### § 2743.4 Patented disposal sites.

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

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

## Group 2800—Use; Rights-of-Way

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

### Subpart 2801—General Information



### Subpart 2802—Lands Available for FLPMA Grants



### Subpart 2803—Qualifications for Holding FLPMA Grants



### Subpart 2804—Applying for FLPMA Grants



### Subpart 2805—Terms and Conditions of Grants

## Subpart 2806—Annual Rents and Payments

GENERAL PROVISIONS



LINEAR RIGHTS-OF-WAY



COMMUNICATION SITE RIGHTS-OF-WAY



SOLAR ENERGY RIGHTS-OF-WAY



WIND ENERGY RIGHTS-OF-WAY



OTHER RIGHTS-OF-WAY

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

SOURCE: 70 FR 21058, Apr. 22, 2005, unless otherwise noted.

## Subpart 2801—General information

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

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

(a) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a government entity;

(b) Prevents unnecessary or undue degradation to public lands;

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

(d) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.

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

(a) *Acronyms.* As used in this part:

*ALJ* means Administrative Law Judge.

*BLM* means the Bureau of Land Management.

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

*EA* means environmental assessment.

*EIS* means environmental impact statement.

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

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

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

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

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

*Acreage rent* means rent assessed for solar and wind energy development grants and leases that is determined by the number of acres authorized for the grant or lease.

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

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

*Application filing fee* means a filing fee specific to solar and wind energy applications. This fee is an initial payment for the reasonable costs for processing, inspecting, and monitoring a right-of-way.

*Assignment* means the transfer, in whole or in part, of any right or interest in a right-of-way grant or lease from the holder (assignor) to a subsequent party (assignee) with the BLM's written approval. A change in ownership of the grant or lease, or other related change-in-control transaction involving the holder, including a merger or acquisition, also constitutes an assignment for purposes of these regulations requiring the BLM's written approval, unless applicable statutory authority provides otherwise.

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

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

*Commercial purpose or activity* refers to the circumstance where a holder attempts to produce a profit by allowing the use of its facilities by an additional party. BLM may assess an appropriate rent for such commercial activities. The holder's use may not otherwise be subject to rent charges under BLM's rental provisions.

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

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

(2) *AM and FM radio broadcast* means a use that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception. This category does not include low-power FM radio; rebroadcast

devices, such as translators; or boosters or microwave relays serving broadcast translators;

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

(4) *Broadcast translator, low-power television, and low-power FM radio* means a use of translators, LPTV, or low-power FM radio (LPFM). Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases the translator relays the true signal to an amplifier or another translator. LPTV and LPFM are broadcast translators that originate programming. This category also includes translators associated with public telecommunication services;

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

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

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

(8) *Microwave* means communication uses that:

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

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

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

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

(a) of the definition of Communication Use Rent Schedule in this section).

*Designated leasing area* means a parcel of land with specific boundaries identified by the BLM land use planning process as being a preferred location for solar or wind energy development that may be offered competitively.

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

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

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

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

(1) Holds a communication use grant or lease;

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

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

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

(1) Holds a communication use grant or lease;

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

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

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

*Hazardous material* means:

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

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

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

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

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

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

*Megawatt (MW) capacity fee* means the fee paid in addition to the acreage rent for solar and wind energy development grants and leases. The MW capacity fee is the approved MW capacity of the solar or wind energy grant or lease multiplied by the appropriate MW rate. A grant or lease may provide for stages of development, and the grantee or lessee will be charged a fee for each stage by multiplying the MW rate by the approved MW capacity for the stage of the project.

*Megawatt rate* means the price of each MW of capacity for various solar and wind energy technologies as determined by the MW rate formula. Current MW rates are found on the BLM's MW rate schedule, which can be obtained at any BLM office or at *http://www.blm.gov*. The MW rate is calculated by multiplying the total hours per year by the net capacity factor, by

the MW hour (MWh) price, and by the rate of return, where:

(1) *Net capacity factor* means the average operational time divided by the average potential operational time of a solar or wind energy development, multiplied by the current technology efficiency rates. The BLM establishes net capacity factors for different technology types but may determine another net capacity factor to be more appropriate, on a case-by-case or regional basis, to reflect changes in technology, such as a solar or wind project that employs energy storage technologies, or if a grant or lease holder or applicant is able to demonstrate that another net capacity factor is appropriate for a particular project or region. The net capacity factor for each technology type is:

(i) Photovoltaic (PV)—20 percent;

(ii) Concentrated photovoltaic (CPV) and concentrated solar power (CSP)—25 percent;

(iii) CSP with storage capacity of 3 hours or more—30 percent; and

(iv) Wind energy—35 percent;

(2) *Megawatt hour (MWh) price* means the 5 calendar-year average of the annual weighted average wholesale prices per MWh for the major trading hubs serving the 11 western States of the continental United States (U.S.);

(3) *Rate of return* means the relationship of income (to the property owner) to revenue generated from authorized solar and wind energy development facilities based on the 10-year average of the 20-year U.S. Treasury bond yield rounded to the nearest one-tenth percent; and

(4) *Hours per year* means the total number of hours in a year, which, for purposes of this part, means 8,760 hours.

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

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

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

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

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

*Performance and reclamation bond* means the document provided by the holder of a right-of-way grant or lease that provides the appropriate financial guarantees, including cash, to cover potential liabilities or specific requirements identified by the BLM for the construction, operation, decommissioning, and reclamation of an authorized right-of-way on public lands.

(1) *Acceptable bond instruments.* The BLM will accept cash, cashier's or certified check, certificate or book entry deposits, negotiable U.S. Treasury securities, and surety bonds from the approved list of sureties (U.S. Treasury Circular 570) payable to the BLM. Irrevocable letters of credit payable to the BLM and issued by banks or financial institutions organized or authorized to transact business in the United States are also acceptable bond instruments. An insurance policy can also qualify as an acceptable bond instrument, provided that the BLM is a named beneficiary of the policy, and the BLM determines that the insurance policy will guarantee performance of financial obligations and was issued by an insurance carrier that has the authority to issue policies in the applicable jurisdiction and whose insurance operations are organized or authorized to transact business in the United States.

(2) *Unacceptable bond instruments.* The BLM will not accept a corporate guarantee as an acceptable form of bond instrument.

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

(1) Located on the Outer Continental Shelf; and

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

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

*Reclamation cost estimate (RCE)* means the estimate of costs to restore the land to a condition that will support pre-disturbance land uses. This includes the cost to remove all improvements made under the right-of-way authorization, return the land to approximate original contour, and establish a sustainable vegetative community, as required by the BLM. The RCE will be used to establish the appropriate amount for financial guarantees of land uses on the public lands, including those uses authorized by right-of-way grants or leases issued under this part.

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

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

*Screening criteria for solar and wind energy development* refers to the policies and procedures that the BLM uses to prioritize how it processes solar and wind energy development right-of-way applications to facilitate the environmentally responsible development of such facilities through the consideration of resource conflicts, land use plans, and applicable statutory and regulatory requirements. Applications for projects with lesser resource conflicts are anticipated to be less costly and time-consuming for the BLM to process and will be prioritized over those with greater resource conflicts.

*Short-term right-of-way grant* means any grant issued for a term of 3 years or less for such uses as storage sites, construction areas, and site testing and monitoring activities, including site characterization studies and environmental monitoring.

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

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

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

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

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

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

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

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

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92205, Dec. 19, 2016]

### § 2801.6 Scope.

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

(1) Grants for necessary transportation or other systems and facilities which are in the public interest and which require the use of public lands for the purposes identified in 43 U.S.C. 1761, and administering, amending, assigning, renewing, and terminating them;

(2) Grants to Federal departments or agencies for all systems and facilities

identified in§ 2801.9(a), including grants for transporting by pipeline and related facilities, commodities such as oil, natural gas, synthetic liquid or gaseous fuels, and any refined products produced from them; and

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

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

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

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

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

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

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

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

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

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

(B) Did not receive a grant under Title V of the Federal Land Policy and Management Act (FLPMA) before October 24, 1992; and

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92207, Dec. 19, 2016]

### § 2801.8 Severability.

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

### § 2801.9 When do I need a grant?

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

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

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

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

(4) Systems for generating, transmitting, and distributing electricity, including solar and wind energy development facilities and associated short-term actions, such as site and geotechnical testing for solar and wind energy projects;

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

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

(7) Such other necessary transportation or other systems or facilities,

including any temporary or short-term surface disturbing activities associated with approved systems or facilities, which are in the public interest and which require rights-of-way.

(b) If you apply for a right-of-way grant for generating, transmitting, and distributing electricity, you must also comply with the applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935, 16 U.S.C. 791a *et seq.*, and 18 CFR chapter I.

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

(d) All systems, facilities, and related activities for solar and wind energy projects are specifically authorized as follows:

(1) Energy site-specific testing activities, including those with individual meteorological towers and instrumentation facilities, are authorized with a short-term right-of-way grant issued for 3 years or less;

(2) Energy project-area testing activities are authorized with a short-term right-of-way grant for an initial term of 3 years or less with the option to renew for one additional 3-year period under § 2805.14(h) when the renewal application is accompanied by an energy development application;

(3) Solar and wind energy development facilities located outside designated leasing areas, and those facilities located inside designated leasing areas under § 2809.17(d)(2), are authorized with a right-of-way grant issued for up to 30 years (plus the initial partial year of issuance). An application for renewal of the grant may be submitted under § 2805.14(g);

(4) Solar and wind energy development facilities located inside designated leasing areas are authorized with a solar or wind energy development lease when issued competitively under subpart 2809. The term is fixed for 30 years (plus the initial partial year of issuance). An application for renewal of the lease may be submitted under § 2805.14(g); and

(5) Other associated actions not specifically included in § 2801.9(d)(1) through (4), such as geotechnical testing and other temporary land disturbing activities, are authorized with a short-term right-of-way grant issued for 3 years or less.

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92207, Dec. 19, 2016]

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

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

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

## Subpart 2802—Lands Available for FLPMA Grants

### § 2802.10 What lands are available for grants?

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

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

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

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

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

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

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

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

### § 2802.11 How does the BLM designate right-of-way corridors and designated leasing areas?

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

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

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

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

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

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

(5) Risks to national security;

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

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

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

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92207, Dec. 20, 2016]

## Subpart 2803—Qualifications for Holding FLPMA Grants

### § 2803.10 Who may hold a grant?

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

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

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

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

### § 2803.11 Can another person act on my behalf?

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

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

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

(b) If the distributee of a grant is not qualified to hold a grant under § 2803.10 of this subpart, BLM will recognize the distributee as grant holder and allow the distributee to hold its interest in

the grant for up to two years. During that period, the distributee must either become qualified or divest itself of the interest.

## Subpart 2804—Applying for FLPMA Grants

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

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

(1) Identify potential routing and other constraints;

(2) Determine whether the lands are located inside a designated or existing right-of-way corridor or a designated leasing 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) Subject to § 2804.13 of this subpart, BLM may share any information you provide under paragraph (a) of this section with Federal, state, tribal, and local government agencies to ensure that:

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92207, Dec. 19, 2016]

### § 2804.11 Where do I file my grant application?

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

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

### § 2804.12 What must I do when submitting my application?

(a) File your application on Standard Form 299, available from any BLM office or at *http://www.blm.gov*, and fill in the required information as completely as possible. Your completed application must include the following:

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

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

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

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

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

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

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

(8) A schedule for the submission of a plan of development (POD) conforming to the POD template at *http://www.blm.gov*, should the BLM require you to submit a POD under § 2804.25(c).

(b) When submitting an application for a solar or wind energy development project or for a transmission line project with a capacity of 100 kV or more, in addition to the information required in paragraph (a) of this section, you must:

(1) Include a general description of the proposed project and a schedule for the submission of a POD conforming to the POD template at *http://www.blm.gov;*

(2) Address all known potential resource conflicts with sensitive resources and values, including special designations or protections, and include applicant-proposed measures to avoid, minimize, and compensate for such resource conflicts, if any;

(3) Initiate early discussions with any grazing permittees that may be affected by the proposed project in accordance with 43 CFR 4110.4–2(b); and

(4) Within 6 months from the time the BLM receives the cost recovery fee under § 2804.14, schedule and hold two preliminary application review meetings as follows:

(i) The first meeting will be with the BLM to discuss the general project proposal, the status of BLM land use planning for the lands involved, potential siting issues or concerns, potential environmental issues or concerns, potential alternative site locations and the right-of-way application process;

(ii) The second meeting will be with appropriate Federal and State agencies and tribal and local governments to facilitate coordination of potential environmental and siting issues and concerns; and

(iii) You and the BLM may agree to hold additional preliminary application review meetings.

(c) When submitting an application for a solar or wind energy project under this subpart rather than subpart 2809, you must:

(1) Propose a project sited on lands outside a designated leasing area, except as provided for by § 2809.19; and

(2) Pay an application filing fee of $15 per acre for solar or wind energy development applications and $2 per acre for energy project-area testing applications. The BLM will refund your fee, except for the reasonable costs incurred on your behalf, if you are the unsuccessful bidder in a competitive offer held under § 2804.30 or subpart 2809. The BLM will adjust the application filing fee at least once every 10 years using the change in the Implicit Price Deflator, Gross Domestic Product (IPD–GDP) for the preceding 10-year period and round it to the nearest one-half dollar. This 10-year average will be adjusted at the same time as the Per Acre Rent Schedule for linear rights-of-way under § 2806.22.

