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§ 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

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AUTHORITY: 43 U.S.C. 1733, 1740, 1763, 1764, and 3003.

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 wherever practical, 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.

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 25956, Apr. 12, 2024]

§ 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.

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

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.

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.

Ancillary means a secondary use entirely within the scope of a primary authorization that is for the sole purpose of supporting the operations allowed by that primary authorization and that the same holder of the primary authorization does not make available to third parties through commercial sales.

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.

Capacity fee means the fee charged to right-of-way holders once energy production commences that is equal to the greater of an acreage rent and 3.9 percent of the gross proceeds from the sale of electricity produced by the renewable energy project.

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.

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

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

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.

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

Facility means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the grantee within a right-of-way.

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

Hazard tree, for purposes of vegetation management for a powerline facility and when used in section 2805.22 of this part, means any tree, brush, shrub, other plant, or part thereof, hereinafter ''vegetation'' (whether located on public lands inside or outside the linear boundary of the right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist or forester under the supervision of the Bureau of Land Management or the right-of-way holder to be:

(i) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and

(ii) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability

and safety standards and as identified in the right-of-way for the powerline facility and the associated approved operating plan or agreement.

Hazardous material means:

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

(ii) 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;

(iii) 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

(iv) 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.

Maintenance when the term is used in relation to vegetation management for a powerline facility means:

(i) With respect to routine maintenance, the repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (*e.g.,* insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement;

(ii) With respect to non-routine maintenance, the realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement; and

(iii) With respect to maintenance to address emergency conditions, the immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

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.

Maximum operating sag means the theoretical position of a powerline facility conductor (wire) when operating at 100 degrees Celsius, which must be accounted for when determining minimum vegetation clearance distance.

Minimum vegetation clearance distance (MVCD) means the calculated distance (stated in feet or meters) that is used to prevent flashover between conductors and vegetation for various altitudes and operating voltages. The MVCD is measured from a conductor's maximum operating sag to vegetation on public lands within the linear right-of-way for a powerline facility and on public lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the right-of-way holder uses to determine whether vegetation poses a system reliability hazard to the powerline facility.

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

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

(ii) For Monitoring Category 5 (Master Agreements), monitoring activities include those actions or activities

agreed to in the Master Agreement; and

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

Operating plan or agreement means a plan or agreement prepared by the right-of-way holder, approved by the authorized officer, and incorporated by reference into the corresponding right-of-way that provides for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of the facility or facilities on public lands within the linear right-of-way and on public lands adjacent to either side of the linear right-of-way to fell or prune hazard trees and to construct, reconstruct, and maintain access roads and trails, to enhance electric reliability, promote public safety, and avoid fire hazards.

Operations and maintenance means activities conducted by a ROW holder to manage facilities and vegetation within and adjacent to the ROW boundary.

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.

(i) *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.

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

Powerline facility means one or more electric distribution or transmission lines authorized by a right-of-way, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the right-of-way holder; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.

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

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

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

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

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:

(i) Located on the Outer Continental Shelf; and

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

Reasonable costs has the meaning found in Section 304(b) of FLPMA.

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.

Renewable energy coordination office (RECO) means one of the National, State, district, or field offices established by the Secretary under 43 U.S.C. 3002(a) that is responsible for implementing a program for improving Federal permit coordination with respect to solar, wind, and geothermal projects on BLM-administered land, and such other activities as the Secretary determines necessary.

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.

Solar or wind energy development means the use of public lands to generate electricity from solar or wind energy resources. It includes the construction, operation, maintenance, and decommissioning of any such facilities, as well as the subsequent reclamation of the site.

Solar or wind energy lease means any right-of-way issued for solar or wind energy development in an area classified or allocated for solar or wind energy (*i.e.*, a designated leasing area) in a resource management plan.

Subleasing means allowing another party or parties to use your facility for the purposes specified in your authorization, for which use you may charge fees. The BLM may permit subleasing under the requirements of 43 CFR 2805.14 and 2865.14.

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

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 identified through a land use planning process as being a preferred location for existing and future linear rights-of-way and facilities. The corridor may be suitable to accommodate more than one right-

of-way use or facility, provided that the uses are compatible with one another and the corridor designation.

Vegetation management means:

(i) *Emergency vegetation management*—unplanned felling and pruning of vegetation on public lands within the linear right-of-way for a powerline facility and unplanned felling and pruning of hazard trees on abutting public lands that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard; and

(ii) *Non-emergency (routine) vegetation management*—planned actions as described in an operating plan or agreement periodically taken to fell or prune vegetation on public lands within the linear right-of-way for a powerline facility and on abutting public lands to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92205, Dec. 19, 2016; 89 FR 25956, Apr. 12, 2024; 89 FR 41331, May 13, 2024; 89 FR 35677, May 1, 2024; 89 FR 53870, June 28, 2024; 89 FR 104890, Dec. 26, 2024; 90 FR 36113, Aug. 1, 2025]

§ 2801.6 Scope.

