



**DEPARTMENT OF THE INTERIOR**

**4310-84P**

**Bureau of Land Management**

**43 CFR Parts 2800 and 2880**

**[LLWO301000.L13400000]**

**RIN 1004-AE24**

**Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections**

**AGENCY:** Bureau of Land Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to amend existing regulations to facilitate responsible solar and wind energy development and to receive fair market value for such development. The proposed rule would promote the use of preferred areas for solar and wind energy development and establish competitive processes, terms, and conditions (including rental and bonding requirements) for solar and wind energy development rights-of-way both inside and outside these preferred areas. In the proposed rule, preferred areas for solar and wind energy development would be called “designated leasing areas.” The proposed rule would also make technical changes, corrections, and clarifications to existing rights-of-way regulations. Some of these changes would affect all rights-of-way and some provisions would affect particular types of actions, such as transmission lines with a capacity of 100 Kilovolts (kV) or more, or pipelines 10 inches or more in diameter.

**DATES:** Please submit comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

Mail: Director (630) Bureau of Land Management, U.S. Department of the Interior, 1849 C St., NW., Room 2134LM, Washington, DC 20240, Attention: 1004-AE24.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at this website.

You may submit comments on the proposed collection of information by fax or electronic mail as follows:

Fax: Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, 202-395-5806.

Electronic mail: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

Please indicate “Attention: OMB Control Number 1004-XXXX,” regardless of the method used. If you submit comments on the proposed collection of information please provide the BLM with a copy of your comments at one of the addresses shown above.

**FOR FURTHER INFORMATION CONTACT:** Ray Brady, Bureau of Land Management, at 202-912-7312, for information relating to the BLM’s solar and wind renewable energy programs, or the substance of the proposed rule. For information pertaining to the changes made for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter you may contact Lucas Lucero at

202-912-7342. For information on procedural matters or the rulemaking process you may contact Jean Sonneman at 202-912-7405. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, to contact the above individuals.

## **SUPPLEMENTARY INFORMATION:**

### **Executive Summary**

The BLM initiated this rulemaking in 2011 by publishing an Advance Notice of Proposed Rulemaking (ANPR) seeking public comment on a potential regulatory framework for competitive solar and wind energy rights-of-way. The regulations in this proposed rule would provide for such a framework, update rental fees, establish new Megawatt (MW) Capacity fees for wind and solar energy projects, and codify existing solar and wind energy policies in 43 CFR 2800. The proposed regulations also would affect other rights-of-way, including transmission lines with a capacity of 100 kV or more, and pipelines 10 inches or more in diameter.

### **Statutory and Regulatory Authority**

Facilities for the generation, transmission, and distribution of electric energy are authorized under Title V of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1761 – 1771) and 43 CFR part 2800. Section 501(b)(1) includes provisions authorizing the consideration of competition in the issuance of a right-of-way. Section 504(g) requires annual rental payments of fair market value for a right-of-way, but does not provide for royalty payments on electricity generation.

Rights-of-way for oil and gas pipelines are authorized under Section 28 of the Mineral Leasing Act (30 U.S.C. 185) and 43 CFR Part 2880. The BLM processes applications for these categories of rights-of-way in accordance with 43 CFR 2884.11.

### Policies

Title V of FLPMA authorizes the BLM to issue right-of-way grants, leases, and easements. The majority of BLM-issued rights-of-way are grants. The BLM intends to differentiate the solar and wind energy development rights-of-way issued inside a designated leasing area under new subpart 2809 as leases, which would be a type of grant with specific requirements.

The BLM released a Draft Solar Energy Programmatic Environmental Impact Statement (EIS) on December 17, 2010, and released a Supplemental Solar EIS on October 28, 2011. The Supplemental EIS included discussions of a process to identify and offer public lands in Solar Energy Zones (SEZs) through a competitive leasing process. The Supplemental EIS indicated that the BLM would pursue a rulemaking process to implement a competitive leasing program within SEZs. The BLM released the Final Solar EIS on July 27, 2012, and the Secretary signed the Record of Decision on October 12, 2012, which carried forward the proposal to establish a competitive leasing program within the SEZs.

The designation of SEZs, as an outcome of the Solar Energy Programmatic EIS, provides the foundation for initiating a Bureau-motion competitive process for offering lands for solar energy development within the SEZs. Similar efforts could be initiated by the BLM for designated wind development areas that may be identified in the future. The public comment period on the ANPR ended in February 2012 and this proposed rule has

been prepared for competitive solar and wind energy leases in designated renewable energy leasing areas.

### Competitive Leasing Process

The proposed rule outlines the competitive leasing process for solar and wind energy leases in designated leasing areas, including the definition of designated leasing areas, the nomination process, reviews of nominations, competitive bidding procedures, and the administration of solar or wind energy leases issued through the competitive leasing process. The proposed rule also includes provisions to provide incentives for leases within designated leasing areas. The proposed rule establishes a new \$15 per-acre application filing fee for right-of-way applications outside of designated leasing areas to discourage speculative applications and encourage development in the preferred designated leasing areas.

The proposed rule would provide for variable offsets when the competitive bidding process is used in a designated leasing area. A bidder would have an opportunity to pre-qualify for the offset by meeting the factors set forth in the Notice of Competitive Offer. Pre-qualified bidders would be eligible for offsets limited to no more than 20 percent of the high bid. Factors for a bidder to pre-qualify may vary from one competitive lease offer to another, but could include offsets for bidders with an approved Power Purchase Agreement (PPA) or Interconnect Agreement, among other factors. The proposed rule also includes revised language to facilitate the competitive ROW application process outside of designated leasing areas under the provisions of the existing right-of-way regulations at 43 CFR 2804.23. This provision would allow the use

of a competitive process to select a preferred applicant for the processing of a ROW application outside of designated leasing areas.

### Incentives

The proposed rule includes some financial incentives for leases within designated leasing areas. Incentives for designated leasing areas would include a limited nomination fee of \$5 per acre for wind and solar competitive parcels, variable offsets for pre-qualified bidders, 10-year phase-in of the MW capacity fee as opposed to a 3-year phase-in for authorizations outside of a designated leasing area, issuance of 30-year fixed-term leases, and standard bonding requirements to include \$10,000 per acre for solar energy development and \$20,000 per wind energy turbine.

### Rents and Fees

The proposed rule would update the annual rent schedules for both solar and wind energy authorizations. The acreage rent would be based on the acreage of the authorization, using a 10 percent encumbrance value for wind energy authorizations and a 100 percent encumbrance value for solar energy authorizations. This compares to a 50 percent encumbrance value that is used for determining rent for a linear right-of-way on the public lands. The acreage rent for both linear rights-of-way and solar and wind energy rights-of-way would vary by individual counties and are based on land values determined by data published by the National Agricultural Statistics Service.

A MW capacity fee would be used to capture the increased value of a solar or wind energy project on the public lands above the rural land value captured by the acreage rent. The MW capacity fee captures the value of the electrical generation from a project based on a formula that includes the MW size of the approved project, a capacity

factor or efficiency factor based on average potential electric generation that varies by solar and wind technologies, average wholesale prices of electricity, and a Federal rate of return based on a 20-year Treasury bond. The capacity factor used for calculating the MW capacity fee would be 20 percent for solar photovoltaic (PV), 25 percent for concentrated solar power (CSP), 30 percent for CSP with storage, and 35 percent for wind.

The MW capacity fee would increase from the current fee of \$4,155 per MW to \$6,209 per MW for wind energy authorizations and adjust to \$3,548 per MW for PV solar, \$4,435 per MW for CSP solar and \$5,322 per MW for CSP solar with storage. The MW capacity fee would provide for a 3-year phase-in outside of designated leasing areas (25 percent, 50 percent and 100 percent) and provide for a 10-year phase-in within designated leasing areas (50 percent the first 10 years and 100 percent for subsequent years). The MW capacity fees are based upon and supported by an appraisal consultation report performed by the Department's Office of Valuation Services.

The proposed rule would expand cost recovery, in response to BLM field office recommendations, to the pre-application process that has been implemented for solar and wind energy projects. In addition, the proposed rule would provide for cost reimbursement measures to coincide with a Secretarial Order for delegation of FLPMA cost recovery authority to other agencies and offices of the Department of the Interior.

#### 43 CFR Part 2880

The BLM is proposing revisions to several subparts of part 2880. These revisions are necessary to ensure consistency of policies, processes, and procedures, where possible, between rights-of-way applied for and administered under part 2800 and those

applied for and those rights-of-way administered under part 2880. In addition, the BLM is proposing pre-application requirements and fees for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter (see section 2884.10), similar to those being proposed for all solar energy and wind energy projects. Authorizations for solar or wind energy, for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter, are all generally large-scale operations that require additional steps to help protect the public land.

- I. Public Comment Procedures
- II. Background
- III. Advance Notice of Proposed Rulemaking for the Competitive Solar and Wind Energy Development Regulations
- IV. General Discussion and Section-by-Section Analysis
- V. Procedural Matters

**I. Public Comment Procedures**

You may submit comments on this proposed rule by mail, personal or messenger delivery, or electronic mail.

Mail: Director (630) Bureau of Land Management, U.S. Department of the Interior, 1849 C St., NW., Room 2134LM, Washington, DC 20240, Attention: Regulatory Affairs, 1004-AE24.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003.

Electronic mail: You may access and comment on the proposed rule at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. When possible, comments should reference the specific section or paragraph of the proposed rule that the comment is addressing.

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

Comments, including names and street addresses, will be available for public review at the U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Washington, DC 20003 during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. They will also be available at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at this website.

You may submit comments on the proposed collection of information by fax or electronic mail as follows:

Fax: Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, 202-395-5806.

Electronic mail: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

Please indicate “Attention: OMB Control Number 1004-XXXX,” regardless of the method used. If you submit comments on the proposed collection of information, please provide the BLM with a copy of your comments at one of the addresses shown above.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment for the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **II. Background**

Section 310 of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1740) authorizes the Secretary of the Interior (Secretary) to promulgate regulations with respect to public lands. FLPMA also provides comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed “on the basis of multiple use and sustained yield” (43 U.S.C. 1701(a)(7)).

In this proposed rule, the BLM would amend its regulations to provide for two competitive processes for solar and wind energy rights-of-way on public lands. One of the processes would be for lands inside “designated leasing areas,” that is, areas that have been identified as preferred for solar or wind energy facility development. The other process would be for lands outside of such areas. The proposed rule, in an amendment of 43 CFR 2801.5, would define the term “designated leasing area” as a parcel of land with specific boundaries identified by the BLM land-use planning process as being a preferred location, conducted through a landscape-scale approach, for solar or wind energy where a competitive process must be undertaken.

For lands outside designated leasing areas, the BLM would amend existing section 2804.23 to allow the BLM to provide for a competitive bid process specifically for solar or wind energy development. At present, section 2804.23 authorizes a competitive process only when the BLM is resolving competing applications for the same facility or system. Under amended section 2804.23, the BLM could competitively offer lands by soliciting bids. The highest bidder would become the preferred applicant for a right-of-way if all requirements are met. The competitive process for solar and wind energy development on lands outside of designated leasing areas is outlined in new section 2804.30.

The competitive process for lands inside designated leasing areas is outlined in new 43 CFR subpart 2809, which would provide for a nomination and competitive process, instead of an application process. This nomination and competitive process for lands inside designated leasing areas was the primary focus of the BLM's Advance Notice of Proposed Rulemaking (ANPR) that was published on December 29, 2011 (76 FR 81908).

This proposed rule includes not only the process that was emphasized in the ANPR and a proposed competitive process for lands outside of designated leasing areas, but also a number of amendments to other provisions of the right-of-way regulations found at 43 CFR part 2800 and 43 CFR part 2880. The BLM has determined that it is necessary to first articulate the general requirements for rights-of-way in order to distinguish the specific solar and wind requirements.

For example, the proposed rule has mandatory bonding requirements for solar and wind energy, including a minimum bond amount. The BLM has determined that bonding

is necessary for all solar and wind rights-of-way because of the intensity and duration of the impacts of such authorizations. For other right-of-way grant or lease authorizations, the BLM would require bonding at its discretion, under both the existing and proposed regulations. The proposed regulations, however, identify specific bonding requirements, should the BLM require a bond.

Other proposed amendments pertain to right-of-way bonding, rents for rights-of-way, and changes in pre-application requirements for applications for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter. Based on the BLM's experience, pipelines and transmission lines of these sizes would be large-scale projects and generate more public interest. In addition, this rule proposes several technical corrections.

FLPMA provides comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed "on the basis of multiple use and sustained yield" (43 U.S.C. 1701(a)(7)). As defined by FLPMA, the term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands (43 U.S.C. 1702(f)). Title V of FLPMA (43 U.S.C. 1761 – 1771) authorizes the BLM to issue rights-of-way for electric generation systems on the public lands and this authority includes solar and wind energy generation systems. FLPMA also mandates that "the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute" (43 U.S.C. 1701(a)(9)). Section 28 of the Mineral Leasing Act (MLA) (30 U.S.C. 185) provides similar authority for authorizing rights-of-way for oil and gas pipelines. The BLM has

authority to issue regulations under both FLPMA (43 U.S.C. 1740) and the MLA (30 U.S.C. 185).

The Energy Policy Act of 2005 (codified at 42 U.S.C. 15801 et seq.) (EPAct) includes provisions authorizing and encouraging the Federal Government to develop energy producing facilities. Title II of the EPAct includes a provision encouraging the Secretary to approve non-hydropower renewable energy projects (solar, wind, and geothermal) on public lands with a total combined generation capacity of at least 10,000 MW of electricity by 2015. See Section 211, Public Law 109-58, 119 Stat. 660 (2005).

Since passage of the EPAct, the Secretary has issued several orders that emphasize the importance of renewable energy development on public lands and the Department of the Interior's (Department) efforts to achieve the goal that Congress established in Section 211 of the EPAct. Secretarial Order No. 3283, "Enhancing Renewable Energy Development on the Public Lands," was signed by Secretary Salazar on January 16, 2009, and facilitates the Department's efforts to achieve the goal established by Congress in Section 211 of the EPAct. On March 11, 2009, Secretary Salazar signed Secretarial Order No. 3285, "Renewable Energy Development by the Department of the Interior" that describes the need for strategic planning and a balanced approach to domestic resource development. This order was amended by Secretarial Order 3285A1 (Order) in February 2010. This amended Order establishes the development of renewable energy on public lands as one of the Department's highest priorities.

In 2012, the BLM met the goal established by Congress by approving over 12,000 MWs of renewable energy. However, the development of renewable energy is a

continuing Federal priority. On June 25, 2013, to emphasize the importance of the renewable energy goals of the nation, the President announced the release of a Climate Action Plan to reduce carbon pollution. The Climate Action Plan set a new goal for the Department to approve a renewable energy capacity of at least 20,000 MWs of electricity on the public lands by 2020.

The BLM has, in recent years, issued several instruction memoranda (IM) that identify policies and procedures related to processing solar and wind energy right-of-way applications. Through this rule, the BLM intends to incorporate many of these existing policies and procedures into its right-of-way regulations. The IMs can be found at [http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html).

Briefly, the IMs are as follows:

1. IM 2009-043, Wind Energy Development Policy: This IM provides guidance on processing right-of-way applications for wind energy projects on public lands;
2. IM 2011-003, Solar Energy Development Policy: This IM provides guidance on the processing of right-of-way applications and the administration of authorized solar energy projects on public lands;
3. IM 2011-059, National Environmental Policy Act (NEPA) Compliance for Utility-Scale Renewable Energy Right-of-Way Authorizations: This IM clarifies NEPA policy for evaluating solar and wind energy project right-of-way applications;
4. IM 2011-060, Solar and Wind Energy Applications – Due Diligence: This IM provides guidance on the due diligence requirements for solar and wind energy development right-of-way applications; and

5. IM 2011-061, Solar and Wind Energy Applications – Pre-Application and Screening: This IM provides guidance on the review of right-of-way applications for solar and wind energy development projects on public lands.

More recently, Secretary Jewell signed Secretarial Order No. 3330, “Improving Mitigation Policies and Practices of the Department of the Interior.” In it, the Secretary established principles for the use of the mitigation strategies when considering the deployment of infrastructure, particularly large-scale applications, that impact natural resources and should incorporate a landscape-scale approach to mitigation compliance. The process proposed within this rule allows for the inclusion of landscape-scale approach and other mitigation actions on the public land.

Further, the President issued Executive Order 13604, “Improving Performance of Federal Permitting and Review of Infrastructure Projects.” The President established executive policy to improve the permitting and review processes across multiple agencies to reduce the aggregate time required to make permitting and review decisions on projects. In the policies, improved outcomes for communities and the environment were addressed. The policies compelled the agencies to improve practices such as “pre-application procedures, early collaboration with other agencies, project sponsors, and affected stakeholders and coordination with State, local and tribal governments.”

In addition, the BLM has completed two programmatic EISs related to wind and solar energy development. These programmatic EISs supported decisions by the BLM to amend a large number of land use plans (LUP), which guide future BLM management actions by identifying and modifying desired outcomes and allowable or potential uses on public lands covered by a particular LUP.

On June 24, 2005, the BLM published the Final Programmatic Environmental Impact Statement on Wind Energy Development on BLM-Administered Lands in the Western United States (70 FR 36651), which analyzed the environmental impact of the development of wind energy projects on public lands in the West and identified approximately 20.6 million acres of public lands with wind energy development potential (<http://windeis.anl.gov>). The Final Programmatic EIS and the Record of Decision (ROD) for Implementation of a Wind Energy Development Program and Associated Land Use Plan Amendments (71 FR 1768) did not identify specific wind energy development leasing areas, but rather identified areas that had potential for the development of wind energy production facilities, along with areas that were excluded from consideration from wind energy facility development because of other resource values that were incompatible with this use. The Programmatic EIS on Wind Energy Development also amended 48 BLM LUPs to incorporate wind energy development.

On July 27, 2012, the BLM and the Department of Energy published the Notice of Availability of the Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Solar Programmatic EIS) (77 FR 44267), which assessed the environmental, social, and economic impacts associated with utility-scale solar energy development on public lands in Arizona, California, Colorado, Nevada, New Mexico, and Utah (<http://solareis.anl.gov>). On October 12, 2012, the BLM and the Department issued the Solar Programmatic EIS ROD, which identified 17 solar energy zones (SEZs) on BLM managed lands, modified 89 land use plans, and described the BLM's intent to use a competitive offer process to facilitate solar energy development projects in SEZs.

This proposed rule is one of the steps being taken by the Department and the BLM to promote renewable energy development on the public lands consistent with the BLM's multiple use mission. The proposed rule would also implement the suggestions for improving the renewable energy program made by the Office of the Inspector General for the Department, initially in its draft report and carried over to the final report (Report No. CR-EV-BLM-0004-2010) and the Government Accountability Office (Audit No. 361373), both of which address the use of competitive leasing for solar and wind development authorizations. The Inspector General (IG) reviewed the BLM's renewable energy activities to assess the effectiveness of the BLM's development and management of its renewable energy program. The IG also made recommendations on other aspects of the BLM's right-of-way program.

The IG report discusses only wind energy projects, as the solar energy program was not at a stage where projects had been authorized. However, based on experience gained from recent authorizations for solar projects, the BLM believes that these recommendations also should apply to solar energy projects.

Other IG recommendations pertained to the amounts and collection procedures for bonds covering wind energy projects. These recommendations included:

1. Requiring a bond for all wind and solar projects and reassessing the minimum bond requirements;
2. Tracking and managing bond information;
3. Developing and implementing procedures to ensure that when a project is transferred, the BLM would return the first bond to the company that obtained it and request a new bond from the newly assigned company; and

4. Developing and implementing Bureau-wide guidance for using competitive bidding on wind and solar ROWs.

For additional information, you may review the IG report and recommendations at:

[http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html).

The BLM concurred with the recommendations provided by the IG report. The last recommendation is one of the principal reasons for developing this proposed rule. The other recommendations require changes in the BLM's operating procedures that will also be addressed through this rulemaking.

Through this rulemaking, the BLM proposes to amend existing regulations in 43 CFR parts 2800 and 2880, and in particular:

1. § 2804.25, to establish screening criteria to prioritize applications for solar or wind energy development applications;
2. § 2804.30, to establish a competitive process for leasing public lands outside of designated leasing areas for solar and wind energy development;
3. § 2805.11(b), to establish a term for granting rights-of-way for solar or wind energy development;
4. § 2805.12(c), to establish terms and conditions for a solar or wind energy development grant or lease;
5. § 2805.20, to provide more detail on bonding requirements;
6. § 2806.50, to provide information on rents for solar energy development rights-of-way;
7. § 2806.60, to provide information on rents for wind energy development rights-of-way;

8. Subpart 2809, to establish a competitive process for leasing public lands inside designated leasing areas for solar and wind energy development;
9. Provisions in 43 CFR part 2800 pertaining to transmission lines with a capacity of 100 kV or more and any non-oil or gas pipeline 10 inches or more in diameter;  
and
10. Provisions in 43 CFR part 2880 pertaining to all oil and gas pipelines 10 inches or more in diameter.

In addition to these amendments, the BLM is proposing technical changes, corrections, and clarifications to the regulations at 43 CFR parts 2800 and 2880. For example, the BLM is codifying the cost recovery authority delegated by Secretarial Order 3327. See the explanation of the proposed changes to “Management Overhead Costs” for more discussion on this topic.

### **III. Advance Notice of Proposed Rulemaking for the Competitive Solar and Wind Energy Development Regulations**

To solicit public comments and suggestions to assist the BLM in preparing the proposed regulations for competitive solar and wind energy leasing, the BLM published an ANPR in the Federal Register on December 29, 2011, and provided a 60-day comment period ending on February 27, 2012 (76 FR 81906). The BLM asked generally for comments regarding the content and structure of a competitive process for solar and wind energy development and specifically requested comments responding to the following nine questions:

1. How a competitive process should be structured for leasing lands within designated solar or wind energy development leasing areas?

2. Should a competitive leasing process be implemented for public lands outside of designated solar or wind energy development leasing areas? If so, how should such a competitive leasing process be structured?
3. What competitive bidding procedures should the BLM adopt?
4. What is the appropriate term for a competitive solar energy ROW lease?
5. What is the appropriate term for a competitive wind energy ROW lease?
6. Should nomination fees be established for the competitive process? If so, how should the fees be determined?
7. How should the bidding process for competitive solar and wind energy ROW leases be structured to ensure receipt of fair market value?
8. Should a standard performance bond be required for competitive solar and wind energy ROW leases and how should the bond amount be determined?
9. What diligent development requirements should be included in competitive solar and wind energy right-of-way leases?

In response to the above questions, 76 industry representatives, environmental groups, individuals, and local and State governments provided comments and suggestions. The BLM used this information to develop many components of this proposed rule. The substantive comments received are grouped together by the question asked and are addressed below. An introductory “General Comments” section responds to some comments that did not address the above nine questions. Comments received from this ANPR were directed at the 2800 regulations, specifically at solar and wind energy competitive leasing. Other provisions of this proposed rule were not raised in the ANPR.

## General Comments

Several comments addressed topics other than those raised by the nine questions in the ANPR. These comments discuss the lease rental rates, valuing project proposals based upon qualitative and quantitative factors, adequate implementation of resource protection measures, and providing incentives for the leasing of low conflict development areas.

Some comments discussed grant and lease rental rates. Rates discussed in this proposed rule would be established pursuant to FLPMA and would be based upon known market data and calculations that are confirmed by a survey of market rental rates and comparable commercial practices. Provisions for updating the rental rates for solar and wind energy rights-of-way are included in this proposed rule and would be incorporated within any BLM grant or lease. Under the proposed rule, the BLM proposes a payment structure that includes both acreage rent and a MW capacity fee for solar and wind energy right-of-way authorizations.

Some comments expressed concern that if the BLM were to adopt a competitive leasing process, the agency might not adequately evaluate the potential impacts to resources on affected public lands. The BLM has structured its proposed competitive processes to obtain fair market value, while also promoting thoughtful and reasonable development of the public lands and protecting important resource and other values. If a competitive lease is issued, the BLM would continue to comply with all NEPA and other statutory requirements when reviewing project-specific plans. The designated leasing areas, which are preferred areas for solar or wind energy development, would be identified through the BLM land use planning process (43 CFR part 1600), supported by

a NEPA analysis, and designed to minimize impacts to environmental and cultural resources. In addition to the environmental review associated with the designation of leasing areas, site specific environmental analyses and other appropriate studies would be done for each proposed lease site as stated in the proposed rule at paragraph 2809.12(b)(1).

Likewise, several comments voiced concern that the BLM would be unable to adequately mitigate impacts to resources if it were to adopt a competitive leasing process. All grants and leases for solar and wind energy right-of-way authorizations would be expected to implement best management practices and mitigation as identified within the ROD for the Wind Programmatic EIS (<http://windeis.anl.gov/>) or Solar Programmatic EIS (<http://solareis.anl.gov/>). Furthermore, any additional site-specific NEPA requirements associated with an individual project could result in the identification of further mitigation measures, as applicable. It is intended that this review would provide the careful balance between the development and protection of the public lands that the BLM is charged with overseeing.

There were multiple comments regarding the BLM's proposed incentives for development in designated leasing areas. The BLM conducts an environmental review when identifying a designated leasing area through the planning process. This environmental review supports the BLM's decision to identify a designated leasing area. Project specific environmental reviews would be tiered from or incorporated by reference from this initial review to the extent practicable. The completion of this environmental review would be an incentive to develop facilities in designated leasing areas by reducing uncertainty regarding expected project schedules, potential resource conflicts, and

mitigation measures, all of which could add considerably to a project development timeline and cost if not already captured in BLM's environmental review.

Some commenters suggested development of an internal cash flow model for how the BLM would retain and redistribute collected funds within the agency. Currently, the BLM does not have authority under FLPMA to retain rents or fees collected from right-of-way grantees for the use of public lands. It is required to distribute such funds to the U.S. Treasury. The BLM's collection of money as a bid, fee, or rent does not result in the BLM retaining such funds. The BLM may retain funds when collecting reimbursement for processing or monitoring costs under Sections 304(b) and 504(g) of FLPMA or when the BLM holds funds for a performance and reclamation bond. Funds held for purposes of a performance and reclamation bond are tied to the performance requirements of an authorization, which would include costs such as the reclamation and restoration of the right-of-way.

Question 1. How should a competitive process be structured for leasing lands within designated solar or wind energy development areas?

Comments responding to Question 1 of the ANPR discussed State and local government involvement in the process, multi-factor bidding, and revenue sharing with State and local governments.

One comment recommended that the BLM coordinate with and consider the regulations of State, local, and tribal governments during the application process. The BLM's proposed rule does not affect the authority of State, local, or tribal governments. The BLM's ongoing objective is to coordinate with State, local, or tribal governments to the fullest extent possible when considering the issuance of rights-of-way across Federal

public lands. Under the existing regulations, applicants are encouraged to hold a pre-application meeting with the BLM and the BLM may share this information with State, local, and tribal governments (see section 2804.10). The proposed rule would require all applicants for solar and wind energy (and for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter), as part of the pre-application meetings, to coordinate with appropriate Federal and State agencies and tribal and local governments.

Some comments discussed competitive bidding processes to be applied outside of a designated leasing area and the allocation of revenue generated by an authorization. Of the several bidding processes discussed in the ANPR, the multi-factor bidding proposal received the most discussion. After review of comments and internal discussions, the BLM determined the term “multi-factor bidding” did not appropriately describe the BLM’s procedures. It has been modified to align with its intent, which is to provide an offset to the successful bidder after competitive bidding has occurred. The variable offsets are discussed in the section-by-section analysis under section 2809.16. Bidding options are discussed later in the section-by-section analysis part of this proposed rule. Section 2804.30 outlines a competitive leasing process for solar and wind energy development outside of designated leasing areas similar to the process in subpart 2809 for lands inside designated leasing areas. The BLM would use the process in section 2804.30 when there are two or more competing applications, or may start the process on its own initiative. The BLM may receive interest from the public or industry for development in an area. The BLM may also offer a parcel to help a state reach its goals for developing renewable energy.

Under FLPMA, revenues generated from right-of-way rentals are deposited in the U.S. Treasury. Currently, there is no authority to distribute rents, fees, or bid amounts to State or local governments, or to the BLM. However, the proposed rule would not limit the ability of the BLM or other Federal agencies to seek reimbursement from project proponents for the costs associated with processing, inspecting, and monitoring right-of-way authorizations. In fact, the existing regulations already require reimbursement of costs associated with processing, inspecting, and monitoring rights-of-way under section 2804.14.

Question 2. Should a competitive leasing process be implemented for public lands outside of designated solar or wind energy development leasing areas? If so, how should such a competitive leasing process be structured?

Several commenters discussed their interest in the BLM's existing competitive process under section 2804.23 to remain intact and continue forward. They also had concerns about the recent processes established by the BLM under the Solar Programmatic EIS and ROD and about eminent domain actions. Other commenters proposed the use of a sliding scale for a nomination fee based upon the amount of environmental risk associated with a proposal. Comments were also submitted suggesting that the BLM should allow development outside of designated leasing areas based upon a determination of the project's economic viability.

The proposed rule would codify new procedures for the competitive process currently being implemented on public lands outside of designated leasing areas and establish a similar process for lands inside designated leasing areas. The proposed rule

would also clarify the circumstances in which a competitive process may be used outside of designated leasing areas.

When developing the proposed rule, the BLM considered the solar variance process that was established by the Solar Programmatic EIS and ROD. The Solar Programmatic EIS and ROD identified variance areas as lands outside of SEZs (a type of designated leasing area) that may be suitable for solar energy development. The Solar Programmatic EIS and ROD accounted for avoidance and exclusion areas when identifying variance lands. The variance process established in the Solar Programmatic EIS ROD is the process by which the BLM evaluates applications for solar energy development in variance areas. The existing solar variance process and proposed rule are intended to be compatible and complement each other when the BLM processes an application for solar energy development.

One commenter expressed concern over potential BLM eminent domain actions on private land in areas where public and private lands are interspersed. The BLM's authority does not extend beyond the boundaries of BLM managed public lands. The proposed rule is intended to provide further direction on the management of public lands and should not be interpreted as applying to lands managed or owned by others. To the extent private lands are relevant to or necessary for a proposed use of public lands, it would be the responsibility of an applicant who proposes the use of BLM managed public lands to also secure the necessary rights over the adjacent private lands. No authorization from the BLM can confer such rights.

Some comments expressed concern that the BLM was determining whether projects are economically viable if located inside or outside a designated leasing area and

questioned the differences in environmental conditions between lands inside and outside a designated leasing area.

The BLM would identify areas that have a high potential for solar or wind energy development, but would not determine the economic viability of developing a project in these areas. Any determination of a project's economic viability would be left to the prospective developers.

The BLM would, however, identify locations that have fewer and less significant adverse resource impacts and are suitable for solar or wind energy development. The BLM would identify these areas through the land use planning process, which includes a supporting environmental review. The BLM and the Department issued the Solar Programmatic EIS ROD, which identified 17 SEZs on BLM managed lands, modified 89 land use plans, and described the BLM's intent to use a competitive process to facilitate solar energy development projects in SEZs.

Lands outside of designated leasing areas are not closed to solar and wind energy development, but would not benefit from the completed environmental review of the land use planning process and may, therefore, have greater resource conflicts. Greater resource conflicts are likely to increase an applicant's costs, as well as the BLM review period.

Outside of designated leasing areas, the BLM would prioritize solar and wind energy applications based upon categories of screening criteria, as discussed in the section-by-section analysis. While this is not a sliding scale as suggested by commenters, an application may be reprioritized based on new information provided or identified in the processing of an application. Prioritizing applications would focus the BLM's efforts

on those applications that are likely to have lesser resource conflicts before those with potentially greater impacts.

Question 3. What competitive bidding procedures should the BLM adopt?

In response to the request for comments on competitive bidding procedures, the BLM received several recommendations to model the competitive procedures of solar and wind energy development after the geothermal or oil and gas leasing programs. One commenter discussed the merit in allowing bidding on single or multiple tracts at a time. In addition to the recommendations for methods of competitive procedures, several commenters discussed appropriate methodologies for valuing public lands made available for competitive offering.

When developing the proposed competitive bid procedures, the BLM considered the bidding processes used by programs for offshore renewable energy, onshore oil and gas, and geothermal mineral leasing, and also past competitive actions for rights-of-way. Though these programs are guided by different statutes, regulations, and policies, the BLM's proposed competitive bid processes for rights-of-way have incorporated procedures used by the oil and gas and geothermal leasing programs, some of which were described in the ANPR. For example, similar to the BLM's oil and gas program, a notice placed in both a local newspaper and the Federal Register would provide specific instructions to interested parties on the required methodology and procedures to file for a pending competitive offer.

The BLM, through this proposed rule, intends to identify the methods by which it may competitively offer rights-of-way inside designated leasing areas. However, the proposed rule is written so as to not unnecessarily limit the BLM's ability to

competitively offer lands for solar and wind energy development. The BLM may tailor the competitive leasing offer to meet the needs of the agency, prospective developers, and the interests of the public. For example, when a notice is provided in a local newspaper and the Federal Register, the BLM could announce whether it would accept bids on single or multiple tracts of public land and whether variable offsets would be provided for a preferred technology.

Questions 4 and 5. What is the appropriate term for a competitive solar energy ROW lease? What is the appropriate term for a competitive wind energy ROW lease?

Most of the commenters agreed that the duration of both solar and wind energy development right-of-way lease terms should be no less than 20 years and no more than 30 years. The proposed rule would establish a term of 30 years inside designated leasing areas, and up to 30 years outside of designated leasing areas.

Question 6. Should nomination fees be established for the competitive process? If so, how should the fees be determined?

Most commenters felt that a nomination fee should be established for a competitive process for solar and wind energy development. However, those commenters that agreed with a nomination fee had different suggestions for how the nomination fee should be configured. Most commenters indicated that they would support a nomination fee if the fee was reasonable. The BLM's proposed nomination fees are discussed in the section-by-section analysis under section 2809.11.

Question 7. How should the bidding process for competitive solar and wind ROW leases be structured to ensure receipt of fair market value?

The BLM received a variety of different comments discussing Question 7. Some commenters discussed instituting a bidding process while others opposed it. Some commenters recommended that the agency consider not implementing a bidding process once an application is submitted.

The BLM considered not implementing a competitive process once an application for solar or wind energy development has been submitted. Existing regulations allow the BLM to implement a competitive process when there are two or more competing applications for the same facility or system. The rules would still have this provision, and under the proposal, the BLM would also be able to implement a competitive process on its own initiative. FLPMA directs the BLM to receive fair market value for right-of-way authorizations on the public lands and the recommendation not to offer rights-of-way competitively could prevent the BLM from doing so. The BLM is more likely to receive fair market value through a combination of the competitive process and the rents and MW capacity fees described in this proposed rule. Section 2804.23 describes when the BLM would implement a competitive process outside of designated leasing areas. Section 2809.19 describes how the BLM would process applications on lands that are subsequently identified as designated leasing areas.

Some commenters suggested alternative methodologies for determining the value of using public lands for solar or wind energy development, including valuing a proposed right-of-way based on adjacent land uses or the appraised value of the past uses of the land.

