

**DEPARTMENT OF THE INTERIOR****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, Department of the Interior.**ACTION:** Final rule.

**SUMMARY:** Through this final rule the Bureau of Land Management (BLM) is amending its regulations governing rights-of-way issued under the Federal Land Policy and Management Act (FLPMA) and the Mineral Leasing Act (MLA). The principal purposes of these amendments are to facilitate responsible solar and wind energy development on BLM-managed public lands and to ensure that the American taxpayer receives fair market value for such development. This final rule includes provisions to promote the use of preferred areas for solar and wind energy development, called “designated leasing areas” (DLAs). It builds upon existing regulations and policies to expand BLM’s ability to utilize competitive processes to offer authorizations for development inside or outside of DLAs. It also addresses the appropriate terms and conditions (including payment and bonding requirements) for solar and wind energy development rights-of-way issued under the regulations. Finally, the rule makes technical changes, corrections, and clarifications to the existing rights-of-way regulations. Some of these changes affect all rights-of-way, while some provisions affect only specific rights-of-way, such as those for transmission lines with a capacity of 100 kilovolts (kV) or more.

**DATES:** *Effective Date:* This final rule is effective January 18, 2017.**FOR FURTHER INFORMATION CONTACT:** John Kalish, 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 final rule. For information pertaining to the changes made for any transmission line with a capacity of 100 kV or more you may contact Stephen Fusilier at 202-912-7426. For information on procedural matters or the rulemaking process you may contact Charles Yudson at 202-912-7437. 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:**

- I. Executive Summary
- II. Background
- III. Final Rule as Adopted and Responses to Comments
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**I. Executive Summary**

The BLM initiated this rulemaking in 2011 through publication of an Advance Notice of Proposed Rulemaking (ANPR) seeking public comment on a potential regulatory framework for competitive solar and wind energy rights-of-way. A proposed rule was published in the **Federal Register** on September 30, 2014, summarizing and discussing the comments that the BLM received on the ANPR. The proposed rule set forth a framework for the competitive leasing of solar and wind energy rights-of-way both inside and outside of designated leasing areas. It also proposed codifying existing solar and wind energy policies in 43 CFR part 2800, establishing a new acreage rent for wind energy projects, and updating the methods used to set acreage rents and megawatt (MW) capacity fees for existing and future solar and wind energy projects. In addition to the changes related to solar and wind energy development, the rule also proposed related updates to other provisions of the rights-of-way regulations, including those applicable to transmission lines with a capacity of 100 kV or more and pipelines 10 inches or more in diameter. Based on comments on the proposed rule and consideration of other factors, the BLM prepared this final rule.

**Statutory and Regulatory Authority**

Facilities for the generation, transmission, and distribution of electric energy are authorized under Title V of the FLPMA (43 U.S.C. 1761-1771) and its implementing regulations at 43 CFR part 2800. Section 504(g) requires that the BLM generally receive fair market value for a right-of-way. Under Title V, the BLM can issue easements, leases, licenses, and permits to occupy, use or traverse public lands for particular purposes. The BLM generally refers to all such rights-of-way as “grants.” The final rule continues to refer to solar and wind energy development rights-of-way issued noncompetitively or outside a DLA as “grants,” but designates solar and wind energy development rights-of-way

issued competitively and within a DLA under revised subpart 2809 as “leases,” to which specific requirements and benefits are attached, as explained below.

Rights-of-way for oil and gas pipelines are authorized under Section 28 of the MLA (30 U.S.C. 185), Sections 302, 303, and 310 of FLPMA (43 U.S.C. 1732, 1733, and 1740), and the applicable implementing regulations at 43 CFR part 2880. The BLM processes applications for these categories of rights-of-way in accordance with section 2884.11.

**Policies**

The BLM released a Draft Solar Energy Programmatic Environmental Impact Statement (EIS) on December 17, 2010 and released a Supplement to the Draft EIS on October 28, 2011. The Supplement to the Draft EIS contemplated a process to identify and offer public lands in solar energy zones (SEZs) through a competitive leasing process. The Supplement to the Draft EIS described how the BLM intended to 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 of the Interior (Secretary) signed the Record of Decision (ROD) on October 12, 2012. The Solar Programmatic EIS ROD, or Western Solar Plan, likewise described the BLM’s intent to establish a competitive leasing program within the SEZs.

