regulations in this part?

§ 2861.8 Severability.

§ 2861.9 When do I need a grant?

Subpart 2862—Lands Available for Grants

§ 2862.11 How does the BLM designate communications sites and establish communications site management plans?

Subpart 2864—Applying for Grants

§ 2864.10 What should I do before I file my application?

§ 2864.12 What must I do when submitting my application?

§ 2864.24 Do I always have to use Standard Form 299 when submitting my application for a grant?

§ 2864.25 How will the BLM process my Communications Uses application?

§ 2864.26 Under what circumstances may the BLM deny my application?

§ 2864.35 How will the BLM prioritize my Communications Uses application?

Subpart 2865—Terms and Conditions of Grants

§ 2865.14 What rights does a grant provide?

Subpart 2866—Annual Rents and Payments

General Provisions

§ 2866.14 Under what circumstances am I exempt from paying rent?

§ 2866.15 Under what circumstances may the BLM waive or reduce my rent?

Communications Uses Rental

§ 2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?

§ 2866.30 What are the rents for Communications Uses?

§ 2866.31 How will the BLM calculate rent for Communications Uses in the schedule?

§ 2866.32 How does the BLM determine the population strata served for your facility?

§ 2866.33 How will the BLM calculate the rent for a single use communication facility grant?

§ 2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?

§ 2866.35 How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?

§ 2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

§ 2866.37 How will the BLM calculate rent for a grant 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?

§ 2866.38 Can I combine multiple grants for facilities located at one site into a single grant?

- § 2866.39 How will the BLM calculate rent for a grant for a facility manager's use?
- § 2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?
- § 2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?
- § 2866.42 How will the BLM calculate rent for Communications Uses within a federally owned communications facility?
- § 2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?
- § 2866.44 How will the BLM calculate rent for a facility; owner's or facility manager's grant which authorizes Communications Uses?

Subpart 2868—Communications Uses Trespass

- § 2868.10 What is a Communications Uses Trespass?

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

Subpart 2861—General Information

§ 2861.1 What requirements of part 2800 apply to my grant?

Grants issued under this part must comply with the requirements of part 2800, except as otherwise described in this part.

§ 2861.2 What is the objective of the BLM's Communications Uses program?

It is the BLM's objective to authorize and administer communications uses under Title V of the Federal Land Policy and Management Act of 1976 and the regulations in this part to qualified individual, business, or governmental entities and to direct and control communications uses 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) Facilitates the orderly development of communications uses on BLM-administered lands and provides for a safe and high-quality communications environment for the public;
- (c) Prevents unnecessary or undue degradation to public lands;
- (d) Collects fair market value for communications uses that occupy BLM-administered lands through the collection of annual rental fees;
- (e) Promotes the expansion of communications uses in rural America and use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

(f) 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.

§ 2861.5 What acronyms and terms are used in the regulations in this part?

In addition to the acronyms and terms listed in this section, the acronyms and terms listed in part 2800 of this chapter apply to this part. As used in this part:

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

Annual inventory certification means a report that the holder of a grant submits to the BLM each year to report the uses within or on their facilities (see § 2866.31(c)).

Base rent means the dollar amount required from an authorization holder on BLM managed lands based on the communications uses with the highest value in the associated facility or facilities, as calculated according to the communications uses 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.

Collocation means another use, other than the holder's use, added to a communications use facility. Collocation may occur inside the building or on a tower.

Communications site means an area of public land designated for wireless communications uses that may be limited to a single communications facility, but most often encompasses more than one, and is identified by name, usually featuring a local prominent landmark.

Communications site management plans means implementation-level plans that provide direction to the users for the day-to-day operations of the communications site.

Communications uses means any uses associated with the transmission of data, voice, or video, or any other transmission or reception uses authorized by 43 U.S.C. 1761(a)(5). Communications uses may occur in or on a communications facility or a linear facility, such as a telephone line or fiber optic cable line.

Communications uses rent schedule is a schedule of rents for the following

types of communications uses, including related technologies, located in a facility associated with a particular grant. 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 § 2866.30 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)* 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;

(6) *Facility Managers* are grant 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;

(7) *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, Air-to-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service;

(8) *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;

(9) *Microwave* means communications 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;

(10) *Internet service provider (ISP)* refers to a holder who utilizes wireless technology to connect subscribers to the internet;

(11) *Passive reflector* means various types of non-powered 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;

(12) *Local exchange network* means radio service that provides basic telephone service, primarily to rural communities; and

(13) *Other communications uses* means private communications 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 communications 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 2866.42 of this subchapter. 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 communications uses" (see paragraph (13) of the definition of *communications uses rent schedule* in this section).

Duly filed application means an application which includes all the elements required by § 2804.25.

Facility means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the authorization holder. For purposes of communications site rights-of-way, facility means the building, tower, cabinet, and related incidental structures or improvements authorized under the terms of the authorization.

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

(1) Holds a communication use grant;

(2) Owns a communications facility on lands covered by that grant; 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 communications users and:

(1) Holds a communications uses grant;

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

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

Grant means an authorization or instrument (e.g., lease) 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.