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

(1) Grants or leases for necessary transportation or other systems and facilities that are in the public interest and require the use of public lands for the purposes identified in 43 U.S.C. 1761, and administering, amending, assigning, monitoring, 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; 89 FR 35677, May 1, 2024]

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

(6) 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 energy generation, storage, or transmission 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) Energy generation facilities, including solar and wind energy development facilities, are authorized with a right-of-way grant or lease that may be issued for up to 50 years (plus initial partial year of issuance);

(4) Energy storage facilities, which are separate from energy generation facilities, are authorized with a right-of-way grant that may be issued for up to 50 years;

(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.

(6) Electric transmission lines with a capacity of 100 kV or more are authorized with a right-of-way grant that may be issued for up to 50 years.

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92207, Dec. 19, 2016; 89 FR 25959, Apr. 12, 2024; 89 FR 35677, May 1, 2024]

§ 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 or Leases

§ 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 to:

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 25959, Apr. 12, 2024]

§ 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 public lands may be suitable for right-of-way corridors or designated leasing areas, the BLM may consider various factors, including:

(1) Federal, State, Tribal, and local land use plans, and applicable Federal, State, Tribal, and local 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.

(10) Access to electric transmission; and

(11) Whether there are areas for solar and wind energy development with low

potential for conflict with resources or uses due to environmental, cultural, and other relevant criteria, which the BLM will identify by:

(i) Assessing the demand for new or expanded areas;

(ii) Applying environmental, cultural, and other screening criteria; and

(iii) Analyzing proposed areas through the land use planning process described in part 1600 of this chapter.

(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; 89 FR 35677, May 1, 2024]

Subpart 2803—Qualifications for Holding FLPMA Grants

§ 2803.10 Who may hold a grant or lease?

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 or States where the right-of-way you seek is located.

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 35678, May 1, 2024]

§ 2803.11 Can another person act on my behalf?

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

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

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

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

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

[89 FR 25959, Apr. 12, 2024]

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

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

(b) If the receiver of a grant or lease is not qualified to hold a grant or lease under § 2803.10 of this subpart, the BLM will recognize the receiver as grant or leaseholder for up to two years, subject to full compliance with all terms, conditions, and stipulations. During that period, the receiver must either become qualified or divest itself of the interest.

[89 FR 35678, May 1, 2024]

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; 89 FR 25959, Apr. 12, 2024]

§ 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 *https://www.blm.gov*, and fill in the required information. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include the following:

(1) 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, and Geographic Information Systems (GIS) shapefiles, or equivalent format, when requested by the BLM;

(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) You must meet additional requirements when applying for a solar

or wind energy development or short-term right-of-way, as follows:

(1) Pay an application filing fee of $2 per acre for short-term right-of-way applications or $15 per acre for solar or wind energy development applications. The BLM will apply the application filing fee toward the processing fees described in §§ 2804.14 through 2804.22. The BLM will refund the balance of any application filing fee at the end of the BLM's application review process if the application filing fee exceeds the amount of the processing fee.

(2) Pay additional reasonable costs in addition to payment of the application filing fee when processing your application, pursuant to § 2804.14. A processing or monitoring Category 6 cost recovery fee may be reduced by the application filing fee paid when submitting an application.

(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. The BLM will identify additional information in a written deficiency notice asking you to provide the information within a specified time pursuant to § 2804.25(c).

(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.

(j) Complete applications: Your application will not be complete until you have met or addressed the requirements of this section to the satisfaction of the BLM. The BLM will notify you in writing when your application is complete.

[81 FR 92207, Dec. 19, 2016, as amended at 89 FR 25959, Apr. 12, 2024; 89 FR 35678, May 1, 2024; 89 FR 104890, Dec. 26, 2024]

§ 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 are the fee categories for cost recovery?

(a) Unless your fees are waived under § 2804.16, you must pay cost recovery fees for the reasonable costs associated with your application and grant. Subject to applicable laws and regulations, if your application involves Federal agencies other than the BLM, your fee may also include the reasonable costs estimated to be incurred by those Federal agencies. Instead of paying the BLM a fee for the reasonable costs incurred by other Federal agencies in processing your application, you may pay other Federal agencies directly. The fees for Categories 1 through 4 (see paragraph (b) of this section) are one-time fees and are not refundable. Reasonable costs are those costs defined in Section 304(b) of FLPMA (43 U.S.C. 1734(b)). The fees are categorized based on an estimate of the amount of time that the Federal Government will expend to process your application, issue a decision granting or denying the application, and monitor that land use authorization.