The Western Solar Plan provides the foundation for a Bureau-initiated competitive process for offering lands for solar energy development within the SEZs. Similar comprehensive or regional land use planning efforts could be initiated by the BLM in the future to designate additional renewable energy development areas, such as for wind development. For example, the recently completed Desert Renewable Energy Conservation Plan (DRECP) identified Development Focus Areas (DFAs) in Southern California that were designed to support wind, solar, and geothermal development. As explained elsewhere in this preamble, in the Western Solar Plan and in the DRECP Record of Decision (ROD), SEZs and DFAs, like all DLAs, represent areas that have been prescreened by the BLM and identified as having high energy generation potential, access to transmission (either existing or proposed), and low potential for conflicts with other resources. The rule supports the establishment of these areas through procedures to inform their identification and establishment.

### Competitive Leasing Process

Existing regulations authorize the BLM to determine whether competition exists among right-of-way applications filed for the same facility or system; however, they do not allow the BLM to offer such lands competitively absent such a finding. The existing regulations allow the BLM to resolve any such competition using competitive bidding procedures. All such grants are issued subject to valid existing rights in accordance with 43 CFR 2805.14.

Building on recommendations and analysis in the Western Solar Plan, this final rule expands the existing regulations to allow the BLM to offer lands competitively on its own initiative, both inside and outside DLAs, even in the absence of identified competition. Within DLAs, the rule will require competitive leasing procedures except in certain circumstances, when applications could be considered outside the competitive process. Outside DLAs, the BLM will have discretion whether to utilize competitive leasing procedures. This rule identifies what constitutes a DLA, and outlines the competitive process for solar and wind energy leasing inside DLAs, including the nomination process for areas inside DLAs, the process for reviewing nominations, the competitive bidding procedures to be deployed, and the rules governing administration of solar or wind energy leases issued through the competitive process.

### Incentives

This rule includes various provisions to incentivize development inside rather than outside of DLAs. For example, the rule establishes a new \$15 per acre application filing fee for right-of-way applications outside of DLAs to discourage speculative applications and encourage development in DLAs. In addition, a winning bidder outside a DLA will be deemed the “preferred applicant” and eligible to apply for a grant, while a winning bidder within a DLA will be offered a lease. A primary reason for this distinction is that the prescreening done by the BLM as part of the identification of DLAs enables it to issue a lease prior to the conclusion of the project-specific reviews (such project-specific reviews would, however, have to be completed prior to the commencement of construction).

Further, this final rule establishes a mechanism whereby bidders inside DLAs may qualify for variable offsets (a form of bidding credit) that will give them a financial advantage in the competitive bidding process. Specifically, a bidder that meets the

qualifications set forth in the Notice of Competitive Offer for a particular offset will have an opportunity to pre-qualify for a reduction to their bid amount, up to 20 percent of the bid. Suppose, for example, a bidder pre-qualified for a 20 percent offset and then won the auction with a high bid of \$100. The bidder would only be obligated to pay the BLM \$80 for the lease. These reductions would be sale-specific and would be based on factors identified in the initial sale notice. The final rule gives the BLM the flexibility to vary the factors that could enable a bidder to obtain a variable offset from one competitive offer to another, but possible factors include having an approved Power Purchase Agreement (PPA) or Interconnect Agreement, or employing a less water-intensive technology. Each of the factors will be identified in the Notice of Competitive Offer, which will also specify the pre-determined reduction (*e.g.*, 5 percent) associated with any individual factor. The total aggregate reduction across all factors cannot exceed 20 percent.

Additional provisions that incentivize development within DLAs include a reduced nomination fee of \$5 per acre, which is electively paid by a potential bidder, compared to \$15 per acre non-elective application filing fee for competitive parcels outside of DLAs; a 10-year phase-in of the MW capacity fee inside a DLA as opposed to a 3-year phase-in of the fee outside of a DLA; and more favorable bonding requirements inside DLAs. Specifically, outside DLAs, bonding must be determined based on reclamation cost estimates, whereas inside DLAs, the final rule requires a standard bond in the amount of \$10,000 per acre for solar energy development and either \$10,000 or \$20,000 per wind energy turbine for wind energy development, depending on the nameplate capacity of the turbine.

Finally, successful competitive processes within DLAs will result in the issuance of a 30-year fixed-term lease, whereas a successful competitive process outside of a DLA will result in a preferred applicant status for the winner. The 30-year fixed term lease issued to the high bidder for a parcel offered competitively within a DLA will increase the certainty for developers and, in turn, make it easier to secure financing or reach terms on other agreements. Specifically, the lease will provide developers with evidence of site control, and they will obtain it much earlier in the review process than they would under existing regulations (notably, before project-specific NEPA reviews have been concluded).