Occupant means an entity who uses any portion of a facility owned by a grant holder.

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

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 Communications Uses" (see paragraph (13) of the definition of *Communications uses rent schedule* in this section).

§ 2861.8 Severability.

If a court holds any provisions of the rules 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.

§ 2861.9 When do I need a grant?

You must have an authorization under this part to use public lands for communications uses systems or facilities over, under, on, or through public lands. These include, but are not limited to systems for transmitting or receiving electronic signals and other means of communication by:

(a) Installing a facility that is not under a current valid authorization; or

(b) Installing a linear communications facility, such as fiber optic cable.

Subpart 2862—Lands Available for Grants

§ 2862.11 How does the BLM designate communications sites and establish communications site management plans?

(a) The BLM may determine the location and boundaries of communications sites. When establishing a communications site, the BLM coordinates with other Federal agencies, State, local, and Tribal governments, and the public to identify resource-related issues, concerns, and needs.

(b) When determining which lands may be suitable for communications sites, the BLM will consider all factors described in § 2802.11(b). Additional factors the BLM considers include but are not limited to access to the site, existing infrastructure, signal coverage, available space, and industry demand.

(c) The BLM may establish a communications site management plan to guide the development of communications uses at the site. The plans describe the types of communications uses that are permitted to operate at a communications site.

Subpart 2864—Applying for Grants

§ 2864.10 What should I do before I file my application?

In addition to the suggested actions listed in § 2804.10, before you file your application you should:

(a) Schedule a preliminary application review meeting with the appropriate personnel in the BLM field office having jurisdiction over the lands you seek to use. Preliminary application review meetings help you to plan your project, coordinate with the BLM, and ensure a smooth permitting process. During the preliminary application review meeting, the BLM can:

- (1) Identify potential constraints;
- (2) Determine whether the lands are located inside a communications site management plan area;
- (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) Request a copy of the most recent communications site management plan for that site if one is available.

(c) Ensure you have all other necessary licenses, authorizations, or permits required for the operation of your facility.

§ 2864.12 What must I do when submitting my application?

(a) You must file your application on Standard Form 299, available from any

BLM office or at <https://www.blm.gov>, and fill in the required information as completely as possible. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include the following:

- (1) All necessary information under § 2804.12 of this chapter;
- (2) Federal Communications Commission (FCC) call sign, or license, for all licensed uses;
- (3) Geographic Information Systems (GIS) shapefiles, or equivalent format;
- (4) Draft engineering/construction drawings of your proposed facility;
- (5) Technical data related to your project; and
- (6) Draft communications use plan of development.

(b) The BLM may at any time during the application process request additional information relevant to the permitting of your proposal. You must submit this information before the BLM will continue processing your application.

§ 2864.24 Do I always have to use Standard Form 299 when submitting my application for grant?

You must file an application for communications uses using Standard Form 299.

§ 2864.25 How will the BLM process my Communications Uses application?

The BLM will process your communications uses application in accordance with the provisions in § 2804.25. The BLM will notify you in writing with an offer of an authorization or a denial of your application within 270 days of receiving a duly filed application.

§ 2864.26 Under what circumstances may the BLM deny my application?

In addition to the considerations listed in § 2804.26, the BLM may deny your application under this part if:

- (a) The proposed use would interfere with previously authorized rights-of-way, including communications uses on public lands;
- (b) The proposed use presents a public health or safety issue; or
- (c) The proposed use is not in conformance with the applicable resource management plan or communications site management plan.

§ 2864.35 How will the BLM prioritize my Communications Uses application?

The BLM will prioritize your application in a manner that assists in meeting the needs of underserved, rural, and Tribal communities and first responders to strengthen telecommunications infrastructure throughout the United States.

Subpart 2865—Terms and Conditions of Grants

§ 2865.14 What rights does a grant provide?

In addition to the rights listed in § 2805.14, the authorization provides to you the right to:

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

(b) If your authorization specifically allows for subleasing, charge reasonable fees for such use. If your authorization does not specifically authorize subleasing, you may not let anyone else collocate within or on your facilities;

(c) Allow others to utilize the lands or facilities if the authorization specifies; and

(d) Hold the grant for a term of 30 years, unless the BLM determines a shorter term is appropriate.

Subpart 2866—Annual Rents and Payments

General Provisions

§ 2866.14 Under what circumstances am I exempt from paying rent?

(a) You are exempt from rent under this part if:

(1) You are a Federal, State, or local governmental entity (except as provided by paragraph (b) of this section);

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

(3) Your facilities were financed in whole or in part, or are 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. When a holder who is exempt from rent under REA adds non-eligible tenant uses on the authorization, the holder will become subject to rent in accordance with §§ 2866.30 through 2866.44 of this subpart.

(b) Exceptions:

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

(2) If you are a governmental entity, you are not exempt from rent, when:

(i) The facility, system, space, or any part of the authorization is being used for commercial purposes;

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

(iii) You charge the United States rent for occupancy within or on your facility beyond standard operation and maintenance fees.