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

TABLE 1 TO PARAGRAPH (b)—COST RECOVERY CATEGORIES

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

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

(c) You may obtain a copy of the current year's cost recovery fee schedule at *https://www.blm.gov*, by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Director (HQ–350), Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

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

refund or an adjustment of your cost recovery fee.

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

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

[89 FR 25959, Apr. 12, 2024]

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

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

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

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

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

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

[89 FR 25960, Apr. 12, 2024]

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

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

(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.

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 25960, Apr. 12, 2024]

§ 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 the BLM will do to complete right-of-way activities;

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

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

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

(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;

(9) May be prepared so that it includes previously granted rights-of-way held by the right-of-way holder; and

(10) 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 cost recovery fees.

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92209, Dec. 19, 2016; 89 FR 25960, Apr. 12, 2024]

[89 FR 25960, Apr. 12, 2024]

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

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

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

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

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

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

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

(5) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

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

(iv) Financial information you must submit; and

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

(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; 89 FR 25961, Apr. 12, 2024]

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

The BLM will consider the factors in paragraph (a) of this section and § 2804.21 of this subpart to determine

reasonable costs. Submit to the BLM field office having jurisdiction over the lands covered by your application a written analysis of those factors applicable to your project unless you agree in writing to waive consideration of those factors and elect to pay actual costs (see § 2804.14(f) of this subpart). Submitting your analysis with the application will expedite its handling. The BLM may require you to submit additional information in support of your position. The BLM will continue to work on your application while you are responding to our request, as long as a deposit has been received by the BLM as provided in § 2804.19(a)(4).

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

(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; 89 FR 25961, Apr. 12, 2024]

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

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

(1) 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 performing any or all right-of-way activities 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, cost recovery fees would be inconsistent with prudent and appropriate management of public lands and with your equitable interests or the equitable interests of the United States.

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

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 25961, Apr. 12, 2024]

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

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

(b) The BLM may deny your application if we have not received requested reasonable costs for processing your application within 90 days.

(c) If your cost recovery agreement provides that a portion of the funds you pay will be used in the hiring of additional staff or contractors, such funds may not be refundable.

[89 FR 35678, May 1, 2024]

§ 2804.23 What costs am I responsible for when the BLM decides to use a competitive process for lands included in my application?

If the BLM decides to use a competitive process for lands included in your application and your application is in:

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

(b) *Processing Category 6.* You are responsible for processing costs identified in your application. If the 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 the BLM. If you agree to share the 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. You must pay the entire processing fee in advance. The BLM will not process your application until we receive the advance payments.

[89 FR 35678, May 1, 2024]

§ 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 the BLM process my application?

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

(1) Identify your cost recovery fee described at § 2804.14, unless you are exempt from paying fees; 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. The failure to provide additional information requested by the BLM under this section may result in the BLM denying your application pursuant to § 2804.26.

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

TABLE 1 TO PARAGRAPH (d)

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

(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 local public meeting if there is no other public meeting or opportunity for early engagement on the project, such as those completed when complying with the National Environmental Policy Act (NEPA).

(ii) Prioritize the application in accordance with § 2804.35; and

(iii) Evaluate the application based on the information provided by the applicant and input from other parties, such as Federal, State, Tribal, and local government agencies, as well as comments received in preliminary application review meetings held under § 2804.12(b)(4) and any public meeting held under paragraph (e)(1) of this section. 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 NEPA compliance for the application, as required by 43 CFR part 46 and 40 CFR chapter V, subchapter A;

(5) Determine whether your proposed use complies with applicable Federal 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. A segregation will not be extended unless the application is complete and cost recovery has been received. 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, as amended at 89 FR 25961, Apr. 12, 2024; 89 FR 35678, May 1, 2024]

§ 2804.26 Under what circumstances may the 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 FLPMA, 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.

(9) You do not comply with a deficiency notice (see § 2804.25(c) of this subpart) within the time specified in the notice.

(10) You fail to pay costs for processing your application within 90 days of receiving the BLM's request for funds under § 2804.22(b).

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92211, Dec. 19, 2016; 89 FR 25962, Apr. 12, 2024; 89 FR 35679, May 1, 2024]

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

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

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

(b) You may withdraw your Category 5 or 6 application in writing before the BLM issues a grant. If you do so, you are liable for all reasonable processing costs the United States has incurred up to the time you withdraw the application and for the reasonable costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due. Any money you paid that is not used to cover costs the United States incurred as a result of your application will be refunded to you; and

(c) You may relinquish your grant in writing. If you do so, you are liable for all reasonable costs the United States has incurred up to the time you relinquish the grant and for the reasonable costs of closing your grant. Any cost recovery fees you have not previously paid are due within 30 calendar days after receiving a bill for the amount due. The BLM will refund any cost recovery fees you paid in Categories 5 or 6 that were not used to cover costs the United States incurred as a result of your grant.