### Rents and Fees

The rule updates the payments currently established by BLM policies to ensure that the BLM obtains fair market value for the use of the public lands. Specifically, it updates and codifies the acreage rent for both solar and wind energy authorizations. The acreage rent will 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 the 50 percent encumbrance value that is used for determining rent for linear rights-of-way on the public lands.

The acreage rent for linear rights-of-way and solar and wind energy rights-of-way will vary by individual counties and is based on agricultural land values determined from data published by the National Agricultural Statistics Service (NASS). The BLM may also determine on a project-specific or regional basis that a different rate should be utilized. The “acreage rent” component captures the value of unimproved rural land encumbered by a project.

In addition to acreage rent, the rule also updates and codifies the MW capacity fee that the BLM already charges under existing policies. As under existing policy, that fee is designed to capture the difference between a particular project area’s unimproved land value and the higher value associated with the area’s solar or wind energy development potential. The BLM uses a MW capacity fee as a proxy for the area’s electrical generation development potential. That fee is calculated using a formula that includes the nameplate capacity of the approved project, a capacity factor or efficiency factor that varies based on the average potential electric generation of different solar and wind technologies, the average wholesale prices of electricity, and a Federal rate of return based on a 20-year Treasury bond. In this final rule, the capacity factors used for calculating the MW capacity fee are 20 percent for solar photovoltaic (PV), 25 percent for concentrated solar power (CSP), 30 percent for CSP with storage capacity of 3 hours or more, and 35 percent for wind. Additionally, the final rule allows the BLM to determine, on a project-specific or regional basis, that a different net capacity factor is more appropriate, such as if a project takes advantage of a new technology (*e.g.*, energy storage) or project design considerations (*e.g.*, solar array layout).

The final rule increases the MW capacity fee currently established by BLM policy from \$4,155 per MW to

\$5,010 per MW for wind energy authorizations, and reduces the MW capacity fee from \$5,256 to \$2,863 per MW for PV solar, from \$6,570 to \$3,578 per MW for concentrated photovoltaic (CPV) or CSP solar, and from \$7,884 to \$4,294 per MW for CSP with storage capacity of 3 hours or more. The rule provides for a three-year phase-in of the MW capacity fee for right-of-way grants outside DLAs (25 percent in year one, 50 percent in year two, and 100 percent for subsequent years) and for a longer, ten-year phase-in for right-of-way leases inside DLAs (50 percent for the first 10 years and 100 percent for subsequent years).

As explained elsewhere in this preamble, both the acreage rent and MW capacity fees adjust periodically based on identified factors, including changes in NASS survey values and wholesale power prices. In addition, based on comments received on the proposed rule, this final rule includes provisions that allow grant or lease holders the option to select fixed, scheduled rate adjustments to the applicable per acre zone rate (or rent) and MW rate over the term of the right-of-way grant or lease. This scheduled rate adjustment method would be used in lieu of the rule's standard rate adjustment method, under which those rates could increase or decrease by irregular amounts depending on changes to NASS survey values or wholesale power prices.

The rule includes requirements to hold preliminary application review meetings after the submission of an application for a solar or wind energy project, including authorizing the BLM to collect cost recovery fees for those meetings. Through this final rule the BLM is also extending the preliminary application review meeting requirement to any transmission line having a capacity of 100 kV or more. This change is appropriate because both solar or wind energy projects and transmission lines with a capacity greater than 100 kV are generally large-scale facilities with greater potential for impacts and resource conflicts. Based on experience with existing solar and wind energy projects, the BLM has found that those preliminary application meetings provide both the applicant and the BLM with an opportunity to identify and discuss resource conflicts early on in the process. In addition, the rule provides for additional cost reimbursement measures, consistent with Sections 304(b) and 504(g) of FLPMA.

#### *Changes to 43 CFR Part 2880*

In addition to the changes to 43 CFR part 2800, this final rule also revises

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 rights-of-way applied for and administered under part 2880. These changes are discussed in more detail in Section II of this preamble. However, a proposal to require preliminary application review meetings for right-of-way applications for pipelines exceeding 10 inches in diameter was dropped from this final rule in response to comments.

## **II. Background**

### *A. Rule Overview*

The BLM published the proposed rule in the **Federal Register** on September 30, 2014 (79 FR 59022) for a 60-day comment period ending on December 1, 2014. In response to public requests for extensions of the public comment period the BLM extended the period for an additional 15 days on November 29, 2014, through December 16, 2014. We received 36 comment letters on the proposed rule. We also received similar feedback through stakeholder engagement meetings held as part of BLM's regular course of business. This final rule addresses the comments received during the comment period and during stakeholder engagement meetings in the section-by-section discussion in section III. of this preamble.