§ 2866.15 Under what circumstances may the BLM waive or reduce my rent?

(a) The BLM may waive or reduce your rent if you are licensed by the FCC as noncommercial and educational.

(b) The BLM may evaluate and approve, in writing, any requests for waiver or reduction in the annual rent for authorizations granted to:

(1) An amateur radio club (such as Civil Air Patrol) which provides a benefit to the general public or to the programs of the Secretary of the Interior;

(2) A nonprofit organization; or

(3) Holders that demonstrate that their rates will cause undue hardship and that it is in the public interest to waive or reduce the rent (see § 2806.15(b)(5)).

(c) The BLM may not waive or reduce your rent when:

(1) Your organization exists and operates for the principal benefit of its members;

(2) The facility, system, space, or any part of the right-of-way area is being used for commercial purposes;

(3) You charge the United States to occupy your facility; or

(4) You charge rent to your occupant or occupants, beyond standard operation and maintenance fees, when those occupants' use or uses are exempted or waived from rent by the BLM.

(d) The BLM may revoke your existing waiver of rent if the BLM determines that you no longer meet the criteria above for a waiver.

Communications Uses Rental**§ 2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?**

The BLM will calculate your rent for linear rights-of-way for communications uses, such as telephone lines and fiber optic cable, as provided in § 2806.23.

§ 2866.30 What are the rents for Communications Uses?

(a) Rent schedule. You may obtain a copy of the current schedule from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C St. NW, Room 5647, Washington, DC 20240. We also post the current communications use rent schedule at <https://www.blm.gov>.

(1) The BLM uses a rent schedule to calculate the rent for communications uses. The schedule is based on population strata (the population served), as depicted in the most recent version of the Rationally Metro Area (RMA) Population Ranking, and the type of communications use or uses for

which we normally grant communication site rights-of-way. These uses are listed as part of the definition of "communications uses rent schedule," set out at § 2861.5.

(2) The BLM will update the schedule annually based on 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) The BLM will limit the annual adjustment based on the Consumer Price Index to no more than 5 percent. The BLM will review the rent schedule to ensure that the schedule reflects fair market value.

(b) Uses not covered by the schedule. The communications uses rent schedule does not apply to:

(1) Communications uses located entirely within the boundaries of an oil and gas lease, and solely supporting the operations of the oil and gas lease (see parts 3160 through 3190 of this Chapter);

(2) Communications facilities and uses ancillary to a linear authorization that are entirely within the scope of an authorized linear right-of-way, such as a railroad authorization or an oil and gas pipeline authorization that solely support the operations authorized by that right-of-way and that are owned and operated by the authorization holder for that right-of-way;

(3) Linear communications uses not listed on the schedule, such as telephone lines, fiber optic cables, and new technologies;

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

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

(i) The expected annual rent, that the 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 communications use or uses is more than \$10,000 above the rent from the rent schedule.

§ 2866.31 How will the BLM calculate rent for Communications Uses in the schedule?

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

(1) Single-use facilities by applying the rent from the communications uses rent schedule (see § 2866.30 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 §§ 2866.32 and 2866.34 of this subpart).

(b) Exclusions. When calculating rent, the BLM will exclude customer uses, except as provided for at §§ 2866.34(b)(4) and 2866.42 of this subpart. The BLM will also exclude those uses exempted from rent by § 2866.14 of this subpart, and any uses whose rent has been waived or reduced to zero as described in § 2866.15 of this subpart.

(c) Annual statement. By October 15 of each year, you, as a grant holder, must submit to the 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. The BLM may require you to submit additional information to calculate your rent. The BLM will determine the rent based on the annual inventory certification statement provided. We require only facility owners or facility managers to hold a grant (unless you are an occupant in a federally owned facility as described in § 2866.42 of this subpart) and will charge you rent for your grant based on the total number of communications uses within the right-of-way and the type of uses and population strata the facility or site serves. If you fail to submit your annual inventory certification by October 15 (by electronic correspondence or postmarked), you may not receive any discounts, reductions, exemptions, or waivers (see §§ 2866.14, 2866.15, and 2866.34), to which you may have been entitled.

§ 2866.32 How does the BLM determine the population strata served for your facility?

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

(1) If the site or facility is within a designated RMA, the 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, the 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, the 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, the 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; or

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

(b)(1) The BLM considers all facilities (and all uses within the same facility) located at one site to serve the same RMA or community. However, the 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. The 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, and only the high-power uses are capable of serving an RMA or community with the greatest population, the 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 § 2866.30 of this subpart.

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

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

§ 2866.33 How will the BLM calculate the rent for a single use communication facility grant?

The BLM calculates the rent for a grant authorizing a single-use communication facility from the communications uses rent schedule (see § 2866.30 of this subpart), based on your authorized single use and the population strata it serves (see § 2866.32 of this subpart).

§ 2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?