[89 FR 25962, Apr. 12, 2024]

§ 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.

§§ 2804.30–2804.31 [Reserved]

§ 2804.35 Application prioritization for solar and wind energy development rights-of-way.

(a) The BLM will prioritize the processing of applications to ensure that agency resources are allocated to applications with the greatest potential for approval and implementation. The BLM's prioritization of an application is not a decision and is not subject to appeal under 43 CFR part 4.

(b) The BLM will consider relevant criteria when prioritizing applications, including the following:

(1) Whether the proposed project is located within an area preferred for solar or wind energy development, such as designated leasing areas, which include solar energy zones, development focus areas, and renewable energy development areas;

(2) Whether the proposed project is likely to avoid adverse impacts to or conflicts with known resources or uses on or adjacent to public lands, and includes specific measures designed to further mitigate impacts or conflicts;

(3) Whether the proposed project is in conformance with the governing BLM land use plans;

(4) Whether the proposed project is consistent with relevant State, Tribal, and local government laws, plans, or priorities;

(5) Whether the proposed project incorporates the best management practices set forth in the applicable BLM land use plans and other BLM plans and policies; and

(6) Any other circumstances or prioritization criteria identified by the BLM in subsequent policy guidance or management direction through land use planning.

(c) The BLM will prioritize your complete application based on all available information, including information you provide to the BLM in the application or in response to deficiency notices, and information provided to the BLM in public meetings or consultations.

(d) The BLM may re-prioritize your application at any time.

[89 FR 35679, May 1, 2024]

§ 2804.40 Alternative requirements.

If you are unable to meet any of the application 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, as amended at 89 FR 35679, May 1, 2024]

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 or lease, you should sign and return it to the BLM with any payment required under § 2805.16. The BLM will issue the right-of-way by signing the grant or lease and transmitting it to you, if the regulations in this part, including § 2804.26, remain satisfied.

(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; 89 FR 35679, May 1, 2024]

§ 2805.11 What does a grant or lease 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) *Right of ingress and egress to a right-of-way.* To facilitate the use of a right-of-way, the authorized officer must include in the grant rights of ingress and egress, as may be necessary for access to and from the right-of-way. Access routes must be identified in the grant and may include existing roads or other infrastructure.

(c) *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 energy grants and leases, such as solar or wind energy development projects, 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) Energy generation facilities, including solar or wind energy development facilities, are authorized with a grant or lease for up to 50 years (plus initial partial year of issuance), subject to the terms and conditions including but not limited to § 2805.12(c); and

(v) Energy storage facilities which are separate from energy generation facilities are authorized with a right-of-way grant for up to 50 years, subject to

the terms and conditions including but not limited to § 2805.12(c);

(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.

(4) Electric transmission lines with a capacity of 100 kV or more are authorized with a right-of-way grant for up to 50 years.

(d) *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; 89 FR 25962, Apr. 12, 2024; 89 FR 35679, May 1, 2024; 89 FR 53870, June 28, 2024]

§ 2805.12 With what terms and conditions must I comply?

(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 adjacent to the right-of-way;

(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 decommission the facilities authorized by the right-of-way in a manner consistent with the grant, including the approved POD, if one was required, or any approved operating plan or agreement;

(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:

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

(ii) Present a hazard to human health or safety. You must take appropriate remedial action within 30 days after receipt of a written noncompliance notice unless you have been provided an

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

(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.

(8) Comply with the operational standards in this section for solar or wind energy development projects on public lands. The holder of a grant or lease for solar or wind energy development is authorized to operate for the purpose of generating energy. Diligent operation requires the holder to annually maintain at least 75 percent of energy generation capacity for the authorized development. Failure to meet this required generation in continuous two calendar year period during the term of the grant or lease may support suspension or termination of the 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 reductions in energy generation (for example, delays in equipment delivery, legal challenges, and Acts of God);

(ii) Provide the anticipated date in which production of energy generation will resume; and

(iii) Submit a written request under paragraph (e) of this section for extension of the period in which the holder must satisfy the minimum energy threshold. If you do not comply with the requirements of paragraph (c)(8) of this section, the BLM may deny your request for an extension of the period for complying with the minimum energy generation threshold.

(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:

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

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

(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, other than rents or fees. Any proposed 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, as amended at 89 FR 25962, Apr. 12, 2024; 89 FR 35679, May 1, 2024; 90 FR 33114, Aug. 1, 2025]

§ 2805.13 When is a grant or lease effective?

A grant is effective after both you and the 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 the BLM that your right to use the public lands, as specified in the grant or lease, is subject to the terms and conditions of the grant or lease and applicable laws and regulations.

