



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Docket No. BLM-2025-0142; PO #4820000251; Order #02412-014-004-047181.0]

RIN 1004-AF45

Revisions to the Regulations Regarding Intermittent Energy

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department) is amending the BLM rules governing acreage rent rate and capacity fee for solar and wind energy generation on Public Lands to effectuate changes required by the “One Big Beautiful Bill Act” (OBBA) enacted on July 4, 2025.

DATES: The final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The BLM has established a docket for this rulemaking in the *Federal eRulemaking Portal*: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004-AF45” and click the “Search” button. Follow the instructions at this website.

FOR FURTHER INFORMATION CONTACT: Jayme Lopez, Interagency Coordination Liaison, by phone at (520) 235-4581, or by email at energy@blm.gov for information relating to the rule. Please use “RIN 1004-AF45” in the subject line.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Historically, the BLM has set rental rates and capacity fees for solar and wind energy rights-of-way based on a determination of fair market value consistent with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g)) (FLPMA). Congress, through Section 50302 of Pub. L. 119-21, 139 Stat. 71, enacted on July 4, 2025, (“OBBS”) established specific rent and capacity fees for rights-of-way authorizing solar and wind energy generation facilities on public lands. Section 50302’s provisions governing acreage rent rates and capacity fee supersede those in the BLM’s current right-of-way regulations governing solar and wind energy. The Department is therefore revising the BLM right-of-way regulations found at 43 CFR part 2800 to reflect the acreage rent rates and capacity fee required by statute. Specifically, through this final rule the Department is revising §§ 2801.5, 2805.12, 2806.50, 2806.51, 2806.52, 2807.21, and 2809.16.

The Title 43 CFR part 2800 regulations were updated to comprehensively address solar and wind energy generation by a final rule published in the *Federal Register* on December 19, 2016, titled “Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections” (81 FR 92122). That rule built upon existing right-of-way regulations and policies to specifically address solar and wind energy development by establishing a competitive leasing framework, a formula that included an acreage rent along with a capacity fee, and incentives to encourage project siting within designated leasing areas (DLAs). On May 1, 2024, the Department issued a new rule entitled “Rights-of-Way, Leasing, and Operations for Renewable Energy.” These revisions included updates to the methodology for determining acreage rents and capacity fees for solar and wind energy development projects that significantly reduced revenue from these projects permitted on public lands and the establishment of financial incentives in the form of additional

capacity fee reductions for projects utilizing American-made components or constructed using project labor agreements.

Section 50302(b) of the OBBB established a new formula for calculating the acreage rents for solar and wind generation facilities located on public lands. The statutory formula in section 50302(b)(2)(A) is $A \times B \times ((1 + C)^D)$ where A is the per-acre rate, defined as the average of the per-acre pastureland rental rates published in the Cash Rents Survey by the National Agricultural Statistics Service for the State in which the right-of-way is located over the 5 calendar-year period preceding the issuance or renewal of the right-of-way; B is the encumbrance factor, which is 100 percent for a solar energy generation facilities and not less than 10 percent for a wind energy generation facility, as determined by the Secretary; C is the Annual Adjustment Factor, which is set at 3 percent; and D is the year in the term of the right-of-way. Section 50302(b) also requires the Secretary to collect the rent not later than January 1 of each calendar year, consistent with section 504(g) of FLPMA.

Once a solar or wind generation facility is generating electricity, section 50302(c)(2) sets the capacity fee for solar and wind energy to be the greater of the acreage rent and 3.9 percent of the gross proceeds from the sale of electricity produced by the renewable energy project. Section 50302(c)(1) also allows the Secretary to collect the capacity fee annually based on energy produced and sold, rather than directing that it be collected not later than January 1 of each calendar year. Section 50302(c)(3) also allows holders of wind energy rights-of-way the opportunity to apply for a 10 percent reduction in their capacity fee if “not less than 25 percent of the land within the area of the right-of-way is authorized for use, occupancy, or development with respect to an activity other than the generation of wind energy for the entirety of the year in which the capacity fee is collected.” *See* Pub. L. 119-21, section 50302(c)(3)(B), 139 Stat. 71 (2025).

The Department is revising certain provisions in 43 CFR part 2800 to reflect Congress's determination with regard to required acreage rent rate and capacity fee for solar and wind facilities on public lands. Because the rate and fee changes went into effect on July 4, 2025, the date that the OBBB was enacted, and these targeted revisions merely effectuate those changes, the Department is issuing this final rule revising the following provisions in 43 CFR part 2800: the definitions in § 2801.5(b), the rents and fees for solar and wind energy development provisions at § 2806.50, the grant and lease rate adjustments in § 2806.51, the acreage rent formula at § 2806.52(a), and the capacity fee formula at § 2806.52(b); as well as making conforming changes to § 2805.12(e)(2). Prompt issuance of this final rule will avoid any confusion on the part of the regulated community as to what the acreage rent rate and capacity fee will be due during the next billing cycle.

The enactment of section 50302, independently and alone, justifies these revisions to 43 CFR part 2800. The Department has no interest in maintaining regulations in the Code of Federal Regulations that have been superseded by, and are contrary to, a lawfully enacted statute. This final rule simply aligns the BLM's regulations in part 2800 with the specific statutory requirements established by Section 50302 that went into effect on July 4, 2025.

The Department's authority for the rulemaking procedures followed in this action is provided by the Administrative Procedure Act (APA, 5 U.S.C. 551 through 559). In general, the APA requires an agency issuing a rule to provide prior notice and an opportunity for public comment. The APA section 553(b)(B), however, provides an exemption from notice-and-comment requirements "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." *Id.* § 553(b)(B). This action is being issued without prior

notice or opportunity for public comment because the Department finds that the APA “good cause” exemption from notice-and-comment requirements applies here because the statutory direction in Section 50302 involves no agency discretion and issuing the rule will help reduce potential public confusion regarding paying rents and capacity fees for solar and wind energy generation facilities located on public lands.