(a) *Basic rule.* The BLM first determines the population strata the communication facility serves according to § 2866.32 of this subpart and then calculates the rent assessed to facility owners and facility managers for a grant for a communication facility that

authorizes subleasing with tenants, customers, or both, as follows:

(1) The 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 § 2866.30 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, the BLM will consider the owner's or manager's use like any tenant or customer use in calculating the rent (see § 2866.35(b) for facility owners and § 2866.39(a) for facility managers);

(3) If a tenant use is the highest value use, the 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, such as a TV and a FM radio station, the 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 the 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 communications uses exempted from rent under § 2866.14 of this subpart or communications uses whose rent has been waived or reduced to zero under § 2866.15 of this subpart:

(1) The BLM will exclude exempted uses or uses whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15 of this subpart) of either a facility owner or a facility manager in calculating rents. The BLM will exclude similar uses (see §§ 2866.14 and 2866.15 of this subpart) of a customer or tenant if they choose to hold their own grant (see § 2866.36 of this subpart) or are occupants in a Federal facility (see § 2866.42(a) of this subpart);

(2) The 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 §§ 2866.14 and 2866.15 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) The BLM will not charge rent to a facility owner, facility manager, or tenant (when holding a grant) when all of the following occur:

(i) The BLM exempts from rent, waives, or reduces to zero the rent for

the holder's use (see §§ 2866.14 and 2866.15 of this subpart);

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

(iii) The holder is not operating the facility for commercial purposes (see § 2866.15(c)(2) 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 §§ 2866.14 and 2866.15 of this subpart), the BLM will charge rent, notwithstanding § 2866.31(b), based on the highest value use within the facility. This paragraph (b)(4) does not apply to facilities exempt from rent under § 2866.14(a)(3) except when the facility also includes ineligible facilities.

§ 2866.35 How will the 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, the 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, the BLM will follow the provisions in § 2866.31 of this subpart to calculate rent for a grant 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. The BLM excludes these uses in the 25 percent calculation (see § 2866.31(a) of this subpart) when their value does not exceed the highest value in the facility.

§ 2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

(a) You may have your own authorization, but the BLM does not require a separate grant for tenants and customers using a facility authorized by a BLM grant that contains a subleasing provision. The 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) 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 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) The BLM will charge tenants and customers who hold their own grant in a facility, as grant holders, the full annual rent for their use based on the BLM communications use rent schedule. The BLM will also include such tenant or customer use in calculating the rent the facility owner or facility manager must pay.

§ 2866.37 How will the BLM calculate rent for a grant 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?

The BLM will include the single use in calculating rent for each grant authorizing that use. For example, a television station locates its antenna on a tower authorized by grant "A" and locates its related broadcast equipment in a building authorized by grant "B." The statement listing tenants and customers for each facility (see § 2866.31(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.

§ 2866.38 Can I combine multiple grants for facilities located at one site into a single grant?

If you hold grants for two or more facilities on the same communications site, you may submit an SF-299 application and be subject to cost recovery for the BLM to authorize those facilities under a single grant. The highest value use in all the combined facilities determines the base rent. The 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 the BLM authorized each of the facilities on an individual basis.

§ 2866.39 How will the BLM calculate rent for a grant for a facility manager's use?

(a) The BLM will follow the provisions in § 2866.31 of this subpart to calculate rent for a grant 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. The BLM excludes the facility manager's use in the 25 percent calculation (see § 2866.31(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 grant for other purposes, the BLM will continue to charge you for your authorized use until the BLM amends the grant to change your use to facility manager or to some other communications use.

§ 2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?

If the ancillary communication equipment is used solely in direct support of the primary use (see the definition of communications uses rent schedule in § 2861.5 of this part), the BLM will calculate and charge rent only for the primary use.

§ 2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?

When a communications facility is authorized as ancillary to (*i.e.*, used for the sole purpose of internal communications) a grant or some other type of use authorization (*e.g.*, a mineral lease or sundry notice), the BLM will determine the rent using the linear rent schedule (see § 2866.20) or rent scheme associated with the other authorization, and not the communications uses rent schedule.

§ 2866.42 How will the BLM calculate rent for Communications Uses within a federally owned communications facility?

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

(b) If a Federal agency holds a grant and agrees to operate the facility as a facility owner under § 2866.31 of this subpart, occupants do not need a separate BLM grant, and the BLM will calculate and charge rent to the Federal facility owner under § 2866.30 through § 2866.43 of this subpart.

§ 2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?

The 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, we use the provisions in § 2806.70 to determine rent. See the Forest Service regulations at 36 CFR chapter II.

§ 2866.44 How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

This section applies to a grant that authorizes a mixture of communications uses, some of which are subject to the communications uses rent schedule and some of which are not. We will determine rent for these grants under the provisions of this section.

(a) The BLM establishes the rent for each of the uses in the facility that are not covered by the communications uses rent schedule using § 2806.70.

(b) BLM establishes the rent for each of the uses in the facility that are covered by the rent schedule using §§ 2866.30 and 2866.31 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.

Subpart 2868—Communications Uses Trespass

§ 2868.10 What is a Communications Uses trespass?