(d) If you are unable to meet a requirement of the application outlined in this section, you may submit a request for an alternative requirement under § 2804.40.

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

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

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

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

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

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

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

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

(8) If you have already provided the information in paragraphs (b)(1) through (7) of this section to the BLM and the information remains accurate, you need only reference the BLM serial number under which you previously filed it.

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

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

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

the materials, or reference all the information, you filed with the other Federal agency.

(i) *Inter-agency coordination.* You may request, in writing, an exemption from the requirements of this section if you can demonstrate to the BLM that you have satisfied similar requirements by participating in an inter-agency coordination process with another Federal, State, local, or Tribal authority. No exemption is approved until you receive BLM approval in writing.

[81 FR 92207, Dec. 19, 2016]

### § 2804.13 Will BLM keep my information confidential?

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

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

(a) Unless you are exempt under § 2804.16, you must pay a fee to the BLM for the reasonable costs of processing your application. Subject to applicable laws and regulations, if processing 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 for such costs. Reasonable costs are those costs as defined in Section 304(b) of FLPMA (43 U.S.C. 1734(b)). The fees for Processing Categories 1 through 4 (see paragraph (b) of this section) are one-time fees and are not refundable. The fees are categorized based on an estimate of the amount of time that the Federal Government will expend to process your application and issue a decision granting or denying the application.

(b) There is no processing fee if the Federal Government's work is estimated to take 1 hour or less. Processing fees are based on categories. The BLM will update the processing fees for Categories 1 through 4 in the schedule each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter, rounded to the nearest dollar. The BLM will update Category 5 processing fees as specified in the Master Agreement. These categories and the estimated range of Federal work hours for each category are:

PROCESSING CATEGORIES

| Processing category | Federal work hours involved |
|---|---|
| (1) Applications for new grants, assignments, renewals, and amendments to existing grants .... | Estimated Federal work hours are >1 ≤ 8 |
| (2) Applications for new grants, assignments, renewals, and amendments to existing grants .... | Estimated Federal work hours are >8 ≤ 24 |
| (3) Applications for new grants, assignments, renewals, and amendments to existing grants .... | Estimated Federal work hours are >24 ≤ 36 |
| (4) Applications for new grants, assignments, renewals, and amendments to existing grants .... | Estimated Federal work hours are >36 ≤ 50 |
| (5) Master agreements .... | Varies |
| (6) Applications for new grants, assignments, renewals, and amendments to existing grants .... | Estimated Federal work hours are >50 |

(c) You may obtain a copy of the current year's processing fee schedule from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Washington, DC 20003. The BLM also posts the current processing fee schedule at *http://www.blm.gov*.

(d) After an initial review of your application, BLM will notify you of the processing category into which your application fits. You must then submit the appropriate payment for that category before BLM begins processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the processing category decision. If you disagree with the category that BLM has determined for your application, you may appeal the decision under § 2801.10

of this part. For Processing Categories 5 and 6 applications, *see* §§ 2804.17, 2804.18, and 2804.19 of this subpart. If you paid the processing fee and you appeal a Processing Category 1 through 4 or a Processing Category 6 determination, BLM will process your application while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your processing fee.

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92208, Dec. 19, 2016]

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

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

(a) Technology;

(b) The procedures for processing applications and monitoring grants;

(c) Statutes and regulations relating to the right-of-way program; or

(d) The IPD-GDP.

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

You are exempt from paying processing and monitoring fees if:

(a) You are a state or local government, or an agency of such a government, and BLM issues the grant for governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt; or

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

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

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

(b) Your request for a Master Agreement must:

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

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

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

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

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

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

(a) A Master Agreement:

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

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

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

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

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

(6) Describes existing agreements between the BLM and other Federal agencies for cost reimbursement;

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

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

(9) Contains any other provisions BLM considers necessary.

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92209, Dec. 19, 2016]

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

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

(b) In processing your application, BLM will:

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

(2) Prepare a preliminary work plan;

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

(4) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

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

(iv) Financial information you must submit; and

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

(c) BLM retains the option to prepare any environmental documents related to your application. If BLM allows you to prepare any environmental documents and conduct any studies that BLM needs to process your application, you must do the work following BLM standards. For this purpose, you and BLM may enter into a written agreement. BLM will make the final determinations and conclusions arising from such work.

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

(e) We may collect reimbursement for reasonable costs to the United States for processing applications and other documents under this part relating to the public lands.

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92209, Dec. 19, 2016]

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

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

(a) *FLPMA factors.* If your application is for a Processing Category 6, or a Monitoring Category 6 project, the

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

(1) Actual costs to the Federal Government (exclusive of management overhead costs) of processing your application and of monitoring construction, operation, maintenance, and termination of a facility authorized by the right-of-way grant;

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

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

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

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

(6) Existing agreements between the BLM and other Federal agencies for cost reimbursement associated with such application; and

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92209, Dec. 19, 2016]

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

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

(1) Payment of actual costs would:

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

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

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

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

(i) The studies undertaken in connection with processing the application or monitoring the grant have a public benefit; or

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

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

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

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

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

(b) *Fee determination.* With your written application, submit your analysis

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

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

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

### § 2804.23 When will the BLM use a competitive process?

(a) If there are two or more competing applications for the same facility or system and your application is in:

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

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

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

(c) If we determine that competition exists, we will describe the procedures for a competitive bid through a bid announcement in the FEDERAL REGISTER. We may also provide notice by other methods, such as a newspaper of general circulation in the area affected by the potential right-of-way, or the Internet. We may offer lands through a competitive process on our own initiative. The BLM will not competitively offer lands for which the BLM has accepted an application and received a plan of development and cost recovery agreement.

(d) *Competitive process for solar and wind energy development outside designated leasing areas.* Lands outside designated leasing areas may be made available for solar and wind energy applications through a competitive application process established by the BLM under § 2804.30.

(e) *Competitive process for solar and wind energy development inside designated leasing areas.* Lands inside designated leasing areas may be offered competitively under subpart 2809.

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92209, Dec. 19, 2016]

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

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

(a) The BLM offers lands competitively under § 2804.23(c) and you have already submitted an application for the facility or system;

(b) The BLM offers lands for competitive lease under subpart 2809 of this part; or

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92209, Dec. 19, 2016]

### § 2804.25 How will BLM process my application?

(a) The BLM will notify you in writing when it receives your application. This notification will also:

(1) Identify your processing fee described at § 2804.14; and

(2) Inform you of any other grant applications which involve all or part of the lands for which you applied.

(b) The BLM will not process your application if you have any:

(1) Outstanding unpaid debts owed to the Federal Government. Outstanding

debts are those currently unpaid debts owed to the Federal Government after all administrative collection actions have occurred, including any appeal proceedings under applicable Federal regulations and the Administrative Procedure Act; or

(2) Trespass action pending against you for any activity on BLM-administered lands (see § 2808.12), except those to resolve the trespass with a right-of-way as authorized in this part, or a lease or permit under the regulations found at 43 CFR part 2920, but only after outstanding unpaid debts are paid.

(c) The BLM may require you to submit additional information necessary to process the application. This information may include a detailed construction, operation, rehabilitation, and environmental protection plan (*i.e.*, a POD), and any needed cultural resource surveys or inventories for threatened or endangered species. If the BLM needs more information, the BLM will identify this information in a written deficiency notice asking you to provide the additional information within a specified period of time.

(1) For solar or wind energy development projects, and transmission lines with a capacity of 100 kV or more, you must commence any required resource surveys or inventories within one year of the request date, unless otherwise specified by the BLM; or

(2) 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 completed application as follows:

| Processing category | Processing time | Conditions |
|---|---|---|
| 1–4 | 60 calendar days | If processing your application will take longer than 60 calendar days, 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 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. |

(e) In processing an application, the BLM will:

(1) Hold public meetings if sufficient public interest exists to warrant their time and expense. The BLM will publish a notice in the FEDERAL REGISTER and may use other notification methods, such as a newspaper of general circulation in the vicinity of the lands involved in the area affected by the potential right-of-way or the Internet, to announce in advance any public hearings or meetings;

(2) If your application is for solar or wind energy development:

(i) Hold a public meeting in the area affected by the potential right-of-way;

(ii) Apply screening criteria to prioritize processing applications with lesser resource conflicts over applications with greater resource conflicts and categorize screened applications according to the criteria listed in § 2804.35; and

(iii) Evaluate the application based on the information provided by the applicant and input from other parties, such as Federal, State, and local government agencies, and tribes, as well as comments received in preliminary application review meetings held under § 2804.12(b)(4) and the public meeting held under paragraph (e)(2)(i) of this section. The BLM will also evaluate your application based on whether you propose to site the development appropriately (*e.g.* outside of a designated leasing area or exclusion area) and whether you address known resource values discussed in the preliminary application review meetings. Based on these evaluations, the BLM will either deny your application or continue processing it.

(3) Determine whether a POD schedule submitted with your application meets the development schedule or other requirements described by the BLM, such as in § 2804.12(b);

(4) Complete appropriate National Environmental Policy Act (NEPA) compliance for the application, as required by 43 CFR part 46 and 40 CFR parts 1500 through 1508;

(5) Determine whether your proposed use complies with applicable Federal and State laws;

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

(7) Consult, as necessary, on a government-to-government basis with tribes and other governmental entities; and

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

(f)(1) The BLM may segregate, if it finds it necessary for the orderly administration of the public lands, lands included in a right-of-way application under this subpart for the generation of electrical energy from wind or solar sources. In addition, the BLM may also segregate lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources when initiating a competitive process for solar or wind development on particular lands. Upon segregation, such lands would not be subject to appropriation under the public land laws, including location under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*), but would remain open under the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The BLM would effect a segregation by publishing a FEDERAL REGISTER notice that includes a description of the lands being segregated. The BLM may effect segregation in this way for both pending and new right-of-way applications.

(2) The effective date of segregation is the date of publication of the notice in the FEDERAL REGISTER. Consistent with 43 CFR 2091–3.2, the segregation terminates and the lands automatically open on the date that is the earliest of the following:

(i) When the BLM issues a decision granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period stated in the FEDERAL REGISTER notice initiating the segregation; or

(iii) Upon publication of a FEDERAL REGISTER notice terminating the segregation and opening the lands.

(3) The segregation period may not exceed 2 years from the date of publication in the FEDERAL REGISTER of the notice initiating the segregation, unless the State Director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the State Director determines an extension is necessary, the BLM will extend the segregation for up to 2 years by publishing a notice in the FEDERAL REGISTER, prior to the expiration of the initial segregation period. Segregations under this part may only be extended once and the total segregation period may not exceed 4 years.

[81 FR 92209, Dec. 19, 2016]

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

(a) BLM may deny your application if:

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

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

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

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

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

(i) Applicants must have or be able to demonstrate technical and financial capability to construct, operate, maintain, and terminate a project throughout the application process and authorization period. You can demonstrate your financial and technical capability to construct, operate, maintain, and terminate a project by:

(A) Documenting any previous successful experience in construction, operation, and maintenance of similar facilities on either public or non-public lands;

(B) Providing information on the availability of sufficient capitalization to carry out development, including the preliminary study stage of the project and the environmental review and clearance process; or

(C) Providing written copies of conditional commitments of Federal and other loan guarantees; confirmed power purchase agreements; engineering, procurement, and construction contracts; and supply contracts with credible third-party vendors for the manufacture or supply of key components for the project facilities.

(ii) Failure to demonstrate and sustain technical and financial capability is grounds for denying an application or terminating an authorization;

(6) The PODs required by §§ 2804.25(e)(3) and 2804.12(a)(8) and (c)(1) do not meet the development schedule or other requirements in the POD template and the applicant is unable to demonstrate why the POD should be approved;

(7) Failure to commence necessary surveys and studies, or plans for permit processing as required by § 2804.25(c); or

(8) The BLM's evaluation of your solar or wind application made under § 2804.25(e)(2)(iii) provides a basis for a denial.

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

(c) If you are unable to meet any of the requirements in this section you may request an alternative from the BLM (see § 2804.40).

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92211, Dec. 19, 2016]

### § 2804.27 What fees must I pay if BLM denies my application or if I withdraw my application?

If the BLM denies your application or you withdraw it, you must still pay any application filing fees under § 2804.12(b)(2), and any processing fee set forth at § 2804.14, unless you have a Processing Category 5 or 6 application. Then, the following conditions apply:

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92211, Dec. 19, 2016]

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

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

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

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

(a) You may conduct casual use activities on the BLM lands covered by the application, as may any other

member of the public. BLM does not require a grant for casual use on BLM lands.

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

### § 2804.30 What is the competitive process for solar or wind energy development for lands outside of designated leasing areas?

(a) *Available land.* The BLM may offer through a competitive process any land not inside a designated leasing area and open to right-of-way applications under § 2802.10.

(b) *Variety of competitive procedures available.* The BLM may use any type of competitive process or procedure to conduct its competitive offer and any method, including the use of the Internet, to conduct the actual auction or competitive bid procedure. Possible bid procedures could include, but are not limited to: Sealed bidding, oral auctions, modified competitive bidding, electronic bidding, and any combination thereof.

(c) *Competitive offer.* The BLM may identify a parcel for competitive offer if competition exists or may include land in a competitive offer on its own initiative.