In this rule, the BLM proposes a structure where the fair market value of a right-of-way authorization would be reflected by all of the components of the competitive offer

i.e., the minimum bid, bonus bid, acreage rent, and a MW capacity fee. The combination of these components is intended to result in the Government's receipt of fair market value for the use of the public lands for solar and wind energy development. The BLM has determined competitive offers provide a more accurate assessment of fair market value for solar and wind energy rights-of-way than valuations of adjacent lands.

Other commenters indicated that the BLM should develop an internal cash flow model for specific technology types, on a State-by-State or regional basis to achieve fair market value. Comments also indicated that the BLM should match or stay above other competitively offered lease prices, utilizing a minimum bid rate.

As part of this rule, the BLM has proposed rents and fees specific to the different solar and wind energy technology types. The BLM proposes a MW capacity fee, based on the number of approved MWs of capacity for the energy development, and an acreage rent, based on the number of acres authorized for the right-of-way. The acreage rent would be based on the existing linear rent schedule, which is determined on a regional basis to reflect the value of the land. The MW capacity fees and acreage rents would be different for solar and wind energy based upon technology type and encumbrance factors. See sections 2806.50 and 2806.60 for more information on the solar and wind right-of-way rents and fees. The proposed combination of rent, MW capacity fees, and bids proposed by this rule is not intended to require a value greater than other competitively offered parcels, but rather to represent fair market value.

Question 8. Should a standard performance bond be required for competitive solar and wind energy ROW leases and how should the bond amount be determined?

Most commenters stated that a standard performance bond should be required for competitive solar and wind energy development right-of-way leases. Several comments suggested that a bond should be required for the cost of restoring the land to its original condition. Other comments suggested that bond amounts should be based on project development costs. Several comments also suggested that a bond requirement would encourage viable proposed solar and wind energy development projects by committed applicants. There were a few comments suggesting that bonds should not be required because of uncertainty as to what bonds were to cover, and other comments recommended that the BLM should continue to use its existing bond requirements.

The proposed rule describes bonding requirements and addresses the elements the BLM would consider when establishing a bond amount. The BLM considered the comments submitted under the ANPR and determined that a bond would be required for each solar and wind energy authorization, including a minimum bond amount. A minimum bond amount would be established for grants on lands outside of designated leasing areas. This minimum bond amount would be the same as the standard bond amount for leases on lands inside designated leasing areas. These amounts are discussed in greater detail in the section-by-section analysis under section 2805.20. The bond amount for grants on lands outside designated leasing areas would be based on a reclamation cost estimate (RCE), which estimates the costs for reclaiming and restoring the public lands. This amount would include the administrative costs for the BLM to administer a contract to reclaim and restore the lands in the authorization. The minimum bond amount is based on an average of RCEs for existing projects.

The BLM considered establishing bond amounts based upon other costs, such as costs to develop a project. However, the BLM rejected this idea since these and other suggested costs and methods for establishing bond amounts were based on construction costs and were not specific to the reclamation and restoration requirements of a project or an indication of reasonable costs to do so on BLM-managed public lands. The proposed minimum bond amounts are based on an average of the RCEs for existing projects.

Question 9. What diligent development requirements should be included in competitive solar and wind energy right-of-way leases?

Comments on diligent development requirements for leases focused on the BLM notification to potential bidders before a competitive offer is made. Comments expressed interest in timeframes for the start and completion of development requirements, such as construction deadlines, once a lease is offered to the successful bidder. Some comments indicated that the BLM should enforce benchmarks, deadlines, or other criteria.

The BLM is proposing diligent development requirements for a competitively offered lease for solar or wind energy development. For example, the proposed regulations would require that a plan of development (POD) be submitted to the BLM within 2 years and that the proposed energy development be operational within 10 years of the lease issuance. Other site-specific requirements may be disclosed in the notice offering the lands for a competitive offer.

Existing regulations (section 2807.16) provide the BLM with authority to suspend or terminate a right-of-way authorization if the holder does not comply with the terms and conditions of the grant, such as a POD. A suspension or termination of a solar or wind energy right-of-way would cause a right-of-way holder to lose profits and

potentially increase their cost of operations. The BLM does not propose to establish monetary penalties to enforce diligent development or established benchmarks or criteria.

#### **IV. General Discussion and Section-by-Section Analysis**

##### General Discussion

The BLM's existing right-of-way regulations provide only limited authority to use a competitive bidding process when authorizing solar and wind renewable energy facilities. Specifically, the existing regulations (see 43 CFR 2804.23(c)) allow the BLM to use a competitive bidding process only when it has already received two or more competing right-of-way applications for the same facility or system. This proposed rule would expand the BLM's ability to use competitive bidding processes, including competitive bidding for solar and wind energy development grants and leases. While this proposed rule includes provisions that apply to all rights-of-way, the focus of this rule is primarily on solar and wind energy development. It would codify existing BLM policies and provide additional detail pertaining to a competitive process for seeking solar or wind energy development grants outside designated leasing areas. In addition, it would establish a competitive process for seeking solar and wind energy development leases inside designated leasing areas.

The term "designated leasing area" would be defined at section 2801.5(b) as "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 must be leased competitively." Similar to right-of-way corridors, designated leasing areas would be identified as appropriate areas for development while minimizing cultural and environmental impacts through avoidance, minimization, and compensatory mitigation.

The BLM's preliminary review of these areas, and its determinations that these areas are suitable for renewable energy development, are intended to provide an incentive to renewable energy developers looking for a potential site to develop. Site-specific NEPA analysis would still be required for each right-of-way, but the BLM's preliminary review and land management suitability determinations would streamline subsequent site-specific NEPA analysis and could save the developer time and money.

Solar and wind energy development inside designated leasing areas would be authorized using the competitive offer process that would be established in proposed 43 CFR subpart 2809. Another competitive process for lands outside designated leasing areas would be established in proposed section 2804.30. Both processes would enable the BLM, on its own initiative, to offer lands competitively for solar or wind energy development.

After deciding to offer either type of lands competitively, the BLM would publish a notice of competitive offer in accordance with new section 2804.30(d) that would be used in conducting the auction or competitive bidding. This notice would include the date, time, and location, as well as the process and procedures of the competitive offer. The BLM would accept a bid only if it included payment for the minimum bid and at least 20 percent of the bonus bid.

The minimum bid would consist of: (1) Administrative costs incurred by the BLM and other Federal agencies in preparing for and conducting the competitive offer; and (2) An amount determined by the BLM based on known or potential values of the parcel. The bonus bid would consist of any dollar amount that a bidder decides to bid in addition to the minimum bid.

For lands outside designated leasing areas, the bidder who submits the highest total bid would become the preferred applicant. The preferred applicant is the only party who may submit a right-of-way application for the parcel identified in the notice of competitive offer on which it was the highest bidder. A preferred applicant who completes the application process may be offered a grant, at the BLM's discretion.

In contrast, for lands inside designated leasing areas, the bidder who submits the highest total bid would be offered a lease, provided that qualifications and payment terms are met. The BLM would offer a lease in designated leasing areas as an incentive for development in these preferred areas. These lands would have undergone sufficient cultural and environmental review to offer the successful bidder a lease that ordinarily would not require further evaluation. As noted, site-specific NEPA analysis would still be required for each right-of-way and could be tiered from the BLM's preliminary review and land management suitability determinations. This streamlined process would save the applicant time and money. Lands outside of designated leasing areas would not have yet undergone the preliminary environmental and cultural review provided by the planning process.

In addition, new section 2809.16 of this proposed rule would provide that a successful bidder for lands inside a designated leasing area may qualify for variable offsets totaling up to 20 percent of the total bid. These offsets are intended to provide an incentive for development inside designated leasing areas and benefits to the general public. As envisioned, such benefits to the public would include better resource protection, more efficient use of the public lands, and an increased likelihood of project development. Requirements for qualifying for such offsets would be outlined specifically

in the notice of competitive offer. Competitive offers for lands outside of designated leasing areas would not include variable offsets. These offsets are discussed in detail in the section-by-section analysis of this preamble.

The rent for solar and wind energy grants and leases would comprise an acreage rent and a MW capacity fee. The methodology used to determine rents and fees for solar and wind energy, inside and outside of designated leasing areas, are generally the same. The main differences between acreage rents for lands outside and inside designated leasing areas are when the acreage rent is adjusted and how it is phased in. For lands outside of designated leasing areas, the acreage rent would be updated every year using the BLM's linear rent schedule. For lands inside designated leasing areas, the acreage rent would be updated in year 11 of the lease, and every 10 years thereafter, using the acreage rent schedule in place at the time of the adjustment.

The MW capacity fees would be phased in over the course of the grant or lease based on changes to the MW rate. There would be a 3-year phase-in period for grants outside of designated leasing areas, and a 10-year phase-in period for leases inside designated leasing areas. The provisions describing how acreage rents and MW capacity fees would be phased in are explained in greater detail in the section-by-section analysis.

Bonding requirements would also differ. Inside designated leasing areas, the standard bond amount for solar energy developments would be \$10,000 per acre and wind energy developments would be \$20,000 per authorized turbine. These same amounts would be the minimum requirements for bonds outside designated leasing areas, and those minimum bonds could be subject to adjustment by the BLM under proposed section 2805.20(a). These bond amounts are based on an average of the bond

requirements of existing solar or wind energy projects. The minimum amount outside of designated leasing areas would help ensure that the BLM receives an adequate bond to protect the public lands. Since the BLM would identify designated leasing areas as areas with lesser and fewer environmental and cultural resource conflicts, the BLM proposes a standard bond amount for solar or wind energy developments inside those areas. The BLM expects that if a RCE were prepared for a project inside a designated leasing area, the amount would not deviate significantly from the standard bond amount.

The BLM intends to provide an additional level of certainty for right-of-way holders inside designated leasing areas and streamline the development process. The potential lessee could save time and money by not preparing a RCE.

Under existing regulations, the BLM may adjust a bond amount to ensure the bond adequately protects the lands in a right-of-way. The BLM does not intend to adjust the standard bond amount for solar and wind energy leases unless there is a change in use. A change in use would be when a grant is amended. The removal of a wind turbine and subsequent reclamation could result in a decreased bond amount. The expansion of a lease area for a solar project could result in an increased bond amount. While the BLM intends to streamline solar and wind energy development on public lands, the BLM would maintain the ability to protect public lands.

Title V of FLPMA authorizes the BLM to issue right-of-way grants, leases, and easements. The majority of BLM-issued rights-of-way are grants. The BLM intends to differentiate the rights-of-way issued under subpart 2809 as leases, which would be a type of grant with specific requirements. Communication site rights-of-way are another

example of BLM-issued leases, which have specific regulatory requirements for rent and subletting.

The following table summarizes the differences between grants outside designated leasing areas and leases inside designated leasing areas:

**Differences in Processes, Terms, and Conditions between Right-of-Way Grants and Leases for Solar and Wind Energy Development**

	<b>Grants (Outside Designated Leasing Areas)</b>	<b>Leases (Inside Designated Leasing Areas)</b>	<b>Applicable Regulations</b>
All applications			
Pre-application meetings	Mandatory for all applications.	Does not apply.	43 CFR 2804.10
Screening Criteria	Applies to all applications.	Does not apply.	43 CFR 2804.25 and 2804.35
Competitive Process			
BLM would identify parcels for competitive offer	When there are 2 or more competing applications, or on the BLM's initiative.	After issuing a call for nominations, or on the BLM's initiative.	43 CFR 2804.30 and subpart 2809
Variable offset	Does not apply.	Each offset (and percent) described in Notice of Competitive Offer; total offset cannot exceed 20 percent of total bid.	43 CFR 2809.16
The successful bidder:	Becomes the preferred applicant and may apply for a grant.	Would be offered a lease if requirements are met.	43 CFR 2804.30(f) and 2809.15
Terms and Conditions			
Assignment rights	Yes.	Yes.	43 CFR 2807.21 and 2809.18(f)
Due Diligence	2 years to begin construction, 24 months to complete construction.	2 years to submit POD, 7 years to complete construction.	43 CFR 2805.12(c)(3) and 2809.18(g)
Bonding	Minimum bond of \$10,000 per acre for solar/ \$ 20,000 per authorized turbine for wind	Standard bond of \$10,000 per acre for solar/ \$ 20,000 per authorized turbine for wind.	43 CFR 2805.20

Acreage Rent	Adjusted annually.	Adjusted every 10 years.	43 CFR 2806.50 and 2806.60
MW Fee Phase-ins	3 years at 25%/50%/100%.	10 years at 50%, then 100% all subsequent years.	43 CFR 2806.50 and 2806.60
Term Length of Grants and Leases	Up to 30 years.	30 years.	43 CFR 2805.11 and 2809.18(a)

The above identified differences between outside and inside designated leasing areas are intended to provide incentives for development inside designated leasing areas. The BLM is soliciting comments as to whether these identified differences and incentives are appropriate for the designated leasing areas, if other incentives may exist, and as to whether the identified timeframes, amounts, rationale, and processes are appropriate for such areas.

The BLM believes that the Federal Government will receive fair market value for all of the uses of public lands that could be authorized by the proposed rule (see 43 U.S.C. 1701 (a)(9)). The salient features of fair market value as referenced by the Uniform Appraisal Standards for Federal Land Acquisitions (1992) and the Appraisal of Real Estate (1992) are as follows:

1. Fair market value is characterized as, or is representative of, a transaction between a knowledgeable buyer and a knowledgeable seller;
2. Neither buyer nor seller is obligated or under duress to buy or sell;
3. Fair market value is determined by a competitive market rather than the personal or inherent value of the property;
4. The property is exposed to a competitive market for a reasonable time;
5. Market value is only that value transferable from owner to owner. In most cases this means private market value; and

6. Properties lacking buyer competition, which are likely to become part of a larger competition property, can be given an estimated market value as part of the larger property. In accordance with the market concept, the price paid for a similar property in an arm's-length transaction is accepted as the best evidence of fair market value. Factors to be considered in estimating value include probable demand, property location, and property use.

This proposed rule would establish a framework through which the United States would obtain fair market value for the use of the public lands (See 43 U.S.C. section 1701(a)(9) and 43 U.S.C. section 1764(g)). The procedures in the proposed rule have been designed to facilitate the BLM's determination of fair market value through a combination of acreage rent (based on the number and value of acres within the authorized area), MW capacity fees (based on approved capacity of the solar or wind energy project), and any minimum and bonus bids offered during the competitive process. Although the BLM would collect administrative costs as a component of the minimum bid, these costs are not part of the fair market value of a parcel and would be reimbursement for reasonable costs for processing the authorization.

Drawing upon its experience with solar and wind energy development on the public lands to date, the BLM has given careful consideration to the procedures to collect fair market value through a combination of rents, MW capacity fees, and bids (not including Federal administrative costs). While the BLM's current right-of-way regulations provide only limited authority for the agency to use a competitive bidding process, through the proposed rule the BLM intends to develop a more detailed set of competitive procedures that will enhance the agency's ability to identify and receive fair

market value by collecting minimum and bonus bids for solar and wind energy authorizations.

Currently, the BLM does not have authority to retain revenues collected from such developments as payment to the government for the use of public lands. Revenue collected for solar or wind energy developments will be sent to the U.S. Treasury and not retained by the BLM. This revenue includes acreage rents, MW capacity fees, minimum bids and bonus bids (not including Federal administrative costs), application filing fees, and nomination filing fees.

However, some funds received by the BLM for solar and wind energy developments would be retained or held by the BLM for its use. Such funds would include those received for cost recovery for the pre-application period and the processing of an application or the monitoring of an authorization, bonds, Federal administrative costs for a competitive offer, and penalty fees for the late payment of rent and MW capacity fees.

Annual rent payments are required for all solar and wind energy grants and leases. Acreage rent would consist of payments based on the value of the underlying public land encumbered by a particular project, which the proposed rule addresses through a set of updated and more detailed methods. Under the proposed rule, the BLM would identify acreage rent as described in the section-by-section discussion at 2806.50 and 2806.60 of this preamble. For lands outside of designated leasing areas, the acreage rent would be updated every year using the BLM's linear rent schedule. For lands inside designated leasing areas, the acreage rent is updated in year 11, and every 10 years thereafter, using the acreage rent schedule in place at the time of the adjustment.

The BLM would also establish a MW capacity fee using payment schedules based on the approved generation capacity of solar and wind energy grants and leases. It has been the BLM's practice under its current regulatory authority and policies to collect acreage and MW capacity payments as rent. Through this proposed rule the BLM is proposing to classify MW capacity payments as fees, since they reflect the incremental value added by the more intensive, industrial use of the land above and beyond the rural or agricultural value of the land in its unimproved state. In addition, in the BLM's experience, the total MW generating capacity of a project is independent of the area of land it occupies since the generation capacity of a project is driven in significant part by the technology used. The acreage payment would remain classified as rent under the proposed rule as it is directly tied to the area of public lands encumbered by the project and its constraints to other uses on the public lands.

Under the competitive process that the proposed rule would establish for lands outside designated leasing areas, the winning bid amount, combined with other potential payments to the BLM over the course of the period of the grant, may better represent the fair market value. If the BLM receives no bids in a competitive offer, the lands could be reoffered competitively or non-competitively, if doing so is in the public interest (see paragraph 2804.34(h)(4)). In the absence of comparable transactions, an appraisal could determine whether a fair market value was achieved.

For lands inside designated leasing areas, the highest bidder at the competitive offer would become the lessee and may qualify for and receive variable offsets for up to 20 percent of the winning bid amount. Since the potential offsets would be known to

bidders before a competitive offer, bidders should be willing to bid higher than they would without the offsets.

Assuming a scenario with sufficient competition among bidders who qualify for offsets, the winning bid amount minus any offsets would theoretically be the same as what the winning bid would have been if no offsets were offered. In this case, the bonus bid and the other payments to the BLM over the course of the lease may better represent the fair market value for the lease. If one or few bidders qualify for offsets, then it is likely that the winning bid amount minus any offsets would be less than what the winning bid would have been if no offsets were offered.

If the BLM receives no bids on a competitive offer, the lands could be reoffered competitively or non-competitively, if doing so is in the public interest (see 2809.17(d)). An appraisal could verify whether a fair market value was achieved.

#### Section-by-Section Analysis for Part 2800

This proposed rule would make the following changes in part 2800. The existing language found at section 2809.10 would be revised and redesignated as paragraph 2807.17(d), while revised subpart 2809 would be devoted to solar and wind energy development in designated leasing areas. This proposed rule would also amend parts 2800 and 2880 to clarify the BLM's administrative procedures used to process right-of-way grants and leases. These clarifications would ensure uniform application of the BLM's procedures and requirements. A more in-depth discussion of the proposed changes is provided below.

The following terms would be added to the definitions in section 2801.5:

“Acreage rent” is a new term that means rent assessed for solar and wind energy development grants and leases that is determined by the number of acres authorized by the grant or lease. The acreage rent is calculated by multiplying the number of acres (rounded up to the nearest tenth of an acre) within the authorized area times the per-acre county rate in effect at the time the authorization is issued. Provisions addressing adjustments in the acreage rent can be found in sections 2806.52, 2806.54, 2806.62, and 2806.64. An example of how to calculate acreage rent is discussed in this preamble in the section-by-section analysis of paragraph 2806.52(a)(1).

“Application filing fee” is a new term that means a nonrefundable filing fee specific to solar and wind energy right-of-way applications. The fee is proposed at \$15 per acre for all solar and wind energy development applications and \$2 per acre for wind site testing applications. The BLM would adjust the application filing fee once every 10 years to account for inflation. Further discussion of application filing fees can be found in section 2804.12.

“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. The proposed rule would add this definition to section 2801.5 to help clarify existing regulations. A more detailed explanation of assignments and the changes made can be found under section 2807.21.

“Designated leasing area” is a new term that means a parcel of land with specific boundaries identified by the BLM’s land use plan process as being an area (e.g., SEZ) established, conducted through a landscape-scale approach, for the leasing of public lands for solar or wind energy development via a competitive offer. The competitive offer

process may be found in the discussion of subpart 2809 under the section-by-section analysis contained in this preamble. Further discussion of designated leasing areas can be found under section 2802.11.

“Designated right-of-way corridor” is a term that is defined in existing regulations. The word “linear” has been added to this definition to distinguish between these corridors and designated leasing areas.

“Management overhead costs” is defined in existing regulations as Federal expenditures associated with the BLM. Under Sections 304(b) and 504(g) of FLPMA, the Secretary may require payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to public lands. Secretarial Order (see Order 3327) delegated the Secretary’s authority under FLPMA to receive reimbursable payments to the bureaus and offices of the Department of the Interior. This definition has been expanded to include other Federal agencies.

“Megawatt capacity fee” is a new term meaning the fee paid in addition to the acreage rent for solar and wind development grants and leases based on the approved MW capacity of the solar or wind authorization. The MW capacity fee is calculated based on the MW capacity for an approved solar or wind energy project authorized by the BLM. Examples of how MW capacity fees are calculated may be found under the discussion of section 2806.56. While the acreage rent reflects the value of the land itself, the MW capacity fee reflects the value of the industrial use of the property to generate electricity.

“Megawatt rate” is a new term that means the price of each MW for various solar and wind energy technologies as determined by the MW rate schedule. The MW rate

equals the number of hours per year multiplied by the net capacity factor multiplied by the MW per hour (MWh) price multiplied by the rate of return where: The net capacity factor is the average operational time divided by the average potential operational time of a solar or wind energy development facility multiplied by current technology efficiency rates. The net capacity factor for each technology type is:

- a. Photovoltaic (PV) = 20 percent;
- b. Concentrated photovoltaic (CVP) and concentrated solar power (CSP) = 25 percent;
- c. Concentrated solar power with storage capacity of 3 hours or more = 30 percent; and
- d. Wind energy = 35 percent.

1. The MWh price equals the 5-year average of the annual weighted average wholesale price per MWh for the major Intercontinental Exchange (ICE) or its successor in interest at trading hubs serving the 11 Western States of the continental United States (see proposed paragraph 2806.52(b)). The wholesale price of electricity is tracked daily on the ICE and is readily accessible at <https://beta.theice.com/marketdata/reports/ReportCenter.shtml>. Should the ICE or its successor in interest discontinue tracking the wholesale price of electricity, the 5-year average of the annual weighted average wholesale price per MWh would be calculated using comparable market prices.

2. The rate of return is the relationship of income (to the property owner, or in this case the United States) to the revenue generated from authorized solar and wind

energy development facilities, based on the 10-year average of the 20-year U.S. Treasury bond yield, rounded to the nearest one-half percent.

3. The number of hours per year is a fixed number (i.e., 8,760 hours, the total number of hours in a 365-day year).

The BLM is considering basing the net capacity factors for these technologies on an average of the annual capacity factors listed by Energy Information Administration (EIA). The EIA posts an average of the capacity factors on its Web site at [http://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.cfm?t=epmt\\_6\\_07\\_b](http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_6_07_b).

“Performance and reclamation bond” is a new term that 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. This term is defined here to clarify the expectations of what a bond accomplishes.

The definition would also explain which instruments would or would not be acceptable. Acceptable bond instruments include cash, cashiers or certified check, certificate or book entry deposits, negotiable U.S. Treasury securities, surety bonds from the approved list of sureties, and irrevocable letters of credit. The BLM would not accept a corporate guarantee. These provisions would codify the BLM’s existing procedures and practices.

“Reclamation cost estimate (RCE)” is a new term that means the report used by the BLM to estimate the costs to restore the intensive land uses on the right-of-way to a condition that would support pre-disturbance land uses.

“Right-of-way” is defined in existing regulations as the public lands the BLM authorizes a holder to use or occupy under a grant. The revised definition would describe the authorization as “a particular grant or lease.”

“Screening criteria for solar and wind energy development” is a term that refers to the policies and procedures that the BLM would use to prioritize how it processes solar and wind energy development right-of-way applications outside of designated leasing areas. Some examples of screening criteria are:

1. Applications filed for areas specifically identified for solar or wind energy development, other than designated leasing areas;
2. Previously disturbed areas or areas located adjacent to previously disturbed areas;
3. Lands currently designated as Visual Resource Management (VRM) Class IV; and
4. Lands identified for disposal in a BLM land use plan.

Screening criteria for solar and wind energy development have been established by policy through IM 2011-61, and are further discussed in paragraph 2804.25(d)(2) and section 2804.35 of this proposed rule. The IM may be found at [http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html).

“Short term right-of-way grant” is a new term that means any grant issued for a term of 3 years or less for such uses as storage sites, construction sites and short-term site testing and monitoring activities. The holder may find the area unsuitable for development or the BLM may determine that a resource conflict exists in the area.

The scope section of the regulations in part 2800 is clarified in the proposed changes to section 2801.6. The additional language clarifies that the regulations in this part would apply to all systems and facilities identified under paragraph 2801.9(a).

Section 2801.9 explains when a grant or lease is required for systems or facilities on public lands. Paragraph 2801.9(a)(4), systems for generation, transmission and distribution of electricity, would be expanded to include solar and wind energy development facilities and associated short-term actions. Language would also be added to paragraph 2801.9(a)(7) to allow any temporary or short-term surface-disturbing activities associated with any of the systems described in this section. A new paragraph (d) would be added to specifically describe the types of authorizations required for various components of solar and wind energy development projects. These are:

1. Short term authorizations (term to not exceed 3 years),
2. Long term right-of-way grants (up to 30 years); and
3. Solar and wind energy development leases (30 years).

This paragraph also describes the type of authorizations for solar and wind projects located both inside and outside of designated leasing areas. Authorizations for solar or wind energy development located outside of a designated leasing area would be issued as a right-of-way grant for a term of up to 30 years. Authorizations located inside of a designated solar or wind energy development would be issued as a right-of-way lease for a term of 30 years.

Section 2802.11, which explains how the BLM designates right-of-way corridors, would be revised to include “designated leasing areas.” The BLM would identify designated leasing areas as preferred areas for solar or wind energy development, based on a high potential for energy development and lesser resource impacts. This section provides the factors the BLM considers when determining which lands may be suitable

for right-of-way corridors or designated leasing areas. These factors are unchanged from the existing regulations.

Paragraphs (a), (b), (b)(3), (b)(4), (b)(6), (b)(7) and (d) of this section would be amended to include references to designated leasing areas. Existing regulations specifically mention right-of-way corridors in these paragraphs. These revisions would clarify that this section would apply to designated leasing areas in addition to linear right-of-way corridors.

Existing section 2804.10 encourages prospective applicants for a right-of-way grant to schedule and hold a pre-application meeting. As revised in this proposed rule, section 2804.10 would continue to encourage pre-application meetings regarding some right-of-way grants, but would require two or more such meetings for:

1. Any solar or wind energy grant outside a designated leasing area;
2. Any transmission line with a capacity of 100 kV or more; or
3. Any pipeline 10 inches or more in diameter.

Under existing paragraph 2804.10(a)(2), the BLM determines if your application is on land within a right-of-way corridor. This paragraph would be revised to include “or a designated leasing area.” The BLM would not accept applications for grants on lands inside designated leasing areas (see the section-by-section analysis of paragraph 2809.19(b) for further discussion).

Proposed paragraph 2804.10(a)(4) would be amended by adding a reference to proposed paragraph 2804.10(b). The existing paragraph states that the BLM may inform you of financial obligations, such as processing and monitoring costs, rent, and

mitigation. The reference would reiterate that applicants must pay the reasonable costs associated with proposed paragraph 2804.10(b), or may elect to pay the full actual costs.

Under paragraph 2804.10(b), applicants for right-of-way grants for solar or wind energy development (outside of designated leasing areas), any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter, must hold two or more pre-application meetings. These types of authorizations are generally larger and more complex than the average right-of-way authorization, and this extra step would help protect the public lands and make application processing more efficient.

The BLM would not accept an application until all pre-application meetings are held and the applicant complies with the grazing permittee early notification requirement found at 43 CFR 4110.4-2(b). Applicants must pay reasonable costs associated with the pre-application requirements identified in paragraph (b) of this section, with the option of paying the-actual costs. Payment for reasonable costs associated with pre-application requirements would be paid prior to the first pre-application meeting.

After the enactment of the Energy Policy Act of 2005, the BLM received an influx of solar and wind energy development applications. Many of these applications were unlikely to be approved due to issues such as siting, environmental impacts and lack of involvement with other interested parties. As the BLM gained more experience with these applications it developed policies to process applications more efficiently. These policies required pre-application meetings and application screening criteria (see section 2804.35).

Mandatory pre-application meetings helped the BLM and prospective applicants identify necessary resource studies, and other interests and concerns associated with a

project. Further, the pre-application meetings provided an opportunity to direct development away from lands with high conflict or sensitive resource values. As a result of these meetings, the applications submitted were better sited and had fewer resource issues than those submitted where no pre-application meetings were held. Holding these meetings early in the process made the applications more likely to be approved by the BLM. This saved the applicant the time and money spent when doing resource studies and developing projects that may not be accepted or approved by the BLM.

Some prospective applicants chose not to pursue a development after these meetings after they had a better understanding of the potential issues and resource conflicts with the project as proposed. The BLM found that applicants who participated in pre-application meetings saved money that would have been spent planning a development that the BLM would not have approved. This also saved the BLM time by reducing the number of applications they would process and the time spent reviewing resource studies and project plans.

The Government Accountability Office report (GAO-13-189), submitted in January 2013, found that the average BLM permitting timeframes have decreased since implementation of its solar and wind energy policies, which include the pre-application and application requirements in this proposed rule.

In review of the BLM's experiences with renewable energy development, transmission lines larger than 100 kV, and pipelines larger than 10 inches in diameter, holding pre-application meetings save both the BLM and a developer time and money. The GAO concluded that applications submitted in 2006 averaged about 4 years to process. Applications submitted in 2009 and later averaged about 1.5 years to process.

Further, the BLM has reviewed its records for cost recovery of these renewable energy, transmission and pipeline projects and identified a range of costs and time associated with each type of application for the public lands. These ranges vary between the solar and wind energy, transmission line, and pipeline projects. For solar and wind energy a range of costs was identified between \$40,000 and \$4 million including up to approximately 40,000 BLM staff labor hours and other non-labor costs per project. For transmission lines 100 kV or larger and pipelines 10 inches or larger, a range of costs was identified between \$260,000 and \$3.2 million including up to approximately 32,000 BLM staff labor hours and other non-labor costs per project.

Based on the BLM's experience, two pre-application meetings would usually be sufficient to address all potential concerns with a project. However, the BLM understands that additional pre-application meetings may be beneficial to a project before an application is submitted. The BLM does not want to limit its ability to hold additional meetings should a project be particularly complex and has allowed for additional pre-application meetings to be held when mutually agreed upon by the BLM. For example, a project that crossed State lines could require additional coordination with local governments and other interested parties.

The burden on prospective applicants would be limited. In advance of the first pre-application meeting, they would need to collect information about the general project proposal (see section 2804.10(b)(1)(i)). The BLM would be in the best position to know, and thus would be primarily responsible for collecting and communicating, the rest of the required information:

- 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.

One or more additional pre-application meetings would be held with the BLM and other Federal, State, tribal, and local governments to facilitate coordination. This requirement would provide an opportunity for a prospective applicant to describe the general project proposal (i.e., information that has already been collected), and for the BLM and the prospective applicant to learn generally the views of various governmental entities. Again, the burden for prospective applicants would be limited. Paragraph 2804.10(c) would explain requirements for submitting an application for solar or wind energy development projects, for any transmission line with a capacity of 100 kV or more, or for any pipeline 10 inches or more in diameter. This provision would codify the existing policies and provide clear instructions to the public about what they should expect during the application process.

The BLM would accept an application only if the following conditions are met. The written proposal must address known potential resource conflicts with sensitive resources and values that are the basis for special designations or protections, and include applicant-proposed measures to avoid, minimize, and mitigate such resource conflicts. For example, some applicant proposed measures could utilize a landscape level approach as conceptualized by Secretarial Order 3330 and subsequent reports, and consistent with the BLM's IM 2013-142 interim policy guidance. Due to the intense use of the land from the projects covered in this section, the BLM would require applicants to identify

potential conflicts and how they may be avoided, minimized, or mitigated. The BLM works with applicants throughout the application process to ensure the most efficient use of public land and to minimize possible resource conflicts. This provision would require applicants to consider these concerns before submitting an application and therefore provide the BLM with potential plans to minimize and mitigate conflicts.

The BLM is soliciting comments on the number of pre-application meetings that would be required for solar or wind energy development projects, for any transmission line with a capacity of 100 kV or more, or for any pipeline 10 inches or more in diameter. The Department of Energy (DOE) is currently developing a draft integrated, interagency pre-application (IIP) process for onshore transmission projects. The BLM intends to create a pre-application process that would be consistent with the IIP when it is proposed for transmission lines. However, the DOE has not yet published the IIP or other such plan for pre-application. The BLM will coordinate with the DOE to ensure that the final BLM rule is consistent with DOE's final IIP process.

The proposal for solar energy or wind energy development must not be sited on lands inside a designated leasing area except as provided for by section 2809.19. Lands inside designated leasing areas would be offered competitively under subpart 2809. See section 2809.19 of this preamble for further discussion.

The applicant must have completed pre-application meetings described in paragraphs 2804.10(b)(1) and 2804.10(b)(2) to the BLM's satisfaction. This paragraph would reinforce the requirements for pre-application meetings.

The proposal must be accompanied by a general description of the proposed project and a schedule for the submittal of a POD conforming to the POD template at <http://www.blm.gov>.

The submittal of a POD is often required under the authority of the existing regulations at paragraph 2804.25(b). Under proposed paragraph 2804.10(b) of this rule, PODs would always be required for authorizations for solar or wind energy development, any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter. The new requirement in paragraph 2804.10(c)(4) is for a more general summary of the project, using the information available at the time of submittal. A POD conforming to the BLM's template would be submitted later, in accordance with the approved schedule.

Proposed paragraph 2804.12(a)(8) would require that an applicant submit a non-refundable application filing fee with any solar or wind energy right-of-way application. Section 304 of FLPMA authorizes the BLM to establish filing and service fees. A per-acre application filing fee would discourage applicants from applying for more land than would be necessary for the proposed project. Revenue collected for application filing fees will be sent to the U.S. Treasury and not retained by the BLM as this is not a cost recovery fee. A similarly structured nomination fee inside designated leasing areas is established following the same criteria and is described in paragraph 2809.11(b)(1).

The application filing fee is based on the appraisal consultation report performed by the Department's Office of Valuation Services. The appraisal consultation report compared similar costs on private lands, and provided a range between \$10 and \$25 per acre per year. The nominal range or median was reported as \$15-\$17 per acre per year.

The appraisal consultation report is available for review by contacting individuals listed regarding the substance of the proposed rule under the “FOR FURTHER INFORMATION CONTACT” heading section of this preamble.

The BLM is proposing to adopt a single filing fee at the time of filing an application, as opposed to a yearly payment. Based on the appraisal consultation report, fees are proposed at \$15 per acre for solar and wind energy applications and \$2 per acre for wind energy project area and site specific testing applications.

Fees for solar and wind energy development applications would be adjusted for inflation once every 10 years using the Implicit Price Deflator for Gross Domestic Product (IPD-GDP). The average change in the IPD-GPD from 1994-2003 is 1.9 percent which would be applicable through 2015.