In addition to the provisions of § 2808.10, holders of a grant must comply with this section. The following are prohibited:

(a) Placement of any type of facilities such as generators, fuel tanks, equipment cabinets, additional towers or wind or solar power generation equipment on the public lands without formal BLM authorization to do so;

(b) Subleasing communications facilities by allowing another entity to place equipment or utilize your tower without having BLM subleasing authority to do so; or

(c) Affixing communications equipment, such as antennas, to vegetation or rocks on public lands without express authorization to do so.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

■ 38. The authority citation for part 2880 continues to read as follows:

Authority: 30 U.S.C. 185 and 189, and 43 U.S.C. 1732(b), 1733, and 1740.

Subpart 2881—General Information

■ 39. Amend § 2881.2 by revising paragraph (c) to read as follows:

§ 2881.2 What is the objective of the BLM's right-of-way program?

* * * * *

(c) Promotes the use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

* * * * *

■ 40. Amend § 2881.5 by:

- a. Adding the terms “complete application,” “cost recovery,” and “exempt from rent”;
- b. Removing the term “monitoring”;
- c. Adding the terms “monitoring activities” and “processing activities”; and
- d. Revising the term “substantial deviation”.

The additions and revisions read as follows:

§ 2881.5 What acronyms and terms are used in the regulations in this part?

* * * * *

Complete application means your application contains all the required information under § 2884.11 and you received notification from the BLM that your application is complete.

Cost recovery is a fee charged to an applicant or holder to cover the costs incurred by the BLM in the processing and monitoring associated with a right-of-way grant or TUP on public lands.

Exempt from rent means that the BLM is precluded by statute or policy from collecting rent.

* * * * *

Monitoring activities means those activities, subject to § 2886.11 of this part, the Federal Government performs to ensure compliance with a right-of-way grant or TUP, such as assignments, amendments, or renewals.

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

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

(3) For Monitoring Category 6, monitoring activities include those actions or activities agreed to between the BLM and the applicant.

* * * * *

Processing activities means those activities the Federal Government

undertakes to evaluate an application for a right-of-way grant or TUP, including activities such as assignments, amendments, or renewals. It also includes preparation of an appropriate environmental document and compliance with other legal requirements in evaluating an application.

(1) For Processing Categories 1 through 4, processing activities include preliminary application reviews, application processing and administrative actions such as assignments and amendments to the right-of-way or TUP;

(2) For Processing Category 5 (Master Agreements), processing activities include those actions or activities agreed to in the Master Agreement; and

(3) For Processing Category 6, processing activities include those actions or activities agreed to between the BLM and the applicant.

* * * * *

Substantial deviation means a change in the authorized location or use that requires construction or use outside the boundaries of the right-of-way or TUP area or any change from, or modification of, the authorized use. The BLM may determine that there has been a substantial deviation in some of the following circumstances: When a right-of-way holder adds overhead or underground lines, pipelines, structures, or other facilities not expressly included in the current grant or TUP. Operation and maintenance actions or safety related improvements within an existing right-of-way are not considered a substantial deviation. Activities undertaken to reasonably prevent and suppress wildfires on or adjacent to the right-of-way do not constitute a substantial deviation.

* * * * *

■ 41. Amend § 2881.7 by revising paragraphs (a)(1) and (2) and (b)(1) to read as follows:

§ 2881.7 Scope.

(a) * * *

(1) Issuing, amending, assigning, renewing, and terminating grants and TUPs for pipelines, or parts thereof, that are:

(i) On Federal land and outside the boundary of any Federal oil and gas lease;

(ii) Within the boundary of a Federal oil and gas lease but owned by a party who is not a lessee or lease operator with respect to that lease; or

(iii) Within the boundary of a Federal oil and gas lease but downstream from a custody transfer metering device; and

(2) All grants and permits the BLM and its predecessors previously issued under section 28 of the Act.

(b) * * *

(1) Production facilities on an oil and gas lease that operate for the benefit of the lease;

* * * * *

§ 2881.9 [Redesignated as § 2881.8]

■ 42. Redesignate § 2881.9 as § 2881.8.

■ 43. Amend § 2883.14 by revising the title and paragraph (a) to read as follows:

§ 2883.14 What happens to my grant or TUP if I die?

(a) If a grant or TUP holder dies, any inheritable interest in the grant or TUP will be distributed under State law.

* * * * *

■ 44. Amend § 2884.11 by revising paragraph (a) and paragraph (c)(6) to read as follows:

§ 2884.11 What information must I submit in my application?

(a) File your application on Form SF-299 or as part of an Application for Permit to Drill or Reenter (BLM Form 3160-3) or Sundry Notice and Report on Wells (BLM Form 3160-5), available from any BLM office. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include:

* * * * *

(c) * * *

(6) A map of the project, showing its proposed location and showing existing facilities adjacent to the proposal and Geographic Information Systems (GIS) shapefiles, or equivalent format, when requested by the BLM;

* * * * *

■ 45. Revise § 2884.12 to read as follows:

§ 2884.12 What are the fee categories for cost recovery?