[89 FR 35680, May 1, 2024]

§ 2805.14 What rights does a right-of-way grant or lease 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 authorization specifically allows for subleasing, you may allow other parties to use your facility for the purposes specified in your authorization and you may charge fees for such use. If your authorization does not specifically allow subleasing, you may not let anyone else use your facility and you may not charge for its use unless the 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 trimming, pruning, and removal of vegetation to maintain the right-of-way or facility and protect public health and safety;

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

(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 right-of-way grant or lease under § 2807.22;

(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; 89 FR 25962, Apr. 12, 2024; 89 FR 35680, May 1, 2024]

§ 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 and enter the facilities described in the authorization.

The BLM will give you reasonable notice before it enters any facility on the right-of-way;

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92215, Dec. 19, 2016; 89 FR 25962, Apr. 12, 2024]

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

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

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

(c) You may obtain a copy of the current year's cost recovery fee schedule from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Director (HQ–350), Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240. The BLM also posts the current cost recovery fee schedule at *https://www.blm.gov*.

[89 FR 25963, Apr., 12, 2024]

§ 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]

§ 2805.21 What is an operating plan or agreement for electric transmission and distribution and other rights-of-way?

(a) *Operating plans or agreements.* An operating plan or agreement:

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

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

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

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

(b) *Electric Reliability Organization (ERO) standards:* Holders subject to mandatory reliability standards established by the ERO (or superseding standards) may use those standards as part of the operating plan or agreement.

(c) *Plan requirements:* An operating plan or agreement must:

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

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

(3) Include vegetation management, inspection, operation and maintenance, and fire prevention plans, including methods to comply with applicable law, such as fire safety requirements and reliability standards established by the ERO;

(4) Include schedules for:

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

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

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

(5) Describe processes for:

(i) Identifying changes in conditions; and

(ii) Modifying the approved operating plan or agreement, if necessary; and

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

(d) *Plan approval.* The BLM will, to the extent practicable, review and decide whether to approve an operating plan or agreement within 120 days.

(e) *Operating plan or agreement modifications:* The BLM may notify a holder that changed conditions warrant a modification to the operating plan or agreement.

(1) The BLM will provide advance reasonable notice that the holder must submit an operating plan or agreement modification.

(2) The holder must submit a proposed operating plan or agreement modification to the BLM to address the changed condition identified by the BLM.

(3) The BLM will, to the extent practicable, review and approve modifications in the same 120-day timeframe that applies to the initial submission of an operating plan or agreement.

(4) The holder may continue to implement any element of an approved operating plan or agreement that does not directly and adversely affect the

condition precipitating the need for modification.

(f) *Agreements in lieu of an operating plan:* Certain holders meeting the requirements described in paragraph (g) of this section may enter into an agreement with the BLM in lieu of an operating plan.

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

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

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

[89 FR 25963, Apr. 12, 2024]

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

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

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

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

(b) *Non-Emergency Conditions.* For non-emergency conditions, the holder of a right-of-way for an electric transmission or distribution facility must conduct vegetation management activities in accordance with the terms and conditions of the grant, §§ 2805.12(a)(4) and 2805.14(d), and any approved operating plan or agreement.

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

(i) Requires you to seek specific approval for the proposed activity; or

(ii) Does not address the proposed activity. You may also need to amend your operating plan or agreement if you anticipate conducting this activity on a recurring basis.

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

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

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

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

[89 FR 25963, Apr. 12, 2024]

Subpart 2806—Annual Rents and Payments

GENERAL PROVISIONS

§ 2806.10 What rent must I pay for my grant or lease?

(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.

(c) You must pay rent for your grant or lease using the per-acre rent schedule for linear right-of-way grants (see § 2806.20) unless a separate rent schedule is established for your use, such as for communication sites per § 2806.30 or solar and wind energy development per § 2806.50. The BLM may also determine that these schedules do not apply to your right-of-way pursuant to § 2806.70.

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 35680, May 1, 2024]

§ 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 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 grant or lease allows for multiyear 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 instead of the initial rent bill periods provided under paragraph (a)(1)(i) or (ii) of this section.

(b) You must make all rent payments for 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; 89 FR 35680, May 1, 2024]

§ 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, the BLM will retroactively bill for uncollected or under-collected rent, fees, and late payments.

(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.

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92216, Dec. 19, 2016; 89 FR 25964, Apr. 12, 2024]

§ 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. The BLM may require you to document the facility's eligibility for REA financing.

(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; 89 FR 25964, Apr. 12, 2024]

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

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 25964, Apr. 12, 2024]

§ 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 the address found under § 2804.14(c) of this part. 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; 89 FR 25964, Apr. 12, 2024; 89 FR 35680, May 1, 2024]

§ 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]

Solar and Wind Energy Development Rights-of-Way

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

If you hold a right-of-way for solar or wind energy development, you must pay an annual rent and fee in accordance with this section and subpart. The annual rent and fee is the greater of the acreage rent or the capacity fee that would be due in a given year. The acreage rent will be calculated consistent with § 2806.11 and prorated consistent with § 2806.12(a). The capacity fee will vary depending on the project's gross proceeds from the sale of electricity produced by the renewable energy project and will be calculated consistent with § 2806.52(b).