Paragraph 2804.12(a)(9) would be added to clarify existing requirements, as well as to complement new provisions. Under existing paragraph 2804.25(b), the BLM may require an applicant to submit a general description of the project POD. This new requirement in paragraph 2804.12(a)(9) states that if the BLM requires you to submit a POD, you must include a schedule for its submittal in your application.

Under the existing regulations at section 2804.14, applicants must pay the BLM for its reasonable costs, as defined by FLPMA, of processing an application. New paragraph 2804.14(a) gives the BLM discretion to collect the estimated reasonable costs incurred by other Federal agencies. Secretarial Order 3327 delegated the Secretary’s FLPMA cost reimbursement authority to Interior agencies, who often work together on projects with joint jurisdiction. Applicants may pay those costs to the other affected agencies directly instead of paying them to the BLM.

Proposed paragraph 2804.14(b) includes a table of the processing categories for applications. The specific costs would be removed from this table, while the explanations of the categories and the methodology of calculating the costs would remain. These numbers are available in writing upon request or on the BLM's website. The cost figures that would be removed are outdated, since the BLM updates these costs annually and has done so annually since the original rule was published. The revision would allow the BLM to update these numbers without modifying the CFR and prevent confusion to potential applicants who would see incorrect information. The explanation of how these costs are calculated, currently in paragraph 2804.14(c), would be moved up to paragraph (b) in order to provide better context for the amended table. Redundant language would be removed from the Category 1 processing fee in order to streamline the definition.

As defined in section 2804.18, a Master Agreement is a written agreement covering processing and monitoring fees negotiated between the BLM and a right-of-way applicant that involves multiple BLM rights-of-way for projects within a defined geographic area. New paragraph 2804.18(a)(6) would require that a Master Agreement describe existing agreements between the BLM and other Federal agencies for cost reimbursement with such applications. With the recent authority delegated by Secretarial Order 3327 to collect costs for other Federal agencies, it is important for the applicant, the BLM, and other Federal agencies to coordinate and be consistent for cost reimbursement.

Under paragraph 2804.19(a), an applicant for a Category 6 application must enter into a written agreement with the BLM about how such applications would be processed.

A new requirement would be added to this paragraph requiring that the final agreement must include a description of any existing agreements the applicant has with other Federal agencies for cost reimbursement associated with the application. The new authority delegated by Secretarial Order 3327 requires more coordination and promotes consistency between the Federal agencies and this revision would help to implement this coordination.

Under new paragraph 2804.19(e), the BLM may collect reimbursement to the U.S. for reasonable costs for processing applications and preparation of other documents under this part relating to the public lands. Secretarial Order 3327 authorizes the BLM to collect funds for other agencies for their work on applications submitted to the BLM. Adding this language to the CFR would clarify the BLM's authority for the public.

Section 2804.20 would be amended to account for the authority delegated by Secretarial Order 3327, as well as new provisions in the proposed rule, when determining reasonable costs for processing and monitoring Category 6 applications. New language would include existing agreements with other Federal agencies for cost reimbursement associated with an application and costs associated with new pre-application requirements for proposed solar or wind energy development projects, for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter. Processing costs would include reasonable costs for processing a right-of-way application, while monitoring costs include reasonable costs for those actions the Federal Government performs to ensure compliance with the terms, conditions, and stipulations of a right-of-way grant.

The heading of section 2804.23 would be revised to read “When will the BLM use a competitive process?” to better reflect the subject of the section. Paragraph (a)(1) of this section would now require applicants to reimburse the Federal Government, as opposed to just the BLM, for processing costs. This change reflects the authority delegated by Secretarial Order 3327 for Interior agencies to collect money for processing applications made on the public land, as well as promote cooperation between the different Federal land management agencies.

A new sentence in paragraph 2804.23(c) would give the BLM authority to offer lands through a competitive process. Under the existing regulations, the BLM may only use a competitive process when there are two or more competing applications for a single right-of-way system. This change gives the BLM more flexibility to offer lands competitively for all potential rights-of-way, not just solar and wind energy development projects.

The BLM has already established competitive leasing procedures for the oil and gas and geothermal leasing programs, some of which were described in the ANPR. Though these programs are guided by different statutes, regulations, and policies, the BLM’s proposed competitive bid processes for rights-of-way have appropriately incorporated procedures used by these programs. For example, a notice placed in both a local newspaper and the Federal Register would provide specific instructions to interested parties on the required methodology and procedures for a competitive offer.

Under proposed paragraph 2804.23(d), lands outside of designated leasing areas may be made available for solar or wind energy applications through the competitive process outlined in section 2804.30. This new provision would direct the reader to new

section 2804.30, which explains the competitive process for solar and wind energy development outside of designated leasing areas. This paragraph is necessary to differentiate between development inside and outside of a designated leasing area.

Under new paragraph 2804.23(e), lands inside a designated leasing area would be offered competitively through the process described in subpart 2809. This new paragraph would direct the reader to new subpart 2809, which would explain the competitive process for solar and wind energy development inside of designated leasing areas. This paragraph is necessary to differentiate between development inside and outside of a designated leasing area.

Existing section 2804.24 explains when you do not have to use Standard Form 299 (SF-299) to apply for a right-of-way. Under the existing rule, you do not have to use SF-299 if the BLM determines competition exists under paragraph 2804.23(a). This only occurs when there are two or more competing applications for the same right-of-way facility or system.

Due to the proposed changes to section 2804.23, section 2804.24 must specify when an SF-299 is required. Under both the existing regulations and the proposed rule, the BLM would implement a competitive process if there are two or more competing applications. Under paragraph 2804.24(a), you would not have to submit a SF-299 if the BLM is offering lands competitively and you have already submitted an application for that facility or system.

Under paragraph (a), if you have not submitted an application for that facility or system, you must submit an SF-299 as specified by the BLM. Under the competitive process for solar or wind energy in section 2804.30, for example, the successful bidder

becomes the preferred applicant, and may apply for a grant. The preferred applicant would be required to submit an SF-299, but unsuccessful bidders would not.

New paragraph (b) would explain that an applicant would not have to use an SF-299 when the BLM is offering lands competitively under subpart 2809. The BLM may offer lands competitively for solar and wind energy development inside designated leasing areas under subpart 2809. Under subpart 2809, the successful bidder would be offered a lease if the requirements described in paragraph 2809.15(d) are met. The successful bidder inside designated leasing areas would not have to submit an application using SF-299. The following chart illustrates under what circumstances the filing of an SF-299 would or would not be required:

**When a SF-299 is required**

Type of Solar or Wind right-of-way	Would have to submit a SF 299	Comments
Have two or more competing applications for the same area	Yes	Outside of designated leasing areas
Lands are offered competitively outside of a designated leasing area and you have already submitted an application for the parcel before the Notice of Competitive Offer	No	
Lands are being offered competitively outside of a designated leasing area and you have not submitted an application	Yes	
You are the successful bidder and have been declared the preferred applicant and may apply for a grant	Yes	Outside of designated leasing areas
Lands being offered competitively within a designated leasing area under subpart 2809	No	

Under the amendments to paragraph 2804.25(b), the BLM would not process your application if you have any trespass action pending for any activity on BLM-administered lands or have any unpaid debts owed to the Federal Government. The only applications

the BLM would process to resolve the trespass would be for a right-of-way as authorized in this part, or a lease or permit under the regulations found at 43 CFR 2920, but only after outstanding debts are paid. This provision would apply to rights-of-way, and would clarify existing regulations. Under existing regulations at section 2808.12, the BLM will not process any application for any activity on BLM-administered lands until you have satisfied your liability for a trespass. The requirement in section 2808.12 is often overlooked by potential right-of-way applicants and this change would insert this existing requirement into the application process described in subpart 2804.

Paragraph 2804.25(d) would be revised by replacing the words “before issuing a grant” with “in processing an application.” This change would be made to account for the situation where the BLM would issue a grant without accepting applications. Lands leased inside designated leasing areas would be offered through a competitive bidding process under subpart 2809 in situations where no applications for those lands are received. The provisions in section 2804.25 would not apply to the leases issued under subpart 2809. They would apply to all other rights-of-way, including solar and wind energy development grants outside of designated leasing areas. The issuance of leases inside designated leasing areas will be discussed in subpart 2809.

Paragraph 2804.25(d) also would be revised to incorporate new provisions for all rights-of-way as well as specific provisions for solar and wind energy development. Existing paragraph 2804.25(d)(5), which provides the requirement to hold a public meeting if there is sufficient public interest, would be moved to new paragraph 2804.25(d)(1). Language would be added to specify that the public notice would be published in a newspaper in the area affected by the potential right-of-way and that the

BLM may use other notification methods as well, such as the Internet. The former revision would clarify existing regulations, while the latter would expand the BLM's methods for notification.

New paragraph 2804.25(d)(2) would consist of three separate requirements for solar and wind energy development applications. Under paragraph 2804.25(d)(2)(i), the BLM would hold a public meeting in the area affected by the potential right-of-way for all solar or wind energy applications. Based on the BLM's experience, most solar and wind energy development projects are large-scale projects that draw a high level of public interest. This requirement would be added to provide an opportunity for public involvement early in the process. Under paragraph (d)(2)(ii), the BLM would apply screening criteria when processing an application outside of designated leasing areas. These screening criteria are explained further in section 2804.35.

Under new paragraph 2804.25(d)(2)(iii), the BLM would either deny or continue processing an application, after reviewing the input of other government and tribal entities, as well as information received in the application, public meetings, and pre-application meetings. The denial of an application would be in writing and would be an appealable decision under section 2801.10. The approval of all grant applications is at the BLM's discretion and the BLM would likely deny an application that has high potential for resource conflicts. While the BLM already has the authority to deny applications that have high potential for resource conflicts, the proposed rule would clarify to potential applicants how they may submit an application that is more likely to be approved.

Under new paragraph 2804.25(d)(3), if an application is for solar or wind energy development, for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter, then the BLM would determine whether the POD submitted with the application meets the applicable development schedule and other requirements or whether the applicant must provide additional information. This is a necessary step that would be added to allow the BLM to evaluate the new application requirements under paragraphs 2804.10(c)(4) and 2804.12(a)(9). The BLM would determine if the development schedule and other requirements of the POD templates were followed as required under paragraphs 2804.10(c)(4) and 2804.12(a)(9). The POD template can be found at <http://www.blm.gov>.

Proposed paragraphs (d)(4), (d)(5), (d)(6), (d)(7), and (d)(8) of this section are existing provisions that would be moved to fit in with the other paragraphs of this section.

The BLM is considering and seeks public comment on establishing in the final rule a provision that would limit the time for applicants to begin conducting necessary resource studies. The deadline could be specific, for example 1 year after the BLM accepts an application. Alternatively, a time limitation could be stated in more general terms that would provide for greater flexibility on a case-by-case basis. Under this proposal, the failure to begin conducting such studies in the specified time frame could result in the BLM's denial of an application unless the BLM had previously agreed to a longer period of time at the request of the applicant. We are considering adding this time limitation to section 2804.25. We seek public comment on any other provisions that might be pertinent.

Section 2804.26 explains the circumstances under which the BLM may deny an application. Existing paragraph 2804.26(a)(5) explains one such circumstance, when an applicant does “not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities in the proposed right-of-way.” The proposed rule would add text to clarify this requirement, which applies to all rights-of-way. The new paragraphs would explain how an applicant could provide evidence of the financial and technical capability to be able to construct, operate, maintain, and decommission a solar or wind energy development project. The applicant may provide documented evidence showing prior successful experience in developing similar projects, provide information of sufficient capitalization to carry out development, or provide documentation of loan guarantees, confirmed power purchase agreements, and contracts for the manufacture and/or supply of key components for solar or wind energy project facilities. A specific period of time for requiring compliance with this provision has not been established. The BLM is soliciting comments as to what an appropriate time would be in such situations.

Under new paragraph 2804.26(a)(6), the BLM may deny your application if you do not meet the POD submittal requirements under paragraphs 2804.10(c)(4) and 2804.12(a)(9). New paragraph 2804.26(a)(7) would reference the possible denial based on the screening criteria established in new paragraph 2804.25(d)(2)(iii). Paragraphs (a)(6) and (a)(7) would be added to this section to reiterate these new requirements and explain that the BLM may deny an application should an applicant not comply with these provisions.

The heading of section 2804.27, “What fees do I owe if BLM denies my application or if I withdraw my application?” would be revised to read “What fees must I pay if BLM denies my application or if I withdraw my application?” A new provision in this paragraph would provide that if the BLM denies your application, or if you withdraw it, you must still pay any pre-application costs required under paragraph 2804.10(a)(4), any application filing fees submitted or due under paragraph 2804.12(a)(8), and the processing fee set forth at section 2804.14. Currently, the BLM is reimbursed for its costs only after a right-of-way application has been filed. Under the proposed rule, the BLM could recover the considerable expense devoted to pre-application work. Reimbursement for pre-application costs would ensure that the BLM has funds for, and could help reduce delays in performing pre-application work. Section 304(b) of FLPMA provides for the deposit of payments to reimburse the BLM for reasonable costs with respect to applications and other documents relating to the public lands.

New section 2804.30 would explain the process by which the BLM would competitively offer lands outside of designated leasing areas. The bidding process here is similar to the one established in subpart 2809, except for the end result of the bidding. Under paragraph (f) of this section, the successful bidder would become the preferred right-of-way applicant. Under this section, the high bidder is not guaranteed a grant; however, the preferred applicant is the only party that may submit an application for the parcel identified by the BLM under paragraph (g). This is different from subpart 2809, where the successful bidder would be offered a lease.

Paragraph (a) of this section would identify which lands are available for competitive lease; paragraph (b) of this section would explain the variety of competitive procedure options available; and paragraph (c) would explain how the BLM would identify parcels for competitive offer. The BLM may identify a parcel for competitive offer if competition exists or the BLM may include lands in a competitive offer on its own initiative. The existing regulations only allow the BLM to use a competitive process when there are two competing applications and the changes to paragraph 2804.23(c) would give the BLM more flexibility. The BLM could include lands in a competitive offer in response to interest from the public, industry, or to facilitate State renewable energy goals.

Paragraph 2804.30(d), “Notice of competitive offer,” establishes the content of the materials of a notice of competitive offer that include the date, time, and location (if any) of the competitive offer, bidding procedures, qualifications of potential bidders, and the minimum bid required. The notice would also explain that the successful bidder would become the preferred applicant and must apply for a grant under this subpart. This is different from the competitive offers held under subpart 2809 where the successful bidder is offered a lease.

Paragraph 2804.30(d)(4) requires that the notice to provide the amount of the minimum bid, which would include a description of the administrative costs to the Federal agencies involved and what was provided by those administrative costs, as well as the minimum bid determined by the authorized officer and the rationale for how this minimum bid was derived. As discussed in the general discussion section of this preamble, the administrative costs are not a component of fair market value, but are cost

reimbursement to the Federal Government. The BLM would publish a notice containing all of the identified elements in a newspaper of general circulation in the area affected by the potential right-of-way, in the Federal Register, and other notification methods, including use of the Internet.

Under paragraph 2804.30(e), “Bidding,” the BLM would require that bid submissions include both the minimum bid amount and at least 20 percent of the bonus bid. The minimum bid would consist of administrative costs and an amount determined by the authorized officer. Included in the administrative costs are those expenses pertaining to the development of environmental analyses and those costs to the Federal Government associated with holding the competitive offer.

The authorized officer may specifically identify a second component for the minimum bid(s) submitted for each competitive offer. This amount would be based on the known or potential values of the offered parcel. The authorized officer may consider values that include, but are not limited to, the acreage rent, the MW capacity fee, or other environmental and mitigation costs of the parcel. For example, the BLM may have identified values in management plans, or other such documents, for the habitat mitigation of the desert tortoise. The authorized officer would have to identify these costs and provide the description of how the minimum bid amount was determined. An explanation of the minimum bid amount and how the BLM derived it would be provided in the notice of competitive offer.

Under proposed paragraph 2804.30(f), the successful bidder would be determined by submitting the highest total bid at a competitive offer. The successful bidder must fulfill the payment requirements of the successful bid in order to become the preferred

right-of-way applicant. The preferred applicant must submit the balance of the bid to the BLM within 15 calendar days of the end of the offer.

Under proposed paragraph 2804.30(g), the preferred applicant would be the only party who may submit an application for the parcel offered. Unlike the process under subpart 2809, the approval of a grant under this paragraph is not guaranteed to the successful bidder. Approval of a grant is solely at the BLM's discretion. The preferred applicant may also apply for a wind energy project area or site specific testing grant.

Paragraph 2804.30(h), "Reservations," describes how the BLM would address certain situations that could arise from a competitive offer. Under paragraph (h)(1) of this section, the BLM may reject bids regardless of the amount offered. For example, the BLM may reject a bid if there is evidence of conflicts of interest or collusion among bidders or if there is new information regarding potential environmental conflicts. The BLM would notify the bidder of the reason for the rejection and what refunds are available. If the BLM rejects a bid, the bidder may administratively appeal that decision.

Under paragraph (h)(2) of this section, the BLM could make the next highest bidder the preferred applicant if the first successful bidder does not satisfy the requirements under section 2804.30(f). This could allow the BLM to determine a preferred applicant without reoffering the land and could save time and money for the BLM and potential applicants.

The BLM could reoffer lands competitively under (h)(3) of this section if the BLM could not identify a successful bidder. If there is a tie, this offer could be limited to tied bidders or to all bidders. This would provide the BLM flexibility to resolve ties and other issues that could complicate a competitive offer.

Under proposed paragraph 2804.30(h)(4), if the BLM receives no bids, the BLM may re-offer the lands through the competitive process in section 2804.30. The BLM may also make the lands available through the non-competitive process as described in subparts 2803, 2804, and 2805, if doing so is determined to be in the public interest.

New section 2804.35 would explain how the BLM would prioritize review of an application for a solar or wind energy development right-of-way based on the screening criteria for projects outside of designated leasing areas. The BLM would evaluate the application based on the screening criteria and place the application into one of three categories. These categories would assist the BLM in prioritizing and processing such applications. Applications for solar and wind energy development will not be accepted for lands inside designated leasing areas except as allowed under new section 2809.19, and therefore would not have such applications prioritized.

The BLM has already established screening criteria through IM 2011-061, which identifies their use for solar and wind energy development rights-of-way in order to facilitate environmentally responsible development by considering resource conflicts, land use plans, and statutory and regulatory provisions pertinent to the applications and the lands in question. Applications with lesser resource conflicts are anticipated to be less costly and time-consuming for the BLM to process and would be prioritized over those with greater resource conflicts. IM 2011-061 may be found at [http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html). This rule proposes criteria similar to those in the IM and the codification of these criteria would give applicants a better understanding of how their application would be categorized. Also,

applications could be tailored to fit these screening criteria to streamline the processing of an application.

High priority applications are given processing priority over medium and low priority applications and would consist of lands meeting some or all of the following criteria:

1. Lands specifically identified for solar or wind energy development, outside designated leasing areas;
2. Previously disturbed sites or areas adjacent to previously disturbed or developed sites;
3. Lands currently designated as VRM Class IV; and
4. Lands identified as suitable for disposal in the BLM's land use plans.

The BLM may identify lands through the NEPA process that are suitable for solar or wind energy development, which are not designated leasing areas. Identified lands would include those which have: been analyzed in a land use plan and are suitable for solar and wind energy development but were determined to not be made available competitively; received approval from the BLM for a similar development for which a right-of-way was never issued or the right-of-way was relinquished, or; been returned from a designated leasing area back to lands not identified for solar or wind energy completion.

VRM factors would address situations where the construction of solar or wind facilities would have low impacts to the environment and are in areas that have few or no resource values or areas needing protection from development. The VRM inventory process is a means to determine visual resource values. The VRM inventory consists of a scenic quality evaluation, sensitivity level analysis, and a delineation of distance zones.

Based on these three factors, BLM-administered lands are placed into one of four VRM classes, with Classes I and II being the most valued, Class III representing a moderate value, and Class IV being of least value. The BLM assigns VRM classes through the land use planning process and these values can range from areas having few scenic qualities to areas with exceptional scenic quality.

Under the proposed rule, medium priority applications would be considered before low priority applications, based on the following criteria:

1. BLM special management areas that provide for limited development or where a project may adversely affect lands having value for conservation purposes, such as historical, cultural, or other similar values;
2. Right-of-way avoidance areas;
3. Sensitive plant or animal habitat areas; and
4. Lands designated as VRM Class III.

Low priority applications may not be feasible to authorize due to a high potential for conflict. Examples of applications that may be assigned low priority would involve:

1. Lands near or adjacent to areas designated by the Congress, the President, or the Secretary for the protection of various resource values;
2. Right-of-way exclusion areas;
3. Lands currently designated as VRM Classes I or II;
4. Lands currently designated as no surface occupancy areas; and
5. Lands designated as critical habitat for federally designated threatened or endangered species.

The heading for section 2805.10 would be revised to read, “How will I know if BLM has approved or denied my application, or if my bid for a solar or wind energy development lease inside a designated leasing area is successful or unsuccessful?” This section would be updated to reflect the new competitive process for lands inside designated leasing areas by providing that a successful bidder for a solar or wind development lease on such lands would not have to submit an SF-299 application. Instead, in these circumstances, the successful bidder would have the option to sign the lease offered by the BLM.

Paragraph (a) of this section would contain the existing language that explains how the BLM would notify you about your application. It would add a new provision requiring that the BLM send the successful bidder a written response, including an unsigned lease for review and signature. Unsuccessful bidders would also be notified and any funds submitted with their bid would be returned. If an application is rejected, the applicant would still be required to pay any pre-application costs (paragraph 2804.10(a)(4)), filing fees (paragraph 2804.12(a)(8)), and any processing fee (section 2804.14).

Proposed paragraphs 2805.10(b), (b)(1), and (b)(2) would parallel existing paragraphs (a)(1) and (a)(2), and the content remains unchanged. These paragraphs describe the unsigned grant that the BLM would send for approval and signature.

Paragraph (b)(3) of this section would specify that the BLM may make changes to any grant or lease as a result of the periodic review of the grant or lease required by this section, including those issued under subpart 2809, in accordance with paragraph 2805.15(e). A more detailed discussion can be found under that section. This provision

is necessary because many terms and conditions of leases issued under subpart 2809 would not be changed except as described in this rule. However, the terms and conditions in subpart 2809 may be changed in accordance with paragraph 2805.15(e) as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

Proposed paragraphs 2805.10(c), 2805.10(d), 2805.10(d)(1), 2805.10(d)(2), and 2805.20(d)(3) would contain the language from existing paragraphs 2805.10(b), 2805.10(c), 2805.10(c)(1), 2805.10(c)(2), and 2805.20(c)(3). These provisions remain unchanged from existing regulations.

Existing paragraph 2805.11(b) explains how the duration of each potential right-of-way is determined. This paragraph would be revised to include specific terms for solar and wind energy authorizations because they are unique and different than other right-of-way authorizations.

Paragraph 2805.11(b)(2)(i) would limit the term for a site specific grant for testing and monitoring of wind energy potential to 3 years. Under this rule, this type of grant would only be issued for a single meteorological tower or wind study facility. This authorization cannot be renewed. If a holder of a grant wishes to keep their site for additional time, they must reapply.

Paragraph 2805.11(b)(2)(ii) would provide for an initial term of 3 years for project area wind energy testing. Such grants may include any number of meteorological towers or wind study facilities inside the right-of-way. Any renewal application must be submitted before the end of the third year. In order for the BLM to renew a permit, the project area wind testing grant holder must submit another application for wind energy

development and a POD for that use. Renewals for project area wind testing grants may be authorized for one additional 3-year term.

Paragraph 2805.11(b)(2)(iii) would provide for a short-term grant for all other associated actions, such as geotechnical testing and other temporary land-disturbing activities, when the term is 3 years or less. A renewal of this grant may be issued under for an additional 3-year term.

Paragraph 2805.11(b)(2)(iv) would provide for an initial grant term of up to 30 years for solar and wind energy grants outside of designated leasing areas, with a possibility of renewal in accordance with paragraph 2805.14(g). A holder must apply for renewal before the end of the authorization term.

Paragraph 2805.11(b)(2)(v) would provide for a 30-year term for solar and wind energy development leases inside designated leasing areas. A holder may apply for renewal for this term and any subsequent terms of the lease before the end of the authorization and the renewal would be considered at that time by the BLM.

For all grants and leases under this section with terms greater than 3 years, the actual term period would include the number of full years specified, plus the initial partial year, if any. This provision differs from the grant term for rights-of-way authorized under the MLA (see the discussion of paragraph 2885.11 later in this preamble section) as FLPMA rights-of-way may be issued for terms greater than 30 years, while a MLA right-of-way may be issued for a maximum term of 30 years and a partial year would count as the first year of a grant.

Paragraph 2805.11(b)(3) contains the language from existing paragraph 2805.11(b)(2) and would require that grants and leases with terms greater than 3 years

include the number of full years specified, plus the partial year, if any. This proposed change to existing BLM regulations would affect the duration of all right-of-way grants that are issued or amended after the final rule becomes effective. This change would provide specific direction for consistently calculating the term of a right-of-way grant or lease.

Section 2805.12 would provide a listing of terms and conditions to which all right-of-way holders must comply. This section has been reorganized in order to better present a large amount of information. Paragraph (a) of this section in the proposed rule would carry forward, without adjustment, most of the requirements from the existing section. Paragraph (b) of this section refers the reader to new section 2805.20, which explains bonding requirements for right-of-way holders. Paragraph (c) of this section contains specific terms and conditions for solar or wind energy right-of-way authorizations. The following discussion would apply only to those requirements that are proposed by this rule. All other requirements are part of the existing regulation and are not discussed in this preamble.

New paragraph 2805.12(a)(5) contains existing language from section 2805.12(e) with two small changes. The word “phase” would be changed to “stage” to prevent confusion with the use of “phase-in of the MW capacity fee” and similar phrases in this proposed rule. The proposed rule would also prohibit discrimination based on sexual orientation. Adding sexual orientation as a protected class in this regulation would be consistent with the policy of the Department of the Interior that no employee or applicant for employment be subjected to discrimination or harassment because of his or her sexual orientation. See 373 Departmental Manual 7 (June 5, 2013).

Paragraph 2805.12(a)(8)(v) would require compliance with project specific terms, conditions, and stipulations, including proper maintenance and repair of equipment during the operation of the grant. This is an existing policy requirement that affects all rights-of-way and would be clarified to include leases offered under new subpart 2809 and that the approved operations would not unnecessarily harm the public land by poor maintenance and operation activities. In addition, this provision would require a holder to comply with the terms and conditions in the POD. Any holder that does not comply with the POD approved by the BLM would be subject to remedial actions under existing section 2807.17, which may include the suspension or termination of the grant or lease.

In order to comply with the terms and conditions of the grant or lease, a developer may choose to modify, remove or add improvements to the project in order to remedy identified compliance matters. Proposed changes to the grant or lease, if approved by BLM, would be completed as discussed in section 2807.11 as a substantial deviation. Substantial deviations may require adjustment to a grant or lease rent and fees under part 43 CFR 2806, or bonding requirements under part 43 CFR 2805 and 2809 that reflect proposed changes that are approved by BLM.

New paragraph 2805.12(a)(15) would require that a grant holder or lessee provide or make available, upon the BLM's request, any pertinent environmental, technical, and financial records for inspection and review. Any information marked confidential or proprietary would be kept confidential to the extent allowable by law. Review of the requested records would facilitate the BLM's monitoring and inspection activities related to the development. The records would also be used to determine if the holder is

complying with the requirements for holding a grant under existing paragraph 2803.10(b).

Paragraph 2805.12(b) would require that grant holders and lessees comply with the bonding requirements of new section 2805.20. The existing bonding requirements are lacking in detail and this new section would help clarify the requirements of a grant holder or lessee.

New paragraph 2805.12(c) would identify specific terms and conditions for grants and leases issued for solar or wind energy development, including those issued under subpart 2809, unless specifically noted.

New paragraph 2805.12(c)(1) would prohibit ground-disturbing activities until either a notice to proceed is issued under the authority of existing section 2807.10 or the BLM states in writing that all requirements have been met to begin construction. Requirements may include the payment of rents, fees, or monitoring costs and securing a performance and reclamation bond. The BLM would apply this requirement prohibiting ground-disturbing activities to all solar and wind rights-of-way due to the large-scale of most of these projects.

Paragraph 2805.12(c)(2) would require construction to be completed within the timeframes provided in the approved POD. Construction must begin within 24 months of the effective date of the grant authorization or within 12 months, if approved as a staged development. Further discussion of a staged development can be found under section 2806.50.

Paragraph 2805.12(c)(3) would require each stage of construction after the first begin within 3 years after construction began for the previous stage of development.

Construction would be completed no later than 24 months after the start of construction for that stage of development. These time periods were selected after evaluating the timing of other completed wind energy development projects. These timeframes help to ensure that the public land is not unreasonably encumbered by these large authorizations, which are exclusive to other rights during the construction period of the project.

Paragraph 2805.12(c)(3)(iii) would limit the number of stages of development to three, unless the BLM's approval for additional stages is obtained in advance. The BLM would generally approve up to three stages for solar and wind energy development. Approval of additional stages may be requested by an applicant or holder, but must be accompanied with supporting discussion for why additional stages are necessary or reasonable. Each stage would require a review of records and a decision issued by the BLM to allow the construction of the next stage. Additional phasing could generate unnecessary work for the BLM.

Paragraphs (c)(4), (c)(5), and (c)(6) of this section would contain specific requirements for diligent development and the potential consequences of not complying with these requirements.

Paragraph 2805.12(c)(4) would require the holder to maintain all onsite electrical generation equipment and facilities in accordance with the design standards of the approved POD. This paragraph specifies requirements to comply with the POD that must be submitted under paragraph 2804.10(c)(4).

Paragraph 2805.12(c)(5) would provide requirements for repairing or removing damaged or abandoned equipment and facilities within 30 days of a notice from the BLM. The BLM would issue a notice of noncompliance under this provision only after

identifying damaged or abandoned facilities that present an unnecessary hazard to the public health or safety or the environment for a continuous period of 3 months. Upon receipt of a notice of noncompliance under this provision, an operator would be required to take appropriate remedial action within 30 days, or show good cause for any delays. Failure to comply with these requirements may result in suspension or termination of a grant or lease.

Under paragraph 2805.12(c)(6), the BLM may suspend or terminate a grant if the holder does not comply with the diligent development requirements of the authorization.

Paragraph 2805.12(d) would describe specific requirements for wind energy site or project testing grants. These requirements include shorter time periods for beginning construction, because these grant terms are only 3 years or less. All facilities must be installed within 12 months after the effective date of the grant. All equipment must be maintained and failure to comply with any terms may result in termination of the authorization.

The BLM is proposing two new paragraphs for section 2805.14, both of which would address renewal applications. New paragraph (g) would provide that a holder of a solar or wind energy development grant or lease may apply for renewal under section 2807.22. New paragraph (h) would provide that a holder of a wind energy project area testing grant may apply for renewal of such a grant for up to an additional 3 years, provided that the renewal application also includes a wind energy development application. The BLM is proposing paragraph (h) to recognize that project area testing may be necessary for longer than an initial 3-year term even after an applicant believes that wind energy development at a proposed project site is feasible.

Under existing paragraph 2805.15(e), the BLM may change the terms and conditions of a grant as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment. This paragraph remains unchanged and would apply to the leases issued under subpart 2809. The BLM must maintain the flexibility to adjust these leases for new laws and rules, as well as to protect the public lands. In section 2805.15, the word “facilities” would be added to the first sentence of paragraph (b) to clarify that the BLM may require common use of right-of-way facilities. The term “facility” is defined in the BLM’s existing regulations at section 2801.5 and means an improvement or structure that would be owned and controlled by the grant holder or lessee. Common use of a right-of-way is when more than one entity uses the same area for their authorization. This revision would facilitate the cooperation and coordination between users of the public lands managed by the BLM so that resources are not unnecessarily impacted. An example of common use of a facility would be authorization for a roadway and an adjacent transmission line. Maintenance of the transmission line would include use of the adjacent roadway. Under existing paragraph 2805.14(b), the BLM may authorize or require common use of a facility as a term of the grant. Under this existing provision, a grant holder may charge for the use of its facility. A reference to this paragraph is provided in the section proposed.

The table of monitoring categories in section 2805.16 would no longer have the dollar amounts for the 2005 category fees. Paragraph (b) explains that the current year’s monitoring cost schedule is available from any BLM State, district, or field office, or by writing and would be adjusted for inflation annually using the same methodology as the table in paragraph 2804.14(b). The table now only includes the existing definition of the

monitoring categories in terms of hours worked, instead of providing specific dollar amounts. This change was made to avoid either adjusting the table each year through a rulemaking or relying on outdated material. The current monitoring fee schedule may also be found at <http://www.blm.gov>. This paragraph also provides that you may pay directly to another Federal agency their incurred costs in monitoring your grant instead of paying the fee to the BLM.

New section 2805.20 would provide for the bonding requirements for all grant holders or lessees. This information would be moved from the existing section 2805.12. Bonds are required only at the BLM's discretion, but this expanded section explains the specifics should a bond be required. Specific bonding requirements for solar and wind energy development are also outlined in paragraphs (b) and (c) of this section.

New paragraph 2805.20(a) would provide that, if required by the BLM, you must 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 or damages to property or the environment in connection with your use of an authorized right-of-way. This paragraph includes the language from existing paragraph 2805.12(g), which is the section that details bonding requirements.

Paragraph 2805.20(a)(1) would require that bonds list the BLM as an additionally covered party if a State regulatory authority requires a bond to cover some portion of environmental liabilities. If the BLM were not named as an additionally covered party for such bonds, the BLM would not be covered by the instrument. This provision would allow the BLM to accept the State bond as satisfying a portion of the BLM's bonding requirement, thus limiting double bonding.

Under paragraph (a)(1)(i), the State's bond must be redeemable by the BLM. If such instrument is provided to the BLM and it is not redeemable, the BLM would be unable to use the bond for its intended purpose(s).

Under paragraph (a)(1)(ii), the State's bond must be held or approved by a State agency for the same reclamation requirements as the BLM requires.

Under paragraph (a)(1)(iii), the State's bond must provide the same or greater financial guarantee than the BLM requires for the portion of environmental liabilities covered by the State's bond.

Under paragraph 2805.20(a)(2) a bond must be approved by the BLM authorized officer. This approval ensures that the bond meets the BLM's standards. Under paragraph 2805.20(a)(3), the amount would be determined based on an RCE, and must also include the BLM's costs in administering a reclamation contract. As defined in section 2801.5, the RCE identifies an appropriate amount for financial guarantees for uses of the public lands. Both of these paragraphs contain a stipulation that they do not apply to leases issued under subpart 2809. Bonds issued under subpart 2809 for leases inside designated leasing areas have standard amounts. Bond acceptance and amounts for solar and wind energy facilities outside of designated leasing areas are discussed in paragraphs (b) and (c) of this section.

Proposed paragraph 2805.20(a)(4) would require that a bond be submitted on or before the deadline provided by the BLM. Current regulations have no such provision and this revision would enable the BLM to collect bonds in a timely manner. Timely submittal of a bond would promote efficient stewardship of the public lands and ensure

that the bond amount provided would be acceptable to the BLM and available prior to beginning on-the-ground activities.