(a) You must pay a cost recovery fee with the application to cover the costs to the Federal Government of processing your application before the Federal Government incurs them. These cost recovery fees are for the processing and monitoring activities associated with your grant. Subject to applicable laws and regulations, if your application will involve Federal agencies other than the BLM, your fee may also include the reasonable costs estimated to be incurred by those Federal agencies. Instead of paying the BLM a fee for the estimated work of other Federal agencies in processing your application, you may pay other Federal agencies directly for the costs estimated to be

incurred by them. The cost recovery fees for Categories 1 through 4 (see paragraph (b) of this section) are not refundable. The fees are categorized based on an estimate of the amount of time that the Federal Government will spend to process your application and monitor your grant.

(b) The BLM bases cost recovery fees on categories. The BLM will update the

fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD-GDP, as measured second quarter to second quarter, rounded to the nearest dollar. The BLM will update Category 5 fees, which may include preliminary application review, processing, and monitoring, as specified in the applicable Master Agreement. Category

6 fees are for situations when a right-of-way activity will require more than 64 hours, or when an environmental impact statement (EIS) is required and may include preliminary application review costs. The cost recovery categories and the estimated range of Federal work hours for each category are:

MLA RIGHT-OF-WAY COST RECOVERY FEE CATEGORIES

MLA right-of-way cost recovery category descriptions	Federal work hours involved
<i>Category 1.</i> Processing and monitoring associated with an application or existing grant or TUP.	Estimated Federal work hours are ≤8.
<i>Category 2.</i> Processing and monitoring associated with an application or existing grant or TUP.	Estimated Federal work hours are <8 ≤24.
<i>Category 3.</i> Processing and monitoring associated with an application or existing grant or TUP.	Estimated Federal work hours are <24 ≤40.
<i>Category 4.</i> Processing and monitoring associated with an application or existing grant or TUP.	Estimated Federal work hours are >40 ≤64
<i>Category 5.</i> Master Agreements	Varies, depending on the agreement
<i>Category 6.</i> Processing and monitoring associated with an application or existing grant or TUP, including preliminary-application reviews. *	Estimated Federal work hours are >64

* Preliminary application review costs are those expenses related to meetings held between a Federal agency and the applicant to discuss a right-of-way application. These reviews are not required but are encouraged.

(c) You may obtain a copy of the current cost recovery fee schedule at <https://www.blm.gov>, by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5625, Washington, DC 20240.

(d) After an initial review of your application, the BLM will notify you of the processing category into which your application fits. You must then submit the appropriate payment for that category before the BLM will begin processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the cost recovery category decision. For reimbursement of the BLM's costs for Category 5 and 6 right-of-way applications or grants, see §§ 2804.17, 2804.18, and 2804.19 of subpart 2804. If you disagree with the category that the BLM has determined for your application, you may appeal the decision under § 2881.10 of this part. If you paid the cost recovery fee and you appeal a Category 1 through 4 determination, the BLM will work on your application, grant, or TUP while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your cost recovery fee.

(e) In processing your application, the BLM may determine at any time that the application requires preparing an EIS. If this occurs, the BLM will send you a decision changing your cost recovery category to Category 6. You may appeal the decision under § 2881.10 of this part.

(f) If you hold an authorization relating to TAPS, the BLM will send you a written statement seeking reimbursement of actual costs within 60 calendar days after the close of each quarter. Quarters end on the last day of March, June, September, and December. In processing applications and administering authorizations relating to TAPS, the Department of the Interior will avoid unnecessary employment of personnel and needless expenditure of funds.

■ 46. Revise § 2884.13 to read as follows:

§ 2884.13 When will the BLM waive cost recovery fees?

(a) The BLM may waive your cost recovery fees if you are a:

- (1) State or local government, or an agency of such a government and the BLM issues the grant for governmental purposes benefitting the general public. However, if you collect revenue from charges you levy on customers for services similar to those of a profit-making corporation or business, or you assess similar fees to the United States for similar purposes, cost recovery fees will not be waived; or
- (2) Federal agency, and your cost recovery category determination is Category 1 to 4.

(b) The BLM will not waive your cost recovery fees if you are in trespass.

■ 47. Revise the section heading of § 2884.14 to read as follows:

§ 2884.14 When does the BLM reevaluate the cost recovery fees?

* * * * *

■ 48. Amend § 2884.15 by revising the section heading and paragraph (a) to read as follows:

§ 2884.15 What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?

(a) A Master Agreement (Cost Recovery Category 5) is a written agreement covering processing and monitoring fees (see § 2884.16 of this part) negotiated between the BLM and you that involves multiple BLM grant or TUP approvals for projects within a defined geographic area or for a specific common activity for many projects.

* * * * *

■ 49. Amend § 2884.16 by revising paragraphs (a)(2) and (5) and adding a new paragraph (c) to read as follows:

§ 2884.16 What provisions do Master Agreements contain and what are their limitations?