As explained above, the primary purpose of this rule is to facilitate the responsible development of solar and wind energy development on the public lands, with a specific focus on incentivizing development on lands identified as DLAs. To that end, this rule, in an amendment of section 2801.5, defines 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 for solar or wind energy that can be leased competitively for energy development. In this rule, the BLM amends its regulations implementing FLPMA to provide for two competitive processes for solar and wind energy rights-of-way on public lands. One of the processes is for lands inside DLAs. The other process is for lands outside of DLAs.

For lands outside DLAs, the BLM amends section 2804.23 to provide for a competitive bidding process designed specifically for solar or wind energy development. Prior to this final rule, section 2804.23 authorized a competitive process to resolve

competing right-of-way applications for the same facility or system. Under amended section 2804.23, the BLM can now competitively offer lands on its own initiative. The competitive process for solar and wind energy development on lands outside of DLAs is outlined in new section 2804.30.

The competitive process for lands inside DLAs is outlined in revised 43 CFR subpart 2809, which provides for a parcel nomination and competitive offer, instead of an application process.

This rule includes not only these competitive processes, but also a number of amendments to other provisions of the right-of-way regulations found at 43 CFR parts 2800 and 2880. The BLM determined that it is necessary to first articulate the general requirements for rights-of-way in order to set the solar and wind requirements apart.

For example, the final rule has mandatory bonding requirements for solar and wind energy, including a minimum bond amount. The BLM determined that bonding is necessary for all solar and wind energy rights-of-way because of the intensity and duration of the impacts of such authorizations. For other right-of-way authorizations, the BLM will continue to require bonding at its discretion under this final rule.

Other amendments to the regulations include changes in right-of-way application submission and processing requirements, rents and fees, and alternative requirement requests. In addition, this final rule makes several technical corrections as explained in the section-by-section analysis below.

### *B. Statutory and Regulatory Background*

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) and 1732(a)). 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 on the public lands for electric generation systems, including solar and wind energy generation systems. FLPMA also mandates that "the United States receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute" (43 U.S.C. 1701(a)(9) and 1764(g)). Section 28 of the MLA (30 U.S.C. 185) and FLPMA provide 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. 1732, 1733, and 1740) and the MLA (30 U.S.C. 185 and 189).

The Energy Policy Act of 2005 (codified at 42 U.S.C. 15801 *et seq.*) (EPAAct) includes provisions authorizing and encouraging the Federal Government to develop energy producing facilities. Title II of the EPAAct 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 MWs of electricity by 2015. See Section 211, Public Law 109–58, 119 Stat. 660 (2005).

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

While the BLM has already met the goal established by Congress by approving over 12,000 MWs of renewable energy by the end of 2012, the development of renewable energy resources on the public lands remains a national priority. To advance that goal, President Obama included in the administration's Climate Action Plan to reduce carbon pollution, released on June 25, 2013, a new goal for the Department to approve at least 20,000 MWs of new renewable energy capacity on federal lands by 2020. As of the end of fiscal year 2015, the BLM has reviewed and approved 60 projects capable of generating over 15,000 MWs of power.

The BLM has issued several instruction memoranda (IMs) that identify policies and procedures related to processing solar and wind energy right-of-way applications. The BLM is

incorporating some 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 by 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; and

6. IM 2016–122, *Policy Guidance for Federal Land Policy and Management Act Right-of-Way Rent Exemptions for Electric or Telephone Facilities Financed or Eligible for Financing under the Rural Electrification Act of 1936, as amended (IM 2016–122)*. This IM provides guidance for processing requests for FLPMA right-of-way rent exemptions for electric and telephone facilities financed or eligible for financing by the United States Department of Agriculture, Rural Utilities Service (RUS) under the Rural Electrification Act of 1936, as amended (Rural Electrification Act), 7 U.S.C. 901 *et seq.* In particular, this IM makes clear that wind and solar entities that qualify under the Rural Electrification Act pay the MW capacity fees but not acreage rent.

In addition, in 2005 and 2012 the BLM issued landscape-level land use plan amendment decisions supported by programmatic EISs to facilitate wind and solar energy development. These land use plan amendments guide future BLM management actions by identifying desired outcomes and allowable uses on public lands.

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 (Wind Programmatic EIS) (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>). Following the publication of the Wind Programmatic EIS, the BLM issued the ROD for Implementation of a Wind Energy Development Program and Associated Land Use Plan Amendments (Wind Programmatic EIS ROD) (71 FR 1768), which amended 48 BLM land use plans. The Wind Programmatic EIS ROD did not identify specific wind energy development leasing areas, but rather identified areas that have potential for the development of wind energy production facilities, along with areas excluded from consideration for wind energy facility development because of other resource values that are incompatible with that use.