Paragraph 2805.20(a)(5) would outline the components to be addressed when determining a RCE. They include environmental liabilities, maintenance of equipment and facilities, and reclamation of the right-of-way. This paragraph consolidates and presents what liabilities the bond must cover.

Under paragraph 2805.20(a)(6), a holder of a grant or lease may ask the BLM to accept a replacement bond. The BLM must review and approve the replacement bond before accepting it. Should a replacement bond be accepted, the surety company for the old bond is not released from obligations that accrued while the old bond was in effect unless the new bond covers such obligations to the BLM's satisfaction. This gives the grant holder flexibility to find a new bond, potentially reducing their costs, while ensuring that the right-of-way is adequately bonded.

A holder of a grant or lease would be required to notify the BLM that reclamation has occurred under paragraph 2805.20(a)(7). If the BLM determines reclamation is complete, the BLM may release all or part of the bond that covers these liabilities. However, paragraph 2805.20(a)(8) reiterates that a grant holder is still liable in certain circumstances under existing section 2807.12. Despite the bonding requirements of this section, grant holders are liable if the BLM releases all or part of your bond, the bond amount does not cover the cost of reclamation, or even if no bond remains in place.

New paragraphs 2805.20(b) and 2805.20(c) would identify specific bond requirements for solar energy development and wind energy development, respectively, outside of designated leasing areas. Holders of a solar or wind energy grant outside of

designated leasing areas would be required to submit an RCE to help the BLM determine the bond amount. The bond amount would be no less than \$10,000 per acre for solar energy development grants and no less than \$20,000 per authorized turbine for wind energy development grants. Bond amounts for short term grants for wind energy site or project testing would be no less than \$2,000 per authorized meteorological tower. These minimum bond amounts for lands outside of designated leasing areas would be the standard bond amounts inside of designated leasing areas.

The BLM completed a recent review of existing bonded solar and wind energy projects and the BLM based the bond amounts in this proposed rule on the information discovered during this review. When determining these bond amounts, the BLM considered potential liabilities associated with the lands affected by the rights-of-way, such as cultural values, wildlife habitat, and scenic values. The range of costs included in this review represented the cost differences in performing reclamation activities for solar and wind energy developments throughout the various geographic regions the BLM manages. The BLM used this review to determine an appropriate bond amount to cover potential liabilities associated with solar and wind energy projects.

Minimum bond amounts were set for solar development for each acre of authorization because the activities authorized encumber 100 percent of the lands and are exclusive to other uses. The range of bond amounts for solar energy development was approximately \$10,000 to \$18,000 per acre of the rights-of-way on public lands. Minimum bond amounts for wind energy development were set for each wind turbine authorized on public land because the encumbrance is factored at 10 percent and is not

exclusive to other uses. The review showed that the range of bond amounts for wind energy development varied between \$22,000 and \$60,000 per wind turbine.

The heading of section 2806.12 would be changed to “When and where do I pay rent?” New paragraph 2806.12(a) would describe the proration of rent for the first year of a grant. Specific dates are used for proration to prevent any confusion for grant holders or the BLM. Rent is prorated for the first partial year of a grant, since the use of public lands in such situations is only for a partial year. Paragraph (a)(2) of this section explains that if you have a short term grant, you may request that the BLM bill you for the entire duration of the grant in the first payment. Some short term grant holders may wish to pay this amount up front.

New paragraph (d) of section 2806.12 would direct right-of-way grant holders to make rental payments as instructed by the BLM or as provided for by Secretarial order or legislative authority. This provision acknowledges that the Secretary or Congress may take action that could affect rents and fees. The BLM would provide payment instructions for grant holders, which would include where payments may be made.

Section 2806.13 would be retitled “What happens if I do not pay rents or fees or if I pay the rents or fees late?” This change addresses the addition of new paragraph (e) that would provide authority for the BLM to retroactively bill for uncollected or under-collected rents and fees. The BLM would collect rent if: (1) A clerical error is identified; (2) A rental schedule adjustment is not applied; or (3) An omission or error in complying with the terms and conditions of the authorized right-of-way is identified.

Paragraph (a) of this section would be amended by removing language from the existing rule that a fee for a late rental payment may not exceed \$500 per authorization.

The BLM has determined that the current \$500 limit is not a sufficient financial incentive to ensure the timely payment of rent. Therefore, under this proposed rule, late fees would be proportionate to late rental amounts. A penalty proportionate to the rental amount would provide more incentive for the timely payment of rents to the BLM. The BLM also added the term “fees” so the MW capacity fees for solar and wind energy development grants and leases may be retroactively collected.

New paragraph (g) of this section would allow the BLM to condition any further activities associated with the right-of-way on the payment of outstanding payments. The BLM believes that this consequence imposed for outstanding payments would be further incentive to timely pay rents to the BLM.

In section 2806.20, the address to obtain a current rent schedule for linear rights-of-way would be updated. District offices would also be added to State and field offices as a location at which you may request a rent schedule. These are minor corrections made to provide current information to the public.

A technical correction in 2806.22 would correct the acronym IPD-GDP, referring to the Implicit Price Deflator for Gross Domestic Product.

Section 2806.23 would be amended by removing paragraph (b), which refers to the 2-year phase-in of the linear rent schedule in 2009 and renumbering the existing paragraphs. This language would be removed since the phase-in for the updated rent schedule ended in 2011 and thus, is no longer applicable.

Paragraph 2806.24(c) would explain how the BLM prorates the first year rental amount. The proposed rule would add the option to pay rent for multiple year periods.

The new language would require payment for the remaining partial year along with the first year, or multiples thereof, if proration applies.

Section 2806.30 would be amended by removing the communications site rent schedule table. The rent schedule may be found at section 2806.70. Paragraph (b) would be removed and paragraph (c) would be redesignated as new paragraph (b).

Paragraph 2806.30(a)(1) would be revised to update the mailing address. Paragraphs 2806.30(a)(2) would be revised by removing references to the table that would be removed. This paragraph would still describe the methodology for updating the schedule, but would direct the reader to the BLM's website or offices instead.

Paragraph 2806.34(b)(4) would be revised to fix a citation in the existing regulations that is incorrect.

Paragraphs 2806.43(a) and 2806.44(a) would each be revised by changing the cross-reference from section 2806.50 to section 2806.70. Section 2806.50 would be redesignated as section 2806.70 and these citations must be updated to reflect this change.

Sections 2806.50 and 2806.60 would provide new rules for the rents and fees of solar and wind energy development, respectively. The rents and fees described in these sections, along with the bidding process, would help the BLM receive fair market value for the use of the public lands. There are similarities between rents for solar and wind, as well as between rents for lands inside and outside of designated leasing area. These similarities are discussed below and include acreage and MW capacity fees, phase-ins, and adjustments. For some of these, several components comprise a single element of the rent and will be discussed here. Where there are differences in the solar rent provisions,

they are discussed in sections 2806.52 and 2806.54, and for wind rents, they are discussed in sections 2860.62 and 2860.64. The differences between inside and outside of designated leasing areas will be identified and discussed in the section-by-section analysis.

Section 2806.50 would be retitled “Rents for solar energy rights-of-way.” The existing regulation at section 2806.50 would be redesignated as new section 2806.70. Revised section 2806.50 would require a holder of a solar energy right-of-way authorization to pay annual rent for right-of-way authorizations both inside and outside of a designated leasing area. Those right-of-way holders with authorizations located outside a designated leasing area would pay rent for a grant and those right-of-way holders with authorizations inside designated leasing areas would pay rent for a lease. Rent for both types of right-of-way authorizations would consist of an acreage rent and MW capacity fee. The acreage rent would be paid in advance, prior to the issuance of an authorization, and the MW capacity fee would be phased-in. Initial acreage rent and MW capacity fee would be calculated, charged, and prorated consistent with right-of-way requirements at sections 2806.11 and 2806.12. Rent for solar authorizations would vary depending on the number of acres, technology of the solar development, and whether the right-of-way authorization is a grant or lease.

New section 2806.52 would be titled “Rent for solar energy development grants.” This section would require a grant holder to pay rent annually based on the acreage rent and MW capacity fee.

New paragraph 2806.52(a), “Acreage rent,” would describe the per-acre county rate, acreage rent payment, and adjustments for solar grants. Acreage rent, as defined in

section 2801.5, means rent assessed for solar energy development grants and leases that is determined by the number of acres authorized for the grant or lease times the per-acre county rate.

Under new paragraph 2806.52(a)(1), the acreage rent would be calculated by multiplying the number of acres (rounded up to the nearest tenth of an acre) within the authorized area times the per-acre county rate in effect at the time the authorization is issued. Under paragraph 2806.52(a)(1), the initial per-acre county rate would be established at double the per-acre rent value for each respective county using the BLM's linear rent schedule (see paragraph 2806.20(c)). The per-acre county rates used for linear right-of-way grants reflect a 50 percent encumbrance factor, while a 100 percent encumbrance factor is used to determine acreage rent for solar energy right-of-way authorizations since solar energy facilities generally encumber 100 percent of the authorized acreage to the exclusion of other public land uses. Therefore, doubling the per-acre county rate for linear rights-of-way would reflect the 100 percent encumbrance of solar energy development. An annual adjustment would be made to the per-acre county rates based upon the IPD-GDP, as determined under existing paragraph 2806.22(a). These adjusted rates would be effective on January 1 of each year. A copy of the per-acre county rates for solar energy development would be made available by the BLM upon request.

Acreage rent example: The 2012 acreage rent for a 4,000 acre solar energy development grant in Clark County, Nevada is \$782,240 (4,000 acres x \$195.56 per acre) while the 2013 acreage rent would be \$797,120 (4,000 acres x \$199.28 per acre) to reflect the 1.9 percent annual acreage rent adjustment.

New paragraph 2806.52(a)(2) would provide that acreage rent would be required each year, regardless of the stage of development or status of operations of a grant. Acreage rent would be paid for the public land acreage described in the right-of-way grant prior to issuance of the grant and prior to the start of each subsequent year of the authorized term. There is no phase-in period for acreage rent, which must be paid initially upon issuance of the grant. A rental payment plan may be requested and approved by the BLM State Director consistent with section 2806.15(c).

New paragraph 2806.52(a)(3) would provide that the BLM would adjust the per-acre county rates each year based on the average annual change in the IPD–GDP as determined under paragraph 2806.22(a). The acreage rent also would adjust each year for solar energy development grants outside designated leasing areas. The BLM would use the most current per-acre county rates to calculate the acreage rent for each year of the grant term. The BLM posts the current per-acre county rates for solar energy development grants and leases at

[http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html).

New paragraph 2806.52(b), “MW capacity fee” would describe the components used to calculate the MW capacity fee. Paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) explain the MW rate, MW rate schedule, adjustments to the MW rate, and the phase-in of the MW rate.

The MW capacity fee, as defined in section 2801.5, would mean fees paid, in addition to the acreage rent, for solar energy development grants and leases based on the approved MW capacity of the solar energy authorization. The MW capacity fee captures the value of the increased industrial use of the right-of-way, above the limited rural or

agricultural land value captured by the acreage rent schedule. The MW capacity fee would vary depending on the size and type of solar project and technology and whether the solar energy right-of-way authorization is a grant (if located outside a designated leasing area) or a lease (if located inside a designated leasing area). The MW capacity fee is paid annually when electricity generation begins or as approved, within the approved POD, whichever comes first. If the electricity generation does not begin on or before the time approved in the POD, the BLM will begin charging a MW capacity fee at the time identified in the POD.

The POD submitted to the BLM would identify the stages of development for the solar or wind energy project's energy generation. The POD stages would describe development steps for the solar or wind energy facility and the time by which energy operations would begin. Each step of development would generally separate the project into a different energy development stage. The POD and its stages represent the agreed-to understanding between the grant holder and the BLM of what the status of the facility would be at any given point in time after lease or grant issuance. The BLM would generally allow up to three development stages for a solar energy project. As the facility becomes operational, the approved MW capacity would increase as would be described in the POD. These stages are part of the approved POD and would allow the BLM to enforce the diligence requirements associated with the grant.

The "MW capacity fee" is the total authorized MW capacity approved by the BLM for the project, or an approved stage of development, multiplied by the appropriate MW rate. The MW capacity fee is prorated and would be paid for the first partial

calendar year in which generation of electricity starts or when identified within an approved POD.

New paragraph 2806.52(b)(1) would identify the “MW rate” as a formula that is the product of four components: The hours per year multiplied by the net capacity factor, multiplied by the MWh price, multiplied by the rate of return. This can be represented by the following equation:  $MW\ Rate = H (8,760\ hrs) \times N (net\ capacity\ factor) \times MWh$  (Megawatt Hour price)  $\times R$  (rate of return). The components of this formula are discussed here at greater length.

Hours per year. This component of the MW rate formula is the fixed number of hours in a year (8,760). The BLM would use this number of hours per year for both standard and leap years.

Net capacity factor. The net capacity factor is the average operational time divided by the average potential operational time of a solar or wind energy development, multiplied by the current technology efficiency rates. A net capacity factor is used to identify the efficiency at which a project operates. The net capacity factor is influenced by several common factors such as geographic location and topography and the technology employed. Other factors can influence the specifics of a project’s net capacity factor. For example, placement of a solar panel in the direction that captures the most sun may increase the efficiency at which a project operates. These other factors tend to be specifically related to a project and its design and layout. An increase in the net capacity factor is most readily seen when a developer sites a project geographically for the energy source they are seeking and utilizes the best technology for harnessing the

power. An example of this would be placing wind turbines in a steady wind speed location with a wind turbine designed for optimal performance at those wind speeds.

The efficiency rates may vary by location for each specific project, but the BLM proposes to use the national average for each technology. Efficiency rates for solar and wind energy technology can be found in the market reports provided by the DOE through its Lawrence Berkeley National Laboratory. For solar energy see “Utility-Scale Solar 2012” at [http://emp.lbl.gov/sites/all/files/lbnl-6408e\\_0.pdf](http://emp.lbl.gov/sites/all/files/lbnl-6408e_0.pdf), and for wind energy, please see “2012 Wind Technologies Market Report” at <http://emp.lbl.gov/sites/all/files/lbnl-6356e.pdf>. This proposed rule would establish the net capacity factor for each technology as follows:

Technology Type	Net Capacity Factor
Photovoltaic (PV)	20 percent
Concentrated Photovoltaic (CPV) or Concentrated Solar Power (CSP)	25 percent
CSP w/Storage Capacity of 3 Hours or More	30 percent
Wind Energy	35 percent

The BLM would periodically review the efficiency factors for the various solar and wind technologies, but would not adjust this component of the MW rate formula except through new rulemaking. The BLM is considering basing the net capacity factors for these technologies on an average of the annual capacity factors listed by the EIA. This would allow the BLM to regularly update these factors absent rulemaking. Please specifically comment on whether and how the BLM could use the EIA’s data to determine the net capacity factors. The EIA posts an average of the capacity factors on its Web site at

[http://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.cfm?t=epmt\\_6\\_07\\_b](http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_6_07_b). Basing

the net capacity factors for these technologies on EIA's posted averages would allow the BLM to adjust these factors without future rulemakings.

MWh price. This component of the MW rate formula is the 5-year average of the annual weighted average wholesale prices per MWh for the major ICE trading hubs serving the 11 Western States of the continental United States. This wholesale price of the ICE trading hubs is the price paid for energy on the open market between power purchasers and is an indication of current pricing for the purchase of power.

The wholesale price of electricity is tracked daily on the ICE and is readily accessible at <https://beta.theice.com/marketdata/reports/ReportCenter.shtml>. Should the ICE or its successor in interest discontinue tracking the wholesale price of electricity, the 5-year average of the annual weighted average wholesale price per MWh would be calculated using comparable market prices.

Pricing may be based upon a daily high and low value, as well as an average value. When determining the proposed MWh price, the BLM used the yearly average value for each of the trading hubs that cover the BLM public lands in the West. The BLM then averaged the yearly hub values for the most recent 5-year timeframe to establish the annual weighted average wholesale prices per MWh, which is in turn used to determine the MWh price. The MWh price would be initially established at \$45 per MWh which for the years 2008 through 2012, is rounded up to the nearest five dollar increment.

**Annual Weighted Average Wholesale Price per MWh by Trading Hub**

<b>Year</b>	<b>Mid-Columbia Hub</b>	<b>Paloverde Hub</b>	<b>Four Corners Hub</b>	<b>Mead Hub</b>	<b>SP15-EZ CA Hub*</b>	<b>NP15 Hub</b>	<b>California Oregon Border Hub</b>	<b>West US</b>	<b>5 – yr. Average</b>
2008	\$65.32	\$72.43	\$72.46	\$76.15	\$81.20		\$74.54	\$73.68	

2009	\$35.85	\$34.90	\$35.60	\$36.70	\$38.24	\$39.22	\$38.28	\$36.97	
2010	\$35.88	\$38.84	\$40.13	\$40.16	\$40.41	\$40.29	\$38.87	\$39.23	
2011	\$29.42	\$36.31	\$36.66	\$37.02	\$36.39	\$36.29	\$32.86	\$34.99	
2012	\$22.78	\$29.65	\$30.59	\$30.97	\$35.41	\$32.74	\$26.96	\$29.87	\$42.95

Rate of return. The rate of return component used in the MW rate schedule reflects the relationship of income (to the property owner) to revenue generated from authorized solar or wind energy development facilities on the encumbered property. A rate of return for the developed land can vary from 7 percent to 12 percent and is typically around 10 percent, as is identified in the market study completed by the Office of Valuation Services. These rates take into account certain risk considerations, i.e., the possibility of not receiving or losing future income benefits, and do not normally include an allowance for inflation.

A holder seeking a right-of-way from the BLM must show that it is financially able to construct and operate the facility. In addition, the BLM may require surety or performance bonds from the holder to facilitate a right-of-way's compliance with the terms and conditions of the authorization, including any rental obligations. This reduces the risk and should allow the BLM to utilize a "safe rate," i.e., the prevailing rate on guaranteed government securities that include an allowance for inflation. Therefore, the BLM proposes to establish a rate of return that adjusts every 5 years to reflect the preceding 10-year average of the 20-year U.S. Treasury bond yield, rounded up to the nearest one-half percent, with a minimum rate of 4 percent. Applying this criterion, the initial rate of return is 4.5 percent (the 10-year average of the 20-year U.S. Treasury bond yield (4.3 percent), rounded up to the nearest one-half percent). As provided under paragraph (b)(2) of this section, the MW rate schedule is made available to the public in the MW Rate Schedule for Solar and Wind Energy Development. The MW rate schedule

is available to the public at any BLM office, via mail by request, or at

[http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html).

**MW Rate Schedule for Solar and Wind Energy Development (2014-2018)**

<b>Type of Energy Technology</b>	<b>Hours per Year</b>	<b>Net Capacity Factor</b>	<b>MWh Price</b>	<b>Rate of Return</b>	<b>MW Rate 2014 - 2018</b>
Solar - Photovoltaic (PV)	8,760	0.20	\$45	0.045	\$3,548
Solar - Concentrated photovoltaic (CPV) and concentrated solar power with less than 3 hours of storage capacity (CSP)	8,760	0.25	\$45	0.045	\$4,435
Solar - Concentrated solar power with storage capacity of 3 hours or more (CSP w/storage)	8,760	0.30	\$45	0.045	\$5,322
Wind – All technologies	8,760	0.35	\$45	0.045	\$6,209

Periodic adjustments in the MW rate are discussed under paragraph 2806.52(b)(3). Under this rule, adjustments to the MW rate would occur every 5 years by recalculating the MWh price as provided in paragraph 2806.52(b)(3)(i) and by recalculating the rate of return as provided in paragraph 2806.52 (b)(3)(ii). The MWh price and the rate of return would be recalculated for the next 5-year period starting in 2020.

In paragraph 2806.52(b)(3)(i), the MWh price would be initially at \$45 per MWh for calendar years 2014 through 2018. However, the MWh price of electricity would be recalculated every 5 years beginning in 2018, by determining the 5-year average of the annual weighted average wholesale price per MWh for the major ICE trading hubs

serving the 11 Western States of the continental United States for the years 2013 through 2017, rounded to the nearest five-dollar increment. The resulting MWh price would be used to determine the MW rate for each subsequent 5-year interval. The availability of data on which the MWh price would be based is discussed in this preamble in the discussion of section 2801.5.

In paragraph 2806.52(b)(3)(ii), the rate of return is initially established at 4.5 percent, which is the 10-year average (2003 through 2012) of the 20-year U.S. Treasury bond yield (4.3 percent), rounded up to the nearest one-half percent (4.5 percent). The rate of 4.5 percent would be used for calendar years 2014 through 2018. However, the rate of return would be recalculated every 5 years beginning in 2018, by determining the 10-year average of the 20-year U.S. Treasury bond yield for calendar years 2008 through 2017, rounded up to the nearest one-half percent. The resultant rate of return, of not less than four percent, would be used to determine the MW rate for calendar years 2019 through 2023, and so forth. The 20-year U.S. Treasury bond yields are tracked daily and are readily accessible at <http://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=longtermrateAll>.

To allow for a reasonable and diligent testing and operational period, under paragraph 2806.52(b)(4)(i), the BLM would provide for a 3-year phase-in of the MW capacity fee. This would apply after the start of generation operations for solar energy development grants outside designated leasing areas, at the rates of 25 percent for the first year, 50 percent the second year, and 100 percent the third and subsequent years of operations. The first year is the first partial calendar year of operations and the second year is the first full year. For example, if a facility begins producing electricity in June

2014, 25 percent of the capacity fee would be assessed for June through December of 2014 and 50 percent of the capacity fee would be assessed for January through December of 2015. One hundred percent would be assessed thereafter.

Under paragraph 2806.52(b)(4)(ii), the proposed rule further explains the staged development of a right-of-way. Such staged development, consistent with the proposed rule in paragraph 2805.12(c)(3)(iii), would have no more than three development stages, unless the BLM approves more development stages in advance. The 3-year phase-in of the MW rate applies individually to each stage of the solar development. The MW capacity fee is calculated using the authorized MW capacity approved for that stage multiplied by the MW rate for that year of the phase-in, plus any previously approved stages multiplied by the MW rate.

New section 2806.54 would be titled “Rents and fees for solar energy development leases inside designated leasing areas.” The introductory paragraph to section 2806.54 requires a holder of a solar energy lease obtained through the competitive process under subpart 2809 to pay an annual acreage rent and MW capacity fee. The acreage rent would be paid in advance, prior to issuing a lease, and the MW capacity fee would be phased-in and calculated upon the total authorized MW capacity of the solar energy development. Rent or fees for solar authorizations would vary depending on the number of acres, technology of the solar development, and whether the right-of-way authorization is a grant or lease.

There are many similarities in the rent for leases and grants for solar development. This section would reference the rent of grants outside of designated leasing areas as

appropriate and provide further discussion where the rent for a lease differs from that of a grant.

Paragraph (a) of this section identifies the acreage rent for a solar lease, which would be calculated in the same way as acreage rent for solar grants outside a designated leasing area (see paragraph 2806.52(a)). The acreage rent amount for a lease would be calculated and paid prior to issuing a lease. County rates and payment of the acreage rent are the same for leases as they are for grants. For the per-acre county rates, see paragraph 2806.52(a)(1). For the acreage rent payment, see paragraph 2806.52(a)(2).

New paragraph 2806.54(a)(3) describes the adjustments to the acreage rent that would be made for a lease. Once the acreage rent is determined for a lease under paragraph (a) of this section, no further adjustments in the annual acreage rent would be made for 10 years and each subsequent 10-year period after that. The first acreage rent adjustment would not be made until year 11 of the lease term, and the next adjustment would not be made until year 21 of the lease term, ending on year 30 of the lease. During the 10-year periods, the acreage rent would remain constant and not be adjusted. The BLM would adjust the per-acre county rates each year based on the average annual change in the IPD–GDP, as determined under paragraph 2806.22(a). Due to the IPD–GDP adjustment, the per-acre county acreage rent also adjusts each year. The BLM would use the most current per-acre county rates to calculate the acreage rent for the next 10-year period of the lease.

Paragraph (b) of this section would identify the MW capacity fee for solar development leases, which is to be calculated in the same way as the MW capacity fee for solar grants outside a designated leasing area. The phase-in of the MW capacity fee is

different from grants and is described below. For the MW rate, see paragraph 2806.52(b)(1). For the MW rate schedule, see paragraph 2806.52(b)(2). For periodic adjustments in the MW rate, see paragraph 2806.52(b)(3).

New paragraph 2806.54(c) would describe the MW rate phase-in for solar energy development leases. The MW rate in effect at the time the lease is issued will be used for the first 20 years of the lease. The MW rate in effect in year 21 of the lease will be used for years 21-30 of the lease.

Paragraph (c)(1) would provide for a 10-year phase-in of the MW capacity fee, plus the initial partial year, if any. The MW capacity fee would be calculated by multiplying the authorized MW capacity by 50 percent of the MW rate for the applicable type of solar technology employed by the project. The MW rate schedule is provided for under paragraph 2806.52(b)(2). The phase-in proposed for solar leases identified would be applied to the MW rate for either solar or wind energy leases (see paragraph 2806.64(c)).

New paragraph 2806.54(c)(2) would apply to the MW rate phase-in for years 11 through 20 of the lease. The MW capacity fee for years 11 through 20 would be calculated by multiplying the MW capacity by 100 percent of the MW rate.

New paragraph 2806.54(c)(3) would apply to the MW rate for years 21 through 30 of the lease. The MW capacity fee for years 21 through 30 would be calculated by multiplying the MW capacity by 100 percent of the MW rate.

If the POD identifies that electricity generation would begin after year 10 of the lease, the MW capacity fee would be calculated under paragraph 2806.54(c)(2) or 2806.54(c)(3), as appropriate.

New paragraph 2806.54(c)(4) would describe the MW capacity fee of the lease if it were to be renewed. The MW capacity fee would be calculated using the current MW rates at the beginning of the new lease period and remain at that rate through the initial 10-year period of the renewal term. The MW capacity fee would be adjusted using the current MW rate at the beginning of each subsequent 10-year period of the renewed lease term.

Under paragraph 2806.54(c)(5), the proposed rule provides for staged development of leases. Such staged development, consistent with proposed paragraph 2805.12(c)(3)(iii), would have no more than three development stages unless the BLM approved more development stages in advance. The MW capacity fee would be calculated using the authorized MW capacity approved for that stage multiplied by the MW rate for that year of the phase-in, plus any previously approved stages multiplied by the MW rate as described in paragraph 2806.54(c).

MW capacity fee-example 1: The MW capacity fee for a 400-MW photovoltaic solar energy right-of-way grant would be \$1,419,200 per year (400 MW x \$3,548 per MW), implemented over a 3-year period after the start of electricity generation. In the first partial year after start of generation in July for a solar energy right-of-way, the MW capacity fee would be \$177,400 (400 MW x \$3,548 per MW x 25 percent x 0.5 year); in the second year after the start of electricity generation, the MW capacity fee would be \$709,600 (400 MW x \$3,548 per MW x 50 percent x 1.0 year); and in the third year after the start of electricity generation, and each year thereafter, the MW capacity fee would be \$1,419,200 per year (400 MW x \$3,548 per MW x 1 year).

MW capacity fee-example 2: The MW capacity fee for a 400 MW concentrated PV or concentrated solar power right-of-way grant with less than 3 hours of storage capacity would be \$1,774,000 per year (400 MW x \$4,435 per MW), implemented over a 3-year period after the start of electricity generation. In the first partial year assuming the start of electricity generation in January for a solar energy right-of-way, the MW capacity fee would be \$443,500 (400 MW x \$4,435 per MW x 25 percent x 1 year); in the second year after the start of electricity generation, the MW capacity fee would be \$887,000 (400 MW x \$4,435 per MW x 50 percent x 1 year); and in the third year after start of generation and each year thereafter, the MW capacity fee would be \$1,774,000 per year (400 MW x \$4,435 per MW x 1 year).

MW capacity fee-example 3: The MW capacity fee for a 400 MW concentrated solar power right-of-way grant with a storage capacity of 3 hours or more would be \$2,128,800 per year (400 MW x \$5,322 per MW), implemented over a 3-year period after the start of electricity generation. Assuming generation began in January, in the first partial year after the start of electricity generation, the MW capacity fee would be \$532,200 for a solar energy right-of-way (400 MW x \$5,322 per MW x 25 percent x 1 year); in the second year after the start of electricity generation, the MW capacity fee would be \$1,064,400 (400 MW x \$5,322 per MW x 50 percent x 1 year); and in the third year after the start of electricity generation, and each year thereafter, the MW capacity fee would be \$2,128,800 per year (400 MW x \$5,322 per MW x 1 year).

Acreage rent and MW capacity fee example for a solar energy development grant: The annual acreage rent and MW capacity fee for 2014 for a 400 MW photovoltaic solar energy development grant located on 4,000 acres in Clark County, NV after the phase-in

period would be \$2,231,480. (The acreage rent of \$812,280 (4,000 acres x \$203.07 per acre) plus the MW capacity fee of \$1,419,200 (400 MW x \$3,548 per MW) equals \$2,231,480).

New section 2806.56 would be titled “Rent for support facilities authorized under separate grant(s).” Under this section, support facilities for solar development would be authorized under a grant. Support facilities could include administration buildings, groundwater wells, and construction laydown and staging areas. Rent for support facilities authorized under separate grants would be determined using the Per Acre Rent Schedule for linear facilities under existing paragraph 2806.20(c).

New section 2806.60 would be titled “Rents and fees for wind energy rights-of-way.” Section 2806.60 would require a holder of a wind energy right-of-way authorization to pay annual rent for right-of-way authorizations both inside and outside of a designated leasing area. Holders of right-of-way authorizations that are located outside of a designated leasing area would pay rent for a grant and holders of right-of-way authorizations that are inside designated leasing areas would pay rent for a lease. Rent for both right-of-way authorizations are the same as that for solar energy rights-of-way under section 2806.50 and would consist of an acreage rent and MW capacity fee.

As noted earlier in this preamble, there are similarities between rents and fees for solar and wind, as well as between rents and fees for lands inside and outside of designated leasing areas. The BLM intentionally designed the rents and fees for solar and wind to match as closely as possible in order to reduce the potential for confusion and misunderstanding of the requirements. The methodology for calculating rents, fees,

phase-ins, adjustments, and rate proration are the same for wind as for solar. Many of the terms and conditions of a lease issued under this subpart would also be the same.

Many wind energy rent and fee provisions have identical parallels in the solar energy rent and fee provisions. This analysis will reference the solar energy rent and fee discussion when appropriate and highlight the differences between the regulations for wind and solar rents and fees.

New section 2806.62 parallels proposed section 2806.52, which discusses rents and fees for solar energy development grants. The discussion on all components of the wind energy development grant duplicate the provisions for solar rents and fees, except for paragraph (a)(1) which discusses the per-acre county rates.

Paragraph 2806.62(a) would address the acreage rent for wind energy development. See paragraph 2806.52(a) for a discussion of acreage rent.

New paragraph 2806.62(a)(1) addresses per-acre county rates for wind energy development grants. The methodology for calculating the acreage rent is the same for wind as it is for solar, but wind and solar energy have different encumbrance factors. Solar energy projects encumber 100 percent of the land, while wind energy projects generally only encumber 10 percent of the land. The per-acre county rate is calculated using the BLM's linear rent schedule, which is based on a 50-percent encumbrance factor. While the per-acre county rate for solar would be 200 percent of the linear rent schedule (to represent 100 percent encumbrance), the per-acre county rate for wind energy would be 20 percent of the linear rent schedule (to represent 10 percent encumbrance).

The following chart lists the paragraphs where the wind energy provision parallels the solar energy provision for the same topic. The discussion for each relevant wind energy provision can be found in the preamble under the associated solar energy provision.

<b>Topic</b>	<b>Wind</b>	<b>Solar</b>
Acreage Rent Payments	43 CFR 2806.62(a)(2)	43 CFR 2806.52(a)(2)
Acreage Rent Adjustments	43 CFR 2806.62(a)(3)	43 CFR 2806.52(a)(3)
MW Capacity Fee	43 CFR 2806.62(b)	43 CFR 2806.52(b)
MW Rate	43 CFR 2806.62(b)(1)	43 CFR 2806.52(b)(1)
MW Rate Schedule	43 CFR 2806.62(b)(2)	43 CFR 2806.52(b)(2)
MW Rate Adjustments	43 CFR 2806.62(b)(3)	43 CFR 2806.52(b)(3)
MW Rate Formula	43 CFR 2806.62(b)(3)(i)	43 CFR 2806.52(b)(3)(i)
Rate of Return	43 CFR 2806.62(b)(3)(ii)	43 CFR 2806.52(b)(3)(ii)
MW Rate Phase-in	43 CFR 2806.62(b)(4)	43 CFR 2806.52(b)(4)

Paragraph 2806.62(b)(4)(i) would address the term of the MW rate phase-in. Paragraphs (A), (B) and (C) of this section address the percentages of the phase-in. See paragraph 2806.52(b)(4)(i) for a discussion of the term of the MW rate phase-in and its paragraphs (A), (B) and (C) for the percentages of the phase-in.

Paragraph 2806.62(b)(4)(ii) would address the MW rate phase-in for a staged development. Paragraph (A) of this section addresses the percentages of the phase-in and paragraph (B) addresses the calculation of the rent for the phase-in of a staged development. See paragraph 2806.52(b)(4)(ii) for a discussion of the MW rate phase-in for a staged development, its paragraph (A) for the percentages of the phase-in, and its paragraph (B) for the calculation of the rent for the phase-in of a staged development.

New section 2806.64 would be titled “Rent for wind energy development leases inside designated leasing areas.” See section 2806.54 for a discussion of all components of rent for a wind energy development grant, except for paragraph (a)(1), which discusses the per-acre county rates, which do not apply to wind energy development grants and leases. Paragraph 2806.64(a) addresses the acreage rent for wind energy leases. See paragraph 2806.54(a) for a discussion of acreage rent.

New paragraph 2806.64(a)(1) would address per-acre county rates for wind energy leases. See paragraph 2806.62(a)(1) for a discussion of acreage rent, which differs from solar energy development. The per-acre rents would be calculated using the methodology discussed in paragraph 2806.62(a)(1), which reflects the 10 percent encumbrance factor of wind energy development.

The following chart lists the paragraphs where the wind energy provision parallels the solar energy provision for the same topic. The discussion for each relevant wind energy provision can be found in the preamble under the associated solar energy provision.