(a) * * *

(2) Describes the work you will do and the work the BLM will do to complete right-of-way activities.

* * * * *

(5) Explains how the BLM will monitor actions on a grant or TUP and how the BLM will receive payment for this work;

* * * * *

(c) If you sign a Master Agreement, you waive your right to request a reduction of cost recovery fees.

■ 50. Amend § 2884.17 by:

- a. Revising the section heading, paragraph (a), and paragraph (b)(3);
- b. Redesignating paragraphs (b)(4) and (5) as paragraphs (b)(5) and (6); and

■ c. Adding a new paragraph (b)(4) to read as follows:

§ 2884.17 How will the BLM manage my Category 6 project?

(a) For Category 6 applications, you and the BLM must enter into a written agreement that describes how the BLM will process your application or monitor your grant. The BLM may require that the final agreement contains a work plan and a financial plan, and a description of any existing agreements

you have with other Federal agencies for cost reimbursement associated with such application or grant.

* * * * *

(b) * * *

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

(4) Collect, in advance and at BLM's discretion, a deposit for your Category 6 project to initiate processing your

application while all of the plans and agreements are being completed;

* * * * *

■ 51. Amend § 2884.21 by revising paragraph (c) to read as follows:

§ 2884.21 How will the BLM process my application?

* * * * *

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

Processing category	Processing time	Conditions
1–4	60 calendar days	If processing your application(s) for a right-of-way or TUP will take longer than 60 calendar days, the 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	The BLM will process your right-of-way or TUP application(s) as specified in the Master Agreement.
6	Over 60 calendar days	The BLM will notify you in writing within the initial 60-day processing period of the estimated processing time.

* * * * *

■ 52. Amend § 2884.23 by revising paragraph (a)(6) to read as follows:

§ 2884.23 Under what circumstances may the BLM deny my application?

(a) * * *

(6) You do not comply with a deficiency notice (see § 2804.25(c)) or with any requests from the BLM for additional information needed to process the application.

* * * * *

■ 53. Revise § 2884.24 to read as follows:

§ 2884.24 What fees must I pay if the BLM denies my application, or if I withdraw my application or relinquish my grant or TUP?

If the BLM denies your application, you withdraw it, or you relinquish your grant or TUP, you owe the current fees for the applicable cost recovery category as set forth at § 2884.12(b) of this subpart, unless you have a Category 5 or 6 application. Then, the following conditions apply:

(a) If the BLM denies your Category 5 or 6 application, you are liable for actual 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;

(b) You may withdraw your application in writing before the BLM issues a grant or TUP. If you do so, you are liable for all actual processing costs the United States has incurred up to the time you withdraw the application and for the actual 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; and

(c) You may relinquish your grant or TUP in writing. If you do so, you are liable for all actual costs the United States has incurred up to the time you relinquish the grant and for the actual costs of closing your grant. Any cost recovery money you have not previously paid is due within 30 calendar days after receiving a bill for the amount due. The BLM will refund any cost recovery money you paid in Categories 5 or 6 that was not used to cover costs the United States incurred as a result of your grant.

■ 54. Revise § 2884.27 to read as follows:

§ 2884.27 What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?

If an application is for a grant for a pipeline 24 inches or more in diameter, the BLM will not issue or renew the grant until after we notify the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

■ 55. Amend § 2885.12 by revising the section heading to read as follows:

§ 2885.12 What rights does a grant or TUP provide?

■ 56. Amend § 2885.17 by revising paragraph (e) and adding a new paragraph (g) to read as follows:

§ 2885.17 What happens if I do not pay rents and fees or if I pay the rents or fees late?

* * * * *

(e) We will retroactively bill for uncollected or under-collected rent, including late payment and administrative fees.

* * *

(g) We will not approve any further activities associated with your right-of-way until we receive any outstanding payments that are due.

■ 57. Amend § 2885.19 by revising paragraph (b) as follows:

§ 2885.19 What is the rent for a linear right-of-way grant?

* * * * *

(b) You may obtain a copy of the current Per Acre Rent Schedule at <https://www.blm.gov>, by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5625, Washington, DC 20240.

■ 58. Revise § 2885.24 to read as follows:

§ 2885.24 If I hold a grant or TUP, what cost recovery fees must I pay?

(a) Subject to § 2886.11, you must pay a fee to the BLM for any costs the Federal Government incurs in processing, inspecting, and monitoring the construction, operation, maintenance, and termination of the pipeline and protection and rehabilitation of the Federal lands your grant or TUP covers. The BLM categorizes the cost recovery fees based on the estimated number of work hours necessary to manage your grant or TUP. Categories 1 through 4 fees are not refundable. The description of each Category and the associated work hours is found at § 2884.12(b).

(b) The BLM will update the cost recovery fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD-

GDP, as measured second quarter to second quarter rounded to the nearest dollar. The BLM will update Category 5 cost recovery fees as specified in the applicable Master Agreement.

(c) You may obtain a copy of the current cost recovery fee schedule at <https://www.blm.gov>, by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5625, Washington, DC 20240.