[90 FR 36114, Aug. 1, 2025]

§ 2806.51 Grant and lease rate adjustments.

The holder of a right-of-way for a wind energy generation project may request from the BLM to apply a multiple-use reduction factor of 10-percent to the amount of a capacity fee determined under § 2806.52. Such a request may be approved if the holder demonstrates that not less than 25 percent of the land within the right-of-way is authorized for use, occupancy, or development with respect to an activity other than the generation of wind energy for the entirety of the year in which the capacity fee is collected.

[90 FR 36114, Aug. 1, 2025]

§ 2806.52 Annual rents and fees for solar and wind energy development.

You must pay the greater of either an annual acreage rent or a capacity fee. The acreage rent and capacity fee are determined as follows:

(a) *Acreage rent*. The BLM will calculate the acreage rent for your grant or lease by multiplying the number of acres of the authorized area (rounded up to the nearest tenth of an acre) by

the annual per-acre rate for the year in which the payment is due.

(1) *Per-acre rate.* The annual per-acre rate for your grant or lease is calculated using the State per-acre value from the solar or wind energy acreage rent schedule, the encumbrance factor, the year of the grant or lease term, and the annual adjustment factor. The calculation for determining the annual per-acre rate is A × B × [(1 + C) ^ D] where:

(i) A is the state per-acre value from the solar or wind energy acreage rent schedule published by the BLM for the year on which your right-of-way grant or lease is issued and is based on the average of the per-acre pastureland rental rates published in the Cash Rents Survey by the National Agricultural Statistics Service (NASS) for the State in which the right-of-way is located over the 5 calendar-year period preceding the issuance or renewal of the right-of-way. The BLM will calculate the average using only those years for which rent is reported by NASS.

(ii) B is the encumbrance factor, which is 100 percent for solar energy and for wind energy an amount determined by the Secretary, but not less than 10 percent;

(iii) C is the annual adjustment factor, which is 3 percent; and,

(iv) D is the year in the term of the right-of-way.

(2) You may obtain a copy of the current solar or wind energy acreage rent schedule from any BLM state, district, or field office or by writing the address found under § 2804.14(c) of this part, Attention: Renewable Energy Coordination Office. The BLM also posts the current solar energy acreage rent schedule at *http://www.blm.gov*.

(b) *Capacity fee.* (1) The capacity fee is calculated as 3.9 percent of the project's annual gross proceeds from the sale of electricity produced by the renewable energy project. The capacity fee is due annually in the calendar year following the year in which the electricity was produced.

(2) For projects that include generation on public and non-public lands, the holder will be prorated the total energy generation by the percentage of the right-of-way footprint on public lands relative to the total development area footprint.

[81 FR 92217, Dec. 19, 2016, as amended at 89 FR 25964, Apr. 12, 2024; 89 FR 35680, May 1, 2024; 89 FR 104890, Dec. 26, 2024; 90 FR 36114, Aug. 1, 2025]

—RENEWABLE ENERGY RIGHTS-OF-WAY

§ 2806.54 Rent for energy storage facilities that are not part of a solar or wind energy development facility.

Rent for energy storage facilities that are not part of a solar or wind energy development facility will be determined pursuant to the linear rent formula set forth in § 2806.23. The BLM may determine your rent pursuant to § 2806.70 if we determine the linear rent schedule does not apply.

[89 FR 35682, May 1, 2024]

§ 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]

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 BLM will not impose strict liability for damages or injuries resulting from:

(1) The BLM unreasonably withholding or delaying approval of an operating plan or agreement submitted under § 2805.21; or

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

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

[70 FR 21058, Apr. 22, 2005 , as amended at 89 FR 25964, Apr. 12, 2024]

§ 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 or lease?

(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 relinquish the grant;

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

(4) 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, except for solar and wind energy rights-of-way. Consistent with § 2805.12(c)(8), a presumption of abandonment or insufficient productivity of a grant or lease for a solar or wind energy generation occurs for any continuous two calendar-year period.

(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; 89 FR 25965, Apr. 12, 2024; 89 FR 35682, May 1, 2024]

§ 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 lease, or obtain a new grant or lease?

(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, except for solar and wind energy development grants and leases per § 2806.51(c) requesting a rent adjustment addressed under paragraph (f) of this section.