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). The Solar Programmatic EIS 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 Department and the BLM issued the Western Solar Plan, which amended 89 BLM land use plans to identify 17 solar energy zones (SEZs) and identify mandatory design features applicable to utility-scale solar development on BLM managed lands. The Western Solar Plan also described the BLM's intent to use a competitive offer process to facilitate solar energy development projects in SEZs. SEZs, including those identified in the Western Solar plan, will be considered DLAs under this final rule.

This final rule is one of the steps being taken by the Department and the BLM to promote renewable energy development on the public lands. It implements one of the Western Solar Plan's key recommendations, namely that the BLM institute a process whereby it can competitively offer lands within DLAs. In addition to addressing recommendations in the Western Solar Plan, the final rule also implements suggestions for improving the renewable energy program made by the Department of the Interior's Office of

Inspector General for the Department, initially in a draft report and carried over to the final report (Report No. CR–EV–BLM–0004–2010), and by the Government Accountability Office (GAO) (Audit No. 361373), both of which address the use of competitive leasing for solar and wind development authorizations. The Inspector General (OIG) 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 OIG report discusses only wind energy projects, as the solar energy program was not at a stage where it had been fully implemented. However, based on experience gained from its authorization of solar projects, the BLM believes that recommendations made for the wind energy program would also benefit the solar energy program. Other OIG recommendations pertained to the amounts and collection procedures for bonds for wind energy projects. These recommendations included:

1. Requiring a bond for all wind energy 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 from one entity to another, 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 energy rights-of-way.

The BLM concurred with all of the OIG’s recommendations. The last recommendation is one of the principal reasons for developing this rule. The other recommendations form the basis for other changes being made as part of the BLM’s operating procedures that are also addressed through this rulemaking.

Through this rulemaking, the BLM amends regulations in 43 CFR parts 2800 and 2880, and in particular:

1. Section 2804.12, to establish preliminary application review requirements for solar and wind energy development, and for development of any transmission line with a capacity of 100 kV or more;
2. Section 2804.25, to establish application processing and evaluation requirements for solar and wind energy development;
3. Section 2804.30, to establish a competitive process for public lands outside of DLAs for solar and wind energy development;
4. Section 2804.31, to establish a two-step process for solar or wind energy testing and conversion of testing areas to DLAs;
5. Section 2804.35, to establish screening criteria to prioritize applications for solar or wind energy development;
6. Section 2804.40, to establish a requirement to propose alternative requirements with a showing of good cause;

7. Section 2805.11(b), to establish a term for granting rights-of-way for solar or wind energy development;

8. Section 2805.12(c), to establish terms and conditions for a solar or wind energy development grant or lease;

9. Section 2805.20, to provide more detail on bonding requirements;

10. Sections 2806.50, 2806.52, 2806.54, 2806.56, and 2806.58, to provide information on rents for solar energy development rights-of-way;

11. Sections 2806.60, 2806.62, 2806.64, 2806.66, and 2806.68, to provide information on rents for wind energy development rights-of-way;

12. Subpart 2809, to establish a competitive process for leasing public lands inside DLAs for solar and wind energy development; and

13. Provisions in 43 CFR part 2800 pertaining to transmission lines with a capacity of 100 kV or more.

In addition to these amendments, this rule also makes several technical changes, corrections, and clarifications to the regulations at 43 CFR parts 2800 and 2880. The following table provides a summary of the principal changes made in this final rulemaking. The table shows: A description and CFR reference to the existing rule, a description of the changes in the proposed rule, and a description of the changes made in this final rule. The BLM made minor revisions throughout the final rule to improve its readability, which are not noted in this table but are discussed in the section- by- section analysis of this preamble.

TABLE 1—ABBREVIATED DESCRIPTIONS OF THE MAJOR CHANGES MADE TO 43 CFR PARTS 2800 AND 2880 BY THIS RULE

43 CFR reference and description	Changes between proposed rule and existing regulations	Changes between final rule and proposed rule	Additional comments
2801.5(b)—Acronyms and terms.	Adds definitions for 10 items and revises definitions for 3 items, mostly pertaining to solar and wind energy development.	This final rule adopts the definitions in the proposed rule, except that under the final rule the definitions allow the BLM to determine a more appropriate Net Capacity Factor for rights-of-way with storage on a case-by-case basis. No other substantive changes were made from the proposed to the final rule.	Changes made in this section were based on comments received from the public to account for the application filing fee, energy storage, and MW rate.
2801.6—Scope .....	Clarifies that the regulations in this part apply to all systems and facilities identified under section 2801.9(a).	No changes were made from the proposed to the final rule for this section.	
2801.9—When do I need a grant?.	Revises language in paragraph (a)(7) to include solar and wind development facilities. Adds paragraph (d) that references solar and wind energy projects.	The testing provisions at new paragraphs (d)(1) and (2) are revised to include both solar and wind facilities, as opposed to just wind.	Changes made in this section were based on comments received from the public requesting that the testing provisions account for solar facilities as well as wind facilities.
2802.11—Designation of right-of-way corridors and leasing areas.	Adds a process for designating leasing areas for solar and wind energy projects.	No changes were made from the proposed to the final rule.	