(d) *Notice of competitive offer.* The BLM will publish a notice in the FEDERAL REGISTER at least 30 days prior to the competitive offer and may use other notification methods, such as a newspaper of general circulation in the area affected by the potential right-of-way or the Internet. The notice would explain that the successful bidder would become the preferred applicant (see paragraph (g) of this section) and may then apply for a grant. The FEDERAL REGISTER and other notices must also include:

(1) The date, time, and location, if any, of the competitive offer;

(2) The legal land description of the parcel to be offered;

(3) The bidding methodology and procedures to be used in conducting the competitive offer, which may include any of the competitive procedures identified in § 2804.30(b);

(4) The minimum bid required (see § 2804.30(e)(2));

(5) The qualification requirements for potential bidders (see § 2803.10); and

(6) The requirements for the successful bidder to submit a schedule for the submission of a POD for the lands involved in the competitive offer (see § 2804.12(c)(1)).

(e) *Bidding*—(1) *Bid submissions.* The BLM will accept your bid only if it includes payment for the minimum bid and at least 20 percent of the bonus bid.

(2) *Minimum bid.* The minimum bid is not prorated among all bidders, but paid entirely by the successful bidder. The minimum bid consists of:

(i) The administrative costs incurred by the BLM and other Federal agencies in preparing for and conducting the competitive offer, including required environmental reviews; and

(ii) An amount determined by the authorizing officer and disclosed in the notice of competitive offer. This amount will be based on known or potential values of the parcel. In setting this amount, the BLM will consider factors that include, but are not limited to, the acreage rent and megawatt capacity fee.

(3) *Bonus bid.* The bonus bid consists of any dollar amount that a bidder wishes to bid in addition to the minimum bid.

(4) If you are not the successful bidder, as defined in paragraph (f) of this section, the BLM will refund your bid and any application filing fees, less the reasonable costs incurred by the United States in connection with your application, under § 2804.12(c)(2).

(f) *Successful bidder.* The successful bidder is determined by the highest total bid. If you are the successful bidder, you become the preferred applicant only if, within 15 calendar days after the day of the offer, you submit the balance of the bonus bid to the BLM office conducting the competitive offer. You must make payments by personal check, cashier's check, certified check, bank draft, money order, or by other means deemed acceptable by the BLM, payable to the ''Department of the Interior—Bureau of Land Management.''

(g) *Preferred applicant.* The preferred applicant may apply for an energy project-area testing grant, an energy site-specific testing grant, or a solar or

wind energy development grant for the parcel identified in the offer. Grant approval is not guaranteed by winning the subject bid and is solely at the BLM's discretion. The BLM will not accept applications on lands where a preferred applicant has been identified, unless allowed by the preferred applicant.

(h) *Reservations.* (1) The BLM may reject bids regardless of the amount offered. If the BLM rejects your bid under this provision, you will be notified in writing and such notice will include the reasons for the rejection and any refunds to which you are entitled.

(2) The BLM may make the next highest bidder the preferred applicant if the first successful bidder fails to satisfy the requirements under paragraph (f) of this section.

(3) If the BLM is unable to determine the successful bidder, such as in the case of a tie, the BLM may re-offer the lands competitively to the tied bidders, or to all bidders.

(4) If lands offered under this section receive no bids the BLM may:

(i) Re-offer the lands through the competitive process under this section; or

(ii) Make the lands available through the non-competitive application process found in subparts 2803, 2804, and 2805 of this part, if the BLM determines that doing so is in the public interest.

[81 FR 92211, Dec. 19, 2016]

### § 2804.31 How will the BLM call for site testing for solar and wind energy?

(a) *Call for site testing.* The BLM may, at its own discretion, initiate a call for site testing. The BLM will publish this call for site testing in the FEDERAL REGISTER and may also use other notification methods, such as a newspaper of general circulation in the area affected by the potential right-of-way, or the Internet. The FEDERAL REGISTER and any other notices will include:

(1) The date, time, and location that site testing applications identified under § 2801.9(d)(1) of this part may be submitted;

(2) The date by which applicants will be notified of the BLM's decision on timely submitted site testing applications;

(3) The legal land description of the area for which site testing applications are being requested; and

(4) The qualification requirements for applicants (see § 2803.10).

(b) You may request that the BLM hold a call for site testing for certain public lands. The BLM may proceed with a call for site testing at its own discretion.

(c) The BLM may identify lands surrounding the site testing as designated leasing areas under § 2802.11. If a designated leasing area is established, a competitive offer for a development lease under subpart 2809 may be held at the discretion of the BLM.

[81 FR 92212, Dec. 19, 2016]

### § 2804.35 How will the BLM prioritize my solar or wind energy application?

The BLM will prioritize your application by placing it into one of three categories and may re-categorize your application based on new information received through surveys, public meetings, or other data collection, or after any changes to the application. The BLM will generally prioritize the processing of leases awarded under subpart 2809 before applications submitted under subpart 2804. For applications submitted under subpart 2804, the BLM will categorize your application based on the following screening criteria.

(a) High-priority applications are given processing priority over medium- and low-priority applications and may include lands that meet the following criteria:

(1) Lands specifically identified as appropriate for solar or wind energy development, other than designated leasing areas;

(2) Previously disturbed sites or areas adjacent to previously disturbed or developed sites;

(3) Lands currently designated as Visual Resource Management Class IV; or

(4) Lands identified as suitable for disposal in BLM land use plans.

(b) Medium-priority applications are given priority over low-priority applications and may include lands that meet the following criteria:

(1) BLM special management areas that provide for limited development,

including recreation sites and facilities;

(2) Areas where a project may adversely affect conservation lands, including lands with wilderness characteristics that have been identified in an updated wilderness characteristics inventory;

(3) Right-of-way avoidance areas;

(4) Areas where project development may adversely affect resources and properties listed nationally such as the National Register of Historic Places, National Natural Landmarks, or National Historic Landmarks;

(5) Sensitive habitat areas, including important species use areas, riparian areas, or areas of importance for Federal or State sensitive species;

(6) Lands currently designated as Visual Resource Management Class III;

(7) Department of Defense operating areas with land use or operational mission conflicts; or

(8) Projects with proposed groundwater uses within groundwater basins that have been allocated by State water resource agencies.

(c) Low-priority applications may not be feasible to authorize. These applications may include lands that meet the following criteria:

(1) Lands near or adjacent to lands designated by Congress, the President, or the Secretary for the protection of sensitive viewsheds, resources, and values (*e.g.*, units of the National Park System, Fish and Wildlife Service Refuge System, some National Forest System units, and the BLM National Landscape Conservation System), which may be adversely affected by development;

(2) Lands near or adjacent to Wild, Scenic, and Recreational Rivers and river segments determined suitable for Wild or Scenic River status, if project development may have significant adverse effects on sensitive viewsheds, resources, and values;

(3) Designated critical habitat for federally threatened or endangered species, if project development may result in the destruction or adverse modification of that critical habitat;

(4) Lands currently designated as Visual Resource Management Class I or Class II;

(5) Right-of-way exclusion areas; or

(6) Lands currently designated as no surface occupancy for oil and gas development in BLM land use plans.

[81 FR 92212, Dec. 19, 2016]

### § 2804.40 Alternative requirements.

If you are unable to meet any of the requirements in this subpart you may request approval for an alternative requirement from the BLM. Any such request is not approved until you receive BLM approval in writing. Your request to the BLM must:

(a) Show good cause for your 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.

[81 FR 92212, Dec. 19, 2016]

## Subpart 2805—Terms and Conditions of Grants

### § 2805.10 How will I know whether the BLM has approved or denied my application or if my bid for a solar or wind energy development grant or lease is successful or unsuccessful?

(a) The BLM will send you a written response when it has made a decision on your application or if you are the successful bidder for a solar or wind energy development grant or lease. If we approve your application, we will send you an unsigned grant for your review and signature. If you are the successful bidder for a solar or wind energy lease inside a designated leasing area under § 2809.15, we may send you an unsigned lease for your review and signature. If your bid is unsuccessful, it will be refunded under § 2804.30(e)(4) or § 2809.14(d) and you will receive written notice from us.

(b) Your unsigned grant or lease document:

(1) Will include any terms, conditions, and stipulations that we determine to be in the public interest, such as modifying your proposed use or changing the route or location of the facilities;

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

(3) Will impose a specific term for the grant or lease. Each grant or lease that we issue for 20 or more years will contain a provision requiring periodic review at the end of the twentieth year and subsequently at 10-year intervals. We may change the terms and conditions of the grant or lease, including leases issued under subpart 2809, as a result of these reviews in accordance with § 2805.15(e).

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

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

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92212, Dec. 19, 2016]

### § 2805.11 What does a grant contain?

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

(a) *What lands you can use or occupy.* The lands may or may not correspond to those for which you applied. BLM will limit the grant to those lands which BLM determines:

(1) You will occupy with authorized facilities;

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

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

(4) Will not unnecessarily damage the environment; and

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

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

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

(i) The public purpose served;

(ii) Cost and useful life of the facility;

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

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

(2) Specific terms for solar and wind energy grants and leases are as follows:

(i) For an energy site-specific testing grant, the term is 3 years or less, without the option of renewal;

(ii) For an energy project-area testing grant, the initial term is 3 years or less, with the option to renew for one additional 3-year period when the renewal application is also accompanied by a solar or wind energy development application and a POD as required by § 2804.25(e)(3);

(iii) For a short-term grant for all other associated actions not specifically included in paragraphs (b)(2)(i) and (ii) of this section, such as geotechnical testing and other temporary land disturbing activities, the term is 3 years or less;

(iv) For solar and wind energy development grants, the term is up to 30 years (plus the initial partial year of issuance) with adjustable terms and conditions. The grantee may submit an application for renewal under § 2805.14(g); and

(v) For solar and wind energy development leases located inside designated leasing areas, the term is fixed for 30 years (plus the initial partial year of issuance). The lessee may submit an application for renewal under § 2805.14(g).

(3) All grants and leases, except those issued for a term of 3 years or less and those issued in perpetuity, will expire on December 31 of the final year of the grant or lease. For grants and leases with terms greater than 3 years, the actual term includes the number of full years specified, plus the initial partial year, if any.

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

[70 FR 21058, Apr. 22, 2005, as amended at 73 FR 65071, Oct. 31, 2008; 81 FR 92213, Dec. 19, 2016]

### § 2805.12 What terms and conditions must I comply with?

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

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

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

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

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

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

(6) Pay monitoring fees and rent described in § 2805.16 and subpart 2806;

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

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

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

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

(iii) Control or prevent damage to:

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

(B) Public and private property; and

(C) Public health and safety;

(iv) Provide for compensatory mitigation for residual impacts associated with the right-of-way;

(v) Protect the interests of individuals living in the general area who rely on the area for subsistence uses as that term is used in Title VIII of Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111 *et seq.*);

(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 or lease, including the approved POD, if one was required;

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

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

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

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

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

(12) Control and remove any release or discharge of hazardous material on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the release or discharge is authorized

under the grant. You must also remediate and restore lands and resources affected by the release or discharge to the BLM's satisfaction and to the satisfaction of any other Federal, State, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;

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

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

(15) As the BLM directs, provide, or give access to, any pertinent environmental, technical, and financial records, reports, and other information, such as Power Purchase and Interconnection Agreements or the production and sale data for electricity generated from the approved facilities on public lands. Failure to comply with such requirements may, at the discretion of the BLM, result in suspension or termination of the right-of-way authorization. The BLM may use this and similar information for the purpose of monitoring your authorization and for periodic evaluation of financial obligations under the authorization, as appropriate. Any records the BLM obtains will be made available to the public subject to all applicable legal requirements and limitations for inspection and duplication under the Freedom of Information Act. Any information marked confidential or proprietary will be kept confidential to the extent allowed by law; and

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

(b) You must comply with the bonding requirements under § 2805.20. The BLM will not issue a Notice to Proceed or give written approval to proceed with ground disturbing activities until you comply with this requirement.

(c) By accepting a grant or lease for solar or wind energy development, you also agree to comply with and be bound by the following terms and conditions. You must:

(1) Not begin any ground disturbing activities until the BLM issues a Notice to Proceed (see § 2807.10) or written approval to proceed with ground disturbing activities;

(2) Complete construction within the timeframes in the approved POD, but no later than 24 months after the start of construction, unless the project has been approved for staged development, or as otherwise authorized by the BLM;

(3) If an approved POD provides for staged development, unless otherwise approved by the BLM:

(i) Begin construction of the initial phase of development within 12 months after issuance of the Notice to Proceed, but no later than 24 months after the effective date of the right-of-way authorization;

(ii) Begin construction of each stage of development (following the first) within 3 years of the start of construction of the previous stage of development, and complete construction of that stage no later than 24 months after the start of construction of that stage, unless otherwise authorized by the BLM; and

(iii) Have no more than 3 development stages, unless otherwise authorized by the BLM;

(4) Maintain all onsite electrical generation equipment and facilities in accordance with the design standards in the approved POD;

(5) Repair and place into service, or remove from the site, damaged or abandoned facilities that have been inoperative for any continuous period of 3 months and that present an unnecessary hazard to the public lands. 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

(6) Comply with the diligent development provisions of the authorization or the BLM may suspend or terminate your grant or lease under §§ 2807.17 through 2807.19. Before suspending or terminating the authorization, the BLM will send you a notice that gives

you a reasonable opportunity to correct any noncompliance or to start or resume use of the right-of-way (see § 2807.18). In response to this notice, you must:

(i) Provide reasonable justification for any delays in construction (for example, delays in equipment delivery, legal challenges, and acts of God);

(ii) Provide the anticipated date of completion of construction and evidence of progress toward the start or resumption of construction; and

(iii) Submit a written request under paragraph (e) of this section for extension of the timelines in the approved POD. If you do not comply with the requirements of paragraph (c)(7) of this section, the BLM may deny your request for an extension of the timelines in the approved POD.