■ 59. Amend § 2886.17 by revising paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(4) and adding a new paragraph (c)(3) to read as follows:

§ 2886.17 Under what conditions may BLM suspend or terminate my grant or TUP?

* * * * *

(c) * * *

(2) The BLM consents in writing to your request to relinquish the grant or TUP;

(3) A court terminates it or requires the BLM to terminate it; or

* * * * *

■ 60. Amend § 2887.10 by revising paragraph (b) to read as follows:

§ 2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?

* * * * *

(b) The requirements to amend an application or a grant or TUP are the same as those for a new application, including paying cost recovery fees and rent according to §§ 2884.12, 2885.23, 2885.19, and 2886.11 of this part.

* * * * *

■ 61. Amend § 2887.11 by adding new paragraph (i) to read as follows:

§ 2887.11 May I assign or make other changes to my grant or TUP?

* * * * *

(i) You must seek an amendment of your authorization if you propose a substantial deviation in location or use.

* * * * *

■ 62. Amend § 2887.12 by revising paragraph (b) and adding new paragraphs (f) and (g) to read as follows:

§ 2887.12 How do I renew my grant?

* * * * *

(b) The BLM may modify the terms and conditions of the grant at the time of renewal, and you must pay the cost recovery fees.

* * * * *

(f) If you do not submit your application under paragraph (a) of this section at least 120 days prior to

authorization expiration, it is considered delinquent; the BLM will not be subject to the customer service standards in this chapter, and it will be processed only as time and resources are available.

(g) The BLM will review your application and determine if you have complied with all of the provisions in this part and whether or not your authorized use will be renewed. The BLM will notify you within 30 days from acceptance of a complete application if it will take longer than 60 days to review your application.

PART 2920—LEASES, PERMITS AND EASEMENTS

■ 63. The authority citation for part 2920 continues to read as follows:

Authority: 43 U.S.C. 1740.

Subpart 2920—Leases, Permits and Easements: General Provisions

■ 64. Revise § 2920.0–5 to read as follows:

§ 2920.0–5 Definitions.

As used in this part, the term:

(a) *Applicant* means any person who submits an application for a land use authorization under this part.

(b) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(c) *Casual use* means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities.

(d) *Cost recovery* is a fee charged to an applicant or holder to reimburse the United States for processing and monitoring costs that concern applications and other documents relating to the public lands, or that are incurred when processing, inspecting, or monitoring any proposed or authorized leases, permits, and easements located on the public lands.

(e) *Easement* means an authorization for a non-possessory, non-exclusive interest in lands which specifies the rights of the holder and the obligation of the Bureau of Land Management to use and manage the lands in a manner consistent with the terms of the easement.

(f) *Knowing and willful* means that a violation is *knowingly and willfully* committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or

duty that is required. The term does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. The term includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease, permit, and easement. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

(g) *Land use authorization* means any authorization to use the public lands issued under this part.

(h) *Land use proposal* means an informal statement, in writing, from any person to the authorized officer requesting consideration of a specified use of the public lands.

(i) *Land use plan* means resource management plans or management framework plans prepared by the Bureau of Land Management pursuant to its land use planning system.

(j) *Lease* means an authorization to possess and use public lands for a fixed period of time.

(k) *Permit* means a short-term revocable authorization to use public lands for specified purposes.

(l) *Person* means any person or entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands or interests therein are located, who is a citizen of the United States, or in the case of a corporation, is subject to the laws of any State or of the United States.

(m) *Proponent* means any person who submits a land use proposal, either on his/her own initiative or in response to a notice for submission of such proposals.

(n) *Public lands* means lands or interests in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

■ 65. Amend § 2920.6 by revising the section heading and paragraphs (b), (d), and (h) to read as follows:

§ 2920.6 Payment of cost recovery fees.

* * * * *

(b) The selected land use applicant shall pay cost recovery fees to the United States for reasonable administrative and other costs incurred by the United States in processing a land use authorization application and in monitoring construction, operation, maintenance, and rehabilitation of facilities authorized under this part, including preparation of reports and statements required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321 *et seq.*). The payment of cost recovery fees shall be in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

* * * * *

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is

reached on the authorization is responsible for all reasonable costs incurred by the United States in processing the application up to the day that the authorized officer receives notice of the withdrawal and for costs subsequently incurred by the United States in terminating the proposed land use authorization process. Payment of cost recovery fees shall be paid within 30 days of receipt of notice from the authorized officer of the amount due.

* * * * *

(h) The authorized officer shall, on request, give a selected applicant an estimate, based on the best available cost information, of the reasonable costs that may be incurred by the United States in processing the proposed land use authorization. However, payment of

cost recovery fees shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

* * * * *

■ 66. Amend § 2920.8 by revising paragraph (b) to read as follows:

§ 2920.8 Fees.

* * * * *

(b) *Cost Recovery fees.* Each request for renewal, transfer, or assignment of a lease or easement must be accompanied by non-refundable cost recovery fees determined in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

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