TABLE 1—ABBREVIATED DESCRIPTIONS OF THE MAJOR CHANGES MADE TO 43 CFR PARTS 2800 AND 2880 BY THIS RULE—Continued

43 CFR reference and description	Changes between proposed rule and existing regulations	Changes between final rule and proposed rule	Additional comments
2804.10—Actions to be taken before filing a right-of-way application.	Discusses pre-application requirements and specifically addresses solar and wind filing requirements.	Removes all discussion or requirements for pre-application meetings. Now the only change from the existing regulation is to include designated leasing areas in paragraph (a)(2).	Requirements of this section are also applicable to transmission lines with a capacity of 100 kV or more. Based on comments received, the final rule removes the provision in the proposed rule that would have applied certain application requirements to pipelines greater than 10 inches in diameter.
2804.12—Right-of-way application requirements.	Discusses additional filing fees required for solar and wind energy applications.	This section has been retitled to improve clarity. This section also removes requirements for pre-application meetings and substitutes preliminary application review meetings that will occur after rather than before an application is filed. This section is also revised to clarify how the BLM will use the IPD–GDP to update fees.	Changes made in this section were based on comments received from the public. The paragraphs formerly located in section 2804.10(b) and (c) are now found in section 2804.12(b) and (c).
2804.14—Processing fees for grant applications.	Gives the BLM discretion to collect the estimated reasonable costs incurred by other Federal agencies.	No changes were made from the proposed to the final rule for this section.	
2804.18 and 2804.19—Master agreements and major projects.	Adds information on cost reimbursement requirements for work performed by other Federal agencies.	No changes were made from the proposed to the final rule.	
2804.20—Determining reasonable costs for work on major (Category 6) rights-of-ways.	Section title revised for clarity. Adds discussions on right-of-way work performed by other Federal agencies and pre-application requirements for major rights-of-way.	Any reference to “pre-application” requirements was removed to be consistent with other changes made to this final rule to reference preliminary application meetings.	Changes made in this section were based on comments received from the public in regards to collecting cost recovery with the submission of an application.
2804.23—Competitive process for applications.	Adds provisions for competition for solar and wind energy rights-of-way, both inside and outside of designated leasing areas.	Minor changes were made from the proposed to the final rule. The latter clarifies that the BLM will not competitively offer lands where a plan of development (POD) has been accepted and cost recovery established. The requirement to publish in a newspaper is now optional instead of required.	Changes made in this section were based on comments received from the public requesting that the BLM provide assurance that it will not competitively offer lands if a developer has committed considerable time and resources to a project, as evidenced by the existence of a complete POD and executed cost recovery agreement.
2804.24—Use of Standard Form 299 for submitting a right-of-way application.	Updates the circumstances when an application is not required to account for competitive offers under both section 2804.23(c) and subpart 2809.	No changes were made from the proposed to the final rule for this section.	
2804.25—BLM actions in processing a right-of-way application.	Describes POD requirements and adds additional other requirements for solar and wind energy applications. Covers instances where a right-of-way is authorized to resolve a trespass.	Changes were made from the proposed to the final rule to reflect the shift from “pre-application meetings” to “preliminary application review meetings” as described in section 2804.12. The requirement to publish in a newspaper is now optional instead of required.	Changes were made in the final rule for clarity, especially a description of what constitutes “unpaid debts.” Other changes were made to accommodate new requirements for solar and wind rights-of-way and to clarify when the time clock begins for a due diligence request.
2804.26—Circumstances when the BLM may deny your application.	Adds additional situations where the BLM may deny your application, including specific examples for solar and wind energy applications.	Adds language to correspond to the due diligence requirements found in sections 2804.12 and 2804.25. Additional language added to provide consideration when the BLM may deny an application when circumstances are outside of an applicant’s control.	This change was made to be consistent with other changes in this final rule.
2804.27—What fees are owed if an application is not completed?.	Revises this section to include any pre-application costs that must be paid if an application is withdrawn or rejected.	Removes the term pre-application costs and substitutes preliminary application review costs.	This change was made to be consistent with other changes in this final rule with respect to the pre-application meeting identified in the proposed rule.