(7) In addition to the RCE requirements of § 2805.20(a)(5) for a grant, the bond secured for a grant or lease must cover the estimated costs of cultural resource and Indian cultural resource identification, protection, and mitigation for project impacts.

(d) For energy site or project testing grants:

(1) You must install all monitoring facilities within 12 months after the effective date of the grant or other authorization. If monitoring facilities under a site testing and monitoring right-of-way authorization have not been installed within 12 months after the effective date of the authorization or consistent with the timeframe of the approved POD, you must request an extension pursuant to paragraph (e) of this section;

(2) You must maintain all onsite equipment and facilities in accordance with the approved design standards;

(3) You must repair and place into service, or remove from the site, damaged or abandoned facilities that have been inoperative for any continuous period of 3 months and that present an unnecessary hazard to the public lands; and

(4) If you do not comply with the diligent development provisions of either the site testing and monitoring authorization or the project testing and monitoring authorization, the BLM may terminate your authorization under § 2807.17.

(e) *Notification of noncompliance and request for alternative requirements.* (1) As soon as you anticipate that you will not meet any stipulation, term, or condition of the approved right-of-way grant or lease, or in the event of your noncompliance with any such stipulation, term, or condition, you must notify the BLM in writing and show good cause for the noncompliance, including an explanation of the reasons for the failure.

(2) You may also request that the BLM consider alternative stipulations, terms, or conditions. Any request for an alternative stipulation, term, or condition must comply with applicable law in order to be considered. Any proposed alternative to applicable bonding requirements must provide the United States with adequate financial assurance for potential liabilities associated with your right-of-way grant or lease. Any such request is not approved until you receive BLM approval in writing.

[81 FR 92213, Dec. 19, 2016]

### § 2805.13 When is a grant effective?

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

### § 2805.14 What rights does a grant convey?

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

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

(b) If your grant specifically authorizes, allow other parties to use your facility for the purposes specified in your grant and you may charge for such use.

If your grant does not specifically authorize it, you may not let anyone else use your facility and you may not charge for its use unless BLM authorizes or requires it in writing;

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

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

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

(f) Assign the grant to another, provided that you obtain the BLM's prior written approval, unless your grant specifically states that that such approval is unnecessary; and

(g) Apply to renew your solar or wind energy development grant or lease, under § 2807.22; and

(h) Apply to renew your energy project-area testing grant for one additional term of 3 years or less when the renewal application also includes an energy development application under § 2801.9(d)(2).

[70 FR 21058, Apr. 22, 2005, as amended at 73 FR 65071, Oct. 31, 2008; 81 FR 92215, Dec. 19, 2016]

### § 2805.15 What rights does the United States retain?

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

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

(b) Require common use of your right-of-way, including facilities (see § 2805.14(b)), subsurface, and air space, and authorize use of the right-of-way for compatible uses.You may not charge for the use of the lands made subject to such additional right-of-way grants;

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92215, Dec. 19, 2016]

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

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

MONITORING CATEGORIES

| Monitoring category | Federal work hours involved |
|---|---|
| (1) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants. | Estimated Federal work hours are >1 ≤8. |
| (2) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants. | Estimated Federal work hours are >8 ≤24. |

MONITORING CATEGORIES—Continued

| Monitoring category | Federal work hours involved |
|---|---|
| (3) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants. | Estimated Federal work hours are >24 ≤36. |
| (4) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants. | Estimated Federal work hours are >36 ≤50. |
| (5) Master Agreements | Varies. |
| (6) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants. | Estimated Federal work hours are >50. |

(b) The monitoring cost schedule is available from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Washington, DC 20003. The BLM also posts the current schedule at *http://www.blm.gov*.

[81 FR 92215, Dec. 19, 2016]

### § 2805.17 When do I pay monitoring fees?

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

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

(c) *Monitoring Category 6.* BLM may periodically estimate the costs of monitoring your use of the grant. BLM will include this fee in the costs associated with processing fees described at § 2804.14 of this part. If BLM has underestimated the monitoring costs, we will notify you of the shortfall. If your payments exceed the reasonable costs that Federal employees incurred for monitoring, BLM will either reimburse you the difference, or adjust the next billing to reflect the overpayment. Unless BLM gives you written authorization, you may not offset or deduct the overpayment from your payments.

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

### § 2805.20 Bonding requirements.

If you hold a grant or lease under this part, you must comply with the following bonding requirements:

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

(1) The BLM must be listed as an additionally named insured on the bond instrument if a State regulatory authority requires a bond to cover some portion of environmental liabilities, such as hazardous material damages or releases, reclamation, or other requirements for the project. The bond must:

(i) Be redeemable by the BLM;

(ii) Be held or approved by a State agency for the same reclamation requirements as specified by our right-of-way authorization; and

(iii) Provide the same or greater financial guarantee that we require for the portion of environmental liabilities covered by the State's bond.

(2) *Bond acceptance.* The BLM authorized officer must review and approve

all bonds, including any State bonds, prior to acceptance, and at the time of any right-of-way assignment, amendment, or renewal.

(3) *Bond amount.* Unless you hold a solar or wind energy lease under subpart 2809, the bond amount will be determined based on the preparation of a RCE, which the BLM may require you to prepare and submit. The estimate must include our cost to administer a reclamation contract and will be reviewed periodically for adequacy. The BLM may also consider other factors, such as salvage value, when determining the bond amount.

(4) You must post a bond on or before the deadline that we give you.

(5) Bond components that must be addressed when determining the RCE amount include, but are not limited to:

(i) Environmental liabilities such as use of hazardous materials waste and hazardous substances, herbicide use, the use of petroleum-based fluids, and dust control or soil stabilization materials;

(ii) The decommissioning, removal, and proper disposal, as appropriate, of any improvements and facilities; and

(iii) Interim and final reclamation, re-vegetation, recontouring, and soil stabilization. This component must address the potential for flood events and downstream sedimentation from the site that may result in offsite impacts.

(6) You may ask us to accept a replacement performance and reclamation bond at any time after the approval of the initial bond. We will review the replacement bond for adequacy. A surety company is not released from obligations that accrued while the surety bond was in effect unless the replacement bond covers those obligations to our satisfaction.

(7) You must notify us that reclamation has occurred and you may request that the BLM reevaluate your bond. If we determine that you have completed reclamation, we may release all or part of your bond.

(8) If you hold a grant, you are still liable under § 2807.12 if:

(i) We release all or part of your bond;

(ii) The bond amount does not cover the cost of reclamation; or

(iii) There is no bond in place;

(b) If you hold a grant for solar energy development outside of designated leasing areas, you must provide a performance and reclamation bond (see paragraph (a) of this section) prior to the BLM issuing a Notice to Proceed (see § 2805.12(c)(1)). We will determine the bond amount based on the RCE (see paragraph (a)(3) of this section) and it must be no less than $10,000 per acre that will be disturbed;

(c) If you hold a grant for wind energy development outside of designated leasing areas, you must provide a performance and reclamation bond (see paragraph (a) of this section) prior to the BLM issuing a Notice to Proceed (see § 2805.12(c)(1)). We will determine the bond amount based on the RCE (see paragraph (a)(3) of this section) and it must be no less than $10,000 per authorized turbine less than 1 MW in nameplate capacity or $20,000 per authorized turbine equal to or greater than 1 MW in nameplate capacity; and

(d) For short-term right-of-way grants for energy site or project-area testing, the bond amount must be no less than $2,000 per authorized meteorological tower or instrumentation facility location and must be provided before the written approval to proceed with ground disturbing activities (see § 2805.12(c)(1)).

[81 FR 92215, Dec. 19, 2016]

## Subpart 2806—Annual Rents and Payments

GENERAL PROVISIONS

### § 2806.10 What rent must I pay for my grant?

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

(b) If BLM issued your grant on or before October 21, 1976, under then existing statutory authority, upon request, BLM will conduct an informal hearing before a proposed rent increase becomes effective. This applies to rent

increases due to a BLM-initiated change in the rent or from initially being put on a rent schedule. You are not entitled to a hearing on annual adjustments once you are on a rent schedule.

### § 2806.11 How will BLM charge me rent?

(a) BLM will charge rent beginning on the first day of the month following the effective date of the grant through the last day of the month when the grant terminates. *Example:* If a grant became effective on January 10 and terminated on September 16, the rental period would be February 1 through September 30, or 8 months.

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

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

### § 2806.12 When and where do I pay rent?

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

(1) If your non-linear grant or lease is effective on:

(i) January 1 through September 30 and qualifies for annual payments, your initial rent bill is pro-rated to include only the remaining full months in the initial year; or

(ii) October 1 through December 31 and qualifies for annual payments, your initial rent bill is pro-rated to include the remaining full months in the initial year plus the next full year.

(2) If your non-linear grant allows for multi-year payments, such as a short term grant issued for energy site-specific testing, you may request that your initial rent bill be for the full term of the grant instead of the initial rent bill periods provided under paragraph (a)(1)(i) or (ii) of this section.

(b) You must make all rental payments for linear rights-of-way according to the payment plan described in § 2806.24.

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

(d) You must make all rental payments as instructed by us or as provided for by Secretarial order or legislative authority.

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92216, Dec. 19, 2016]

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

(a) If the BLM does not receive the rent or fee payment required in subpart 2806 within 15 calendar days after the payment was due under § 2806.12, we will charge you a late payment fee of $25 or 10 percent of the amount you owe, whichever is greater, per authorization.

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

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

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

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

(1) A clerical error is identified;

(2) An adjustment to rental schedules is not applied; or

(3) An omission or error in complying with the terms and conditions of the authorized right-of-way is identified.

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

(g) We will not approve any further activities associated with your right-

of-way until we receive any outstanding payments that are due.

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92216, Dec. 19, 2016]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LINEAR RIGHTS-OF-WAY

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

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

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

(c) You may obtain a copy of the current Per Acre Rent Schedule from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Washington, DC 20003. We also post the current rent schedule at *http://www.blm.gov*.

[73 FR 65071, Oct. 31, 2008, as amended at 81 FR 92216, Dec. 19, 2016]

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

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

[73 FR 65071, Oct. 31, 2008]

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

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

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

[73 FR 65072, Oct. 31, 2008, as amended at 81 FR 92216, Dec. 19, 2016]

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

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

result by the number of years in the rental payment period (the length of time for which the holder is paying rent).

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

[73 FR 65072, Oct. 31, 2008, as amended at 81 FR 92216, Dec. 19, 2016]

### § 2806.24 How must I make rental payments for a linear grant?

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

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

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

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

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

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

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

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

(c) *Proration of payments.* The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant. If your grant requires, or you chose a 10-year payment term, or multiples thereof, the initial rent bill consists of the remaining partial year plus the next 10 years, or multiple thereof.

[73 FR 65072, Oct. 31, 2008, as amended at 81 FR 92216, Dec. 19, 2016]

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

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

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

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

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

(b) *One-time payment for grants converted to perpetual grants under § 2807.15(b).* If the land your grant encumbers is being transferred out of

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

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

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

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

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

[73 FR 65072, Oct. 31, 2008]

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

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

(b) When no acceptable market information is available and no appraisal report has been completed for the land transfer action or when the BLM requests it, you must prepare an appraisal report as required under § 2806.25(d). You may also submit an appraisal report on your own initiative in accordance with § 2806.25(d).

[73 FR 65072, Oct. 31, 2008]

COMMUNICATION SITE RIGHTS-OF-WAY

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

(a) *Rent schedule.* (1) The BLM uses a rent schedule to calculate the rent for communication site rights-of-way. The schedule is based on nine population strata (the population served), as depicted in the most recent version of the Ranally Metro Area (RMA) Population Ranking, and the type of communication use or uses for which we normally grant communication site rights-of-way. These uses are listed as part of the definition of ''communication use rent schedule,'' set out at § 2801.5(b). You may obtain a copy of the current schedule from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Washington, DC 20003. We also post the current communication use rent schedule at *http://www.blm.gov*.

(2) We update the schedule annually based on two sources: The U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI–U), as of July of each year (difference in CPI–U from July of one year to July of the following year), and the RMA population rankings.

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

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

(1) Communication site uses, facilities, and devices located entirely within the exterior boundaries of an oil and gas lease, and directly supporting the operations of the oil and gas lease (see parts 3160 through 3190 of this chapter);

(2) Communication facilities and uses ancillary to and authorized under a linear grant, such as a railroad grant or an oil and gas pipeline grant;

(3) Communication uses not listed on the schedule, such as telephone lines,

fiber optic cables, and new technologies;

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

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

(i) The expected annual rent, as BLM estimates from market data, exceeds the rent from the rent schedule by five times; or

(ii) The communication site serves a population of one million or more and the expected annual rent for the communication use or uses is more than $10,000 above the rent from the rent schedule.