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. Congress has defined the acreage rent rate and capacity fee that the BLM is required to collect for solar and wind generation facilities on public lands in Section 50302. This final rule simply updates the applicable BLM regulations to reflect these statutory provisions; therefore, this is not a significant rule.

Executive Order 13563 reaffirms the principles of Executive Order 12866, while calling for improvements in the Nation’s regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 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 agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 5 U.S.C. 601 *et seq.*,

generally, when a Federal agency undertakes a notice and comment rulemaking process under the APA, it must prepare a regulatory flexibility analysis that describes the reasons why the action is being considered, a statement of the objectives and legal basis for the final rule, and estimate of the number of small entities the final rule will apply to, a description of reporting and recordkeeping requirements, and an identification of overlapping rules and laws. 5 U.S.C. 603(b). However, the Regulatory Flexibility Act applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). As the Department is not required to publish a notice of proposed rulemaking for this direct final rule, the RFA does not apply.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to, a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. 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 generally approved the existing information-collection requirements contained in 43 CFR part 2800 associated with solar and wind rights-of-way grants or leases under OMB control number 1004-0206 (expiration date: June 30, 2026).

Additionally, the BLM's regulations at 43 CFR part 2800 require the use of Standard Form 299 (SF-299), “Application for Transportation and Utility Systems and Facilities on Federal Lands,” for right-of-way applications and the regulations at 43 CFR part 2800. OMB has approved the requirements associated with SF-299 and has assigned control number 0596-0249. This rule would not result in changes to the Form SF-299.

The total annual burdens under this OMB Control Number are currently estimated as follows: 3,116 annual responses; 47,338, annual burden hours; and \$2,182,302 annual cost burden. The rule removes the annual certification requirement that was in the rescinded § 2806.52(b)(5). The removal of this requirement will result in a reduction of 75 annual responses and 150 annual burden hours.

The resulting new estimated total burdens for OMB Control Number 1004-0206 are provided below.

Title of Collection: Competitive Processes, Terms, and Conditions for Leasing Public Lands for Intermittent Energy Development.

OMB Control Number: 1004-0206.

Form Number: SF-299 (Burden approved by OMB in Request for Common Form under OMB Control No. 0596-0249).

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Private sector (applicants for and holders of wind and solar rights -of-way grants or leases on Federal public lands.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion and every ten years for *Plan of Development ten-year update*.

Number of Respondents: 75.

Annual Responses: 3,041.

Annual Burden Hours: 47,238.

Annual Burden Cost: \$2,182,302.

The complete information collection request that has been submitted to OMB for this rule is available at www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. Written comments and recommendations for the information

collection requirements should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function.

Congressional Review Act

This rule is not a major rule under the Congressional Review Act, 5 U.S.C. 804(2). Specifically, the final rule: (a) will not have an annual effect on the economy of \$100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. The rule merely revises the Federal regulations to remove an obsolete provision that is no longer used. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Authority: This action is issued under Section 50302(c)(2) of Pub. L. 119-21, 139 Stat. 71 (2025) and Title V of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761-1772.

List of Subjects in 43 CFR Part 2800

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

Adam G. Suess

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, for the reasons stated in the preamble, the BLM amends 43 CFR
part 2800 as set forth below:

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

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

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

Subpart 2801 – General information

2. Amend § 2801.5 in paragraph (b) by:

- a. Revising the definition “Capacity fee”; and
- b. Removing the definitions for “Domestic content reduction” and “Megawatt
hour (MWh) rate”.

The revision reads as follows:

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

* * * * *

(b) * * *

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

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Subpart 2805—Terms and Conditions of Grants

3. Amend § 2805.12 by revising paragraph (e)(2) to read as follows:

§ 2805.12 What terms and conditions must I comply with?

* * * * *

(e)***

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

Subpart 2806—Annual Rents and Payments

4. Revise § 2806.50 to read as follows:

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

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

5. Revise § 2806.51 to read as follows:

§ 2806.51 Grant and lease rate adjustments.

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

generation of wind energy for the entirety of the year in which the capacity fee is collected.

6. Amend § 2806.52 by:

- a. Revising paragraphs (a)(1)(i) through (iv) and (b); and
- b. Removing paragraph (c).

The revisions read as follows:

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

* * * * *

(a) ***

(1) ***

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

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

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

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

* * * * *

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

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

Subpart 2807—Grant Administration and Operation

7. Amend § 2807.21 by revising paragraph (e) to read as follows:

§ 2807.21 May I assign or make other changes to my grant or lease?

* * * * *

(e) Your assignment is not recognized until the BLM approves it in writing. We will approve the assignment if doing so is in the public interest. We may modify the grant or lease or add bonding and other requirements, including additional terms and conditions, to the grant or lease when approving the assignment except that we may only modify wind energy leases where modification is warranted under § 2806.51(a). We may decrease rents if the new holder qualifies for an exemption (see § 2806.14) or waiver or reduction (see § 2806.15) and the previous holder did not. Similarly, we may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If we approve the assignment, the benefits and liabilities of the grant or lease apply to the new grant or leaseholder.

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Subpart 2809—Competitive Process for Solar and Wind Energy Development

Applications or Leases

§ 2809.16 [Amended]

8. Amend § 2809.16 by:

- a. Adding the word “and” at the end of paragraph (c)(10);
- b. Removing paragraphs (c)(11) and (12); and
- c. Redesignating paragraph (c)(13) as paragraph (c)(11).