<b>Topic</b>	<b>Wind</b>	<b>Solar</b>
Acreage Rent Payments	43 CFR 2806.64(a)(2)	43 CFR 2806.54(a)(2)
Acreage Rent Adjustments	43 CFR 2806.64(a)(3)	43 CFR 2806.54(a)(3)
MW Capacity Fee	43 CFR 2806.64(b)	43 CFR 2806.54(b)
MW Rate	43 CFR 2806.64(b)(1)	43 CFR 2806.52(b)(1)
MW Rate Schedule	43 CFR 2806.64(b)(2)	43 CFR 2806.52(b)(2)
MW Rate Adjustments	43 CFR 2806.64(b)(3)	43 CFR 2806.52(b)(3)
MW Rate Phase-in	43 CFR 2806.64(c)	43 CFR 2806.54(c)
Years 1-10	43 CFR 2806.64(c)(1)	43 CFR 2806.54(c)(1)
Years 11-20	43 CFR 2806.64(c)(2)	43 CFR 2806.54(c)(2)

<b>Topic</b>	<b>Wind</b>	<b>Solar</b>
Years 21-30	43 CFR 2806.64(c)(3)	43 CFR 2806.54(c)(3)
MW Capacity Fee if Renewed	43 CFR 2806.64(c)(4)	43 CFR 2806.54(c)(4)
MW Capacity for a Staged Development	43 CFR 2806.64(c)(5)	43 CFR 2806.54(c)(5)
Rent for Support Facilities	43 CFR 2806.66	43 CFR 2806.56

New paragraph 2806.68(a) would describe the rent for a wind energy site-specific testing grant. A minimum rent would be established as \$100 per year for each grant issued. Under this section, rent is set by carrying forward the site-specific rent amount from existing IM 2009-043, Wind Energy Development Policy, established by the BLM and described further as follows. Site specific grants are only authorized for one site and would not allow multiple sites to be authorized under a single grant; however, a single entity may hold more than one grant. If a BLM office has an approved small site rental schedule, that office may use the rent amount established in the small site rental schedule, if the rent in the schedule charges more than the \$100 minimum rent per year. Small site rental schedules are provided to the BLM from the Office of Valuation Services and are an appraised valuation of the land. Such schedules are a determination of market value. In lieu of annual payments for a site specific wind testing grant, a grant holder may pay for the entire 3-year term of the grant. See paragraphs 2801.9(d)(1) and 2805.11(b)(2)(i) for further discussion of site-specific wind energy testing grants.

New paragraph 2806.68(b) would describe the rent for a wind energy project area testing grant. A per-year minimum rent would be established at \$2,000 per authorization or \$2 per acre for the lands authorized by the grant, whichever is greater. Existing rent for wind energy project area testing grants is at a lower rate than proposed in this rule.

The appraisal consultation report by the Office of Valuation Services supports the rent established as proposed. Project area grants may authorize multiple meteorological or instrumentation testing sites. There is no additional charge or rent for the number of sites authorized under such grants. See paragraphs 2801.9(d)(2) and 2805.11(b)(2)(ii) for further discussion of project area wind energy testing grants.

New section 2806.70 would be a revision of existing section 2806.50 and would be retitled “How will BLM determine the rent for a grant or lease when the rent schedules do not apply?” This section would provide guidance on how the BLM would determine the rent for a grant or lease when the linear rent schedule, the communication use rent schedule, the solar rental provisions, or the wind rental provisions are not applicable. The only change to this redesignated paragraph is that solar and wind energy rights-of-way are included in the listed rent schedules.

Section 2807.11 would be updated to clarify requirements for changing a right-of-way grant. Under the proposed changes to paragraph 2807.11(b), substantial deviations would require an amendment to a right-of-way grant. Substantial deviations include changing the boundaries of the right-of-way, major improvements not previously approved by the BLM, or a change in use for the right-of-way. Substantial deviations to a grant may require adjustment to a grant or lease rent and fees under part 43 CFR 2806, or bonding requirements under part 43 CFR 2805 and 2809 that reflect proposed changes that are approved by BLM.

New paragraph (d) of this section would require you to contact the BLM when site-specific circumstances or conditions arise resulting in the need for changes to an approved right-of-way grant, POD, site plan, or other procedures that are not substantial

deviations in location or use. Examples of minor deviations would be slight changes in location of improvements in the POD or design of facilities that are all within the existing boundaries of an approved right-of-way. Other such nonsubstantial deviations may include the modification of mitigation measures or project materials. Project materials would include the POD, site plan, and other documents that are created or provided by a grant holder. These project materials are a basis for the BLM's inspection and monitoring activities and are often appended to a right-of-way grant. The requested changes would be considered as grant or lease modification requests. Each nonsubstantial deviation would require review and approval by the authorized officer. New paragraph (e) would require right-of-way holders to contact the BLM to correct discrepancies or inconsistencies.

New paragraph 2807.17(d) would consist of the provisions from existing section 2809.10. This language would be moved to section 2807.17 in order to make room for the renewable energy right-of-way leasing provisions.

The title of existing section 2807.21 would be changed to "May I assign or make other changes to my grant or lease?" The existing regulations should, but do not, cover all instances where an assignment is necessary and the section also needs to be revised to address situations in which assignments are not required. The proposed changes are necessary to: (1) Add and describe additional changes to a grant other than assignments; (2) Clarify what changes would require an assignment; and (3) Specify that right-of-way leases issued under part 2809 are subject to the regulations in this section. Without the BLM's approval of a right-of-way grant assignment, a private party's business transaction would not be recognized and this lack of recognition could hinder a new

holder's management and administration of a right-of-way grant. This rule would clarify the responsibilities of a grant holder should such private party transactions occur.

The proposed rule would add to paragraph (a) two events that may necessitate an assignment: (1) A voluntary transfer by the holder of any right or interest in the right-of-way grant to a third party (e.g., a change in ownership); and (2) A change in control involving the right-of-way grant holder such as a corporate merger or acquisition.

New paragraph (b) would clarify that a change in the holder's name only does not require an assignment and new paragraph (c) would clarify that changes in a holder's articles of incorporation do not require an assignment. As a result, the potential costs of an assignment would not be involved with a name change or the change in the articles of incorporation.

Existing paragraph (b) would be revised and redesignated as new paragraph (d). As revised, this provision would require a potential assignee to pay application fees in addition to processing fees. This revision would establish consistency between applications for assignments and other applications for rights-of-way. For example, this proposed rule (at section 2804.12(a)(8)) would require a nonrefundable application filing fee for solar and wind energy applications. As revised, paragraph (d) would also provide that the BLM will not approve any assignment until the assignor makes any outstanding payments that are due.

Existing paragraph (c) would be redesignated, unchanged, as paragraph (e). Existing paragraph (d) would be revised and redesignated as paragraph (f). As amended, paragraph (f) would except leases issued under revised 43 CFR subpart 2809 (i.e., inside a designated leasing area) from the BLM's authority to modify terms and conditions

when it recognizes an assignment. This provision would provide incentives for potential right-of-way holders to develop lands inside designated leasing areas.

New paragraph 2807.21(g) would provide that the BLM would process assignment applications according to the same time and conditions as in existing paragraph 2804.25(c). This provision would apply the BLM's existing customer service standard to processing assignment applications.

New paragraph 2807.21(h) would clarify that only interests in right-of-way grants or leases are assignable. Pending right-of-way applications do not create a property right and thus may not be assigned.

New paragraph (i) would address how a holder would inform the BLM of a name change when the name change is not the result of an underlying change in control of a grant. These procedures are necessary to ensure that the BLM will be able to send rent bills or other correspondence to the appropriate party. This new provision would address several specific circumstances. For example, it would require any corporation requesting a name change to supply: (1) A copy of the corporate resolution(s) proposing and approving the name change; (2) A copy of the acceptance of the change in name by the State or Territory in which incorporated; and (3) A copy of the appropriate resolution(s), order(s), or other documentation showing the name change. Under this provision, the BLM could also modify a grant, or add bonding and other requirements, including additional terms and conditions when recognizing such changes. However, the only way that the BLM may modify a lease issued under subpart 2809 would be in accordance with paragraph 2805.15(e). Such modifications would be a result of changes in legislation,

regulation, or to protect public health, safety, or the environment. Any such name change would be recognized in writing by the BLM.

The title for section 2807.22 would be revised to read “How do I renew my grant or lease?” This title would be changed so that the leases issued in subpart 2809 would be covered by this section. Paragraphs (a), (b), and (d) of this section would also be revised to include leases. Paragraphs (c) and (e) remain unchanged.

Under new paragraph (f), if a holder makes timely and sufficient application for renewal, the existing grant or lease does not expire until the BLM acts upon the application for renewal. This provision would protect the interests of existing holders of rights-of-way who have timely and sufficiently made an application for the continued use of an existing authorization (see 5 U.S.C. 558(c)(1)), and is consistent with existing policy. In this situation, the authorized activity does not expire until the BLM evaluates the application and issues a decision.

Existing subpart 2809, which consists of a single regulation (section 2890.10) pertaining to Federal agency right-of-way grants, would be revised and redesignated as new paragraph (d) of section 2807.17. Existing paragraph 2809.10(b) explains that Federal agencies are generally not required to pay rent for a grant. This paragraph would be removed instead of redesignated, since existing paragraph 2806.14(a)(2) already addresses rental exemptions for Federal agencies and it would no longer be necessary. New subpart 2809 would be dedicated to the competitive process for leasing public lands for solar and wind energy development.

Under new section 2809.10, only lands inside designated leasing areas would be available for solar and wind competitive leasing using the procedures under this subpart.

Lands outside of designated leasing areas may be offered competitively using the procedures under section 2804.35 of this proposed rule. Under new section 2809.10, the BLM may include lands in a competitive offer on its own initiative or solicit nominations through a call for nominations (see proposed paragraph 2809.11(b)). You would be required to demonstrate that you are qualified to hold a right-of-way grant by meeting the qualifications under section 2803.10. Note, the term “grant” is used when referencing section 2803.10 above and in paragraph 2809.11(c). This is because throughout this part, including section 2803.10, the term grant includes all right-of-way authorizations, including leases.

New section 2809.11, “How will BLM solicit nominations?” would explain the process by which the BLM would request nominations for parcels of lands inside designated leasing areas to be offered competitively for solar or wind energy development.

Under paragraph 2809.11(a), “Call for nominations,” the BLM would solicit expressions of interest and nominations for parcels of land located in a designated leasing area(s). The BLM would publish a notice in a newspaper of general circulation in the area affected by the potential offer of public land for solar and wind energy development, use other notification methods, including the Internet, and publish a notice in the Federal Register.

Paragraph 2809.11(b)(1) would require a payment of \$5 per acre for the parcel(s) nominated. This payment is nonrefundable, except when paragraph 2809.11(d) is applicable. The average area of solar and wind grant or lease ranges between 4,000 and 6,000 acres. The \$5 per-acre fee is derived from an appraisal consultation report

prepared by the Department's Office of Valuation Services and would be adjusted for inflation once every 10 years, using the IPD-GDP. The appraisal consultation report provided a range of \$10 - \$27 per acre per year with the nominal range being \$15 - \$17 per acre as the fair market value for these uses of the public lands. The BLM is establishing the nomination fee below the indicated range in the analysis since the submission of a nomination does not ensure that the nominator would be the successful bidder.

The average change in the IPD-GDP from 1994 to 2003 is 1.9 percent, which would be applied through 2015. The fee would be required only at nomination and not on a yearly basis and this is noted under paragraph 2804.12(a)(8). The nomination fee is low to increase interest in the leasing area and encourage nominators to propose efficient use of the public lands. Payment of fair market value would be received through a combination of the bids (not including Federal administrative costs) received during a competitive process and the rents and MW capacity fees described in sections 2806.50 through 2806.68 of this proposed rule.

The submission of a nomination fee may result in a variable offset for an entity if it is determined to be the successful bidder in accordance with section 2809.15. An expression of interest is an informal submission to the BLM, suggesting that a parcel inside a competitive leasing area be considered for a competitive offer (see paragraph 2809.11(c)). An expression of interest only provides a tentative bidder's interest in a parcel(s) of land located inside a designated leasing area. If the expression of interest identifies a specific parcel, it must be submitted in writing, include the legal land description of the parcel, and a rationale for its inclusion in a competitive offer. There is

no fee required to make an expression of interest, but submission would not qualify a potential bidder for a variable offset, as would formal nominations.

Under paragraph 2809.11(d), a nomination would not be able to be withdrawn, except by the BLM for cause, in which case all nomination monies would be refunded. This clause parallels language in the BLM's other competitive process regulations and encourages more serious nominations for parcels of public land.

New section 2809.12, "How will BLM select and prepare parcels?," would provide that the BLM would identify parcels suitable for leasing based on nominations and expressions of interest, on its own initiative, or both. Before offering the selected lands competitively, the BLM and other appropriate entities would conduct necessary studies, comply with NEPA and other appropriate laws, and complete other necessary site preparation work. This work is necessary to ensure that the parcels are ready for competitive leasing, to provide appropriate terms and conditions for any issued lease, to appropriately protect valuable resources, and to be consistent with the BLM's plans for the area.

Under new section 2809.13, "How will BLM conduct competitive offers?," the BLM may use any type of competitive process or procedure to conduct its competitive offer. Several options, such as oral auctions, sealed bidding, combination, oral/sealed bidding, and others are identified in paragraph 2809.13(a). Oral auctions are planned events where bidders are asked to vocally bid for a lease at a predetermined time and location. Sealed bidding would occur when bidders are asked to submit bids in writing by a certain date and time. Combination bidding would be when sealed bids are first

opened and then an oral auction would occur, with oral bids having to exceed the highest sealed bid.

Under paragraph (b) of this section, the BLM would publish a notice of the competitive offer in a newspaper of general circulation in the area affected by the potential right-of-way at least 30 days before bidding takes place. A similar notification would be published in the Federal Register and through other notification methods, including the Internet. If you nominated lands and paid the nomination fees required by paragraph 2809.11(b)(1), the BLM would notify you of its decision to conduct a competitive offer at least 30 days in advance of the bidding.

A notice of competitive offer would include:

1. The date, time, and location (if any) of the competitive offer;
2. The legal land description of the parcel(s) to be offered. This would also include the total acreage of the parcel(s);
3. The bidding methodology and procedures that would be used in conducting the competitive offer, including any of the applicable competitive procedures identified in paragraph 2809.13(a);
4. The required minimum bid (see paragraph 2809.14(a));
5. The qualification requirements for potential bidders (see section 2809.10);
6. If applicable, the variable offset (see section 2809.16), including:
  - a. The percent of each offset;
  - b. How bidders may pre-qualify for each offset; and

- c. The documentation required to pre-qualify for each offset; and
- 7. The terms and conditions to be contained in the lease, including requirements for the successful bidder to submit a plan of development for the lands involved in the competitive offer (see section 2809.18) and the lease mitigation requirements.

New section 2809.14, “What types of bids are acceptable?” would provide that your bid submission would be accepted by the BLM only if it included the minimum bid established in the competitive offer plus at least 20 percent of your bonus bid and you are able to show to the BLM’s satisfaction that you are qualified to hold a right-of-way by meeting the requirements in section 2803.10.

Paragraph (b) of this section would provide that a minimum bid would consist of three components. The first component would be for reimbursement of administrative costs incurred by the BLM and other Federal agencies in preparing and conducting the competitive offer. Administrative costs would include all costs required for the agency to comply with NEPA plus any other associated costs, including costs identified by other Federal agencies. As mentioned in the general discussion section of this preamble, administrative costs are not a component of fair market value and would be used to reimburse the Federal Government for its work in processing the sale and performing other necessary work.

The second component of the minimum bid would be an amount determined by the authorized officer specifically for each competitive offer. The BLM would consider known values of the parcel when determining this amount, which include, but are not limited to, the acreage rent, megawatt capacity fee and the costs of habitat mitigation. For example, the BLM may have identified values for the mitigation of the habitat of the

desert tortoise in management plans, or other such documents. The authorized officer would identify these factors and explain how they were used to determine this amount. The third component would be a bonus bid submitted by the bidder as part of a bid package. This amount would be determined by the bidder.

In other programs, the minimum bid is often a statutory requirement or is based on fair market value of the resource, but there are no statutory requirements for the minimum bid proposed here. The acreage rent is based on the value of the land, and the MW capacity fee is based on the value of the industrial use of the land. Some other factors that may be considered are habitat mitigation and archaeological clearances or recovery of artifacts. The BLM proposes to base this minimum bid on factors such as these that are known values or limitations of the parcel. The minimum bid amount, how it was determined, and the factors used in this determination would be clearly articulated in the notice of competitive offer for each parcel.

This amount is not a determination of fair market value, but a point at which bidding may start. Fair market value would be received through a combination of the rents, MW capacity fees and the competitive bidding, as the process would determine what the market is willing and able to pay for the parcel. Payment of cost recovery fees would be required, but are not considered to be a part of the minimum bid. The minimum bid would be paid only by the successful bidder and would not be prorated among all of the bidders.

As described in paragraph (c) of this section, a bonus bid would consist of any dollar amount that a bidder wishes to bid, beyond the minimum bid. The total bid equals

the minimum bid plus any additional bonus bid amount offered. If you are not the successful bidder as defined in paragraph 2809.15(a), your bid would be refunded.

Section 2809.15, “How will BLM select the successful bidder?,” would explain how the successful bidder is determined and what requirements they must meet in order to be offered a lease. A bidder with the highest total bid, prior to any variable offset, would be declared the successful bidder and would be offered a lease in accordance with section 2805.10. The BLM would determine the appropriate variable offset, using the criteria provided in section 2809.16, before issuing final payment terms. If you are the successful bidder, your payment must be submitted to the BLM by the close of official business hours on the day of the offer or at such other time as the BLM may have specified in the offer notice. Your payment would be required to be made by personal check, cashier’s check, certified check, bank draft, or money order, or by any other means deemed acceptable by the BLM. Your remittance must be payable to the “Department of the Interior—Bureau of Land Management.” Your payment must include: at least 20 percent of the bonus bid prior to the offset described in section 2809.16 and the total amount of the minimum bid specified in paragraph 2809.14(b). Within 15 calendar days after the day of the offer, you must submit to the BLM the balance of the bonus bid less the variable offset (see proposed section 2809.16) and the acreage rent for the first full year of the solar or wind energy lease as provided for in paragraphs 2806.54(a) or 2806.64(a), respectively, to the BLM office conducting the offer or as otherwise directed by the BLM in the offer notice.

Under paragraph 2809.15(e), the BLM would not offer the successful bidder a lease and would keep all money submitted, if the requirements of paragraph 2809.15(d)

are not met. In this circumstance, the BLM may offer the lease to the next highest bidder under paragraph 2809.17(b) or re-offer the lands under paragraph 2809.17(d).

New section 2809.16, “When do variable offsets apply?,” would provide that a 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. In providing for these offsets, the BLM intends to promote thoughtful and reasonable development based upon known environmental factors and impacts of different technologies. The BLM believes providing these offsets could increase the likelihood that a project is developed, expedite the development of that project, or minimize resource impacts on the affected right-of-way. The BLM believes these offsets would help encourage the production of clean renewable energy on public lands, which is a benefit to the general public.

The notice of competitive offer would identify each factor of the variable offset and the specific percentage for each factor that would be applied to the bonus bid, up to a maximum of 20 percent. The BLM would also list the documentation required to be submitted to qualify for the offset prior to the day of the offer and determine the amount of the offset prior to the competitive offer. The authorized officer would determine these offsets for each competitive offer based on the parcel(s) to be offered. In setting the offsets, the BLM would consider the parcel and its environmental concerns or technological limitations.

For example, the BLM may offer a 5 percent offset to a bidder that has a PPA. This offset could encourage a bidder to secure an agreement before the offer, which could increase the likelihood of a project being developed and expedite the completion of such development.

In the BLM's experience with solar and wind energy developments, a project is not always developed after a right-of-way is issued. Based on this experience, the BLM believes that a bidder with an agreement in place to sell power would be more likely to develop a project on the right-of-way. This could prevent the unnecessary encumbrance of a right-of-way that is issued to a holder that never develops the intended project.

The BLM may also offer an offset for thoughtful and reasonable development. For example, the BLM may offer a 5 percent offset to a bidder that would use a particular technology. The BLM may identify a preferred technology type to reduce impacts to identified environmental or cultural resources.

The BLM anticipates selected offsets to be in increments of 5 percent to be reviewed at the BLM Washington Office for consistency and relevance prior to each competitive offer made in the first several years after publication of the final rule.

The BLM may offer a different percentage for each offset based on how qualified the bidder is for the offset. For example, the BLM may offer a 3 percent offset for an interim step in the PPA process or a 5 percent offset for a signed PPA. The BLM acknowledges that in some circumstances qualifying for these offsets may be difficult. For this reason, the BLM may offer incremental offsets to bidders who are working towards such qualifications. These offsets would be identified in the notice of competitive offer (see paragraph 2809.13(b)(6)).

The variable offset may include, but is not limited to, the following factors:

1. Power purchase agreement. This could be a signed agreement between the potential lessee and an entity that agrees to purchase the power generated from the solar or wind energy facility;

2. Large generator interconnect agreement. This would consist of a signed agreement from the holder of an electrical transmission facility and the potential lessee that power would be accepted on the grid controlled by the holder to be transported to a power receiving source;
3. Preferred solar or wind energy technologies. This would be an incentive to use technologies for generating or storing solar or wind energy that would efficiently use public lands or reduce impacts to identified resources;
4. Prior site testing and monitoring inside the designated leasing area. This would consist of evidence that the potential lessee or others associated with the lessee had previously performed appropriate testing or monitoring to determine the suitability and capability of the site for establishment of a successful solar or wind energy generating facility;
5. Pending applications inside the designated leasing area. This would be a situation where the potential lessee had previously filed for authorization to construct facilities inside the designated leasing area;
6. Submission of nomination fees. These are required when submitting a formal nomination (see section 2809.11);
7. Timeliness of project development, financing, and economic factors. This would include documentation that financing has been arranged for the project and provides an incentive to promote an expedited development timeframe for a project;
8. Environmental benefits. This factor would include any positive environmental considerations such as identifying and salvaging archaeological or historical artifacts, additional protection for protected plant or animal species or similar factors;

9. Holding a solar or wind energy lease on adjacent or mixed land ownership. This could show the bidder's vested interest in developing the right-of-way;
10. Public benefits. These could include documented commitments or agreements to provide jobs or other support for local communities, or supporting local public purposes projects; or
11. Other similar factors. This could include support for other Federal Government programs or national security by providing power for defense purposes or meeting government purchase contracts.

New section 2809.17, "Will BLM ever reject bids or re-conduct a competitive offer?" would identify situations where the BLM may reject a bid, offer a lease to another bidder, re-offer a parcel, or actions the BLM may take when no bids are received. Under paragraph 2809.17(a), the BLM could reject bids regardless of the amount offered. Bid rejection could be for various reasons, such as discovery of resource values that cannot be mitigated through stipulations (e.g., the only known site of a rare or endangered plant, or for security purposes). If this occurs you would be notified and the notice would explain the reason(s) for the rejection and whether you are entitled to any refunds. If the BLM rejects a bid, the bidder may appeal that decision under § 2801.10.

The BLM has the option to offer the lease to the next highest qualified bidder if the first successful bidder is later disqualified or does not sign and accept the offered lease (paragraph 2809.17(b)).

Under paragraph 2809.17(c), the BLM could re-offer a parcel if it cannot determine a successful bidder, such as in the case of a tie, or when a successful bidder is later determined to be unqualified to hold a lease.

Under proposed paragraph 2809.17(d), if public lands offered under the provisions at section 2809.13 receive no bids, the BLM could reoffer the parcels through the competitive process under section 2809.13 or make the lands available through the non-competitive process found in subparts 2803, 2804, and 2805. If the lands are then offered on a noncompetitive basis, the successful applicant would receive a right-of-way grant, rather than a lease, and the offsets described in section 2809.16 would not apply.

Section 2809.18 would list the terms and conditions of solar and wind energy leases issued inside designated leasing areas.

Under paragraph (a) of this section, the term of a lease inside designated leasing areas would be 30 years and the lessee may apply for renewal under section 2805.14. While leases outside of designated leasing areas would be for a term up to 30 years, leases inside designated leasing areas would be guaranteed a lease term of 30 years.

Under paragraph (b) of this section, a lessee must pay rent as specified in section 2806.54 if the lease is for solar energy development or section 2806.64 if the lease is for wind energy development. The BLM's authority to collect market value rent is derived from Section 304(a) of FLPMA (43 U.S.C. 1734). Rent is discussed in greater detail in the rental parts of the section-by-section analysis.

Under paragraph (c) of this section, a lessee 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 on the BLM's website ([http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html)); and (2) Addresses all pre-development and development activities. A POD is often required for rights-of-way under existing paragraph 2804.25(b). Due to their complexity, solar and wind

energy development projects would always require submittal of a POD. The submitted POD would provide site-specific information that would be reviewed by the BLM and other Federal agencies in accordance with NEPA and other relevant laws.

Under paragraph (d) of this section, cost recovery, a lessee must pay the reasonable costs for the BLM or other Federal agencies to review and process the POD and to monitor the lease. The authority for collecting costs is derived from Section 304(b) of FLPMA (43 U.S.C. 1734) that provides for the deposit of payments to reimburse the BLM for reasonable costs with respect to applications and other documents relating to the public lands. Such costs may be determined based upon consideration of actual costs. A lessee may choose to pay full actual costs for the review of the POD and the monitoring activities of the lease. Through the BLM's experience, a lessee is more likely to choose payment of full actual costs as this expedites the BLM's review and monitoring actions by removing administrative steps in cost estimations and verifying estimated account balances.

Under paragraph (e) of this section, a lessee would have to provide a performance and reclamation bond for a solar or wind energy project. Bond amounts inside designated leasing areas would be set at a standard dollar amount (per acre for solar, or per turbine for wind) for either solar or wind energy development. See section 2805.20 of this preamble for additional information on the determination of these bond amounts. As explained in the general discussion section of this preamble, the BLM does not intend to change the amount of a standard bond after the lease is issued unless there is a change in use.

For a solar energy development project, a lessee would be required to provide a bond in the amount of \$10,000 per acre at the time the BLM approves the POD. See the discussion at paragraph 2805.20(b) for additional information. For a wind energy development project, a lessee would be required to provide a bond in the amount of \$20,000 per authorized turbine at the time the BLM approves the POD. See the discussion at paragraph 2805.20(c) for additional information.

The BLM would adjust the solar or wind energy development bond amounts for inflation every 10 years by the average annual change in the IPD-GDP for the preceding 10-year period and round it to the nearest \$100. This 10 year average would be adjusted at the same time as the Per Acre Rent Schedule for linear rights-of-way under section 2806.22.

Under paragraph (f) of this section, a lessee may assign a lease under section 2807.21, and if an assignment is approved, the BLM would not make any changes to the lease terms or conditions, as provided in paragraph 2807.21(f).

Under paragraph (g) of this section, a lessee must start construction of a project within 5 years and begin generating electricity no later than 7 years from the date of lease issuance, as specified in the approved POD. The approved POD would outline the specific development requirements for the project, but all PODs would require a lessee to start generating electricity within 7 years. The 5 years to start construction and 7 years to begin generating electricity proposed in the rule should allow most lessees time to construct and start generation of electricity and give a leaseholder time to address any concerns that are outside of the BLM's authority. Such concerns include PPAs or private land permitting or site control transactions. A request for an extension may be granted

for up to 3 years with a show of good cause and approval by the BLM. Should a leaseholder be unable to meet this due diligence timeframe, the BLM may terminate the lease.

New section 2809.19 would explain how the BLM would process applications in designated leasing areas or on lands that later become designated leasing areas. Under the proposed rule, lands inside designated leasing areas would be offered through the competitive bidding process described in this subpart and applications may not be filed inside these areas after the lands have been designated as such.

Paragraph (a) of this section would explain how the BLM would process applications filed for solar or wind energy development on lands outside of designated leasing areas that subsequently become designated leasing areas. If the application was filed before the BLM published the notice of availability of the draft or proposed land use plan amendment to designate the solar or wind leasing area, the application would continue to be processed by the BLM and it would not be subject to the competitive leasing offer process in this subpart. The notice of availability is the first official public notice of the BLM's intent to designate these lands. After publication of this notice, the public will have been notified of the BLM's intent to create a designated leasing area. If an application is submitted prior to publication of the notice of availability, the applicant would have had no way of knowing the BLM's intent and therefore the BLM would continue to process the application.

If an application is filed after the notice of availability of the draft land use plan amendment to identify the land as a designated leasing area, the application would remain in a pending status, unless it is either withdrawn by the applicant or the BLM denies it.

When the subject lands do become available for leasing under this subpart, the applicant could submit a bid for the lands under this subpart. Any entity with an application pending on a parcel that submits a bid on such parcel may qualify for a variable offset as provided for under section 2809.16. The applicant would not receive a refund for any application fees or processing costs incurred if the lands described in the application are later leased to another entity under section 2809.12. The rationale for these provisions is to ensure that as many parcels as possible are leased and developed appropriately.

Under proposed paragraph (b), the BLM would not accept a new application for solar or wind energy development inside designated leasing areas after the effective date of this rule (see paragraph 2804.10(c)(2)).

Under paragraph (c) of this section, the BLM would be able to authorize short term (3-year) grants for testing and monitoring purposes inside designated leasing areas. These would be processed in accordance with paragraphs 2805.11(b)(2)(i) or 2805.11(b)(2)(ii). These testing grants may qualify an entity for a variable offset under paragraph 2809.16(b)(4).

#### Section-by-Section Analysis for Part 2880

The BLM is proposing revisions to several subparts of part 2880. These revisions are necessary to ensure consistency of policies, processes, and procedures, where possible, between rights-of-way applied for and administered under part 2800 and those applied for and those rights-of-way administered under part 2880. Specific areas where we are proposing consistency changes include: Bonding requirements; determination of initial rental payment periods; and when you must contact the BLM, including grant, lease, and temporary use permit (TUP) modification requests, assignments, and renewal

requests. In addition, the BLM is proposing pre-application requirements and fees for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter (see section 2884.10), similar to those being proposed for all solar energy and wind energy projects. Authorizations for solar or wind energy, for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter, are all generally large-scale operations that require additional steps to help protect the public land.

The heading for subpart 2884 would be revised to read “Applying for MLA Grants and TUPs.” This change would more accurately represent the contents of the subpart.

Section 2884.10 would be revised to parallel the changes being made to section 2804.10. These changes include pre-application requirements for applicants for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter. Some changes are the additional pre-application meetings, payment of reasonable costs, and a list of the reasons why the BLM would not accept such applications. For a detailed discussion of these changes, see section 2804.10 of this preamble.

Section 2884.11 would require a POD if an application is for an oil or gas pipeline that is 10 inches or more in diameter. As previously discussed, PODs are often required under section 2804.25. A POD would be required in this paragraph due to the potentially large on-the-ground impacts of these pipelines.

Section 2884.12 would explain fees associated with an application, including those that involve Federal agencies other than the BLM. The applicant may pay either

the BLM for work done by those Federal agencies or pay those Federal agencies directly for their work. This authority was recently delegated by Secretarial Order 3327 and would be reflected in the final regulations.

Paragraph (b) of this section would revise the processing fee schedule to remove the 2005 category fees. Amended paragraph (c) would provide instructions on where you may obtain a copy of the current processing fee schedule. These changes parallel those made to section 2804.14, which describe processing fees for grant applications. A further analysis of these changes can be found in that part of the section-by-section analysis.

Section 2884.16 would be revised to require that Master Agreements describe existing agreements with other Federal agencies for cost reimbursement associated with the application. This change parallels changes in proposed section 2804.18, which describes Master Agreements for all other rights-of-way. With the authority recently delegated by Order 3327 to collect costs for other Federal agencies, it is important for the applicant, the BLM, and other Federal agencies to coordinate and be consistent regarding cost reimbursement.

Section 2884.17 would explain how the BLM processes Category 6 applications and these changes would parallel changes in proposed section 2804.19. Under paragraph (e) of this section, the BLM may collect reimbursement for the United States for actual costs with respect to applications and other document processing relating to Federal lands. The authority delegated by Secretarial Order 3327 requires more coordination and promotes consistency between the Federal agencies.

Section 2884.18 would parallel proposed section 2804.23. Under paragraph (a)(1) of this section, the requirement to reimburse the BLM would be expanded to allow

for cost reimbursement from all Federal agencies for the processing of these right-of-way authorizations.

Under paragraph (c) of this section, the BLM may offer lands through a competitive process on its own initiative.

Under section 2884.20, the phrase “or use other notification methods including the Internet” would be added to paragraphs (a) and (d) to provide for an additional avenue to notify the public of a pending application or to announce any public hearings or meetings. This language would be consistent with changes made to other notification language throughout this proposed rule.

Under section 2884.21, the BLM would not process your application if you have any trespass action pending for any activity on BLM administered lands (see section 2888.11) or have any unpaid debts owed to the Federal Government. The only application the BLM would process to resolve the trespass would be for a right-of-way as authorized in this part, or a lease or permit under the regulations found at 43 CFR 2920, but only after outstanding debts are paid. This provision is being added to provide incentives for the applicant to resolve outstanding debts or other infractions involving the Federal Government and parallels proposed section 2804.25.

The notification language in paragraph (d)(4) would be amended by adding the phrase “or use other notification methods including the Internet.” This language would be consistent with changes made to other notification language throughout this rule.

Section 2884.23 would describe the circumstances under which the BLM may deny an application. Under new paragraph 2884.23(a)(6), the BLM may deny an application if the required POD fails to meet the development schedule and other

requirements for oil and gas pipelines. This language is necessary to enforce the requirements of new paragraphs 2884.10(d)(3) and 2884.11(c)(5).

Section 2884.24 would parallel changes made to section 2804.27 and would require an applicant to pay any pre-application costs submitted under paragraph 2884.10(b)(4). See section 2804.27 for further discussion.

Section 2885.11 explains the terms and conditions of a grant. Paragraph (a) of this section would be revised by adding the phrase “with the initial year of the grant considered to be the first year of the term.” This revision would clarify, for example, that a 30-year grant issued on September 1, 2013, would expire on December 31, 2042, and have an effective term of 29 years and 4 months. This is consistent with existing policy and procedure. For all grants issued under this section with terms greater than 3 years, the actual term would include the number of full years including any partial year. The term for a MLA grant differs from a term for rights-of-way authorized under FLPMA, as FLPMA rights-of-way may be issued for periods greater than 30 years, while a MLA right-of-way may be issued for a maximum period of 30 years. If a 30 year FLPMA grant is issued on a date other than the first of a calendar year, that partial year would count as additional time of the grant (see discussion of paragraph 2805.11 earlier in this preamble section).

A new sentence would be added to the end of paragraph 2885.11(b)(7) referencing new section 2805.20. Proposed section 2805.20 would explain the bonding requirements for all rights-of-way. This reference would direct readers to the bonding requirements.

Revisions to section 2885.15 would clarify that there are no reductions of rents for grants or TUPs, except as provided under paragraph 2885.20(b). Paragraph 2885.20(b) is an existing provision under which a grant holder can qualify for phased-in rent. This change is only a clarification and cross-reference to existing regulations.

Revisions to section 2885.16 would clarify that the BLM prorates the initial rental amount based on the number of full months left in the calendar year after the effective date of the grant or TUP. If your grant qualifies for annual payments, the initial rent bill consists of the remaining partial year plus the next full year. For example, the initial rental bill for a grant issued on September 1 would be for 1 year and 3 months if the grant qualifies for annual billing. The initial rental bill for the same grant would be for 9 years and 3 months if the grant does not qualify for annual billing. This is a new provision that would parallel paragraph 2806.24(c) and would create consistency in how all rights-of-way are prorated.

Section 2885.17(e) would parallel proposed section 2806.13(e), which identifies when the BLM would retroactively bill for uncollected or under-collected rent, late payments and administrative fees. The BLM would collect rent if: (1) A clerical error is identified; (2) A rental schedule adjustment is not applied; or (3) An omission or error in complying with the terms and conditions of the authorized right-of-way is identified.