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92216, Dec. 19, 2016]

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

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

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

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

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

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

### § 2806.32 How does BLM determine the population strata served?

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

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

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

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

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

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

(b)(1) BLM considers all facilities (and all uses within the same facility) located at one site to serve the same RMA or community. However, BLM may make case-by-case exceptions in determining the population served at a particular site by uses not located within the same facility and not authorized under the same grant or lease. BLM has the sole responsibility to make this determination. For example, when a site has a mix of high-power and low-power uses that are authorized by separate grants or leases, and only

the high-power uses are capable of serving an RMA or community with the greatest population, BLM may separately determine the population strata served by the low-power uses (if not collocated in the same facility with the high-power uses), and calculate their rent as described in § 2806.30 of this subpart.

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

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

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

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

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

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

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

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

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

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

(b) *Special applications.* The following provisions apply when calculating rents for communication uses exempted from rent under § 2806.14 of this subpart or communication uses whose rent has been waived or reduced to zero under § 2806.15 of this subpart:

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

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

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

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

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92217, Dec. 19, 2016]

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

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

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

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

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

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

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

(c) BLM will charge tenants and customers who hold their own grant or lease in a facility, as grant or lease holders, the full annual rent for their use based on the BLM communication use rent schedule. BLM will also include such tenant or customer use in calculating the rent the facility owner or facility manager must pay.

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

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

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

If you hold authorizations for two or more facilities on the same site, you can combine all those uses under one grant or lease, with BLM's approval.

The highest value use in all the combined facilities determines the base rent. BLM then charges for each remaining use in the combined facilities at 25 percent of the rent from the rent schedule. These uses include those uses we previously calculated as base rents when BLM authorized each of the facilities on an individual basis.

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

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

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

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

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

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

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

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

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

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

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

(a) BLM calculates rent for passive reflectors and local exchange networks by using the same rent schedules for passive reflectors and local exchange networks as the Forest Service uses for the region in which the facilities are located. You may obtain the pertinent schedules from the Forest Service or from any BLM state or field office in the region in question. For passive reflectors and local exchange networks not covered by a Forest Service regional schedule, we use the provisions in § 2806.70 to determine rent. See Forest Service regulations at 36 CFR chapter II.

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92217, Dec. 19, 2016]

### § 2806.44 How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses?

This section applies to a grant or lease that authorizes a mixture of communication uses, some of which are subject to the communication use rent schedule and some of which are not. We will determine rent for these leases 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 communication use 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 §§ 2806.30 and 2806.31 of this subpart.

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92217, Dec. 19, 2016]

## SOLAR ENERGY RIGHTS-OF-WAY

### § 2806.50 Rents and fees for solar energy rights-of-way.

If you hold a right-of-way authorizing solar energy site-specific or project-area testing, or solar energy development, you must pay an annual rent and fee in accordance with this section and subpart. Your solar energy right-of-way authorization will either be a grant (if issued under subpart 2804) or a lease (if issued under subpart 2809). Rents and fees for either type of authorization consist of an acreage rent that must be paid prior to issuance of the authorization and a phased-in MW capacity fee. Both the acreage rent and the phased-in MW capacity fee are charged and calculated consistent with § 2806.11 and prorated consistent with § 2806.12(a). The MW capacity fee will vary depending on the size and technology of the solar energy development project.

[81 FR 92217, Dec. 19, 2016]

### § 2806.51 Scheduled Rate Adjustment.

(a) The BLM will adjust your acreage rent and MW capacity fee over the course of your authorization as described in these regulations. For new grants or leases, you may choose either the standard rate adjustment method (see § 2806.52(a)(5) and (b)(3) for grants; see § 2806.54(a)(4) or (c) for leases) or the scheduled rate adjustment method (see § 2806.52(d) for grants; see § 2806.54(d) for leases). Once you select a rate adjustment method, that method will be fixed until you renew your grant or lease (see § 2807.22).

(b) For new grants or leases, if you select the scheduled rate adjustment method you must notify the BLM of your decision in writing. Your decision must be received by the BLM before your grant or lease is issued. If you do not select the scheduled rate adjustment method, the standard rate adjustment method will apply.

(c) If you hold a grant that is in effect prior to January 18, 2017, you may either accept the standard rate adjustment method or request in writing that the BLM apply the scheduled rate adjustment method, as set forth in § 2806.52(d), to your grant. To take advantage of the scheduled rate adjustment option, your request must be received by the BLM before December 19, 2018. The BLM will continue to apply the standard rate adjustment method to adjust your rates unless and until it receives your request to use the scheduled rate adjustment method.

[81 FR 92217, Dec. 19, 2016]

### § 2806.52 Rents and fees for solar energy development grants.

You must pay an annual acreage rent and MW capacity fee for your solar energy development grant as follows:

(a) *Acreage rent.* The BLM will calculate the acreage rent by multiplying the number of acres (rounded up to the nearest tenth of an acre) within the authorized area times the annual per acre zone rate from the solar energy acreage rent schedule in effect at the time the authorization is issued.

(1) *Per acre zone rate.* The annual per acre zone rate from the solar energy acreage rent schedule is calculated using the per acre zone value (as assigned under paragraph (a)(2) of this section), encumbrance factor, rate of return, and the annual adjustment factor. The calculation for determining the annual per acre zone rate is A × B × C × D = E where:

(i) A is the per acre zone value = the same per acre zone values described in the linear rent schedule in § 2806.20(c);

(ii) B is the encumbrance factor = 100 percent;

(iii) C is the rate of return = 5.27 percent;

(iv) D is the annual adjustment factor = the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available (see § 2806.22(a)). The BLM will adjust the per acre zone rates each year based on the average annual change in the IPD–GDP as determined under § 2806.22(a). Adjusted rates are effective each year on January 1; and

(v) E is the annual per acre zone rate.

(2) *Assignment of counties.* The BLM will calculate the per acre zone rate in paragraph (a)(1) of this section by using a State-specific factor to assign a county to a zone in the solar energy acreage rent schedule. The BLM will calculate a State-specific factor and apply it to the NASS data (county average per acre land and building value) to determine the per acre value and assign a county (or other geographical area) to a zone. The State-specific factor represents the percent difference between improved agricultural land and unimproved rangeland values, using NASS data. The calculation for determining the State-specific factor is (A/B) − (C/D) = E where:

(i) A = the NASS Census statewide average per acre value of non-irrigated acres;

(ii) B = the NASS Census statewide average per acre land and building value;

(iii) C = the NASS Census total statewide acres in farmsteads, homes, buildings, livestock facilities, ponds, roads, wasteland, etc.;

(iv) D = the total statewide acres in farms; and

(v) E = the State-specific percent factor or 20 percent, whichever is greater.

(3) The initial assignment of counties to the zones on the solar energy acreage rent schedule will be based upon the most recent NASS Census data (2012) for years 2016 through 2020. The BLM may on its own or in response to requests consider making regional adjustments to those initial assignments, based on evidence that the NASS Census values do not accurately reflect the value of the BLM-managed lands in a given area. The BLM will update this rent schedule once every 5 years by reassigning counties to reflect the updated NASS Census values as described in § 2806.21 and recalculate the State-specific percent factor once every 10 years as described in § 2806.22(b).

(4) *Acreage rent payment.* You must pay the acreage rent regardless of the stage of development or operations on the entire public land acreage described in the right-of-way authorization. The BLM State Director may approve a rental payment plan consistent with § 2806.15(c).

(5) *Acreage rent adjustments.* This paragraph (a)(5) applies unless you selected the scheduled rate adjustment method (see § 2806.51). The BLM will adjust the acreage rent annually to reflect the change in the per acre zone rates as specified in paragraph (a)(1) of this section. The BLM will use the most current per acre zone rates to calculate the acreage rent for each year of the grant term.

(6) You may obtain a copy of the current per acre zone rates for solar energy development (solar energy acreage rent schedule) from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Renewable Energy Coordination Office, Washington, DC 20003. The BLM also posts the current solar energy acreage rent schedule for solar energy development at *http://www.blm.gov.*

(b) *MW capacity fee.* The MW capacity fee is calculated by multiplying the approved MW capacity by the MW rate (for the applicable type of technology employed by the project) from the MW rate schedule (see paragraph (b)(2) of

this section). You must pay the MW capacity fee annually when electricity generation begins or is scheduled to begin in the approved POD, whichever comes first:

(1) *MW rate.* The MW rate is calculated by multiplying the total hours per year, by the net capacity factor, by the MWh price, by the rate of return. For an explanation of each of these terms, see the definition of MW rate in § 2801.5(b).

(2) *MW rate schedule.* You may obtain a copy of the current MW rate schedule for solar energy development from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Renewable Energy Coordination Office, Washington, DC 20003. The BLM also posts the current MW rate schedule for solar energy development at *http://www.blm.gov.*

(3) *Periodic adjustments in the MW rate.* This paragraph (b)(3) applies unless you selected the scheduled rate adjustment method (see § 2806.51). The BLM will adjust the MW rate applicable to your grant every 5 years, beginning in 2021, by recalculating the following two components of the MW rate formula:

(i) The adjusted MWh price is the average of the annual weighted average wholesale price per MWh for the major trading hubs serving the 11 Western States of the continental United States for the full 5 calendar-year period preceding the adjustment, rounded to the nearest dollar increment; and

(ii) The adjusted rate of return is the 10-year average of the 20-year U.S. Treasury bond yield for the full 10 calendar-year period preceding the adjustment, rounded to the nearest one-tenth percent, with a minimum rate of return of 4 percent.

(4) *MW rate phase-in.* This paragraph (b)(4) applies unless you selected the scheduled rate adjustment method (see § 2806.51). If you hold a solar energy development grant, the MW rate will be phased in as follows:

(i) There is a 3-year phase-in of the MW rate when electricity generation begins or is scheduled to begin in the approved POD, whichever comes first, at the rates of:

(A) 25 percent for the first year. This rate applies for the first partial calendar year of operations, from the date electricity generation begins until Dec. 31 of that year;

(B) 50 percent for the second year; and

(C) 100 percent for the third and subsequent years of operations.

(ii) After generation of electricity starts and an approved POD provides for staged development:

(A) The 3-year phase-in of the MW rate applies to each stage of development; and

(B) The MW capacity fee is calculated using the authorized MW capacity approved for that stage plus any previously approved stages, multiplied by the MW rate.

(5) The general payment provisions for rents described in this subpart, except for § 2806.14(a)(4), also apply to the MW capacity fee.

(c) *Initial implementation of the acreage rent and MW capacity fee.* This paragraph (c) applies unless you selected the scheduled rate adjustment method (see § 2806.51). If you hold a solar energy grant and made payments for billing year 2016, the BLM will reduce by 50 percent the net increase in annual costs between billing year 2017 and billing year 2016. The net increase will be calculated based on a full calendar year.

(d) *Scheduled rate adjustment.* Under the scheduled rate adjustment method (see § 2806.51), the BLM will update your per acre zone rate and MW rate as follows:

(1) The BLM will calculate your payments using the per acre zone rate (see § 2806.52(a)(1)) and MW rate (see § 2806.52(b)(1)) in place when your grant is issued, or for existing grants, the per acre zone rate and MW rate in place prior to December 19, 2016, as adjusted under paragraph (d)(6) of this section;

(2) The per acre zone rate will increase:

(i) Annually, beginning after the first full calendar year plus any initial partial year following issuance of your grant, by the average annual change in the IPD–GDP as described in § 2806.22(b); and

(ii) Every 5 years, beginning after the first 5 calendar years, plus any initial

partial year, following issuance of your grant, by 20 percent;

(3) The MW rate will increase by 20 percent every 5 years, beginning after the first 5 years, plus the initial partial year, if any, your grant is in effect;

(4) The BLM will not apply the phase-in to your MW rate under § 2806.52(b)(4) or the reduction under § 2806.52(c);

(5) If the approved POD for your project provides for staged development, the BLM will calculate the MW capacity fee using the MW capacity approved for the current stage plus any previously approved stages, multiplied by the MW rate, as described under this section.

(6) For grants in place prior to January 18, 2017 that select the scheduled rate adjustment method offered under § 2806.51(c), the per acre zone rate and the MW rate in place prior to December 19, 2016 will be adjusted for the first year's payment using the scheduled rate adjustment method as follows:

(i) The per acre zone rate will increase by the average annual change in the IPD–GDP as described in § 2806.22(b) plus 20 percent;

(ii) The MW rate will increase by 20 percent; and

(iii) Subsequent increases will be performed as set forth in paragraphs (d)(2) and (3) of this section from the date of the initial adjustment under this paragraph (d).

[81 FR 92217, Dec. 19, 2016]

### § 2806.54 Rents and fees for solar energy development leases.

If you hold a solar energy development lease obtained through competitive bidding under subpart 2809 of this part, you must make annual payments in accordance with this section and subpart, in addition to the one-time, upfront bonus bid you paid to obtain the lease. The annual payment includes an acreage rent for the number of acres included within the solar energy lease and an additional MW capacity fee based on the total authorized MW capacity for the approved solar energy project on the public lands.

(a) *Acreage rent.* The BLM will calculate and bill you an acreage rent that must be paid prior to issuance of your lease as described in § 2806.52(a). This acreage rent will be based on the following:

(1) *Per acre zone rate.* See § 2806.52(a)(1).

(2) *Assignment of counties.* See § 2806.52(a)(2) and (3).

(3) *Acreage rent payment.* See § 2806.52(a)(4).