(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) Grants issued prior to October 21, 1976:

(1) If there is a proposed substantial deviation in the location or use, or terms and conditions of your right-of-way grant, you must apply for a new grant consistent with the remainder of this section. The BLM may keep the old grant in effect for the portion of the right-of-way not amended and issue a new grant for the new use or location, or terms and conditions.

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

(3) If the BLM has terminated your grant due to non-compliance with the

terms and conditions of your grant, you must apply for a new grant.

(4) If the BLM approves your application for an amendment, the BLM will terminate your old grant and you will receive a new grant under 43 U.S.C. 1761 *et seq.* and the regulations in this part. The BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if the BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so.

(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.

(f) A request to the BLM per § 2806.51(c) to adjust your solar or wind energy rates must be received before July 1, 2026. The BLM will re-issue your grant or lease, without further review, for the remainder of your existing term consistent with the requirements of this part, including processing and monitoring costs under §§ 2804.14 and 2805.16, the terms and conditions under § 2805.12, and rent provision under § 2806.50.

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 25965, Apr. 12, 2024; 89 FR 35682, May 1, 2024]

§ 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. 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 except that we may only modify wind energy leases where modification is warranted under § 2806.51(a). 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 leaseholder.

(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, as amended at 89 FR 35682, May 1, 2024; 90 FR 36114, Aug. 1, 2025]

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

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

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

[70 FR 21058, Apr. 22, 2005, as amended at 81 FR 92223, Dec. 19, 2016; 89 FR 25965, Apr. 12, 2024]

Subpart 2808—Trespass

§ 2808.10 What is trespass?

(a) Trespass is using, occupying, developing, or subleasing 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.

[70 FR 21058, Apr. 22, 2005, as amended at 89 FR 25965, Apr. 12, 2024]

§ 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 Solar and Wind Energy Development Applications or Leases

SOURCE: 81 FR 92224, Dec. 19, 2016, unless otherwise noted.

§ 2809.10 Competitive process for energy development grants and leases.

(a) The BLM may conduct a competitive process for solar and wind energy development grants or leases on its own initiative; or

(b) The BLM may solicit nominations for public lands to be included in a competitive process by publishing a call for nominations under § 2809.11(a); or

(c) You may request that the BLM conduct a competitive process by submitting a request in writing that complies with § 2809.11(b); or

(d) The BLM may conduct a competitive process if it receives two or more competing applications.

(e) Except where an applicant has failed to timely provide information requested by the BLM under § 2804.25(c), the BLM will not offer lands in a competitive process for which the BLM has accepted a complete application, received a Plan of Development, and entered into a cost recovery agreement.

[89 FR 35682, May 1, 2024]

§ 2809.11 How will the BLM call for nominations?

(a) *Call for nominations.* The BLM may publish a call for nominations for lands to be included in a competitive process. The BLM will publish this notice in the FEDERAL REGISTER and may also use other notification methods, such as a newspaper of general circulation in the area affected, or the internet. The FEDERAL REGISTER notice and any other notices will include:

(1) The date, time, and location by which nominations must be submitted;

(2) The date by which nominators will be notified of the BLM's decision on timely submissions;

(3) The area or areas within which nominations are being requested; and

(4) The qualification for a nominator, which must include, at a minimum, the requirements for an applicant, see § 2803.10.

(b) *Nomination submission.* Nominations for lands to be included in a competitive process must be in writing, and include the following:

(1) A refundable nomination fee of $5 per acre;

(2) The 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 submissions 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. The lands nominated may be the entire area or part of the area made available under the call for nominations.

(c) The BLM will not accept your submission if it does not comply with the requirements of this section, or if you are not qualified to hold a grant or lease under § 2803.10.

(d) *Withdrawing a nomination*. A nomination cannot be withdrawn, except by the BLM for cause, in which case the nomination fee will be refunded.

(e) The BLM may decide whether to conduct an offer for nominated lands.

[89 FR 35683, May 1, 2024]

§ 2809.12 How will the BLM select and prepare parcels?

(a) The BLM will identify parcels for a competitive process based on information received in public nominations, land use designations, and on any other information it deems relevant.

(b) The BLM and other Federal agencies, as applicable, may conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, before offering lands in a competitive process.

(c) The BLM's choice to conduct a competitive process is not a decision to grant or deny a right-of-way application and is not subject to appeal under 43 CFR part 4.

[89 FR 35683, May 1, 2024]

§ 2809.13 How will the BLM conduct competitive processes?

(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 process, including whether a successful bidder will become a preferred applicant or a presumptive leaseholder; the requirements for the successful bidder to submit an application, see § 2804.12, or a Plan of Development, see § 2809.18; and any mitigation requirements, including compensatory mitigation.

(c) We will notify you in writing of our decision to conduct a competitive process at least 30 days prior to the competitive process if you nominated lands that are included in the process, paid the nomination fees, and demonstrated your qualifications to hold a grant or lease as required by § 2809.11.