Section 2885.19 would be revised by updating the addresses in paragraph (b). Revisions to section 2885.20 would result in the removal of existing paragraph (b)(1), which provided for a 25 percent reduction in rent for calendar year 2009. This paragraph no longer applies since it specifically mentioned the 2009 Per Acre Rent Schedule.

The proposed changes in section 2885.24 would parallel the proposed changes to other sections of this rule that contain tables with outdated numbers. Specific numbers would be removed from the table. However, the monitoring fee amounts would be available to the public in BLM offices or on the BLM website. The proposed rule would add the methodology for adjusting these fees on an annual basis to paragraph (a) of this section. Since this methodology has been added to paragraph (a), a description of how the BLM updates the schedule would be removed from paragraph (b) of this section.

Section 2886.12 describes when a grant holder must contact the BLM during operations. The changes in this section would parallel the proposed changes to section 2807.11. A grant holder would be required to contact the BLM when site specific circumstances require changes to an approved right-of-way grant, POD, site plan, or other procedures even when they are not substantial deviations in location or use. These types of changes would be considered as grant or TUP modification requests. New paragraph (e) would be added to conform to similar provisions at paragraph 2807.11(e), which would require you to contact the BLM if your authorization requires submission of a certification of construction. See section 2807.11 for further discussion on these topics.

Revisions to section 2887.11 would parallel the changes to section 2807.21, which describes assigning or making other changes to a grant or lease. The title for section 2887.11 would be changed to “May I assign or make other changes to my grant or TUP?”

The existing regulations do not cover all instances where an assignment is necessary and also omit situations where assignments are not required. The proposed changes are necessary to: (1) Add and describe additional changes to a grant other than

assignments; (2) Clarify what changes would require an assignment; and (3) Make right-of-way leases subject to the regulations in this paragraph.

Some of the proposed changes would add to paragraph (a) two events that may require the filing of an assignment: (1) The voluntary transfer by the holder of any right or interest in the right-of-way grant to a third party, e.g., a change in ownership; and (2) Change in control transactions involving the right-of-way grantee. Examples of changes in ownership would be: A transfer by a holder (assignor) of any right or interest in the grant to a third party (assignee); or changes in ownership or other related change involving the BLM right-of-way grant, including a corporate merger or acquisition. Revised paragraph (b) would clarify that a change in the holder's name only does not require an assignment.

Revised paragraph (c) would make it clear that changes in a holder's articles of incorporation do not require an assignment, but if a holder becomes a wholly owned subsidiary of a new third party and still holds the grant, it may need to file new or revised information in conformance with subpart 2803. Paragraph (d) pertains to payments for assignments and would add a requirement to pay application fees in addition to processing fees. Also, the BLM may now condition a grant assignment to require payment of outstanding payments due.

New paragraph (h) would clarify that only interests in right-of-way grants or leases are assignable. Pending right-of-way applications do not create a property right and thus may not be assigned.

New paragraph (i) would add special application requirements to be evaluated if there is a change in the legal name of the right-of-way leaseholder. These include: (1)

Requiring any corporation requesting such a change to supply documentation showing the name change; and (2) Acceptance of the name change by the State or Territory in which incorporated. This section would also explain that the BLM may also modify a grant, or add bonding and other requirements, including additional terms and conditions when processing a name change application.

Section 2887.12 would add new paragraph (d), similar to proposed revisions to section 2807.22, explaining that if a holder makes a timely and sufficient application for renewal, the existing grant or lease does not expire until the application for renewal has been finally determined by the BLM. This provision is derived from the Administrative Procedures Act (5 U.S.C. 558(c)(1)) and it protects interests of existing right-of-way holders who have timely and sufficiently made an application for the continued use of an existing authorization. In this situation, the authorized activity does not expire until the application for continued use has been evaluated and a decision on the extension is made by the agency. This would reiterate and clarify existing policy and procedures.

Under proposed paragraph 2887.12(e), you may appeal the BLM's decision to deny your application under existing section 2881.10. This paragraph would parallel the language under existing paragraph 2807.22(f), which would be redesignated as paragraph 2807.22(g).

## **V. Procedural Matters**

### Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and

Regulatory Affairs has determined that this proposed rule is significant because it could raise novel legal or policy issues.

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

This proposed rule includes provisions that are intended to facilitate responsible solar and wind energy development and to receive fair market value for such development. These provisions would:

1. Promote the use of preferred areas for solar and wind energy development (i.e., designated leasing areas); and
2. Establish competitive processes, terms, and conditions (including rental and bonding requirements) for solar and wind energy development rights-of-way both inside and outside of designated leasing areas.

These provisions would assist the BLM in meeting goals established in Section 211 of the Energy Policy Act (EPA) of 2005 and Secretarial Order 3285A1. They would also

assist the BLM in implementing recommendations of the Department's Office of the Inspector General regarding renewable energy development.

In addition to provisions that would affect renewable energy specifically, this proposed rule also includes provisions that would affect all rights-of-way, and some that would affect transmission lines with a capacity of 100 kV or more, and pipelines 10 inches or more in diameter. These provisions would clarify existing regulations and codify existing policies.

#### Economic Impacts

The proposed rule would not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The BLM anticipates the proposed rule would increase total costs to all applicants, lessees, and operators by no more than \$5.7 million per year. Of this increase in costs to operators, \$4.8 million of this total figure is the amount of the estimated bonus bids. The increase in fees and rentals over the fees and rentals currently set by policy primarily reflect changing market conditions. Increases in the minimum bond amounts also reflect increases in estimated reclamation costs. These impacts are discussed in detail in the Economic and Threshold Analysis for the proposed rule.

#### Other Agencies

The proposed rule would not create a serious inconsistency or otherwise interfere with another agency's actions or plans. The BLM is the only agency that may promulgate regulations for rights-of-way on public lands.

### Budgetary Impacts

This proposed rule would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

### Novel Legal or Policy Issues

This proposed rule could raise novel legal or policy issues. It would codify existing BLM policies and provide additional detail about submitting applications for solar or wind energy development grants outside designated leasing areas, for transmission lines with a capacity of at least 100 kV, and for pipelines 10 inches in diameter or larger. In addition, the proposed rule would provide for a competitive process for seeking solar and wind energy development leases inside of designated leasing areas.

### Clarity of the Regulations

Executive Order 12866 also requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed rule clearly stated?
2. Does the proposed rule contain technical language or jargon that interferes with its clarity?
3. Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?

5. Is the description of the proposed rule in the “**SUPPLEMENTARY INFORMATION**” section of this preamble helpful in understanding the proposed rule?

How could this description be more helpful in making the proposed rule easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the “**ADDRESSES**” section.

#### National Environmental Policy Act (NEPA)

The proposed regulatory amendments are of an administrative or procedural nature and, therefore, are categorically excluded from the requirement to prepare an environmental assessment (EA) or EIS. See 43 CFR 46.205 and 46.210(i). They do not present any of the extraordinary circumstances listed at 43 CFR 46.215.

Nonetheless, the BLM has drafted an EA to inform agency decision-makers and welcomes input from the public on the draft EA’s assessment of the effects of the proposed rule. The draft EA incorporates by reference the Final Solar Energy Development Programmatic Environmental Impact Statement (July 2012) and the Final Programmatic Environmental Impact Statement on Wind Energy Development on BLM-Administered Lands in the Western United States (June 2005). To obtain single copies of the Programmatic EISs or the draft EA, you may contact the person listed under the section of this rule titled, “**FOR FURTHER INFORMATION CONTACT.**” You may also view the EA/FONSI and Programmatic Environmental Impact Statements at, respectively, <http://windeis.anl.gov/>, <http://solareis.anl.gov/>, and [http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html).

#### Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. For the purposes of this analysis, the BLM assumes that all entities (all lessees and operators) that may be affected by this rule are small entities, even though that is not actually the case.

This proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA.

The proposed rule would affect new applicants or bidders for authorizations of solar or wind energy development, transmission lines 100 kV or more, and pipelines 10 inches or more in diameter. The BLM reviewed current holders of such authorizations to determine whether they are small businesses as defined by the SBA. The BLM was unable to find financial reports or other information for all potentially affected entities, so this analysis assumes that the rule could potentially affect a substantial number of small entities.

To determine the extent to which the proposed rule would impact these small entities, we took two approaches. First, we attempted to measure the direct costs of the proposed rule as a portion of the net incomes of affected small entities. However, we were unable to obtain the financial records for a representative sample. Next, we estimated the direct costs of the proposed rule as a portion of the total costs of a project.

The analysis showed that a range of potential impacts on the total cost of a project varied from a savings of 0.04 percent to a cost of 1.58 percent of the total project cost.

The BLM determined that this was an insignificant impact in the context of developing a project and therefore not a significant economic impact on a substantial number of small businesses. For a more detailed discussion, please see the economic analysis.

#### Small Business Regulatory Enforcement Fairness Act

For the same reasons as discussed under the Executive Order 12866, Regulatory Planning and Review section of this preamble, this proposed rule is not a “major rule” as defined at 5 U.S.C. 804(2). That is, it would not have an annual effect on the economy of \$100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments, in the aggregate, or the private sector of \$100 million or more per year; nor would it have a significant or unique effect on State, local, or tribal governments. The amendment of portions of the regulations found at 43 CFR parts 2800 and 2880, redesignated the existing 43 CFR part 2809 in its entirety to a new paragraph found at § 2801.6(a)(2) and promulgation of revised 43 CFR part 2809, and modifying the MLA pipeline regulations in 43 CFR part 2880 would not result in any unfunded mandates. Therefore, the BLM does not need to prepare a statement containing the information required by Sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531 et seq. The proposed rule is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might

uniquely affect small governments, nor does it contain requirements that either apply to such governments or impose obligations upon them.

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

This proposed rule is not a government action that interferes with constitutionally protected property rights. This proposed rule would set out a process that would provide guidance for competitive renewable energy solar and wind energy development processes and certain pipelines and electric transmission facilities on BLM-managed public lands. It establishes a fee schedule for various components of the development of such facilities inside SEZs and sites for wind energy that are conducive to competitive right-of-way leasing and clarifies a process that would rely on the BLM's existing land use planning system to allow for these types of uses. Also, the rule would set out additional requirements for rights-of-way for pipelines exceeding 10 inches in diameter or transmission lines having a capacity of 100 kV or greater. This revised process would promote the orderly administration of the public lands. Because any land use authorizations and resulting development of facilities under this proposed rule would be subject to valid existing rights, it does not interfere with constitutionally protected property rights. Therefore, the Department has determined that this proposed rule does not have significant takings implications and does not require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The BLM has determined that this proposed rule would not have a substantial direct effect on the States, or the relationship between the national Government and the

States, or on the distribution of power and responsibilities among the various levels of government. It would not apply to State or local governments or State or local government entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Department has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Department's Office of the Solicitor has reviewed the proposed rule to eliminate drafting errors and ambiguity. It has been written to minimize litigation, provide clear legal standards for affected conduct rather than general standards, and promote simplification and avoid unnecessary burdens.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that this proposed rule does not have significant tribal implications. On a case-by-case basis, existing regulations require any right-of-way applicant to consult with tribes to discuss the proposed action and other aspects of the proposed project. Designated leasing areas would be identified through the BLM's land use planning process. These areas would be designated using the same process that current regulations use to identify right-of-way corridors and have the same tribal consultation components. In addition to the preliminary review covered in the planning process, the proposed regulations require site-specific consultation. In lands outside designated leasing areas, site-specific requirements would include pre-application and public meetings. The BLM would be

able to deny an application after these meetings based on a variety of criteria, including tribal concerns. The proposed rule would call for further tribal consultation by the BLM and right-of-way applicants, but the rulemaking itself is administrative in nature and does not establish any designated leasing areas, and, therefore, does not require tribal consultation.

#### Data Quality Act

In developing this proposed rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Section 515 of Public Law 106-554). In accordance with the Data Quality Act, the Department has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at the Department's website at:

<http://www.doi.gov/archive/ocio/iq.html>.

#### Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) Is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) Is designated by the Administrator of OIRA as a significant energy action.

This proposed rule could raise novel legal or policy issues within the meaning of Executive Order 12866 or any successor order. However, the BLM believes this proposed rule is unlikely to have a significant adverse effect on the supply, distribution,

or use of energy, and could have a positive impact on energy supply, distribution, or use. In fact, its intent is to facilitate such development. The rule would codify BLM policies and provide additional detail about the process for submitting applications for solar or wind energy development grants outside designated leasing areas, for solar or wind energy development leases inside designated leasing areas, for transmission lines with a capacity of 100 kV or more, and for pipelines 10 inches or more in diameter.

#### Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this proposed rule would not impede the facilitation of cooperative conservation. The rule takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

#### Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3521) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This proposed rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 - 3520). Collections of information include any request or requirement that persons obtain,

maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

OMB has approved the existing information collection requirements associated with rights-of-way and has assigned Control Number 0596-0082 to those requirements. That control number is administered by the U.S. Forest Service and authorizes several Federal agencies to use Form SF-299 (Application for Transportation and Utility Systems and Facilities on Federal Lands).

The BLM has requested OMB approval for a new control number and is inviting public comment on its request for:

1. Proposed information collection requirements supplemental to SF-299; and
2. Other proposed information collection requirements.

The information collection activities in this proposed rule are described below along with estimates of the annual burdens. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the proposed information collection requirements.

The information collection request for this proposed rule has been submitted to OMB for review under 44 U.S.C. 3507(d). A copy of the request can be obtained from the BLM by electronic mail request to Jayme Lopez at [j06lopez@blm.gov](mailto:j06lopez@blm.gov) or by telephone request to 202-912-7547. The information collection request also may be viewed online at <http://www.reginfo.gov/public/do/PRAMain>.

The BLM requests comments on the following subjects:

- Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
- The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

If you want to comment on the information collection requirements of this proposed rule, please send your comments directly to OMB, with a copy to the BLM, as directed in the “**ADDRESSES**” section of this preamble. Please identify your comments with “OMB Control Number 1004-XXXX.” OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 to 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

At present, 4,017 responses, and 100,425 burden hours are approved annually for the Bureau of Land Management for SF-299 under control number 0596-0082. No non-hour burdens are approved. The proposed rule would include program changes of an additional 3,127 responses, 47,206 burden hours, and \$1,608.992 in application filing fees and processing fees (i.e., non-hour burdens) annually.

Of those totals, the following would be additions to the burdens attributed to the Bureau of Land Management for SF-299 under control number 0596-0082:

- 3,103 responses;
- 47,146 hours; and
- \$1,478,992 in application filing fees and processing fees.

The remaining 24 responses, 60 hours, and \$130,000 in fees would be included in the new control number for activities in the proposed rule that are not associated with SF-299 and control number 0596-0082.

As explained above, the proposed rule would supplement the existing information collection requirements currently authorized by control number 0596-0082, and add other new information collection requirements.

#### Summary of Proposed Information Collection Requirements Supplemental to SF-299

The information collection requirements currently approved for SF-299 include the applicant's identity (for example, name, and address, and telephone number), project description, other data about the proposed project (for example, why it is necessary to cross Federal lands and why the project is needed), and probable effects (for example, environmental impacts). In addition, the proposed rule would require applicants to provide the information described below.

1. General Description of Proposed Project and Schedule for Submittal of Plan of Development

New paragraph 2804.10(c)(4) would apply to the application requirements for:

- Solar or wind energy development projects outside designated leasing areas;
- Electric transmission lines with a capacity of 100 kV or more; and
- Pipelines 10 inches or more in diameter.

These types of applications would have to include a general description of the proposed project and a schedule for submittal of a Plan of Development. The new requirements are necessary in order to ensure the timely processing of these types of applications.

2. Application for Wind Energy Testing Grant and Application for Other Short Term Right-of-Way Grant Related to Solar or Wind Energy

Both of these applications are for short term right-of-way grants. “Short term right-of-way grant” is a new term that, as defined in a proposed amendment to 43 CFR 2801.5, would mean any grant issued for a term of 3 years or less for such uses as storage sites, construction sites, and short-term site testing and monitoring activities. The proposed rule provides for two general types of short-term right-of-way grants: (A) Short term wind energy testing grants; and (B) Other short-term right-of-way grants.

A. Proposed section 2804.12(a)(8) would require an “application filing fee” of \$2 per acre for applications for short term wind energy testing grants, both inside and outside designated leasing areas. As defined at section 2801.5 of the proposed rule, the term “application filing fee” would mean a nonrefundable filing fee specific to solar and wind energy right-of-way applications.

The BLM would adjust the application filing fee once every 10 years by the average annual change in the Implicit Price Deflator, Gross Domestic Product (IPD-GDP) for the preceding 10-year period and round it to the nearest one-half dollar. This fee would be necessary in order to defray the BLM’s expenses in processing these types of applications, and it is in accordance with Section 304 of the Federal Land Policy and Management Act (43 U.S.C. 1734) and the Independent Offices Appropriation Act (31 U.S.C. 9701), which authorize the BLM to recover costs of processing applications and

other documents relating to the public lands. Moreover, OMB Circular A-25 (titled “User Charges”) provides that the Federal policy is to assess a charge against each identifiable recipient for special Federal benefits beyond those received by the general public.

B. Proposed section 2804.30(g) would apply to applications for two types of grants that would authorize testing for wind energy potential outside designated leasing areas: (1) A site-specific grant, which would authorize the installation and operation of a single meteorological tower or other wind study facility; and (2) A project area grant, which would authorize the installation and operation of any number of meteorological towers or other wind study facilities. These applications would be subject to a \$2 per-acre application filing fee in accordance with section 2804.12(a)(8).

This regulation would allow only one applicant (i.e., a “preferred applicant”) to apply for a wind energy testing grant. The preferred applicant would be the successful bidder in a competitive process beginning either with the filing of competing applications for the same facility or system, or with an offer by the BLM of a parcel for competitive bidding. In the latter process, the successful bidder also would have to submit the bonus bid to the BLM within 15 days of the date of the offer. See proposed 43 CFR 2804.30(f). This information collection activity is necessary for the competitive process for lands outside designated leasing areas.

C. Proposed section 2805.11(b)(2)(i) through (b)(2)(iii) would authorize applications for the two types of wind energy testing grants authorized under proposed section 2804.30(g), plus short-term grants for geotechnical testing and other temporary land-disturbing activities associated with solar and wind energy. Applications for wind

energy testing grants would be subject to a \$2 per-acre application filing fee in accordance with section 2804.12(a)(8). Applications for other types of short term rights-of-way associated with solar or wind energy would be subject to a processing fee in accordance with section 2804.14. This information collection activity is necessary for the orderly management of activities that may precede an application for a longer term solar or wind energy right-of-way.

D. Proposed section 2809.19(c) would provide a process for applying for short-term grants for testing and monitoring purposes inside designated leasing areas. This application would apply to wind energy testing only, and would be subject to a \$2 per-acre application filing fee in accordance with section 2804.12(a)(8). This information collection activity is necessary for the competitive process for lands inside designated leasing areas.

### 3. Application for, or Request to Assign, Solar or Wind Energy Development Right-of-Way

As defined at section 2801.5 of the proposed rule, the term “application filing fee” would mean a nonrefundable filing fee specific to solar and wind energy right-of-way applications. This fee would be necessary in order to defray the BLM’s expenses in processing these types of applications, and it is accordance with Section 304 of the Federal Land Policy and Management Act (43 U.S.C. 1734) and the Independent Offices Appropriation Act (31 U.S.C. 9701), which authorize the BLM to recover costs of processing applications and other documents relating to the public lands. Moreover, OMB Circular A-25 (titled “User Charges”) provides that the Federal policy is to assess a

charge against each identifiable recipient for special Federal benefits beyond those received by the general public.

Proposed section 2804.30(g) would allow only one applicant (i.e., a “preferred applicant”) to apply for a right-of-way grant outside a designated leasing area for a solar or wind energy development grant. The preferred applicant would be the successful bidder in a competitive process beginning either with the filing of competing applications for the same facility or system, or with an offer by the BLM of a parcel for competitive bidding. In the latter process, the successful bidder also would have to submit the bonus bid to the BLM within 15 days of the date of the offer. See proposed 43 CFR 2804.30(f). The information required in such an application is listed at existing 43 CFR 2804.12(a)(1) through (a)(7), which would not be amended in the proposed rule. This collection is necessary for the competitive process for lands outside designated leasing areas.

A. Existing section 2807.21 allows a holder of a right-of-way grant to apply to assign any right or interest in that grant. This regulation also requires the proposed assignee to file an assignment application and follow the same procedures and standards as for a new right-of-way grant.

As amended, section 2807.21 would:

- Apply the requirements for assignments to right-of-way leases as well as grants;
- Add a list of actions that may require an assignment; and
- Provide that a change in the holder’s name only does not constitute an assignment.

B. Proposed section 2804.12(a)(8) would require an “application filing fee” of \$15 per acre for applications for, and requests to assign, solar and wind energy development rights-of-way.

The BLM would adjust the application filing fee once every 10 years by the average annual change in the Implicit Price Deflator, Gross Domestic Product (IPD-GDP) for the preceding 10-year period and round it to the nearest one-half dollar. This information collection activity is necessary for the orderly administration of right-of-way leases and grants.

4. Application for Renewal of Wind Energy Project Area Testing Grant or Other Short Term Grant

Proposed sections 2805.11(b)(2)(ii) and 2805.14(h) would authorize holders of short term grants for wind energy project area testing to apply for a renewal of up to three years, so long as the renewal application is accompanied by a wind energy development application and a Plan of Development. Authorizations for wind energy site specific testing would not be renewable.

Proposed section 2805.11(b)(2)(iii) would authorize holders of other types of short term testing and monitoring grants (for example, geotechnical testing) to apply for a renewal of up to three years. Processing fees in accordance with 43 CFR 2804.14, as amended, would apply to these renewal applications.

These opportunities for renewal of short term grants are necessary in order to enable the completion of complex testing of wind energy potential, and in order to apprise the BLM whether or not the holder of an expiring short term right-of-way intends to proceed with development.

5. Environmental, Technical, and Financial Records, Reports, and Other Information

Proposed 43 CFR 2805.12(a)(15) would authorize the BLM to require a holder of any type of right-of-way to provide, or give the BLM access to, any pertinent environmental, technical, and financial records, reports, and other information. The BLM would use the information for monitoring and inspection activities.

6. Application for Renewal of Solar or Wind Energy Development Grant or Lease

Proposed amendments to 43 CFR 2805.14 and 2807.22 would authorize holders of leases and grants to apply for renewal of their rights-of-way. Processing fees in accordance with 43 CFR 2804.14, as amended, would apply to these renewal applications. The BLM would use the information to decide whether to renew rights-of-way.

7. Request for Amendment or Name Change (FLPMA)

Proposed sections 2807.14(g) and 2807.22 would require a holder of any type of FLPMA right-of-way to contact the BLM:

- Before engaging in any activity that is a “substantial deviation” from what is authorized;
- Whenever site-specific circumstances or conditions arise that result in the need for changes that are not substantial deviations;
- Before assigning, in whole or in part, any right or interest in a grant or lease; and
- Before changing the name of a holder (i.e., when the name change is not the result of an underlying change in control of the right-of-way).

A request for an amendment of a right-of-way would be required in cases of a substantial deviation (for example, a change in the boundaries of the right-of-way, major

improvements not previously approved by the BLM, or a change in the use of the right-of-way). Other changes, such as changes in project materials, or changes in mitigation measures within the existing, approved right-of-way area, would be required to be submitted to the BLM for review and approval. In order to assign a grant, the proposed assignee must file an assignment application and follow the same procedures and standards as for a new grant or lease, as well as pay application and processing fees. In order to request a name change, the holder would be required to file an application and follow the same procedures and standards as for a new grant or lease and pay processing fees, but no application fee would be required. The following documents are also required in the case of a name change:

- A copy of the court order or legal document effectuating the name change of an individual; or
- If the name change is for a corporation, a copy of the corporate resolution proposing and approving the name change, a copy of a document showing acceptance of the name change by the State in which incorporated, and a copy of the appropriate resolution, order, or other document showing the name change.

In all these cases, the BLM would use the information for monitoring and inspection purposes, and to maintain current data on rights-of-way.

7. Plan of Development for Solar Energy Development Lease Inside Designated Leasing Area and Plan of Development for Wind Energy Development Lease Inside Designated Leasing Area

Proposed section 2809.18(c) would require the holder of a wind or solar energy development lease for lands inside a designated leasing area to submit a Plan of

Development within two years of the lease issuance date that addresses all pre-development and development activities. This collection activity is necessary to ensure diligent development.

This new provision would be a new use of Item # 7 of SF-299, which calls for the following information:

Project description (describe in detail): (a) Type of system or facility (e.g., canal, pipeline, road); (b) related structures and facilities; (c) physical specifications (length, width, grading, etc.); (d) term of years needed; (e) time of year of use or operation; (f) volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction.

This collection has been justified and authorized under 0596-0082. In addition, proposed section 2809.18(c) would provide that the minimum requirements for a “Wind Energy Plan of Development” or “Solar Energy Plan of Development” can be found at a link to a template at [www.blm.gov](http://www.blm.gov). To some extent, that template duplicates the information required by Item # 7 of SF-299. The following requirements do not duplicate the elements listed in SF-299:

- Operations and maintenance. This information will assist the BLM in verifying the right-of-way holder’s compliance with terms and conditions regarding all aspects of operations and maintenance, including road maintenance and workplace safety;
- Environmental considerations. This information will assist the BLM in monitoring compliance with terms and conditions regarding mitigation measures

and site-specific issues such as protection of sensitive species and avoidance of conflicts with recreation uses of nearby lands;

- Maps and drawings. This information will assist the BLM in monitoring compliance with all terms and conditions; and
- Supplementary information. This information, which will be required after submission of the holder's initial Plan of Development, will assist the BLM in reviewing possible alternative designs and mitigation measures for a final Plan of Development.

8. General Description of Proposed Oil or Gas Pipeline 10 inches or More in Diameter and Schedule for Submittal of Plan of Development

Section 2884.10(d)(3) would list conditions for BLM acceptance of an application for an oil or gas pipeline 10 inches or more in diameter. One of these conditions would be the submission of a general description of the proposed project and a schedule for submitting a Plan of Development. The BLM would use the information to assist in its decision whether or not to process an application for a large-scale right-of-way of this type.

9. Request for Amendment, Assignment, or Name Change (MLA)

Proposed sections 2886.12 and 2887.11 would pertain to holders of MLA rights-of-way and temporary use permits. A temporary use permit authorizes a holder of an MLA right-of-way to use land temporarily in order to construct, operate, maintain, or terminate a pipeline, or for purposes of environmental protection or public safety. See 43 CFR 2881.12. The proposed regulations would require these holders to contact the BLM:

- Before engaging in any activity that is a “substantial deviation” from what is authorized;
- Whenever site-specific circumstances or conditions arise that result in the need for changes that are not substantial deviations;
- When the holder submits a certification of construction;
- Before assigning, in whole or in part, any right or interest in a grant or lease; and
- Before changing the name of a holder (i.e., when the name change is not the result of an underlying change in control of the right-of-way).

A request for an amendment of a right-of-way or temporary use permit would be required in cases of a substantial deviation (for example, a change in the boundaries of the right-of-way, major improvements not previously approved by the BLM, or a change in the use of the right-of-way). Other changes, such as changes in project materials, or changes in mitigation measures within the existing, approved right-of-way area, would be required to be submitted to the BLM for review and approval. In order to assign a grant, the proposed assignee must file an assignment application and follow the same procedures and standards as for a new grant or lease, as well as pay processing fees. In order to request a name change, the holder would be required to file an application and follow the same procedures and standards as for a new grant or lease and pay processing fees, but no application fee would be required. The following documents are also required in the case of a name change:

- A copy of the court order or legal document effectuating the name change of an individual; or

- If the name change is for a corporation, a copy of the corporate resolution proposing and approving the name change, a copy of a document showing acceptance of the name change by the State in which incorporated, and a copy of the appropriate resolution, order, or other document showing the name change.

In all these cases, the BLM would use the information for monitoring and inspection purposes, and to maintain current data on rights-of-way.

10. Certification of construction

A certification of construction is a document a holder of an MLA right-of-way must submit to the BLM after finishing construction of a facility, but before operations begin. The BLM will use the information to verify that the holder has constructed and tested the facility to ensure that it complies with the terms of the right-of-way and is in accordance with applicable Federal and State laws and regulations.

Summary of Information Collection Requirements Met by Existing SF-299

All of the respondents that would be subject to the proposed rule, and that would be required to use SF-299, would be required to provide information about their identity (Item Numbers 1 through 6, as applicable). The following table shows additional ways respondents would use SF-299 as currently approved under control number 0596-0082.

**Information Collection Requirements Met by Existing SF-299**

<b>A. Type of Response</b>	<b>B. Number of Responses</b>	<b>C. Key Portions of SF-299 to Be Used by Respondents, As Applicable</b>
--------------------------------	-----------------------------------	---

<p>General description of proposed project and schedule for submittal of Plan of Development 43 CFR 2804.10(c)(4)</p>	<p>20</p>	<p>Project description (Item 7); Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15); Technical and financial capability (Item 12); Other governmental approvals (Items 9, 14, and 20); and Probable effects (Items 17 through 19)</p>
<p>Application for wind energy testing grant 43 CFR 2804.12(a)(8), 2804.30(g), 2805.11(b)(2)(i), 2805.11(b)(2)(ii), and 2809.19(c)</p>	<p>40</p>	<p>Project description (Item 7); Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15); Technical and financial capability (Item 12); Other governmental approvals (Items 9, 14, and 20); and Probable effects (Items 17 through 19)</p>
<p>Application for other short term grant related to solar or wind energy 43 CFR 2804.14 and 2805.11(b)(2)(iii)</p>	<p>1</p>	<p>Project description (Item 7); Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15); Technical and financial capability (Item 12); Other governmental approvals (Items 9, 14, and 20); and Probable effects (Items 17 through 19)</p>
<p>Application for, or request to assign, solar or wind energy development right-of-way 43 CFR 2804.12(a)(8), 2804.30(g), and 2807.21</p>	<p>11</p>	<p>Project description (Item 7); Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15); Technical and financial capability (Item 12); Other governmental approvals (Items 9, 14, and 20); and Probable effects (Items 17 through 19)</p>

<p>Application for renewal of wind energy project area testing grant or other short term grant 43 CFR 2804.14, 2805.11(b)(2)(ii), and 2805.14(h)</p>	6	<p>Project description (Item 7); Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15); Technical and financial capability (Item 12); Other governmental approvals (Items 9, 14, and 20); and Probable effects (Items 17 through 19)</p>
<p>Environmental, technical, and financial records, reports, and other information 43 CFR 2805.12(a)(15)</p>	20	<p>Project description (Item 7); Nature and location of the project (Items 7, 8, 11, 13, and 15); Technical and financial capability (Item 12); Other governmental approvals (Items 9, 14, and 20); and Probable effects (Items 17 through 19)</p>
<p>Application for renewal of solar or wind energy development grant or lease 43 CFR 2805.14(g) and 2807.22</p>	1	<p>Project description (Item 7); Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15); Technical and financial capability (Item 12); Other governmental approvals (Items 9, 14, and 20); and Probable effects (Items 17 through 19)</p>
<p>Request for amendment or name change (FLPMA) 43 CFR 2807.11(b) and (d) and 2807.21</p>	30	<p>Project description (Item 7); and Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15)</p>
<p>Plan of Development for solar energy development lease inside designated leasing area 43 CFR 2809.18(c)</p>	1	<p>Project description (Item 7); and Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15)</p>
<p>Plan of Development for wind energy development lease inside designated leasing area 43 CFR 2809.18(c)</p>	1	<p>Project description (Item 7); and Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15)</p>

General description of proposed oil or gas pipeline 10 inches or more in diameter and schedule for submittal of Plan of Development 43 CFR 2884.10(d)(3)	105	Project description (Item 7); Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15); Technical and financial capability (Item 12); Other governmental approvals (Items 9, 14, and 20); and Probable effects (Items 17 through 19)
Request for amendment, assignment, or name change (MLA) 43 CFR 2886.12(b) and (d) and 43 CFR 2887.11	2,862	Project description (Item 7); and Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15);
Certification of construction 43 CFR 2886.12(f)	5	Project description (Item 7); and Other data on the nature and location of the proposed project (Items 8, 11, 13, and 15)
Totals	3,103	

The estimated hour burdens of the proposed supplemental collection requirements are shown in the following table.

**Proposed Information Collection Requirements Supplemental to SF-299: Estimated Annual Hour Burdens**

<b>A. Type of Response</b>	<b>B. Number of Responses</b>	<b>C. Hours Per Response</b>	<b>D. Total Hours (Column B x Column C)</b>
General description of proposed project and schedule for submittal of Plan of Development 43 CFR 2804.10(c)(4)	20	2	40
Application for wind energy testing grant 43 CFR 2804.12(a)(8), 2804.30(g), 2805.11(b)(2)(i), 2805.11(b)(2)(ii), and 2809.19(c)	40	8	320
Application for other short term grant associated with solar or wind energy 43 CFR 2804.14 and 2805.11(b)(2)(iii)	1	8	8

Application for, or request to assign, solar or wind energy development right-of-way 43 CFR 2804.12(a)(8), 2804.30(g), and 2807.21	11	12	132
Application for renewal of wind energy project area testing grant or other short term grant 43 CFR 2804.14, 2805.11(b)(2)(ii), and 2805.14(h)	6	6	36
Environmental, technical, and financial records, reports, and other information 43 CFR 2805.12(a)(15)	20	4	80
Application for renewal of solar or wind energy development grant or lease 43 CFR 2805.14(g) and 2807.22	1	12	12
Request for amendment or name change (FLPMA) 43 CFR 2807.11(b) and (d) and 2807.21	30	16	480
Plan of Development for solar energy development lease inside designated leasing area 43 CFR 2809.18(c)	1	8	8
Plan of Development for wind energy development lease inside designated leasing area 43 CFR 2809.18(c)	1	8	8
General description of proposed oil or gas pipeline 10 inches or more in diameter and schedule for submittal of Plan of Development 43 CFR 2884.10(d)(3)	105	2	210
Request for amendment, assignment, or name change (MLA) 43 CFR 2886.12(b) and (d) and 43 CFR 2887.11	2,862	16	45,792
Certification of construction 43 CFR 2886.12(f)	5	4	20
Totals	3,103		47,146

Some of these proposed information collection activities would include fees to reimburse the United States for administrative costs. These fees would be collected under the authority of 43 U.S.C. 1734, which authorizes the Secretary of the Interior to

establish reasonable filing and service fees “with respect to applications and other documents relating to the public lands.”

Other information collection requirements in the proposed rule would include fees to discourage speculation by use of frivolous right-of-way applications for solar or wind energy. The amounts of these fees are not intended for cost recovery.

These fees (i.e., non-hour burdens) are itemized in the following table.