(4) *Acreage rent adjustments.* This paragraph (a)(4) applies unless you selected the scheduled rate adjustment method (see § 2806.51). Once the acreage rent is determined under § 2806.52(a), no further adjustments in the annual acreage rent will be made until year 11 of the lease term and each subsequent 10-year period thereafter. The BLM will use the per acre zone rates in effect when it adjusts the annual acreage rent at those 10-year intervals,

(b) *MW capacity fee.* See § 2806.52(b) introductory text and (b)(1), (2), and (3).

(c) *MW rate phase-in.* This paragraph (c) applies unless you selected the scheduled rate adjustment method (see § 2806.51). If you hold a solar energy development lease, the MW capacity fee will be phased in, starting when electricity begins to be generated. The MW capacity fee for years 1–20 will be calculated using the MW rate in effect when the lease is issued. The MW capacity fee for years 21–30 will be calculated using the MW rate in effect in year 21 of the lease. These rates will be phased-in as follows:

(1) For years 1 through 10 of the lease, plus any initial partial year, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 50 percent of the applicable solar technology MW rate, as described in § 2806.52(b)(2).

(2) For years 11 through 20 of the lease, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 100 percent of the applicable solar technology MW rate, as described in § 2806.52(b)(2).

(3) For years 21 through 30 of the lease, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 100 percent of the applicable solar technology MW rate, as described in § 2806.52(b)(2).

(4) If the lease is renewed, the MW capacity fee is calculated using the MW rates at the beginning of the renewed lease period and will remain at that

rate through the initial 10-year period of the renewal term. The MW capacity fee will be adjusted using the MW rate at the beginning of each subsequent 10-year period of the renewed lease term.

(5) If an approved POD provides for staged development, the MW capacity fee is calculated using the MW capacity approved for that stage plus any previously approved stages, multiplied by the MW rate as described under this section.

(d) *Scheduled rate adjustment.* Under the scheduled rate adjustment (see § 2806.51), the BLM will update your per acre zone rate and MW rate as follows:

(1) The BLM will calculate your payments using the per acre zone rate (see § 2806.52(a)(1)) and MW rate (see § 2806.52(b)(1)) in place when your lease is issued;

(2) The per acre zone rate will increase every 10 years, beginning after the first 10 years, plus the initial partial year, if any, your lease is in effect, by the average annual change in the IPD–GDP for the preceding 10-year period as described in § 2806.22(b) plus 40 percent;

(3) The MW rate will increase by 40 percent every 10 years, beginning after the first 10 years, plus the initial partial year, if any, your lease is in effect;

(4) The BLM will not apply the phase-in to your MW rate under § 2806.52(c). Instead, for years 1 through 5, plus any initial partial year, the BLM will calculate the MW capacity fee by multiplying the project's authorized MW capacity by 50 percent of the applicable solar technology MW rate. This phase-in will not be applied to renewed leases; and

(5) If the approved POD for your project provides for staged development, the BLM will calculate the MW capacity fee using the MW capacity approved for the current stage plus any previously approved stages, multiplied by the MW rate, as described under this section.

[81 FR 92217, Dec. 19, 2016]

### § 2806.56 Rent for support facilities authorized under separate grant(s).

If a solar energy development project includes separate right-of-way authorizations issued for support facilities only (administration building, groundwater wells, construction lay down and staging areas, surface water management and control structures, etc.) or linear right-of-way facilities (pipelines, roads, power lines, etc.), rent is determined using the Per Acre Rent Schedule for linear facilities (see § 2806.20(c)).

[81 FR 92217, Dec. 19, 2016]

### § 2806.58 Rent for energy development testing grants.

(a) *Grants for energy site-specific testing.* You must pay $100 per year for each meteorological tower or instrumentation facility location. BLM offices with approved small site rental schedules may use those fee structures if the fees in those schedules charge more than $100 per meteorological tower per year. In lieu of annual payments, you may instead pay for the entire term of the grant (3 years or less).

(b) *Grants for energy project-area testing.* You must pay $2,000 per year or $2 per acre per year for the lands authorized by the grant, whichever is greater. There is no additional rent for the installation of each meteorological tower or instrumentation facility located within the site testing and monitoring project-area.

[81 FR 92217, Dec. 19, 2016]

## Wind Energy Rights-of-Way

### § 2806.60 Rents and fees for wind energy rights-of-way.

If you hold a right-of-way authorizing wind energy site-specific testing or project-area testing or wind energy development, you must pay an annual rent and fee in accordance with this section and subpart. Your wind energy development right-of-way authorization will either be a grant (if issued under subpart 2804) or a lease (if issued under subpart 2809). Rents and fees for either type of authorization consist of an acreage rent that must be paid prior to issuance of the authorization and a phased-in MW capacity fee. Both the acreage rent and the phased-in MW capacity fee are charged and calculated consistent with § 2806.11 and prorated consistent with § 2806.12(a). The MW capacity fee will vary depending on the

size of the wind energy development project.

[81 FR 92220, Dec. 19, 2016]

### § 2806.61 Scheduled Rate Adjustment.

(a) The BLM will adjust your acreage rent and MW capacity fee over the course of your authorization as described in these regulations. For new grants or leases, you may choose either the standard rate adjustment method (see § 2806.52(a)(5) and (b)(3) for grants; see § 2806.54(a)(4) or (c) for leases) or the scheduled rate adjustment method (see § 2806.52(d) for grants; see § 2806.54(d) for leases). Once you select a rate adjustment method, that method will be fixed until you renew your grant or lease (see § 2807.22).

(b) For new grants or leases, if you select the scheduled rate adjustment method you must notify the BLM of your decision in writing. Your decision must be received by the BLM before your grant or lease is issued. If you do not select the scheduled rate adjustment method, the standard rate adjustment method will apply.

(c) If you hold a grant that is in effect prior to January 18, 2017, you may either accept the standard rate adjustment method or request in writing that the BLM apply the scheduled rate adjustment method, as set forth in § 2806.52(d), to your grant. To take advantage of the scheduled rate adjustment option, your request must be received by the BLM before December 19, 2018. The BLM will continue to apply the standard rate adjustment method to adjust your rates unless and until it receives your request to use the scheduled rate adjustment method.

[81 FR 92220, Dec. 19, 2016]

### § 2806.62 Rents and fees for wind energy development grants.

You must pay an annual acreage rent and MW capacity fee for your wind energy development grant as follows:

(a) *Acreage rent.* The BLM will calculate the acreage rent by multiplying the number of acres (rounded up to the nearest tenth of an acre) within the authorized area times the per acre zone rate from the wind energy acreage rent schedule in effect at the time the authorization is issued.

(1) *Per acre zone rate.* The annual per acre zone rate from the wind energy acreage rent schedule is calculated using the per acre zone value (as assigned in accordance with paragraph (a)(2) of this section), encumbrance factor, rate of return, and the annual adjustment factor. The calculation for determining the annual per acre zone rate is $A \times B \times C \times D = E$ where:

(i) A is the per acre zone value = the same per- acre zone values described in the linear rent schedule in § 2806.20(c);

(ii) B is the encumbrance factor = 10 percent;

(iii) C is the rate of return = 5.27 percent;

(iv) D is the annual adjustment factor = the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available (see § 2806.22(a)). The BLM will adjust the per acre rates each year based on the average annual change in the IPD–GDP as determined under § 2806.22(a). Adjusted rates are effective each year on January 1; and

(v) E is the annual per acre zone rate.

(2) *Assignment of counties.* The BLM will calculate the per acre zone rate in paragraph (a)(1) of this section by using a State-specific factor to assign a county to a zone in the wind energy acreage rent schedule. The BLM will calculate a State-specific factor and apply it to the NASS data (county average per acre land and building value) to determine the per acre value and assign a county (or other geographical area) to a zone. The State-specific factor represents the percent difference between improved agricultural land and unimproved rangeland values, using NASS data. The calculation per acre for determining the State-specific factor is $(A/B) - (C/D) = E$ where:

(i) A = the NASS Census statewide average per acre value of non-irrigated acres;

(ii) B = the NASS Census statewide average per acre land and building value;

(iii) C = the NASS Census total statewide acres in farmsteads, homes, buildings, livestock facilities, ponds, roads, wasteland, etc.;

(iv) D = the total statewide acres in farms; and

(v) E = the State-specific percent factor or 20 percent, whichever is greater.

(3) The initial assignment of counties to the zones on the wind energy acreage rent schedule will be based upon the most recent NASS Census data (2012) for years 2016 through 2020. The BLM may on its own or in response to requests consider making regional adjustments to those initial assignments, based on evidence that the NASS Census values do not accurately reflect those of the BLM-managed lands. The BLM will update this rent schedule once every 5 years by re-assigning counties to reflect the updated NASS Census values as described in § 2806.21 and recalculate the State-specific percent factor once every 10 years as described in § 2806.22(b).

(4) *Acreage rent payment.* You must pay the acreage rent regardless of the stage of development or operations on the entire public land acreage described in the right-of-way authorization. The BLM State Director may approve a rental payment plan consistent with § 2806.15(c).

(5) *Acreage rent adjustments.* This paragraph (a)(5) applies unless you selected the scheduled rate adjustment method (see § 2806.61). The BLM will adjust the acreage rent annually to reflect the change in the per acre zone rates as specified in paragraph (a)(1) of this section. The BLM will use the most current per acre zone rates to calculate the acreage rent for each year of the grant term.

(6) The acreage rent must be paid as described in § 2806.62(a) except for the initial implementation of the wind energy acreage rent schedule of section § 2806.62(c).

(7) You may obtain a copy of the current per acre zone rates for wind energy development (wind energy acreage rent schedule) from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Renewable Energy Coordination Office, Washington, DC 20003. The BLM also posts the current wind energy acreage rent schedule for wind energy development at *http://www.blm.gov.*

(b) *MW capacity fee.* The MW capacity fee is calculated by multiplying the approved MW capacity by the MW rate. You must pay the MW capacity fee annually when electricity generation begins or is scheduled to begin in the approved POD, whichever comes first.

(1) *MW rate.* The MW rate is calculated by multiplying the total hours per year by the net capacity factor, by the MWh price, by the rate of return. For an explanation of each of these terms, see the definition of MW rate in § 2801.5(b).

(2) *MW rate schedule.* You may obtain a copy of the current MW rate schedule for wind energy development from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Renewable Energy Coordination Office, Washington, DC 20003. The BLM also posts the current MW rate schedule for wind energy development at *http://www.blm.gov.*

(3) *Periodic adjustments in the MW rate.* This paragraph (b)(3) applies unless you selected the scheduled rate adjustment method (see § 2806.61). We will adjust the MW rate every 5 years, beginning in 2021, by recalculating the following two components of the MW rate formula:

(i) The adjusted MWh price is the average of the annual weighted average wholesale price per MWh for the major trading hubs serving the 11 Western States of the continental United States for the full 5 calendar-year period preceding the adjustment, rounded to the nearest dollar increment; and

(ii) The adjusted rate of return is the 10-year average of the 20-year U.S. Treasury bond yield for the full 10 calendar-year period preceding the adjustment, rounded to the nearest one-tenth percent, with a minimum rate of return of 4 percent.

(4) *MW rate phase-in.* This paragraph (b)(4) applies unless you selected the scheduled rate adjustment method (see § 2806.61). If you hold a wind energy development grant, the MW rate will be phased in as follows:

(i) There is a 3-year phase-in of the MW rate when electricity generation begins or is scheduled to begin in the approved POD, whichever comes first, at the rates of:

(A) 25 percent for the first year. This rate applies for the first partial calendar year of operations;

(B) 50 percent for the second year; and

(C) 100 percent for the third and subsequent years of operations.

(ii) After generation of electricity starts and an approved POD provides for staged development:

(A) The 3-year phase-in of the MW rate applies to each stage of development; and

(B) The MW capacity fee is calculated using the authorized MW capacity approved for that stage, plus any previously approved stages, multiplied by the MW rate.

(iii) The MW rate may be phased in further, as described in paragraph (c) of this section.

(5) The general payment provisions for rents described in this subpart, except for § 2806.14(a)(4), also apply to the MW capacity fee.

(c) *Initial implementation of the acreage rent and MW capacity fee.* This paragraph (c) applies unless you selected the scheduled rate adjustment method (see § 2806.61).

(1) If you hold a wind energy grant and made payments for billing year 2016, the BLM will reduce by 50 percent the net increase in annual costs between billing year 2017 and billing year 2016. The net increase will be calculated based on a full calendar year.

(2) If the BLM accepted your application for a wind energy development grant, including a plan of development and cost recovery agreement, prior to September 30, 2014, the BLM will phase in your payment of the acreage rent and MW capacity fee by reducing the:

(i) Acreage rent of the grant by 50 percent for the initial partial year of the grant; and

(ii) MW capacity fee by 75 percent for the first (initial partial) and second years and by 50 percent for the third and fourth years for which the BLM requires payment of the MW capacity fee. This reduction to the MW capacity fee applies to each stage of development.

(d) *Scheduled rate adjustment.* Under the scheduled rate adjustment (see § 2806.61), the BLM will update your per acre zone rate and MW rate as follows:

(1) The BLM will calculate your payments using the per acre zone rate (see § 2806.62(a)(1)) and MW rate (see § 2806.62(b)(1)) in place when your grant is issued, or for existing grants, the per acre zone rate and MW rate in place prior to December 19, 2016, as adjusted under paragraph (d)(6) of this section;

(2) The per acre zone rate will increase:

(i) Annually, beginning after the first full year plus the initial partial year, if any, your grant is in effect by the average annual change in the IPD–GDP as described in § 2806.22(b); and

(ii) Every 5 years, beginning after the first 5 years, plus the initial partial year, if any, your grant is in effect, by 20 percent;

(3) The MW rate will increase by 20 percent every 5 years, beginning after the first 5 years, plus the initial partial year, if any, your grant is in effect;

(4) The BLM will not apply the phase-in to your MW rate under § 2806.62(b)(4) or the reduction under § 2806.62(c); and

(5) If the approved POD for your project provides for staged development, the BLM will calculate the MW capacity fee using the MW capacity approved for that stage in question plus any previously approved stages, multiplied by the MW rate as described under this section.