TABLE 1—ABBREVIATED DESCRIPTIONS OF THE MAJOR CHANGES MADE TO 43 CFR PARTS 2800 AND 2880 BY THIS RULE—Continued

43 CFR reference and description	Changes between proposed rule and existing regulations	Changes between final rule and proposed rule	Additional comments
2804.30—Description of the competitive process for solar or wind energy development.	Adds section 2804.30, which describes the competitive process for solar or wind energy development outside of DLAs.	Several minor changes were made from the proposed to the final rule, including removing a reference to mitigation costs, a statement that filing fees will be refunded to unsuccessful bidders, and that a successful bidder will have site control over applications from other developers (by virtue of being identified as the preferred applicant following completion of the sale process). Additionally, the requirement to publish in a newspaper is now optional instead of required.	The final rule changes were made principally for clarification. The change in notification requirements is consistent with other changes in this final rule.
2804.31—Site testing for solar and wind energy.	No section 2804.31 in proposed rule ...	Adds section 2804.31. This new section describes how the BLM will inform the public that site-testing applications will be accepted for lands within a DLA.	This new section is a result of public comments on the proposed rule requesting clarification on site testing procedures. This new section does not make any changes to existing policies or procedures.
2804.35—Prioritizing solar and wind energy applications.	Adds section 2804.35 which describes a process for prioritizing solar and wind energy applications.	The rule clarifies that the BLM will generally prioritize the processing of solar and wind energy leases issued under subpart 2809 over applications for solar and wind energy grants issued under subpart 2804. Other minor revisions were made in response to comments and discussed further in the section-by-section analysis.	The changes were made to clarify how the BLM will prioritize leases and applications.
2804.40—Alternative requirements.	No section 2804.40 in proposed rule ...	Adds a provision that allows an applicant to submit an alternate requirement if it is believed that the original requirements cannot be met.	This section was added in response to comments about the BLM need for a process for applicants to demonstrate, based on a showing of good cause, the reasons for its failure to meet the rule requirements and demonstrate why alternative requirements should be put in place in their stead.
2805.10—Approving or denying a grant.	Includes right-of-way leases in addition to grants, and adds specific items to be included within a solar or wind energy grant or lease.	No changes were made from the proposed to the final rule.	
2805.11—What does a grant contain?	Adds specific terms for solar and wind energy grants and leases.	Removed specific references to “wind” so that section would apply to project testing for either solar or wind.	This change was made to be consistent with other changes in this final rule.
2805.12—Terms and conditions in a right-of-way authorization.	Revises this section in its entirety and adds specific terms and conditions for solar and wind energy grants and leases.	Adds new section 2805.12(e) stating that good cause must be shown for extension of time requests. This section now includes solar in addition to wind energy development processes. Other revisions in this section are discussed in the section-by-section analysis.	Changes made in this section were based on comments received from the public, concerning a holder’s inability to meet BLM requirements in some circumstances.
2805.14—Rights conveyed by a right-of-way grant.	Adds section 2805.14(g) allowing for renewal applications for wind projects and section 2805.14(h) allowing renewal for site testing grants.	Removed specific references to “wind” so that section would apply to project testing for either solar or wind.	This change was made to be consistent with other changes in this final rule.
2805.15—Rights retained by the United States.	Adds a provision requiring common use of your right-of-way for compatible uses.	No changes were made from the proposed to the final rule.	
2805.16—Payment of monitoring fees.	Adds a provision to allow the BLM to collect monitoring fees for expenses incurred by other Federal agencies.	Adds the word “inspecting” in addition to the existing word “monitoring.”.	This change was made to be consistent with other changes in this final rule.