[81 FR 92224, Dec. 19, 2016, as amended at 89 FR 35683, May 1, 2024]

§ 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 become the preferred applicant or the presumptive leaseholder in accordance with § 2809.15(b).

(b) The successful bidder will become the presumptive leaseholder or preferred applicant only after making the payments required in paragraph (d) and satisfying the requirements of this section and § 2803.10. If the successful bidder does not satisfy these requirements, the BLM may make the next highest bidder the successful bidder under § 2809.17(b) or re-offer the lands under § 2809.17(d).

(1) *Presumptive leaseholder.* (i) The successful bidder will become a presumptive leaseholder if:

(A) The lands for which the bidder has successfully bid are located within a designated leasing area; and,

(B) The notice of the competitive process indicated that a successful bidder will become a presumptive leaseholder.

(ii) A presumptive leaseholder will be awarded a lease only if the presumptive leaseholder submits a proposed Plan of Development in accordance with § 2804.25(c) and the proposed Plan of Development is approved by the BLM.

(2) *Preferred applicant.* A successful bidder who does not become a presumptive leaseholder in accordance with § 2809.15(b)(1) may become a preferred applicant. The preferred applicant's application for a grant or lease will be processed for the parcel identified in the submission under § 2809.12(b). Approval of the application is not guaranteed and is solely at the BLM's discretion. The BLM will not process other applications for solar and wind energy development on lands where a preferred applicant has been identified, unless allowed by the preferred applicant.

(c) The BLM will determine the variable offsets for the successful bidder in accordance with § 2809.16 before issuing final payment terms.

(d) *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 on which the BLM conducts the competitive process or such other time as the BLM may have specified in the offer notices, submit for each parcel;

(3) Within 15 calendar days after the day on which the BLM conducts the competitive process, submit the balance of the bonus bid (after the variable offsets are applied under paragraph (c) of this section) to the BLM office conducting the process; and

(4) Within 15 calendar days after the day on which the BLM conducts the competitive process, submit the application filing fee under § 2804.12(c) less the application fee submitted under § 2809.11(c)(1) (if you are the preferred

applicant), or submit the acreage rent for the first full year of the lease as provided in part 2806 (if you are the presumptive leaseholder).

(5) You may be required to pay reasonable costs in addition to payment of the application filing fee when processing your application, pursuant to § 2804.14. A processing or monitoring Category 6 cost recovery fee may be reduced by the application filing fee paid when submitting an application.

(e) The successful bidder will not become the preferred applicant or be offered a lease and the BLM will keep all money that has been submitted with the competitive process if the successful bidder does not satisfy the requirements of paragraph (d) of this section. In this case, the BLM may make the next highest bidder the successful bidder under § 2809.17(b) or re-offer the lands.

[81 FR 92224, Dec. 19, 2016, as amended at 89 FR 35683, May 1, 2024; 89 FR 104890, Dec. 26, 2024]

§ 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 the following factors, including progressive steps towards:

(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 factors.

(d) The BLM will determine your variable offset prior to the competitive offer.

(e) If the successful bidder's eligibility for a variable offset cannot be verified until a later time, the BLM may require the successful bidder to submit the full bid amount, without taking into account the variable offset, and hold the amount of the variable offset in suspense. The amount of the bonus bid corresponding to the variable offset will be refunded or credited to the successful bidder once the successful bidder has demonstrated that it has qualified for the variable offset. The BLM may set a deadline in the notice of competitive process by which the successful bidder must demonstrate its qualifications.

[81 FR 92224, Dec. 19, 2016, as amended at 89 FR 35684, May 1, 2024;90 FR 36114, Aug. 1, 2025]

§ 2809.17 Will the BLM ever reject bids or re-conduct a competitive process?

(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 make the next highest bidder the successful bidder if the first successful bidder does not satisfy the requirements of § 2809.15, 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.

[81 FR 92224, Dec. 19, 2016, as amended at 89 FR 35684, May 1, 2024]

§ 2809.18 What terms and conditions apply to a solar and wind energy development lease?

The lease will be issued subject to the following terms and conditions:

(a) *Site Control.* A lease provides site control to the leaseholder. The term of your lease will be consistent with § 2805.11(c) and will terminate on December 31 of the final year of the lease term. You may submit an application for renewal under § 2805.14(g). A leaseholder may not construct any facilities on the right-of-way until the BLM issues a notice to proceed or other written form of approval to begin surface disturbing activities.

(b) *Rent.* You must pay any rent as specified in § 2806.52.

(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 apply to 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.

[81 FR 92224, Dec. 19, 2016, as amended at 89 FR 35684, May 1, 2024; 89 FR 104890, Dec. 26, 2024]

PART 2810—TRAMROADS AND LOGGING ROADS

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

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