(6) For grants in place prior to January 18, 2017 that select the scheduled rate adjustment method offered under § 2806.61(c), the per acre zone rate and the MW rate in place prior to December 19, 2016 will be adjusted for the first year's payment using the scheduled rate adjustment method as follows:

(i) The per acre zone rate will increase by the average annual change in the IPD–GDP as described in § 2806.22(b) plus 20 percent;

(ii) The MW rate will increase by 20 percent; and

(iii) Subsequent increases will be performed as set forth in paragraphs (d)(2) and (3) of this section from the date of the initial adjustment under paragraph (d)(6) of this section.

[81 FR 92220, Dec. 19, 2016]

### § 2806.64 Rents and fees for wind energy development leases.

If you hold a wind energy development lease obtained through competitive bidding under subpart 2809 of this part, you must make annual payments in accordance with this section and subpart, in addition to the one-time, up front bonus bid you paid to obtain the lease. The annual payment includes an acreage rent for the number of acres included within the wind energy lease and an additional MW capacity fee based on the total authorized MW capacity for the approved wind energy project on the public lands.

(a) *Acreage rent.* The BLM will calculate and bill you an acreage rent that must be paid prior to issuance of your lease as described in § 2806.62(a). This acreage rent will be based on the following:

(1) *Per acre zone rate.* See § 2806.62(a)(1).

(2) *Assignment of counties.* See § 2806.62(a)(2) and (3).

(3) *Acreage rent payment.* See § 2806.62(a)(4).

(4) *Acreage rent adjustments.* This paragraph (a)(4) applies unless you selected the scheduled rate adjustment method (see § 2806.61). Once the acreage rent is determined under § 2806.62(a), no further adjustments in the annual acreage rent will be made until year 11 of the lease term and each subsequent 10-year period thereafter. We will use the per acre zone rates in effect at the time the acreage rent is due (at the beginning of each 10-year period) to calculate the annual acreage rent for each of the subsequent 10-year periods.

(b) *MW capacity fee.* See § 2806.62(b) introductory text and (b)(1), (2), and (3).

(c) *MW rate phase-in.* This paragraph (c) applies unless you selected the scheduled rate adjustment method (see § 2806.61). If you hold a wind energy development lease, the MW capacity fee will be phased in, starting when electricity begins to be generated. The MW capacity fee for years 1–20 will be calculated using the MW rate in effect when the lease is issued. The MW capacity fee for years 21–30 will be calculated using the MW rate in effect in year 21 of the lease. These rates will be phased-in as follows:

(1) For years 1 through 10 of the lease, plus any initial partial year, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 50 percent of the wind energy technology MW rate, as described in § 2806.62(b)(2);

(2) For years 11 through 20 of the lease, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 100 percent of the wind energy technology MW rate described in § 2806.62(b)(2);

(3) For years 21 through 30 of the lease, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 100 percent of the wind energy technology MW rate as described in § 2806.62(b)(2);

(4) If the lease is renewed, the MW capacity fee is calculated using the MW rates at the beginning of the renewed lease period and will remain at that rate through the initial 10 year period of the renewal term. The MW capacity fee will continue to adjust at the beginning of each subsequent 10 year period of the renewed lease term to reflect the then currently applicable MW rates; and

(5) If an approved POD provides for staged development, the MW capacity fee is calculated using the MW capacity approved for that stage plus any previously approved stage, multiplied by the MW rate, as described in this section.

(d) *Scheduled rate adjustment.* Under the scheduled rate adjustment (see § 2806.61), the BLM will update your per acre zone rate and MW rate as follows:

(1) The BLM will calculate your payments using the per acre zone rate (see § 2806.62(a)(1)) and MW rate (see § 2806.62(b)(1)) in place when your lease is issued;

(2) The per acre zone rate will increase every 10 years, beginning after the first 10 years, plus the initial partial year, if any, your lease is in effect, by the average annual change in the IPD–GDP for the preceding 10-year period as described in § 2806.22(b) plus 40 percent;

(3) The MW rate will increase by 40 percent every 10 years, beginning after the first 10 years, plus the initial partial year, if any, your lease is in effect;

(4) The BLM will not apply the phase-in to your MW rate under § 2806.62(c). Instead, for years 1 through 5, plus any initial partial year, the BLM will calculate the MW capacity fee by multiplying the project's authorized MW capacity by 50 percent of the applicable solar technology MW rate. This phase-in will not be applied to renewed leases; and

(5) If the approved POD for your project provides for staged development, the BLM will calculate the MW capacity fee using the MW capacity approved for that stage in question plus any previously approved stages, multiplied by the MW rate as described under this section.

[81 FR 92220, Dec. 19, 2016]

### § 2806.66 Rent for support facilities authorized under separate grant(s).

If a wind energy development project includes separate right-of-way authorizations issued for support facilities only (administration building, groundwater wells, construction lay down and staging areas, surface water management, and control structures, etc.) or linear right-of-way facilities (pipelines, roads, power lines, etc.), rent is determined using the Per Acre Rent Schedule for linear facilities (see § 2806.20(c)).

[81 FR 92220, Dec. 19, 2016]

### § 2806.68 Rent for energy development testing grants.

(a) *Grant for energy site-specific testing.* You must pay $100 per year for each meteorological tower or instrumentation facility location. BLM offices with approved small site rental schedules may use those fee structures if the fees in those schedules charge more than $100 per meteorological tower per year. In lieu of annual payments, you may instead pay for the entire term of the grant (3 years or less).

(b) *Grant for energy project-area testing.* You must pay $2,000 per year or $2 per acre per year for the lands authorized by the grant, whichever is greater. There is no additional rent for the installation of each meteorological tower or instrumentation facility located within the site testing and monitoring project area.

[81 FR 92220, Dec. 19, 2016]

OTHER RIGHTS-OF-WAY

### § 2806.70 How will the BLM determine the payment for a grant or lease when the linear, communication use, solar energy, or wind energy payment schedules do not apply?

When we determine that the linear, communication use, solar, or wind energy payment schedules do not apply, we may determine your payment through a process based on comparable commercial practices, appraisals, competitive bids, or other reasonable methods. We will notify you in writing of the payment determination. If you disagree with the payment determination, you may appeal our final determination under § 2801.10.

[81 FR 92222, Dec. 19, 2016]

## Subpart 2807—Grant Administration and Operation

### § 2807.10 When can I start activities under my grant?

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

### § 2807.11 When must I contact BLM during operations?

You must contact BLM:

(a) At the times specified in your grant;

(b) When your use requires a substantial deviation from the grant. You must seek an amendment to your grant under § 2807.20 and obtain the BLM's approval before you begin any activity that is a substantial deviation;

(c) When there is a change affecting your application or grant, including, but not limited to, changes in:

(1) Mailing address;

(2) Partners;

(3) Financial conditions; or

(4) Business or corporate status;

(d) Whenever site-specific circumstances or conditions result in the need for changes to an approved right-

of-way grant or lease, POD, site plan, mitigation measures, or construction, operation, or termination procedures that are not substantial deviations in location or use authorized by a right-of-way grant or lease. Changes for authorized actions, project materials, or adopted mitigation measures within the existing, approved right-of-way area must be submitted to us for review and approval;

(e) To identify and correct discrepancies or inconsistencies;

(f) When you submit a certification of construction, if the terms of your grant require it. A certification of construction is a document you submit to BLM after you have finished constructing a facility, but before you begin operating it, verifying that you have constructed and tested the facility to ensure that it complies with the terms of the grant and with applicable Federal and state laws and regulations; or

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92222, Dec. 19, 2016]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) If you are a state, tribal, or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that

BLM issues your grant. If you do not have the legal power to assume full liability, you must repair damages or make restitution to the fullest extent of your powers.

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

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

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

(3) Cover any damages or injuries resulting from the release or discharge of hazardous materials incurred in connection with your use and occupancy of the right-of-way.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) BLM may issue the immediate temporary suspension order orally or in writing to you, your contractor or subcontractor, or to any representative, agent, or employee representing you or conducting the activity. When you receive the order, you must stop

the activity immediately. BLM will, as soon as practical, confirm an oral order by sending or hand delivering to you or your agent at your address a written suspension order explaining the reasons for it.

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

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

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

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

(b) A grant also terminates when:

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

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

(3) It is required by law to terminate.

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

(d) The BLM may suspend or terminate another Federal agency's grant only if:

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92223, Dec. 19, 2016]

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

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

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

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

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

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

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

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

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

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

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

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

(1) If BLM approves your application, BLM will terminate your old grant and you will receive a new grant under 43 U.S.C. 1761 *et seq*. and the regulations in this part. BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so; or

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

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

(1) These terms are in the public interest;

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

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

### § 2807.21 May I assign or make other changes to my grant or lease?

(a) With the BLM's approval, you may assign, in whole or in part, any right or interest in a grant or lease. Assignment actions that may require BLM approval include, but are not limited to, the following:

(1) The transfer by the holder (assignor) of any right or interest in the grant or lease to a third party (assignee); and

(2) Changes in ownership or other related change in control transactions involving the BLM right-of-way holder and another business entity (assignee), including corporate mergers or acquisitions, but not transactions within the same corporate family.

(b) The BLM may require a grant or lease holder to file new or revised information in some circumstances that do not constitute an assignment (see subpart 2803 and §§ 2804.12(e) and 2807.11). Circumstances that would not constitute an assignment but may necessitate this filing include, but are not limited to:

(1) Transactions within the same corporate family;

(2) Changes in the holder's name only (see paragraph (h) of this section); and

(3) Changes in the holder's articles of incorporation.

(c) In order to assign a grant or lease, the proposed assignee must file an assignment application and follow the same procedures and standards as for a new grant or lease, including paying application and processing fees, and the grant must be in compliance with the terms and conditions of § 2805.12. The preliminary application review meetings and public meeting under §§ 2804.12 and 2804.25 are not required for an assignment. We will not approve any assignment until the assignor makes any outstanding payments that are due (see § 2806.13(g)).

(d) The assignment application must also include:

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

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

(e) Your assignment is not recognized until the BLM approves it in writing. We will approve the assignment if doing so is in the public interest. Except for leases issued under subpart 2809 of this part, we may modify the grant or lease or add bonding and other requirements, including additional terms and conditions, to the grant or lease when approving the assignment, unless a modification to a lease issued under subpart 2809 of this part is required under § 2805.15(e). We may decrease rents if the new holder qualifies for an exemption (see § 2806.14) or waiver or reduction (see § 2806.15) and the previous holder did not. Similarly, we may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If we approve the assignment, the benefits and liabilities of the grant or lease apply to the new grant or lease holder.

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

(g) Only interests in issued right-of-way grants and leases are assignable. Except for applications submitted by a preferred applicant under § 2804.30(g), pending right-of-way applications do not create any property rights or other interest and may not be assigned from one entity to another, except that an entity with a pending application may continue to pursue that application even if that entity becomes a wholly owned subsidiary of a new third party.

(h) To complete a change in name only, (*i.e.*, when the name change in question is not the result of an underlying change in control of the right-of-way grant), the following requirements must be met:

(1) The holder must file an application requesting a name change and follow the same procedures as for a new grant, including paying processing fees. However, the application fees (see subpart 2804 of this part) and the preliminary application review and public meetings (see §§ 2804.12 and 2804.25) are not required. The name change request must include:

(i) If the name change is for an individual, a copy of the court order or other legal document effectuating the name change; or

(ii) If the name change is for a corporation, a copy of the corporate resolution(s) proposing and approving the name change, a copy of the acceptance of the change in name by the State or Territory in which it is incorporated, and a copy of the appropriate resolution, order or other documentation showing the name change.

(2) When reviewing a proposed name change only, we may determine it is necessary to:

(i) Modify a grant issued under subpart 2804 to add bonding and other requirements, including additional terms and conditions to the grant; or

(ii) Modify a lease issued under subpart 2809 in accordance with § 2805.15(e).

(3) Your name change is not recognized until the BLM approves it in writing.

[81 FR 92223, Dec. 19, 2016]

### § 2807.22 How do I renew my grant or lease?

(a) If your grant or lease specifies the terms and conditions for its renewal, and you choose to renew it, you must request a renewal from the BLM at least 120 calendar days before your grant or lease expires consistent with the renewal terms and conditions specified in your grant or lease. We will renew the grant or lease if you are in compliance with the renewal terms and conditions; the other terms, conditions, and stipulations of the grant or lease; and other applicable laws and regulations.

(b) If your grant or lease does not specify the terms and conditions for its renewal, you may apply to us to renew the grant or lease. You must send us your application at least 120 calendar days before your grant or lease expires. In your application you must show that you are in compliance with the terms, conditions, and stipulations of the grant or lease and other applicable laws and regulations, and explain why a renewal of your grant or lease is necessary. We may approve or deny your application to renew your grant or lease.