**Proposed Information Collection Requirements Supplemental to SF-299: Estimated Annual Non-Hour Burdens**

<b>A. Type of Response</b>	<b>B. Number of Responses</b>	<b>C. Amount of Fee Per Response</b>	<b>D. Purpose of Fee</b>	<b>E. Total Fees (Column B x Column C)</b>
Application for wind energy testing grant 43 CFR 2804.12(a)(8), 2804.30(g), 2805.11(b)(2)(i), 2805.11(b)(2)(ii), and 2809.19(c)	40	\$2 per acre x average of 6,000 acres per application = \$12,000	Discourage speculation	\$480,000
Application for other short term grant related to solar or wind energy 43 CFR 2804.14 and 2805.11(b)(2)(iii)	1	\$1,124 <sup>1</sup>	Cost recovery	\$1,124
Application for, or request to assign, solar or wind energy development right-of-way 43 CFR 2804.12(a)(8), 2804.30(g), and 2807.21	11	\$15 per acre x average of 6,000 acres per application = \$90,000	Discourage speculation	\$990,000

<sup>1</sup> This estimate is based on the BLM’s experience. The amount shown is for Processing Category Four for calendar year 2014, in accordance with 43 CFR 2804.14.

Application for renewal of wind energy project area testing grant or other short term grant 43 CFR 2804.14, 2805.11(b)(2)(ii), 2805.11(b)(2)(iii), and 2805.14(h)	6	\$1,124 <sup>2</sup>	Cost recovery	\$6,744
Application for renewal of solar or wind energy development grant or lease 43 CFR 2805.14(g) and 2807.22	1	\$1,124 <sup>3</sup>	Cost recovery	\$1,124
Totals	59			\$1,478,992

Summary of Other Proposed Information Collection Requirements

1. Pre-application Information for Large-Scale Rights-of-Way

In accordance with proposed 43 CFR 2804.10, anyone interested in a right-of-way for a large-scale project (i.e., for solar or wind energy, for a transmission line with a capacity of 100 kV or more, or for any pipeline 10 inches or more in diameter) would be required to hold pre-application meetings. Among other things, these meetings would be opportunities for the proponent of a project to provide information to the BLM, other governmental entities, and various stakeholders. The potential applicant would be required to pay reasonable costs associated with the pre-application requirements, with the option of paying the-actual costs. The information would assist the BLM in protecting public lands and in facilitating application processing for these types of

---

<sup>2</sup> This estimate is based on the BLM’s experience. The amount shown is for Processing Category Four for calendar year 2014, in accordance with 43 CFR 2804.14.

<sup>3</sup> This estimate is based on the BLM’s experience. The amount shown is for Processing Category Four for calendar year 2014, in accordance with 43 CFR 2804.14.

authorizations, which are generally larger and more complex than the average right-of-way authorization.

## 2. Showing of Good Cause

Any right-of-way for solar and wind energy requires due diligence in development. In accordance with proposed 43 CFR 2805.12(c)(6), the BLM would notify the holder before suspending or terminating the right-of-way for lack of due diligence. This notice would provide the holder with a reasonable opportunity to correct any noncompliance or to start or resume use of the right-of-way. A showing of good cause would be required in response. That showing would have to include:

- Reasonable justification for any delays in construction (for example, delays in equipment delivery, legal challenges, and acts of God);
- The anticipated date of completion of construction and evidence of progress toward the start or resumption of construction; and
- A request for extension of the timelines in the approved POD.

The BLM would use the information to determine whether or not to suspend or terminate the right-of-way for failure to comply with due diligence requirements.

## 3. Reclamation Cost Estimate for Lands Outside Designated Leasing Area

The proposed rule provides that a bond would be required for each solar and wind energy development outside a designated leasing area. In accordance with proposed section 2305.20(a)(3), the bond amount would be based on the holder's estimate of the costs for reclaiming and restoring the public lands, include the administrative costs for the BLM to administer a contract to reclaim and restore the lands in the authorization.

The BLM would use the reclamation cost estimate to determine the appropriate bond amount.

#### 4. Nomination of Parcel of Land Inside Designated Leasing Area

Under proposed section 2809.10, the BLM could: (1) on its own initiative offer lands competitively inside designated leasing areas for solar or wind energy development, or (2) solicit nominations for such development. Proposed section 2809.11 would describe the nomination process.

In order to nominate a parcel under this process, the nominator would be required to be qualified to hold a right-of-way under 43 CFR 2803.10. After publication of a notice by the BLM, anyone meeting the qualifications could submit a nomination for a specific parcel of land to be developed for solar or wind energy. There would be a fee of \$5 per acre for each nomination. The following information would be required:

- The nominator's name and personal or business address; and
- The legal land description; and
- A map of the nominated lands.

The BLM would use the information to communicate with the nominator and to determine whether or not to proceed with a competitive offer.

#### 5. Expression of Interest in Parcel of Land Inside Designated Leasing Area

Proposed section 2809.11 would provide that the BLM may consider informal expressions of interest suggesting lands to be included in a competitive offer. The expression would have to include a description of the suggested lands and a rationale for their inclusion in a competitive offer. The information would assist the BLM in determining whether or not to proceed with a competitive offer.

The estimated hour and non-hour burdens of these proposed collection activities are shown in the following tables.

**Other Proposed Information Collection Requirements: Estimated Annual Hour Burdens**

<b>A. Type of Response</b>	<b>B. Number of Responses</b>	<b>C. Hours Per Response</b>	<b>D. Total Hours (Column B x Column C)</b>	<b>E. Annual Cost (Column D x \$61.22)</b>
Pre-application information for large-scale rights-of-way 43 CFR 2804.10(a)(4) and (b)	20	2	40	\$2,449
Showing of good cause 43 CFR 2805.12(c)(6)	1	2	2	\$122
Reclamation cost estimate for lands outside designated leasing area 43 CFR 2805.20(a)(3)	1	10	10	\$612
Nomination of parcel of land inside designated leasing area 43 CFR 2809.11	1	4	4	\$245
Expression of interest in parcel of land inside designated leasing area 43 CFR 2809.11	1	4	4	\$245
Totals	24		60	\$3,673

In connection with the submission of pre-application information, the proposed rule would require a cost recovery fee to reimburse the United States for administrative costs. This fee would be collected under the authority of 43 U.S.C. 1734, which authorizes the Secretary of the Interior to establish reasonable filing and service fees “with respect to applications and other documents relating to the public lands.”

In connection with the nomination of a parcel inside a designated leasing area, the proposed rule would require a fee set at an amount to discourage speculation by use of a frivolous nomination. The amount of this fee is not intended for cost recovery.

**Other Proposed Information Collection Requirements: Estimated Annual Non-Hour Burdens**

A. Type of Response	B. Number of Responses	C. Amount of Fee Per Response	D. Purpose of Fee	E. Total Fees (Column B x Column C)
Pre-application information for large-scale rights-of-way 43 CFR 2804.10(a)(4) and (b)	20	\$5,000	Cost recovery	\$100,000
Nomination of parcel of land inside designated leasing area 43 CFR 2809.11	1	\$5 per acre x average of 6,000 acres per nomination = \$30,000	Discourage speculation	\$30,000
Totals	21			\$130,000

Author

The principal author of this rule is Jayme Lopez, Realty Specialist of the National Renewable Energy Coordination Office Washington Office, Bureau of Land Management, Department of the Interior. He was assisted by Jean Sonneman and Charles Yudson of the Division of Regulatory Affairs, Washington Office, Bureau of Land Management, Department of the Interior.

**List of Subjects**

43 CFR Part 2800

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

43 CFR Part 2880

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

Accordingly, for the reasons stated in the preamble, the BLM proposes to amend 43 CFR parts 2800 and 2880 as set forth below:

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

1. Revise the heading of Part 2800 to read as set forth above.
2. The authority citation for part 2800 continues to read as follows:

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

**Subpart 2801—General Information**

3. Amend § 2801.5(b) by:
  - a. Adding, in alphabetical order, definitions of “Acreage rent,” “Application filing fee,” “Assignment,” “Designated leasing area,” “Megawatt (MW) capacity fee,” “Megawatt rate,” “Performance and reclamation bond,” “Reclamation cost estimate,” “Screening criteria for solar and wind energy development,” and “Short-term right-of-way grant;” and
  - b. Revising the definitions of “Designated right-of-way corridor,” “Management overhead costs,” and “Right-of-way.”

The additions and revisions read as follows:

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

\*\*\*\*\*

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.

\*\*\*\*\*

Application filing fee means a filing fee specific to solar and wind energy applications.

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.

\*\*\*\*\*

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 must be leased competitively. Solar energy zones are an example of a designated leasing area for solar energy.

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.

\*\*\*\*\*

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

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

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

(1) "Net capacity factor" means the average operational time divided by the average potential operational time of a solar or wind energy development, multiplied by the current technology efficiency rates. The net capacity factor for each technology type is:

- (i) Photovoltaic (PV) — 20 percent;
- (ii) Concentrated photovoltaic (CPV) and concentrated solar power (CSP) — 25 percent;
- (iii) CSP with storage capacity of 3 hours or more — 30 percent; and
- (iv) Wind energy — 35 percent;

(2) “Megawatt hour (MWh) price” means the 5-year average of the annual weighted average wholesale prices per MWh for the major Intercontinental Exchange (ICE) (see <https://beta.theice.com/marketdata/reports/ReportCenter.shtml>), or its successor in interest, at trading hubs serving the 11 western States of the continental United States (U.S.);

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

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

\*\*\*\*\*

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 land.

(1) Acceptable bond instruments include 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. Insurance policies can also qualify as acceptable bond instruments,

provided that the BLM determines that the insurance policies will guarantee performance of financial obligations and are issued by insurance carriers that have the authority to issue insurance policies in the applicable jurisdiction and whose insurance operations are organized or authorized to transact business in the U.S.

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

\*\*\*\*\*

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. 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.

\*\*\*\*\*

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 in order 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 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.

\*\*\*\*\*

4. In § 2801.6, revise paragraph (a)(2) to read as follows:

**§ 2801.6 Scope.**

(a) \*\*\*

(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

\*\*\*\*\*

5. Amend § 2801.9 by revising paragraphs (a)(4) and (a)(7), and by adding paragraph (d) to read as follows:

**§ 2801.9 When do I need a grant?**

(a) \*\*\*

(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;

\*\*\*\*\*

(7) Such other necessary transportation or other systems or facilities including any temporary or short-term surface disturbing activities associated with approved systems or facilities and which are in the public interest and which require rights-of-way.

\*\*\*\*\*

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

(1) Wind 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) Wind 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 a wind energy development application;

(3) Other associated actions not specifically included in § 2801.9(d)(1) and (2), 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;

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

(5) Solar and wind energy development facilities located inside designated leasing areas are authorized with a solar or wind energy development lease when issued competitively

under subpart 2809. The term is fixed for 30 years (plus the initial partial year of issuance). An application for renewal of the lease may be submitted under § 2805.14(g).

### **Subpart 2802—Lands Available for FLPMA Grants**

6. In § 2802.11, revise the section heading and paragraph (a), revise the introductory language of paragraph (b), and revise paragraphs (b)(3), (b)(4), (b)(6), (b)(7), and (d) to read as follows:

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

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

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

\*\*\*\*\*

(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);

\*\*\*\*\*

(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;

\*\*\*\*\*

(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.

#### **Subpart 2804—Applying for FLPMA Grants**

7. Amend § 2804.10 by:

- a. Revising the introductory text of paragraph (a), and revising paragraphs (a)(2) and (a)(4);
- b. Redesignating paragraph (b) as paragraph (d);
- c. Adding paragraphs (b) and (c); and
- d. Revising newly redesignated paragraph (d).

The revisions and additions read as follows:

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

(a) Except as provided in paragraph (b) of this section, we encourage you to make an appointment for a pre-application meeting with the appropriate personnel in the BLM office having jurisdiction over the lands you seek to use. During the pre-application meeting, the BLM may:

\*\*\*\*\*

(2) Determine whether the lands are located inside a designated or existing right-of-way corridor or a designated leasing area;

\*\*\*\*\*

(4) Inform you of your financial obligations, such as processing and monitoring costs and rents. In addition to such costs, you are required to pay reasonable costs, and may elect to pay the actual costs, that are associated with the pre-application requirements identified in paragraph (b) of this section.

(b) Before submitting an application for any solar energy or wind energy project, for any transmission line with a capacity of 100 kV or more, or for any pipeline 10 inches or more in diameter, you must do all of the following:

(1) Schedule and hold an initial pre-application meeting with the BLM to discuss:

- (i) The general project proposal;
- (ii) The status of BLM land use planning for the lands involved;
- (iii) Potential siting issues or concerns;
- (iv) Potential environmental issues or concerns;
- (v) Potential alternative site locations; and
- (vi) The right-of-way application process.

(2) Schedule and hold, in coordination with the BLM, one additional pre-application meeting with appropriate Federal and State agencies and tribal and local governments to facilitate coordination of potential environmental and siting issues and concerns. The BLM and you may agree mutually to schedule and hold additional pre-application meetings.

(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).

(c) In addition to all other pre-application, application, and holder requirements specified in this part, the BLM will accept an application under this subpart for any solar energy or wind energy development project, for any transmission line with a capacity of 100 kV or more, or any pipeline 10 inches or more in diameter, only if:

(1) The written proposal addresses known potential resource conflicts with sensitive resources and values that are the basis for special designations or protections, and includes applicant-proposed measures to avoid, minimize, and mitigate such resource conflicts;

(2) The proposal for solar energy or wind energy development is not sited on lands inside a designated leasing area, except as provided for by § 2809.19;

(3) The pre-application meetings described in § 2804.10(b)(1) and (2) have been completed to the BLM's satisfaction; and

(4) The proposal is accompanied by a general description of the proposed project and a schedule for the submittal of a plan of development (POD) conforming to the POD template at <http://www.blm.gov>.

(d) Subject to § 2804.13, 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.

8. In § 2804.12:

- a. Revise the second sentence of the introductory text of paragraph (a);
- b. Remove each semicolon at the end of paragraphs (a)(1) through (a)(5) and add in each place a period;
- c. At the end of paragraph (a)(6), remove the phrase “; and” and add in its place a period; and
- d. Add new paragraphs (a)(8) and (a)(9).

The revisions and additions read as follows:

**§ 2804.12 What information must I submit in my application?**

(a) \*\*\* Your completed application must include all of the following:

\*\*\*\*\*

(8) A nonrefundable application filing fee for solar and wind energy applications. The fee is \$15 per acre for solar and wind energy development applications and \$2 per acre for wind energy project area and site specific testing applications. The BLM will adjust the application filing fee at least once every 10 years by the average annual change in the Implicit Price Deflator, Gross Domestic Product (IPD-GDP) for the preceding 10-year

period and round it to the nearest one-half dollar. This 10-year average will be adjusted at the same time as the Per Acre Rent Schedule for linear rights-of-way under § 2806.22.

(9) A schedule for the submittal of a POD conforming to the POD template at <http://www.blm.gov>, should the BLM require you to submit a POD under § 2804.25(b).

\*\*\*\*\*

9. In § 2804.14, revise paragraphs (a), (b), and (c) to read as follows:

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

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

(b) There is no processing fee if the Federal Government's work is estimated to take 1 hour or less. Processing fees are based on categories. The BLM will update the processing fees for Categories 1 through 4 in the schedule each calendar year, based on the previous year's change in the IPD-GDP, as measured second quarter to second quarter

rounded to the nearest dollar. The BLM will update Category 5 processing fees as specified in the Master Agreement. These categories and the estimated range of Federal work hours for each category are:

**Processing Categories**

<b>Processing category</b>	<b>Federal work hours involved</b>
(1) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $>1 \leq 8$
(2) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $> 8 \leq 24$
(3) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $> 24 \leq 36$
(4) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $> 36 \leq 50$
(5) Master agreements	Varies
(6) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $> 50$

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

\*\*\*\*\*

10. Amend § 2804.18 by redesignating paragraphs (a)(6) through (a)(8) as paragraphs (a)(7) through (a)(9) and adding new paragraph (a)(6). The addition reads as follows:

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

(a) \*\*\*

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

\*\*\*\*\*

11. Amend § 2804.19 by revising paragraph (a) and adding new paragraph (e) to read as follows:

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

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

\*\*\*\*\*

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

12. Amend § 2804.20 by revising paragraphs (a)(1) and (a)(5), redesignating paragraph (a)(6) as paragraph (a)(8), and adding new paragraphs (a)(6) and (a)(7). The revisions and additions read as follows:

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

\*\*\*\*\*

(a) \*\*\*

(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;

\*\*\*\*\*

(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;

(7) Costs associated with the pre-application requirements applicable to your project under § 2804.10; and

\*\*\*\*\*

13. Amend § 2804.23 by revising the section heading and paragraphs (a)(1) and (c) and adding new paragraphs (d) and (e) to read as follows:

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

(a) \*\*\*

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

\*\*\*\*\*

(c) If we determine that competition exists, we will describe the procedures for a competitive bid through a bid announcement in a newspaper of general circulation in the area affected by the potential right-of-way and by a notice in the Federal Register. We

may also provide notice by other methods, including the Internet. We may offer lands through a competitive process on our own initiative.

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

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

14. Amend § 2804.24 by revising paragraph (a), redesignating paragraph (b) as paragraph (c), and adding new paragraph (b) to read as follows:

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

\*\*\*\*\*

- (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

\*\*\*\*\*

15. Amend § 2804.25 by revising paragraphs (b) and (d) to read as follows:

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

\*\*\*\*\*

- (b) 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 BLM will notify you of any other grant applications which involve all or part of the lands for which you applied. The BLM will not process your application if you have any trespass action pending against you for any activity on BLM-administered lands (see § 2808.12) or have any unpaid debts owed to the Federal Government. Except as otherwise provided in this paragraph, the only applications the BLM would process to resolve the trespass would be for 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 debts are paid.

\*\*\*\*\*

(d) 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, a newspaper of general circulation in the vicinity of the lands involved in the area affected by the potential right-of-way, or use other notification methods including the Internet, to announce in advance any public hearings or meetings.

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

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

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

(iii) Evaluate the application based on the information provided by the applicant and the input of Federal, State, and local government agencies, tribes, and comments received in pre-application meetings held under § 2804.10(b) and the public meeting held under § 2804.25(d)(2)(i). Based on this evaluation, the BLM will either deny your application or continue processing it.

(3) Determine whether the POD schedule submitted with your application for solar or wind energy development, transmission line with a capacity of 100 kV or more, or pipeline 10 inches or more in diameter meets the development schedule and other requirements described in §§ 2804.10(c)(4) and 2804.12(a)(9), or whether the applicant must supply additional information;

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

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

(6) If your application is for a road, determine whether it is in the public interest to require you to grant the U.S. 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.

\*\*\*\*\*

16. Amend § 2804.26 by revising paragraph (a)(5), redesignating paragraph (a)(6) as paragraph (a)(8), and adding new paragraphs (a)(6) and (a)(7). The revisions read as follows:

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

(a) \*\*\*

(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 sustain technical and financial capability is grounds for denying the application or terminating the authorization;

(6) The PODs required by §§ 2804.10(c)(4) and 2804.12(a)(9) 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) The BLM's evaluation of your solar or wind application made under § 2804.25(d)(2)(iii) provides a basis for a denial; or

\*\*\*\*\*

17. In § 2804.27, revise the introductory text to read as follows:

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

If the BLM denies your application or you withdraw it, you must still pay any pre-application costs under § 2804.10(a)(4), any application filing fees under § 2804.12(a)(8), and any processing fee set forth at § 2804.14, unless you have a Processing Category 5 or 6 application. Then, the following conditions apply:

\*\*\*\*\*

18. Add § 2804.30 to subpart 2804 to read as follows:

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

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

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

oral auctions, modified competitive bidding, electronic bidding, or any combination thereof.

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

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

- (1) The date, time, and location, if any, of the competitive offer;
- (2) The legal land description of the parcel to be offered;
- (3) The bidding methodology and procedures to be used in conducting the competitive offer, which may include any of the competitive procedures identified in § 2804.30(b);
- (4) The minimum bid required (see § 2804.30(e)(2));
- (5) The qualification requirements of potential bidders (see § 2803.10); and
- (6) The requirements for the successful bidder to submit a schedule for the submittal of a POD for the lands involved in the competitive offer (see § 2804.12(a)(9)).

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

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

- (i) The administrative costs incurred by the BLM and other Federal agencies in preparing for and conducting the competitive offer, including required environmental reviews; and
- (ii) An amount determined by the authorizing officer and disclosed in the notice of competitive offer. This amount will be based on known or potential values of the parcel. In setting this amount, the BLM will consider factors that include, but are not limited to the acreage rent, megawatt capacity fee, and mitigation costs.
- (3) Bonus bid. The bonus bid consists of any dollar amount that a bidder wishes to bid in addition to the minimum bid.
- (4) If you are not the successful bidder, as defined in paragraph (f) of this section, the BLM will refund your bid.
- (f) Successful bidder. The successful bidder is determined by the highest total bid. If you are the successful bidder, you become the preferred applicant only if, within 15 calendar days after the day of the offer, you submit the balance of the bonus bid to the BLM office conducting the offer. You must make payments by personal check, cashier's check, certified check, bank draft, money order, or by other means deemed acceptable by the BLM, payable to the "Department of the Interior—Bureau of Land Management."
- (g) Preferred applicant. The preferred applicant is the only applicant that may apply for the parcel identified in the offer. The preferred applicant may apply for a wind energy project area testing grant, a wind energy site specific testing grant, or a solar or wind energy development grant. Grant approval is not guaranteed by winning the subject bid and is solely at the BLM's discretion.

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

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

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

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

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

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

19. Add § 2804.35 to subpart 2804 to read as follows:

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

The BLM will prioritize your application by placing it into one of three categories and may re-categorize your application based on new information received through surveys, public meetings, or other data collection, or after any changes to the application. The BLM will categorize your application based on the following screening criteria.

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

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

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

- (3) Lands currently designated as Visual Resource Management Class IV; or
  - (4) Lands identified as suitable for disposal in BLM land use plans.
- (b) Medium-priority applications are given priority over low-priority applications and may include lands that meet the following criteria:
- (1) BLM special management areas that provide for limited development, including recreation sites and facilities;
  - (2) Areas where a project may adversely affect conservation lands, to include lands with wilderness characteristics that have been identified in an updated wilderness characteristics inventory;
  - (3) Right-of-way avoidance areas;
  - (4) Areas where project development may adversely affect resources and properties listed nationally such as the National Register of Historic Places, National Natural Landmarks, or National Historic Landmarks;
  - (5) Sensitive habitat areas, including important eagle use areas, priority sage grouse habitat, riparian areas, or areas of importance for Federal or State sensitive species;
  - (6) Lands currently designated as Visual Resource Management Class III;
  - (7) Department of Defense operating areas with land use or operational conflicts; or
  - (8) Projects with proposed groundwater uses within groundwater basins that have been allocated by state water resource agencies.
- (c) Low-priority applications may not be feasible to authorize. These applications may include lands that meet the following criteria:
- (1) Lands near or adjacent to lands designated by Congress, the President, or the Secretary for the protection of sensitive viewsheds, resources, and values (e.g., units of

the National Park System, Fish and Wildlife Service Refuge System, some National Forest System units, and the BLM National Landscape Conservation System), which may be adversely affected by development;

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

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

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

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

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

#### **Subpart 2805—Terms and Conditions of Grants**

20. Amend § 2805.10 as follows:

- a. Revise the section heading;
- b. Revise paragraph (a);
- c. Redesignate paragraph (b) and (c) as paragraphs (c) and (d) respectively; and
- d. Add new paragraph (b).

The revisions and additions read as follows:

**§ 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 will 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 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).

\*\*\*\*\*

21. Amend § 2805.11 by redesignating paragraph (b)(2) as paragraph (b)(3), adding new paragraph (b)(2), and revising newly redesignated paragraph (b)(3) to read as follows:

**§ 2805.11 What does a grant contain?**

\*\*\*\*\*

(b) \*\*\*

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

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

(ii) For a wind 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 wind energy development application and a POD as required by § 2804.10(c)(4);

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

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

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

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

\*\*\*\*\*

22. Revise § 2805.12 to read as follows:

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

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

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

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

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

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

(5) Not discriminate against any employee or applicant for employment during any stage of the project because of race, creed, color, sex, sexual orientation, or national origin.

You must also require subcontractors to not discriminate;

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

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

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

- (i) Restore, revegetate, and curtail erosion or conduct any other rehabilitation measure the BLM determines necessary;
- (ii) Ensure that activities in connection with the grant comply with air and water quality standards or related facility siting standards contained in applicable Federal or State law or regulations;
- (iii) Control or prevent damage to:
  - (A) Scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat;
  - (B) Public and private property; and
  - (C) Public health and safety;
- (iv) 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.);
- (v) Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way in a manner consistent with the grant or lease, including the approved POD, if one was required;
- (vi) 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
- (vii) 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) The BLM may require you to 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 of electricity generated from the approved facilities on public land. 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 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. Failure to comply with such requirements may, at the discretion of the BLM, result in suspension or termination of the right-of-way authorization; and

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

(b) You must comply with the bonding requirements under § 2805.20.

(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;

(3) If an approved POD provides for staged development and not otherwise agreed to by 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 no later than 24 months after the start of construction for that stage; and
  - (iii) Have no more than 3 development stages, unless the BLM approves more development stages in advance.
- (4) Maintain all onsite electrical generation equipment and facilities in accordance with the design standards in the approved POD;
- (5) Repair, place into service, or remove from the site damaged or abandoned facilities that have been inoperative for any continuous period of 3 months that present an unnecessary hazard to the public lands. You must take appropriate remedial action within 30 days after receipt of a written noncompliance notice, unless you have been provided an extension of time by the BLM. Alternatively, you must show good cause for any delays in repairs, use, or removal; estimate when corrective action will be completed; provide evidence of diligent operation of the facilities; and submit a written request for an extension of the 30-day deadline. If you do not comply with this provision, the BLM may suspend or terminate the authorization under §§ 2807.17 through 2807.19; and
- (6) Comply with the diligent development provisions of the authorization or the BLM may suspend or terminate your grant or lease under § 2807.17. 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 § 2807.11(d) for extension of the timelines in the approved POD. If you do not comply with the requirements of § 2804.12(c)(7), 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 cultural resource and Indian cultural resource identification, protection and mitigation.
- (d) For wind 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 show good cause for and the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward site monitoring activities;
  - (2) You must maintain all onsite equipment and facilities in accordance with the approved design standards;
  - (3) You must repair, place into service, or remove from the site damaged or abandoned facilities that have been inoperative for any continuous period of 3 months that present an unnecessary hazard to the public lands; and
  - (4) If you do not comply with the due diligence terms and conditions of either the wind site testing and monitoring authorization or the wind energy development authorization, the BLM may terminate your authorization under § 2807.17.

23. Amend § 2805.14 by removing "and" from the end of paragraph (e), removing the period from the end of paragraph (f) and adding “; and” in its place, and adding paragraphs (g) and (h) to read as follows:

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

\*\*\*\*\*

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

(h) Apply to renew your wind energy project area testing grant for one additional term of 3 years or less when the renewal application also includes a wind energy development application.

24. In § 2805.15, revise the first sentence of paragraph (b) to read as follows:

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

\*\*\*\*\*

(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. \*\*\*

\*\*\*\*\*

25. Revise § 2805.16 to read as follows:

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

(a) You must pay a fee to the BLM for the reasonable costs the Federal Government incurs in monitoring the construction, operation, maintenance, and termination of the project and protection and rehabilitation of the public lands your grant covers. Instead of paying the BLM a fee for the reasonable costs incurred by other Federal agencies in monitoring your grant, you may pay the other Federal agencies directly for such costs.

The BLM will annually adjust the Category 1 through 4 monitoring fees in the manner described at § 2804.14(b). The BLM will update Category 5 monitoring fees as specified in the Master Agreement. The BLM categorizes the monitoring fees based on the estimated number of work hours necessary to monitor your grant. Category 1 through 4 monitoring fees are one-time fees and are not refundable. The monitoring categories and work hours are as follows:

### **Monitoring Categories**

<b>Monitoring category</b>	<b>Federal work hours involved</b>
(1) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $> 1 \leq 8$
(2) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $> 8 \leq 24$
(3) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $> 24 \leq 36$
(4) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours $> 36 \leq 50$
(5) Master Agreements	Varies
(6) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $> 50$

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

26. Add § 2805.20 to subpart 2805 to read as follows:

**§ 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, and property in connection with your use and occupancy of the right-of-way, including terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. The BLM 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. We may require you to prepare and submit an acceptable RCE. The estimate must include our cost to administer a reclamation contract.

(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).

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.

(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).

We will determine the bond amount based on the RCE (see paragraph (a)(3) of this section) and must be no less than \$20,000 per authorized turbine. For short-term right-of-way grants for wind energy site or project testing, the bond amount must be no less than \$2,000 per authorized meteorological tower.

### **Subpart 2806—Rents**

27. Amend § 2806.12 by revising the section heading and paragraphs (a) and (b) and adding paragraph (d) to read as follows:

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

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

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

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

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

(2) If your non-linear grant allows for multi-year payments, such as a short term grant issued for wind energy site specific testing, you may request that your initial rent bill be for the full term of the grant instead of the initial rent bill periods provided paragraphs

(a)(1)(i) or (ii) of this section.

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

\*\*\*\*\*

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

28. Amend § 2806.13 by:

- a. Revising the section heading and paragraph (a);
- b. Redesignating paragraph (e) as paragraph (f); and
- c. Adding new paragraphs (e) and (g).

The revisions and additions read as follows:

**§ 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 this 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.

\*\*\*\*\*

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

(1) A clerical error is identified;

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

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

\*\*\*\*\*

(g) We will not approve any further activities associated with your right-of-way until you make any outstanding payments that are due.

29. In § 2806.20, revise paragraph (c) to read as follows:

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

\*\*\*\*\*

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

30. In § 2806.22, revise the second sentence of paragraph (a) to read as follows:

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

(a) \*\*\*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.\*\*\*

\*\*\*\*\*

31. Amend § 2806.23 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

32. In § 2806.24, revise paragraph (c) to read as follows:

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

\*\*\*\*\*

(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.

33. Amend § 2806.30 by:

- a. Revising paragraphs (a)(1) and (a)(2);
- b. Removing paragraph (b); and
- c. Redesignating paragraph (c) as paragraph (b).

The revisions read as follows:

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

(a) Rent schedule. (1) The BLM uses a rent schedule for communication site rights-of-way to calculate the rent for communication site rights-of-way. The schedule is based on nine population strata (the population served), as depicted in the most recent version of the Rationally Metro Area (RMA) Population Ranking, and the type of communication use

or uses for which we normally grant communication site rights-of-way. These uses are listed as part of the definition of “communication use rent schedule,” set out at § 2801.5(b). You may obtain a copy of the current schedule from any BLM state, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Washington, DC 20003. We also post the current communication use rent schedule at <http://www.blm.gov>.

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

\*\*\*\*\*

34. In § 2806.34, revise the second sentence of paragraph (b)(4) to read as follows:

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

\*\*\*\*\*

(4) \*\*\* This paragraph does not apply to facilities exempt from rent under § 2806.14(a)(4) except when the facility also includes ineligible facilities.

35. In § 2806.43, revise the third sentence of paragraph (a) to read as follows:

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

(a) \*\*\* For passive reflectors and local exchange networks not covered by a Forest Service regional schedule, we use the provisions in § 2806.70 to determine rent. \*\*\*

\*\*\*\*\*

36. Amend § 2806.44 by adding introductory text and revising paragraph (a) to read as follows:

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

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

(a) The BLM establishes the rent for each of the uses in the facility that are not covered by the communication use rent schedule using § 2806.70.

\*\*\*\*\*

37. Remove the undesignated centered heading preceding § 2806.50.

38. Redesignate § 2806.50 as § 2806.70.

39. Add an undesignated centered heading and new § 2806.50 to read as follows:

**Solar Energy Rights-of-Way**

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

If you hold a solar energy right-of-way authorization, you must pay an annual rent and fee in accordance with this section and subpart. Your solar energy right-of-way authorization will either be a grant (if located outside a designated leasing area) or a lease (if located inside a designated leasing area). Rents and fees for either type of authorization consist of an acreage rent that must be paid prior to issuance of the authorization and a phased-in MW capacity fee. Both the acreage rent and the phased-in MW capacity fee are charged and calculated consistent with § 2806.11 and prorated

consistent with § 2806.12(a). The MW capacity fee will vary depending on the size and technology of the solar energy development project.

40. Add new § 2806.52 to read as follows:

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

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

(a) Acreage rent. The acreage rent is calculated by multiplying the number of acres (rounded up to the nearest tenth of an acre) within the authorized area times the per-acre county rate in effect at the time the authorization is issued;

(1) Per-acre county rate. The per-acre county rate is 200 percent of the per-acre rent value for each county using the BLM's linear rent schedule (see § 2806.20(c)). The BLM will adjust the per-acre county rates each year based on the average annual change in the IPD–GDP as determined under § 2806.22(a). Adjusted rates are effective each year on January 1. You may obtain a copy of the current per-acre county rates for solar energy development from any BLM state, district, or field office or by writing: U.S.

Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Attention: Renewable Energy Coordination Office, Washington, DC 20003;

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

(3) Acreage rent adjustments. For authorizations outside of designated leasing areas, the BLM will adjust the acreage rent annually to reflect the change in the per-acre county rates as specified in paragraph (a)(1) of this section. The BLM will use the most current

per-acre county rates to calculate the acreage rent for each year of the grant term. If you hold a solar energy lease, acreage rent will be adjusted under § 2806.54(a)(3);

(b) MW capacity fee. The MW capacity fee is calculated by multiplying the approved MW capacity by the MW rate (for the applicable type of technology employed by the project) from the MW Rate Schedule (see paragraph (b)(2) of this section). You must pay the MW capacity fee annually when electricity generation begins or is scheduled to begin in the approved POD, whichever comes first;

(1) MW rate. The MW rate is calculated by multiplying the total hours per year, by the net capacity factor, by the MWh price, by the rate of return. For an explanation of each of these terms, see the definition of MW rate in § 2801.5. The MW rate is phased in as described under paragraph (b)(4) of this section.

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

(3) Periodic adjustments in the MW rate. The BLM will adjust the MW rate every 5 years, beginning in 2020, by recalculating the following two components of the MW rate formula:

(i) The adjusted MWh price is the 5-year average of the annual weighted average wholesale price per MWh for the major ICE trading hubs serving the 11 Western States

of the continental United States for the 5-year period preceding the adjustment, rounded to the nearest five dollar increment; and

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

(4) MW rate phase-in. If you hold a solar energy development grant, the MW rate will be phased in as follows:

(i) There is a 3-year phase-in of the MW rate after generation of electricity starts at the rates of:

(A) 25 percent for the first year. The MW rate for year 1 of the phase-in period is for the first partial calendar year of operations (at 25 percent of the current MW rate);

(B) 50 percent for the second year; and

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

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

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

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

41. Add new § 2806.54 to read as follows:

**§ 2806.54 Rents and fees for solar energy development leases inside designated leasing areas.**

If you hold a solar energy development lease obtained through competitive bidding under subpart 2809 of this part, you must pay an annual rent and fee in accordance with this

section and subpart, in addition to the one-time, upfront bonus bid you paid to obtain the lease. The annual rent and fee includes an acreage rent for the number of acres included within the solar energy lease and an additional MW capacity fee based on the total authorized MW capacity for the approved solar energy project on the public land.

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

(1) Per-acre county rate. See § 2806.52 (a)(1) .

(2) Acreage rent payment. See § 2806.52(a)(2).