(c) Submit your application under paragraph (a) or (b) of this section and

include the same information necessary for a new application (*see* subpart 2804 of this part). You must reimburse BLM in advance for the administrative costs of processing the renewal in accordance with § 2804.14 of this part.

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

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

(f) If you make a timely and sufficient application for a renewal of your existing grant or lease, or for a new grant or lease, in accordance with this section, the existing grant does not expire until we have issued a decision to approve or deny the application.

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92223, Dec. 19, 2016]

## Subpart 2808—Trespass

### § 2808.10 What is trespass?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SOURCE: 81 FR 92224, Dec. 19, 2016, unless otherwise noted.

### § 2809.10 General.

(a) Lands inside designated leasing areas may be made available for solar and wind energy development through a competitive leasing offer process established by the BLM under this subpart.

(b) The BLM may include lands in a competitive offer on its own initiative.

(c) The BLM may solicit nominations by publishing a call for nominations under § 2809.11(a).

(d) The BLM will generally prioritize the processing of ''leases'' awarded under this subpart over the processing of non-competitive ''grant'' applications under subpart 2804, including those that are ''high priority'' under § 2804.35.

### § 2809.11 How will the BLM solicit nominations?

(a) *Call for nominations.* The BLM will publish a notice in the FEDERAL REGISTER and may use other notification methods, such as a newspaper of general circulation in the area affected by the potential offer of public land for solar and wind energy development or the Internet; to solicit nominations and expressions of interest for parcels of land inside designated leasing areas for solar or wind energy development.

(b) *Nomination submission.* A nomination must be in writing and must include the following:

(1) *Nomination fee.* If you nominate a specific parcel of land under paragraph (a) of this section, you must also include a non-refundable nomination fee of $5 per acre. We will adjust the nomination fee once every 10 years using the change in the IPD–GDP for the preceding 10-year period and round it to the nearest half dollar. This 10 year average will be adjusted at the same time as the per acre rent schedule for linear rights-of-way under § 2806.22;

(2) *Nominator's name and personal or business address.* The name of only one citizen, association, partnership, corporation, or municipality may appear as the nominator. All communications relating to leasing will be sent to that name and address, which constitutes the nominator's name and address of record; and

(3) The legal land description and a map of the nominated lands.

(c) We may consider informal expressions of interest suggesting lands to be included in a competitive offer. If you submit a written expression of interest, you must provide a description of the suggested lands and rationale for their inclusion in a competitive offer.

(d) In order to submit a nomination, you must be qualified to hold a grant or lease under § 2803.10.

(e) *Nomination withdrawals.* A nomination cannot be withdrawn, except by

the BLM for cause, in which case all nomination monies will be refunded to the nominator.

### § 2809.12 How will the BLM select and prepare parcels?

(a) The BLM will identify parcels for competitive offer based on nominations and expressions of interest or on its own initiative.

(b) The BLM and other Federal agencies, as applicable, will conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, before offering lands competitively.

### § 2809.13 How will the BLM conduct competitive offers?

(a) *Variety of competitive procedures available.* The BLM may use any type of competitive process or procedure to conduct its competitive offer, and any method, including the use of the Internet, to conduct the actual auction or competitive bid procedure. Possible bid procedures could include, but are not limited to: Sealed bidding, oral auctions, modified competitive bidding, electronic bidding, and any combination thereof.

(b) *Notice of competitive offer.* We will publish a notice in the FEDERAL REGISTER at least 30 days prior to the competitive offer and may use other notification methods, such as a newspaper of general circulation in the area affected by the potential right-of-way or the Internet. The FEDERAL REGISTER and other notices will include:

(1) The date, time, and location, if any, of the competitive offer;

(2) The legal land description of the parcel to be offered;

(3) The bidding methodology and procedures to be used in conducting the competitive offer, which may include any of the competitive procedures identified in paragraph (a) of this section;

(4) The minimum bid required (see § 2809.14(a)), including an explanation of how we determined this amount;

(5) The qualification requirements for potential bidders (see § 2803.10);

(6) If a variable offset (see § 2809.16) is offered:

(i) The percent of each offset factor;

(ii) How bidders may pre-qualify for each offset factor; and

(iii) The documentation required to pre-qualify for each offset factor; and

(7) The terms and conditions of the lease, including the requirements for the successful bidder to submit a POD for the lands involved in the competitive offer (see § 2809.18) and any lease mitigation requirements, including compensatory mitigation for residual impacts associated with the right-of-way.

(c) We will notify you in writing of our decision to conduct a competitive offer at least 30 days prior to the competitive offer if you nominated lands and paid the nomination fees required by § 2809.11(b)(1).

### § 2809.14 What types of bids are acceptable?

(a) *Bid submissions.* The BLM will accept your bid only if:

(1) It includes the minimum bid and at least 20 percent of the bonus bid; and

(2) The BLM determines that you are qualified to hold a grant or lease under § 2803.10. You must include documentation of your qualifications with your bid, unless we have previously approved your qualifications under § 2809.10(d) or § 2809.11(d).

(b) *Minimum bid.* The minimum bid is not prorated among all bidders, but must be paid entirely by the successful bidder. The minimum bid consists of:

(1) The administrative costs incurred by the BLM and other Federal agencies in preparing for and conducting the competitive offer, including required environmental reviews; and

(2) An amount determined by the authorized officer and disclosed in the notice of competitive offer. This amount will be based on known or potential values of the parcel. In setting this amount, the BLM will consider factors that include, but are not limited to, the acreage rent and megawatt capacity fee.

(c) *Bonus bid.* The bonus bid consists of any dollar amount that a bidder wishes to bid in addition to the minimum bid.

(d) If you are not the successful bidder, as defined in § 2809.15(a), the BLM will refund your bid.

### § 2809.15 How will the BLM select the successful bidder?

(a) The bidder with the highest total bid, prior to any variable offset, is the successful bidder and may be offered a lease in accordance with § 2805.10.

(b) The BLM will determine the variable offsets for the successful bidder in accordance with § 2809.16 before issuing final payment terms.

(c) *Payment terms.* If you are the successful bidder, you must:

(1) Make payments by personal check, cashier's check, certified check, bank draft, or money order, or by other means deemed acceptable by the BLM, payable to the Department of the Interior—Bureau of Land Management;

(2) By the close of official business hours on the day of the offer or such other time as the BLM may have specified in the offer notices, submit for each parcel:

(i) Twenty percent of the bonus bid (before the offsets are applied under paragraph (b) of this section); and

(ii) The total amount of the minimum bid specified in § 2809.14(b);

(3) Within 15 calendar days after the day of the offer, submit the balance of the bonus bid (after the variable offsets are applied under paragraph (b) of this section) to the BLM office conducting the offer; and

(4) Within 15 calendar days after the day of the offer, submit the acreage rent for the first full year of the solar or wind energy development lease as provided in § 2806.54(a) or § 2806.64(a), respectively. This amount will be applied toward the first 12 months acreage rent, if the successful bidder becomes the lessee.

(d) The BLM will offer you a right-of-way lease if you are the successful bidder and:

(1) Satisfy the qualifications in § 2803.10;

(2) Make the payments required under paragraph (c) of this section; and

(3) Do not have any trespass action pending against you for any activity on BLM-administered lands (see § 2808.12) or have any unpaid debts owed to the Federal Government.

(e) The BLM will not offer a lease to the successful bidder and will keep all money that has been submitted, if the successful bidder does not satisfy the requirements of paragraph (d) of this section. In this case, the BLM may offer the lease to the next highest bidder under § 2809.17(b) or re-offer the lands under § 2809.17(d).

### § 2809.16 When do variable offsets apply?

(a) The successful bidder may be eligible for an offset of up to 20 percent of the bonus bid based on the factors identified in the notice of competitive offer.

(b) The BLM may apply a variable offset to the bonus bid of the successful bidder. The notice of competitive offer will identify each factor of the variable offset, the specific percentage for each factor that would be applied to the bonus bid, and the documentation required to be provided to the BLM prior to the day of the offer to qualify for the offset. The total variable offset cannot be greater than 20 percent of the bonus bid.

(c) The variable offset may be based on any of the following factors:

(1) Power purchase agreement;

(2) Large generator interconnect agreement;

(3) Preferred solar or wind energy technologies;

(4) Prior site testing and monitoring inside the designated leasing area;

(5) Pending applications inside the designated leasing area;

(6) Submission of nomination fees;

(7) Submission of biological opinions, strategies, or plans;

(8) Environmental benefits;

(9) Holding a solar or wind energy grant or lease on adjacent or mixed land ownership;

(10) Public benefits; and

(11) Other similar factors.

(d) The BLM will determine your variable offset prior to the competitive offer.

### § 2809.17 Will the BLM ever reject bids or re-conduct a competitive offer?

(a) The BLM may reject bids regardless of the amount offered. If the BLM rejects your bid under this provision, you will be notified in writing and such notice will include the reason(s) for the rejection and what refunds to which you are entitled. If the BLM rejects a

bid, the bidder may appeal that decision under § 2801.10.

(b) We may offer the lease to the next highest qualified bidder if the successful bidder does not execute the lease or is for any reason disqualified from holding the lease.

(c) If we are unable to determine the successful bidder, such as in the case of a tie, we may re-offer the lands competitively (under § 2809.13) to the tied bidders or to all prospective bidders.

(d) If lands offered under § 2809.13 receive no bids, we may:

(1) Re-offer the lands through the competitive process under § 2809.13; or

(2) Make the lands available through the non-competitive application process found in subparts 2803, 2804, and 2805 of this part, if we determine that doing so is in the public interest.

### § 2809.18 What terms and conditions apply to leases?

The lease will be issued subject to the following terms and conditions:

(a) *Lease term.* The term of your lease includes the initial partial year in which it is issued, plus 30 additional full years. The lease will terminate on December 31 of the final year of the lease term. You may submit an application for renewal under § 2805.14(g).

(b) *Rent.* You must pay rent as specified in:

(1) Section 2806.54, if your lease is for solar energy development; or

(2) Section 2806.64, if your lease is for wind energy development.

(c) *POD.* You must submit, within 2 years of the lease issuance date, a POD that:

(1) Is consistent with the development schedule and other requirements in the POD template posted at *http://www.blm.gov;* and

(2) Addresses all pre-development and development activities.

(d) *Cost recovery.* You must pay the reasonable costs for the BLM or other Federal agencies to review and approve your POD and to monitor your lease. To expedite review of your POD and monitoring of your lease, you may notify BLM in writing that you are waiving paying reasonable costs and are electing to pay the full actual costs incurred by the BLM.

(e) *Performance and reclamation bond.* (1) For Solar Energy Development, you must provide a bond in the amount of $10,000 per acre prior to written approval to proceed with ground disturbing activities.

(2) For Wind Energy Development, you must provide a bond in the amount of $10,000 per authorized turbine less than 1 MW in nameplate capacity or $20,000 per authorized turbine equal or greater than 1 MW in nameplate capacity prior to written approval to proceed with ground disturbing activities.

(3) For testing and monitoring sites authorized under a development lease, you must provide a bond in the amount of $2,000 per site prior to receiving written approval to proceed with ground disturbing activities.

(4) The BLM will adjust the solar and wind energy development bond amounts every 10 years using the change in the IPD–GDP for the preceding 10-year period rounded to the nearest $100. This 10-year average will be adjusted at the same time as the Per Acre Rent Schedule for linear rights-of-way under § 2806.22.

(f) *Assignments.* You may assign your lease under § 2807.21, and if an assignment is approved, the BLM will not make any changes to the lease terms or conditions, as provided for by § 2807.21(e) except for modifications required under § 2805.15(e).

(g) *Due diligence of operations.* You must start construction within 5 years and begin generation of electricity no later than 7 years from the date of lease issuance, as specified in your approved POD. A request for an extension may be granted for up to 3 years with a show of good cause and approval by the BLM.

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

(a) Applications for solar or wind energy development filed on lands outside of designated leasing areas, which subsequently become designated leasing areas will:

(1) Continue to be processed by the BLM and are not subject to the competitive leasing offer process of this subpart, if such applications are filed prior to the publication of the notice of

intent or other public announcement from the BLM of the proposed land use plan amendment to designate the solar or wind leasing area; or

(2) Remain in pending status unless withdrawn by the applicant, denied, or issued a grant by the BLM, or the subject lands become available for application or leasing under this part, if such applications are filed on or after the date of publication of the notice of intent or other public announcement from the BLM of the proposed land use plan amendment to designate the solar or wind leasing area.

(3) Resume being processed by the BLM if your application is pending under paragraph (a)(2) of this section and the lands become available for application under §2809.17(d)(2).

(b) An applicant that submits a bid on a parcel of land for which an application is pending under paragraph (a)(2) of this section may:

(1) Qualify for a variable offset under §2809.16; and

(2) Receive a refund for any unused application fees or processing costs if the lands identified in the application are subsequently leased to another entity under §2809.13.

(c) After the effective date of this regulation, the BLM will not accept a new application for solar or wind energy development inside designated leasing areas (see §§2804.12(b)(1) and 2804.23(e)), except as provided by §2809.17(d)(2).

(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(b)(2)(i) or (ii), which may qualify you for an offset under §2809.16.

# PART 2810—TRAMROADS AND LOGGING ROADS

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

Sec.



AUTHORITY: 43 U.S.C. 1181e, 1732, 1733, and 1740.

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

SOURCE: 35 FR 9638, June 13, 1970, unless otherwise noted.