(3) Acreage rent adjustments. Once the acreage rent is determined under § 2806.52(a), no further adjustments in the annual acreage rent will be made until year 11 of the lease term and each subsequent 10-year period thereafter. The BLM will use the per-acre county rates in effect when it adjusts the annual acreage rent at those 10-year intervals.

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

(c) MW rate phase-in. If you hold a solar energy development lease, the MW capacity fee will be phased in, starting when electricity begins to be generated. The MW capacity fee for years 1-20 will be calculated using the MW rate in effect when the lease is issued. The MW capacity fee for years 21-30 will be calculated using the MW rate in effect in year 21 of the lease. These rates will be phased-in as follows:

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

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

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

(4) If the lease is renewed, the MW capacity fee is calculated using the MW rates at the beginning of the renewed lease period and will remain at that rate through the initial 10-year period of the renewal term. The MW capacity fee will be adjusted using the MW rate at the beginning of each subsequent 10-year period of the renewed lease term.

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

42. Add new § 2806.56 to read as follows:

**§ 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)).

43. Add an undesignated centered heading and new §§ 2806.60, 2806.62, 2806.64, 2806.66, and 2806.68, to read as follows:

**Wind Energy Rights-of-Way**

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

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

**§ 2806.62 Rents and fees for wind energy development grants.**

You must pay an annual rent and fee for your wind energy development grant as follows:

- (a) Acreage rent. The acreage rent is calculated by multiplying the number of acres (rounded up to the nearest tenth of an acre) within the authorized area times the per-acre county rate in effect at the time the authorization is issued;
- (1) Per-acre county rate. The per-acre county rate is 20 percent of the per acre rent value for each county using the BLM's Per Acre Rent Schedule (see § 2806.20(c)). We will adjust the per-acre county rates each year based on the average annual change in the IPD–GDP as determined under § 2806.22(a). Adjusted rates are effective each year on January 1. You may obtain a copy of the current per-acre county rates for wind energy development from any BLM state, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM,

Attention: Renewable Energy Coordination Office, Washington, DC 20003. The BLM also posts the current per-acre county rate for wind energy development at

<http://www.blm.gov>.

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

(3) Acreage rent adjustments. We will adjust the acreage rent annually to reflect the change in the per-acre county rates as specified in paragraph (a)(1) of this section. The BLM will use the most current per-acre county rates to calculate the acreage rent for each year of the grant term. If you hold a wind energy lease, acreage rent will be adjusted under § 2806.64(a)(3).

(b) MW capacity fee. The MW capacity fee is calculated by multiplying the approved MW capacity by the MW rate. You must pay the MW capacity fee annually when electricity generation begins or is scheduled to begin in the approved POD, whichever comes first.

(1) MW rate. The MW rate is calculated by multiplying the total hours per year by the net capacity factor, by the MWh price, by the rate of return. For an explanation of each of these terms, see the definition of MW rate in § 2801.5. If your right-of-way includes approved stages of development, your rate will be phased in as described under paragraph (b)(4) of this section.

(2) MW rate schedule. You may obtain a copy of the current MW rate schedule for wind energy development from any BLM state, district, or field office or by writing: U.S.

Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Attention: Renewable Energy Coordination Office, Washington, DC 20003.

The BLM also posts the current MW Rate Schedule for wind energy development at <http://www.blm.gov>;

(3) Periodic adjustments in the MW rate. We will adjust the MW rate every 5 years, beginning in 2020, by recalculating the following two components of the MW rate formula:

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

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

(4) MW rate phase-in. If you hold a wind energy development grant, the MW rate will be phased in as follows:

(i) There is a 3-year phase-in of the MW rate after generation of electricity starts at the rates of:

(A) 25 percent for the first year. The MW rate for year 1 of the phase-in period is for the first partial calendar year of operations (at 25 percent of the current MW rate);

(B) 50 percent for the second year; and

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

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

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

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

**§ 2806.64 Rents and fees for wind energy development leases inside designated leasing areas.**

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

(a) Acreage rent. The BLM will calculate and bill you an acreage rent that must be paid prior to issuance of your lease as described in § 2806.62(a).

(1) Per-acre county rate. See § 2806.62(a)(1).

(2) Acreage rent payment. See § 2806.62(a)(2).

(3) Acreage rent adjustments. Once the acreage rent is determined under § 2806.62(a), no further adjustments in the annual acreage rent will be made until year 11 of the lease term and each subsequent 10-year period thereafter. We will use the per-acre county rates in effect at the time the acreage rent is due (at the beginning of each 10-year period) to calculate the annual acreage rent for each of the subsequent 10-year periods.

(b) MW capacity fee. See § 2806.62(b)(1), (2), and (3).

(c) MW rate phase-in. If you hold a wind energy development lease, the MW capacity fee will be phased in, starting when electricity begins to be generated. The MW capacity fee for years 1-20 will be calculated using the MW rate in effect when the lease is issued. The MW capacity fee for years 21-30 will be calculated using the MW rate in effect in year 21 of the lease. These rates will be phased-in as follows:

(1) For years 1 through 10 of the lease, plus any initial partial year, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 50 percent of the wind energy technology MW rate, as described in § 2806.62(b);

(2) For years 11 through 20 of the lease, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 100 percent of the wind energy technology MW rate described in § 2806.62(b);

(3) For years 21 through 30 of the lease, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 100 percent of the wind energy technology MW rate as described in § 2806.62(b).

(4) If the lease is renewed, the MW capacity fee is calculated using the MW rates at the beginning of the renewed lease period and will remain at that rate through the initial 10 year period of the renewal term. The MW capacity fee will continue to adjust at the beginning of each subsequent 10 year period of the renewed lease term to reflect the then currently applicable MW rates.

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

**§ 2806.66 Rent for support facilities authorized under separate grant(s).**

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

**§ 2806.68 Rent for wind energy development testing grant(s).**

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

(b) Grant for wind 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.

44. Add an undesignated centered heading between §§ 2806.68 and 2806.70 to read as follows:

**Other Rights-of-Way**

45. Revise newly redesignated § 2806.70 to read as follows:

**§ 2806.70 How will the BLM determine the rent for a grant or lease when the linear, communication use, solar energy, or wind energy rent schedules do not apply?**

When we determine that the linear, communication use, solar, or wind energy rent schedules do not apply, we may determine your rent through a process based on

comparable commercial practices, appraisals, competitive bids, or other reasonable methods. We will notify you in writing of the rent determination. If you disagree with the rent determination, you may appeal our final determination under § 2801.10.

**Subpart 2807—Grant Administration and Operation**

46. Amend § 2807.11 by:

- a. Revising paragraph (b);
- b. Redesignating paragraphs (d) and (e) as paragraphs (f) and (g); and
- c. Adding new paragraphs (d) and (e).

The revisions and additions read as follows:

**§ 2807.11 When must I contact BLM during operations?**

\*\*\*\*\*

(b) When your use requires a substantial deviation from the grant. You must seek an amendment to your grant under § 2807.20 and obtain our approval before you begin any activity that is a substantial deviation;

\*\*\*\*\*

(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.

\*\*\*\*\*

47. Amend § 2807.17 by redesignating existing paragraph (d) as paragraph (e) and adding new paragraph (d) to read as follows:

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

\*\*\*\*\*

(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.

\*\*\*\*\*

48. Amend § 2807.21 as follows:

- a. Revise the section heading;
- b. Revise paragraph (a);
- c. Redesignate paragraphs (b), (c), (d) and (e) as paragraphs (d), (e), (f) and (g);
- d. Add paragraphs (b), (c), (h), and (i); and
- e. Revise redesignated paragraphs (d) and (f).

The revisions and additions read as follows:

**§ 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. Actions that may require an assignment include, but are not limited to, the following:

- (1) The voluntary 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. In those instances where the grant or lease holder becomes a wholly owned subsidiary of a new third party, but still holds the grant and does business under its original name, it may only need to file new or revised information in conformance with subpart 2803, § 2804.12(b), and § 2807.11 in order to obtain our approval of the change in the grant or lease.

(b) Changes in the holder's name only (see paragraph (i) of this section) do not constitute an assignment.

(c) Changes in the holder's articles of incorporation do not constitute an assignment.

(d) In order to assign a grant, 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. We will not approve any assignment until the assignor makes any outstanding payments that are due (see § 2806.13(g)).

\*\*\*\*\*

(f) We will not recognize an assignment until we approve it in writing. We will approve the assignment if doing so is in the public interest. Except for leases issued under subpart 2809 of this part, we may modify the grant or lease or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment. 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 apply to the new grant or lease holder.

\*\*\*\*\*

(h) Only interests in issued right-of-way grants and leases are assignable. 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.

(i) 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, but not application fees (see subpart 2804 of this part). 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 incorporated, and a copy of the appropriate resolution, order or other documentation showing the name change.

(2) In connection with its processing of a name change only, we may, under § 2805.15, modify the grant or lease or add bonding and other requirements, including additional terms and conditions to the grant. We may only modify a lease issued under subpart 2809 in accordance with § 2805.15(e).

(3) We will recognize a name change in writing.

49. Amend § 2807.22 by:

- a. Revising the section heading and paragraphs (a), (b), and (d);
- b. Redesignating paragraph (f) as paragraph (g); and
- c. Adding new paragraph (f).

The revisions and additions read as follows:

**§ 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.

\*\*\*\*\*

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

\*\*\*\*\*

(f) If you make timely and sufficient application for a renewal of your existing grant or lease, or for a new grant or lease in accordance with this section, the existing grant does not expire until we have issued a decision to approve or deny the application.

\*\*\*\*\*

50. Revise subpart 2809 to read as follows:

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

Sec.

2809.10      General.

2809.11      How will BLM solicit nominations?

2809.12      How will BLM select and prepare parcels?

2809.13      How will BLM conduct competitive offers?

2809.14      What types of bids are acceptable?

2809.15      How will BLM select the successful bidder?

2809.16      When do variable offsets apply?

2809.17      Will BLM ever reject bids or re-conduct a competitive offer?

2809.18      What terms and conditions apply to leases?

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

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

**§ 2809.10 General.**

(a) Lands inside designated leasing areas may be made available for solar and wind energy development through a competitive leasing offer process established by the BLM under this subpart.

(b) The BLM may include lands in a competitive offer on its own initiative.

(c) The BLM may solicit nominations by publishing a call for nominations under § 2809.11(b).

**§ 2809.11 How will BLM solicit nominations?**

(a) Call for nominations. The BLM will publish a notice in a newspaper of general circulation in the area affected by the potential offer of public land for solar and wind energy development; use other notification methods, including the Internet; and publish a notice in the Federal Register to solicit nominations and expressions of interest for parcels of land inside designated leasing areas for solar or wind energy development.

(b) Nomination submission. A nomination must be in writing and must include the following:

(1) Nomination fee. If you nominate a specific parcel of land under paragraph (a) of this section, you must also include a non-refundable nomination fee of \$5 per acre. We will adjust the nomination fee once every 10 years by the average annual change in the IPD-GDP for the preceding 10-year period and round it to the nearest half dollar. This 10 year average will be adjusted at the same time as the Per Acre Rent Schedule for linear rights-of-way under § 2806.22.

(2) Nominator's name and personal or business address. The name of only one citizen, association, partnership, corporation, or municipality may appear as the nominator. All

communications relating to leasing will be sent to that name and address, which constitutes the nominator's name and address of record.

(3) The legal land description and a map of the nominated lands.

(c) We may consider informal expressions of interest suggesting lands to be included in a competitive offer. If you submit a written expression of interest, you must provide a description of the suggested lands and rationale for their inclusion in a competitive offer.

(d) In order to submit a nomination, you must be qualified to hold a grant or lease under § 2803.10.

(e) Nomination withdrawals. A nomination cannot be withdrawn, except by the BLM for cause, in which case all nomination monies will be refunded to the nominator.

#### **§ 2809.12 How will BLM select and prepare parcels?**

(a) The BLM will identify parcels for competitive offer based on nominations and expressions of interest or on its own initiative.

(b) The BLM and other Federal agencies will conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, before offering lands competitively.

#### **§ 2809.13 How will BLM conduct competitive offers?**

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

(b) Notice of competitive offer. We will publish a notice in a newspaper of general circulation in the area affected by the potential right-of-way; use other notification methods, including the Internet; and publish a notice in the Federal Register at least 30 days prior to the competitive offer. The newspaper and Federal Register 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 of potential bidders (see § 2803.10);
  - (6) If a variable offset (see § 2809.16) is offered;
    - (i) The percent of each offset;
    - (ii) How bidders may pre-qualify for each offset; and
    - (iii) The documentation required to pre-qualify for each offset; and
  - (7) The terms and conditions of the lease, including the requirements for the successful bidder to submit a POD for the lands involved in the competitive offer (see § 2809.18) and the lease mitigation requirements.
- (c) We will notify you in writing of our decision to conduct a competitive offer at least 30 days prior to the competitive offer if you nominated lands and paid the nomination fees required by § 2809.11(b)(1).

**§ 2809.14 What types of bids are acceptable?**

(a) Bid submissions. The BLM will accept your bid only if:

- (1) It includes the minimum bid and at least 20 percent of the bonus bid; and
- (2) The BLM determines that you are qualified to hold a grant 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, megawatt capacity fee, and mitigation costs.

(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 BLM select the successful bidder?**

(a) The bidder with the highest total bid, prior to any variable offset, is the successful bidder and will be offered a lease in accordance with § 2805.10.

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

(c) Payment terms. If you are the successful bidder, you must:

- (1) Make payments by personal check, cashier's check, certified check, bank draft, or money order, or by other means deemed acceptable by the BLM, payable to the Department of the Interior—Bureau of Land Management; and
  - (2) By the close of official business hours on the day of the offer or such other time as the BLM may have specified in the offer notices, submit for each parcel:
    - (i) Twenty percent of the bonus bid (before the offsets are applied under paragraph (b) of this section);
    - (ii) The total amount of the minimum bid specified in § 2809.14(b); and
  - (3) Within 15 calendar days after the day of the offer, submit the balance of the bonus bid (after the variable offsets are applied under paragraph (b) of this section) to the BLM office conducting the offer; and
  - (4) Within 15 calendar days after the day of the offer, submit the acreage rent for the first full year of the solar or wind energy development lease as provided in §§ 2806.54(a) or 2806.64(a), respectively. This amount will be applied toward the first 12 months acreage rent, if the successful bidder becomes the lessee.
- (d) The BLM will approve your right-of-way lease if you are the successful bidder and:
- (1) Satisfy the qualifications in § 2803.10;
  - (2) Make the payments required under paragraph (c) of this section; and
  - (3) Do not have any trespass action pending against you for any activity on BLM-administered lands (see § 2808.12) or have any unpaid debts owed to the Federal Government.

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

**§ 2809.16 When do variable offsets apply?**

(a) The successful bidder may be eligible for an offset of up to 20 percent of the bonus bid based on the factors identified in the notice of competitive offer.

(b) The BLM may apply a variable offset to the bonus bid of the successful bidder. The notice of competitive offer will identify each factor of the variable offset, the specific percentage for each factor that would be applied to the bonus bid, and the documentation required to be provided to the BLM prior to the day of the offer to qualify for the offset.

The total variable offset cannot be larger than 20 percent of the bonus bid.

(c) The variable offset may be based on any of the following factors:

- (1) Power purchase agreement;
- (2) Large generator interconnect agreement;
- (3) Preferred solar or wind energy technologies;
- (4) Prior site testing and monitoring inside the designated leasing area;
- (5) Pending applications inside the designated leasing area;
- (6) Submission of nomination fees;
- (7) Timeliness of project development, financing, and economic factors;
- (8) Environmental benefits;
- (9) Holding a solar or wind energy lease on adjacent or mixed land ownership;
- (10) Public benefits; and

(11) Other similar factors.

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

**§ 2809.17 Will BLM ever reject bids or re-conduct a competitive offer?**

(a) The BLM may reject bids regardless of the amount offered. If the BLM rejects your bid under this provision, you will be notified in writing and such notice will include the reason(s) for the rejection and what refunds to which you are entitled. If the BLM rejects a bid, the bidder may appeal that decision under § 2801.10.

(b) We may offer the lease to the next highest qualified bidder if the successful bidder does not execute the lease or is for any reason disqualified from holding the lease.

(c) If we are unable to determine the successful bidder, such as in the case of a tie, we may re-offer the lands competitively (under § 2809.13) to the tied bidders, or to all prospective bidders.

(d) If lands offered under § 2809.13 receive no bids, we may:

(1) Re-offer the lands through the competitive process under § 2809.13; or

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

**§ 2809.18 What terms and conditions apply to leases?**

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

(a) Lease term. The term of your lease includes the initial partial year in which it is issued, plus 30 additional full years. The lease will terminate on December 31 of the final year of the lease term. You may submit an application for renewal under § 2805.14(g).

(b) Rent. You must pay rent as specified in:

(1) Section 2806.54 if your lease is for solar energy development; or

(2) Section 2806.64 if your lease is for wind energy development.

(c) POD. You must submit, within 2 years of the lease issuance date, a POD that:

(1) Is consistent with the development schedule and other requirements in the POD template posted at <http://www.blm.gov>; and

(2) Addresses all pre-development and development activities.

(d) Cost recovery. You must pay the reasonable costs for the BLM or other Federal agencies to review and approve your POD and to monitor your lease. To expedite review of your POD and monitoring of your lease, you may notify BLM in writing that you are waiving paying reasonable costs and are electing to pay the full actual costs incurred by the BLM.

(e) Performance and reclamation bond. (1) For Solar Energy Development, you must provide a bond in the amount of \$10,000 per acre prior to written approval to proceed with ground disturbing activities.

(2) For Wind Energy Development, you must provide a bond in the amount of \$20,000 per authorized turbine prior to written approval to proceed with ground disturbing activities.

(3) The BLM will adjust the solar and wind energy development bond amounts every 10 years by the average annual change in the IPD-GDP for the preceding 10-year period rounded to the nearest \$100. This 10-year average will be adjusted at the same time as the Per Acre Rent Schedule for linear rights-of-way under § 2806.22.

(f) Assignments. You may assign your lease under § 2807.21, and if an assignment is approved, the BLM will not make any changes to the lease terms or conditions, as provided for by § 2807.21(f).

(g) Due diligence of operations. You must start construction within 5 years and begin generation of electricity no later than 7 years from the date of lease issuance, as specified in your approved POD. A request for an extension may be granted for up to 3 years with a show of good cause and approval by the BLM.

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

(a) Applications for solar or wind energy development filed on lands outside of designated leasing areas, which subsequently become designated leasing areas:

(1) Will continue to be processed by the BLM and are not subject to the competitive leasing offer process of this subpart, if such applications are filed prior to the publication of the notice of availability of the draft or proposed land use plan amendment to designate the solar or wind leasing area; or

(2) Will remain in pending status unless withdrawn by the applicant or denied by the BLM, or the subject lands become available for application or leasing under this part, if such applications are filed on or after the date of publication of the notice of availability of the draft or proposed land use plan amendment to designate the solar or wind leasing area. An applicant that submits a bid on a parcel of land for which an application is pending:

(i) May qualify for a variable offset under § 2809.16; and

(ii) Will not receive a refund for any application fees or processing costs incurred if the lands identified in the application are subsequently leased to another entity under § 2809.12.

(b) After the effective date of this regulation, the BLM will not accept a new application for solar or wind energy development inside designated leasing areas (see § 2804.10(c)(2)).

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

#### **PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT**

51. The authority citation for part 2880 continues to read as follows:

**AUTHORITY:** 30 U.S.C. 185 and 189.

#### **Subpart 2884—Applying for MLA Grants or TUPs**

52. Amend § 2884.10 by:

- a. Revising the introductory text in paragraph (b) and revising paragraph (b)(4);
- b. Redesignating paragraphs (c) and (d) as paragraphs (e) and (f); and
- c. Adding new paragraphs (c) and (d).

The revisions and additions read as follows:

#### **§ 2884.10 What should I do before I file my application?**

\*\*\*\*\*

(b) Before filing an application with the BLM, we encourage you to make an appointment for a pre-application meeting with the appropriate personnel in the BLM

state, district, or field office nearest the lands you seek to use. Pre-application meetings are mandatory for applications for any oil and gas pipeline 10 inches or more in diameter under paragraph (c) of this section. During the pre-application meeting the BLM can:

\*\*\*

(4) Provide you information about qualifications for holding grants and TUPs and inform you of your financial obligations, such as processing and monitoring costs and rents. In addition to such costs, you are required to pay the reasonable costs, and may elect to pay the actual costs that are associated with the pre-application requirements identified in paragraph (c) of this section; and

\*\*\*

(c) Prior to submitting an application for any oil and gas pipeline 10 inches or more in diameter, you must:

(1) Schedule and hold an initial pre-application meeting with us to discuss:

- (i) The general project proposal;
- (ii) The status of BLM land use planning for the lands involved;
- (iii) Potential siting issues or concerns;
- (iv) Potential environmental issues or concerns at the landscape scale;
- (v) Potential alternative site locations; and
- (vi) The right-of-way application process;

(2) Schedule and hold, in coordination with the BLM, one additional pre-application meeting with appropriate Federal and State agencies, tribal, and local governments to facilitate coordination of potential environmental and siting issues and concerns. The

BLM and you may agree mutually to schedule and hold additional pre-application meetings; and

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

(d) In addition to all other pre-application, application, and holder requirements specified in this part, we will accept an application for oil and gas pipelines 10 inches or more in diameter only if the:

(1) Proposal avoids areas where development could cause significant impacts to sensitive resources and values that are the basis for special designations or protections;

(2) The pre-application meetings described in paragraphs (c)(1) and (2) of this section have been completed to our satisfaction; and

(3) Application is accompanied by a general description of the proposed project and a schedule for the submittal of a POD conforming to the POD template at

<http://www.blm.gov>.

53. In § 2884.11, revise paragraph (c)(5) to read as follows:

**§ 2884.11 What information must I submit in my application?**

\*\*\*\*\*

(c) \*\*\*

(5) The estimated schedule for constructing, operating, maintaining, and terminating the project (a POD). Your POD must be consistent with the development schedule and other requirements as noted on the POD template for oil and gas pipelines at

<http://www.blm.gov>;

\*\*\*\*\*

54. In § 2884.12, revise paragraphs (a), (b), and (c) to read as follows:

**§ 2884.12 What is the processing fee for a grant or TUP application?**

(a) You must pay a processing fee with the application to cover the costs to the Federal Government of processing your application before the Federal Government incurs them. Subject to applicable laws and regulations, if processing your application will involve Federal agencies other than the BLM, your fee may also include the reasonable costs estimated to be incurred by those Federal agencies. Instead of paying the BLM a fee for the estimated work of other Federal agencies in processing your application, you may pay other Federal agencies directly for the costs estimated to be incurred by them in processing your application. The fees for Processing Categories 1 through 4 are one-time fees and are not refundable. The fees are categorized based on an estimate of the amount of time that the Federal Government will expend to process your application and issue a decision granting or denying the application.

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

**Processing Categories**

<b>Processing category</b>	<b>Federal work hours involved</b>
----------------------------	------------------------------------

<b>Processing category</b>	<b>Federal work hours involved</b>
(1) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs	Estimated Federal work hours are $>1 \leq 8$
(2) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs	Estimated Federal work hours are $>8 \leq 24$
(3) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs	Estimated Federal work hours are $>24 \leq 36$
(4) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs	Estimated Federal work hours are $>36 \leq 50$
(5) Master Agreements.	Varies
(6) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs	Estimated Federal work hours are $>50$

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

\*\*\*\*\*

55. Amend § 2884.16 by redesignating paragraphs (a)(6), (a)(7), and (a)(8) as paragraphs (a)(7), (a)(8), and (a)(9), and adding new paragraph (a)(6). The addition reads as follows:

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

(a) \*\*\*

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

\*\*\*\*\*

56. Amend § 2884.17 by revising paragraph (a) and adding new paragraph (e) to read as follows:

**§ 2884.17 How will BLM process my Processing Category 6 application?**

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

\*\*\*\*\*

(e) We may collect funds to reimburse the Federal Government for reasonable costs for processing applications and other documents under this part relating to the Federal lands.

57. In § 2884.18, revise revising paragraphs (a)(1) and (c) to read as follows:

**§ 2884.18 What if there are two or more competing applications for the same pipeline?**

(a) \*\*\*

(1) 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.

\*\*\*\*\*

(c) If we determine that competition exists, we will describe the procedures for a competitive bid through a bid announcement in a newspaper of general circulation; use other notification methods, including the Internet, in the area affected by the potential

right-of-way; and by publishing a notice in the Federal Register. We may offer lands through a competitive process on our own initiative.

58. Amend § 2884.20 by revising the introductory text of paragraph (a) and revising paragraph (d) to read as follows:

**§ 2884.20 What are the public notification requirements for my application?**

(a) When the BLM receives your application, it will publish a notice in the Federal Register, a newspaper of general circulation in the vicinity of the lands involved, or use other notification methods, including the Internet. If we determine the pipeline(s) will have only minor environmental impacts, we are not required to publish this notice. The notice will, at a minimum, contain:

\*\*\*\*\*

(d) We may hold public hearings or meetings on your application if we determine that there is sufficient interest to warrant the time and expense of such hearings or meetings. We will publish a notice in the Federal Register, in a newspaper of general circulation in the vicinity of the lands involved, or use other notification methods, including the Internet, to announce in advance any public hearings or meetings.

59. Amend § 2884.21 by:

- a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d);
- b. Adding new paragraph (b); and
- c. Revising redesignated paragraph (d)(4).

The revisions and additions read as follows:

**§ 2884.21 How will BLM process my application?**

\*\*\*\*\*

(b) Except as otherwise provided in this paragraph, the BLM will not process your application if you have any trespass action pending for any activity on BLM-administered lands (see § 2888.11) or have any unpaid debts owed to the Federal Government. The only applications the BLM would process to resolve the trespass would be for 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 debts are paid.

\*\*\*\*\*

(d) \*\*\*

(4) Hold public meetings, if sufficient public interest exists to warrant their time and expense. The BLM will publish a notice in the Federal Register, in a newspaper of general circulation in the vicinity of the lands involved, or use other methods, including the Internet, to announce in advance any public hearings or meetings; and

\*\*\*\*\*

60. Amend § 2884.23 by redesignating paragraph (a)(6) as paragraph (a)(7), adding new paragraph (a)(6), and revising newly redesignated paragraph (a)(7) to read as follows:

**§ 2884.23 Under what circumstances may BLM deny my application?**

(a) \*\*\*

(6) The POD required by §§ 2884.10(d)(3) and 2884.11(c)(5) does not meet the development schedule and other requirements as noted on the POD template and the applicant is unable to demonstrate why the POD should be approved; or

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

\*\*\*\*\*

61. Amend § 2884.24 by revising the first sentence of the introductory text to read as follows:

**§ 2884.24 What fees do I owe if BLM denies my application or if I withdraw my application?**

If the BLM denies your application, or you withdraw it, you must pay costs incurred under § 2884.10(b)(4) and the processing fee set forth at § 2884.12(b), unless you have a Processing Category 5 or 6 application.\*\*\*

\*\*\*\*\*

62. Amend § 2885.11 by revising the introductory text of paragraph (a) and revising paragraph (b)(7) to read as follows:

**§ 2885.11 What terms and conditions must I comply with?**

(a) Duration. All grants, except those issued for a term of 3 years or less, will expire on December 31 of the final year of the grant. The term of a grant may not exceed 30 years, with the initial partial year of the grant considered to be the first year of the term. The term of a TUP may not exceed 3 years. The BLM will consider the following factors in establishing a reasonable term:

\*\*\*\*\*

(b) \*\*\*

(7) If we require, obtain or certify that you have obtained a performance and reclamation bond or other acceptable security to 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 or TUP area, including terminating the grant or TUP, and

to secure all obligations imposed by the grant or TUP and applicable laws and regulations. Your bond must cover liability for damages or injuries resulting from releases or discharges of hazardous materials. We may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant or TUP. This bond is in addition to any individual lease, statewide, or nationwide oil and gas bonds you may have. All other provisions noted at § 2805.12(b) of this chapter regarding bond requirements for grants and leases issued under FLPMA also apply to oil and gas pipelines issued under this part;

\*\*\*\*\*

63. Amend § 2885.15 by revising paragraph (b) to read as follows:

**§ 2885.15 How will BLM charge me rent?**

\*\*\*\*\*

(b) There are no reductions or waivers of rent for grants or TUPs, except as provided under § 2885.20(b).

\*\*\*\*\*

64. Amend § 2885.16 by revising paragraph (a) to read as follows:

**§ 2885.16 When do I pay rent?**

(a) You must pay rent for the initial rental period before we issue you a grant or TUP.

We prorate the initial rental amount based on the number of full months left in the calendar year after the effective date of the grant or TUP. If your grant qualifies for annual payments, the initial rent consists of the remaining partial year plus the next full year. If your grant or TUP allows for multi-year payments, your initial rent payment may

be for the full term of the grant or TUP. See § 2885.21 for additional information on payment of rent.

\*\*\*\*\*

65. Amend § 2885.17 by revising the section heading, redesignating paragraph (e) as paragraph (f), and by adding new paragraph (e) to read as follows:

**§ 2885.17 What happens if I do not pay rent or if I pay the rent late?**

\*\*\*\*\*

(e) We will retroactively bill for uncollected or under-collected rent, including late payment and administrative fees, upon discovery if:

- (1) A clerical error is identified;
- (2) An adjustment to rental schedules is not applied; or
- (3) An omission or error in complying with the terms and conditions of the authorized right-of-way is identified.

\*\*\*\*\*

66. In § 2885.19, revise paragraph (b) to read as follows:

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

\*\*\*\*\*

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

67. In § 2885.20, revise paragraph (b) to read as follows:

**§ 2885.20 How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?**

(a) \*\*\*

(b) Phase-in provisions: If, as the result of any revisions made to the Per Acre Rent Schedule under § 2885.19(a)(2), the payment of your new annual rental amount would cause you undue hardship, you may qualify for a 2-year phase-in period if you are a small business entity as that term is defined in Small Business Administration regulations and if it is in the public interest. We will require you to submit information to support your claim. If approved by the BLM State Director, payment of the amount in excess of the previous year's rent may be phased-in by equal increments over a 2-year period. In addition, the BLM will adjust the total calculated rent for year 2 of the phase-in period by the annual index provided by § 2885.19(a)(1).

\*\*\*\*\*

68. Revise § 2885.24 to read as follows:

**§ 2885.24 If I hold a grant or TUP, what monitoring fees must I pay?**

(a) Monitoring fees. Subject to § 2886.11, you must pay a fee to the BLM for any costs the Federal Government incurs in monitoring the construction, operation, maintenance, and termination of the pipeline and protection and rehabilitation of the affected public lands your grant or TUP covers. We update the monitoring fees for Categories 1 through 4 in the schedule each calendar year, based on the previous year's change in the IPD-GDP, as measured second quarter to second quarter. We will round these changes to the nearest dollar. We will update Category 5 monitoring fees as specified in the Master Agreement. We categorize the monitoring fees based on the estimated number of work

hours necessary to monitor your grant or TUP. Monitoring fees for Categories 1 through 4 are one-time fees and are not refundable. These monitoring categories and the estimated range of Federal work hours for each category are:

**Monitoring Categories**

<b>Monitoring category</b>	<b>Federal work hours involved</b>
(1) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours are $>1 \leq 8$
(2) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours are $>8 \leq 24$
(3) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours are $>24 \leq 36$
(4) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours are $>36 \leq 50$
(5) Master Agreements	Varies
(6) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours $>50$ .

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

69. Amend § 2886.12 by:

- a. Revising paragraph (b);
- b. Redesignating paragraph (d) as paragraph (g); and
- c. Adding new paragraphs (d), (e), and (f).

The revisions and additions read as follows:

**§ 2886.12 When must I contact BLM during operations?**

\*\*\*\*\*

(b) When your use requires a substantial deviation from the grant or TUP. You must seek an amendment to your grant or TUP under § 2887.10 and obtain our approval before you begin any activity that is a substantial deviation;

\*\*\*\*\*

(d) Whenever site-specific circumstances or conditions arise that result in the need for changes to an approved right-of-way grant or TUP, 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 TUP. Changes for authorized actions, project materials, or adopted mitigation measures within the existing, approved right-of-way or TUP area must be submitted to the BLM 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 the 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; and

\*\*\*\*\*

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

70. Revise § 2887.11 to read as follows:

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

(a) With the BLM's approval, you may assign, in whole or in part, any right or interest in a grant or TUP. Actions that may require an assignment include, but are not limited to, the following:

(1) The voluntary transfer by the holder (assignor) of any right or interest in the grant or TUP to a third party (assignee); and

(2) Changes in ownership or other related change in control transactions involving the BLM right-of-way grant holder or TUP holder and another business entity (assignee), including corporate mergers or acquisitions. In those instances where the grant or TUP holder becomes a wholly owned subsidiary of a new third party, but still holds the grant or TUP and does business under its original name, it may only need to file new or revised information in conformance with subpart 2883, §§ 2884.11(c) and 2886.12 in order to obtain the BLM's approval of the changes in the grant or TUP.

(b) Changes in the holder's name only (see paragraph (i) of this section) do not constitute an assignment.

(c) Changes in the holder's articles of incorporation do not constitute an assignment.

(d) In order to assign a grant or TUP, the proposed assignee, subject to § 2886.11, must file an application and follow the same procedures and standards as for a new grant or TUP, including paying processing fees (see § 2884.12).

(e) 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 to be bound by the terms and conditions of the grant or TUP that is being assigned and all applicable laws and regulations.

(f) We will not recognize an assignment until we approve it in writing. We will approve the assignment if doing so is in the public interest. The BLM may modify the grant or TUP or add bonding and other requirements, including terms and conditions, to the grant or TUP when approving the assignment. If we approve the assignment, the benefits and liabilities of the grant or TUP apply to the new grant or TUP holder.

(g) The processing time and conditions described at § 2884.21 apply to assignment applications.

(h) Only interests in issued right-of-way grants and TUPs are assignable. Pending right-of-way and TUP 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.

(i) Change in name only of holder. Name only changes are made by individuals, partnerships, corporations, and other right-of-way and TUP holders for a variety of business or legal reasons. 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 or TUP), 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 or TUP, including paying processing fees (see subpart 2884 of this part). 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 filing/acceptance of the change in name by the State or territory in which incorporated, and a copy of the appropriate resolution(s), order(s), or other documentation showing the name change.

(2) In connection with its processing of a name change only, the BLM retains the authority under § 2885.13 to modify the grant or TUP, or add bonding and other requirements, including additional terms and conditions, to the grant or TUP.

(3) The BLM will recognize a name change in writing.

71. In § 2887.12, add new paragraphs (d) and (e) to read as follows:

**§ 2887.12 How do I renew my grant?**

\*\*\*\*\*

(d) If you make timely and sufficient application for a renewal of your existing grant or for a new grant in accordance with this section, the existing grant does not expire until we have issued a decision to approve or deny the application.

(e) If we deny your application, you may appeal the decision under § 2881.10.

Date: September 23, 2014

---

Janice M. Schneider  
Assistant Secretary, Land and Minerals Management  
U.S. Department of the Interior

[FR Doc. 2014-23089 Filed 09/26/2014 at 11:15 am; Publication Date: 09/30/2014]