TABLE 1—ABBREVIATED DESCRIPTIONS OF THE MAJOR CHANGES MADE TO 43 CFR PARTS 2800 AND 2880 BY THIS RULE—Continued

43 CFR reference and description	Changes between proposed rule and existing regulations	Changes between final rule and proposed rule	Additional comments
2805.20—Bonding requirements.	Adds new section 2805.20 describing bonding requirements.	The final rule adds a requirement to have periodic reviews of project bonds for adequacy. Also, the bond amounts for wind turbines are changed to be based on the nameplate capacity. The final rule also explains that the BLM may consider factors in addition to the reclamation cost estimate (RCE), such as the salvage value of project components, when determining bond amounts.	Changes made in this section were based on comments received from the public.
2806.12—Payment of rents.	Adds provisions for the payment of rents for non-linear rights-of-way, including solar and wind grants and leases.	No changes were made from the proposed to the final rule for this section.	
2806.13—Late payment of rents.	Adds penalties for non-payment of rents and removes the \$500 limit for late payment fees.	No changes were made from the proposed to the final rule.	
2806.20—Rents for linear right-of-way grants.	Describes where you may obtain a copy of the current rent schedule.	No changes were made from the proposed to the final rule.	
2806.22—Changes in the Per Acre Rent Schedule.	Corrects a reference to the IPD—GDP	No changes were made from the proposed to the final rule.	
2806.24—Making payment for a linear grant.	Requires making a payment for the initial partial year, along with the first year's rent. Also, provides for multiple year payments.	No changes were made from the proposed to the final rule.	
2806.30—Communication site rents.	The communication site rent schedule is removed. Several other minor changes made for clarification.	No changes were made from the proposed to the final rule.	
2806.34—Calculation of rent for a multiple-use communication facility.	Corrects an existing citation to read section 2806.14(a)(4).	No changes were made from the proposed to the final rule.	
2806.43—Calculation of rents for passive reflectors and local exchange networks.	Changes a former reference to new section 2806.70.	No changes were made from the proposed to the final rule.	
2806.44—Calculation of rents for a facility owners that authorizes communication uses.	Changes a former reference to new section 2806.70.	No changes were made from the proposed to the final rule.	
2806.50—Rents and fees for solar energy rights-of-way.	Existing section 2806.50 (provisions for determining rents where the linear right-of-way schedule or the communication rent schedule do not apply) is redesignated as section 2806.70. New section 2806.50 introduces rents and fees for solar energy rights-of-way.	No substantive changes were made to the final rule.	
2806.51—Scheduled Rate Adjustment.	Not in the proposed rule; added to the final rule in response to comments received.	This section gives solar project proponents the option of selecting scheduled rate adjustments to the per acre zone rate and MW rate for an individual grant or lease, instead of following the process in the rule for periodic adjustments in response to changes in NASS values and wholesale market prices. Parallel revisions were made to section 2806.52 for grants and section 2806.54 for leases.	These changes were made in response to comments received from the public and were designed to provide project proponents with the option to choose greater payment certainty over the life of a right-of-way grant or lease.



TABLE 1—ABBREVIATED DESCRIPTIONS OF THE MAJOR CHANGES MADE TO 43 CFR PARTS 2800 AND 2880 BY THIS RULE—Continued

43 CFR reference and description	Changes between proposed rule and existing regulations	Changes between final rule and proposed rule	Additional comments
2806.52 through 2806.58 Provide data for rents and fees for solar energy projects.	Sections 2806.50, 2806.52, 2806.54, 2806.56, and 2806.58 describe rents and fees for solar energy authorizations.	The rule now allows for solar energy site testing. The calculation of the acreage rent has been expanded to explain the process more thoroughly. Acreage rent reductions are now adjusted to show greater rent reductions in certain States for solar energy rights-of-way.	The methodology of determining rents and fees for wind is the same as solar, except where noted in the preamble. Changes made in this section were based on comments received from the public and to be consistent with other changes in this final rule.
2806.60 through 2806.68 Provide data for rents and fees for wind energy projects.	Sections 2806.60, 2806.62, 2806.64, 2806.66 and 2806.68 describe rents and fees for wind energy authorizations.	The changes to these sections parallel the changes in sections 2806.50 through 2806.58.	Changes made in this section were made to be consistent with other changes in this final rule.
2806.61—Scheduled Rate Adjustment.	Not in the proposed rule; added to the final rule in response to comments received.	Similar to the provisions of section 2806.51. This section gives wind project proponents the option of selecting scheduled rate adjustments to the per acre zone rate and MW rate for an individual grant or lease, instead of following the process in the rule for periodic adjustments in response to changes in NASS values and wholesale market prices. Parallel revisions were made to section 2806.62 for grants and section 2806.64 for leases.	These changes were made in response to comments received from the public and were designed to provide project proponents with an option to choose greater payment certainty over the life of a right-of-way grant or lease.
2806.70—Rent determinations for other rights-of-way.	Adds redesignated section 2806.70, which contains the text formerly found at section 2806.50, with minor modifications.	No changes were made from the proposed to the final rule.	This section is applicable to all rights-of-way that are not subject to rent schedules.
2807.11—Contacting the BLM during operations.	Specifies requirements when a change in a right-of-way grant is warranted.	No changes were made from the proposed to the final rule.	
2807.17—Grant suspensions or terminations.	This provision contains the regulation formerly located at section 2809.10.	No changes were made from the proposed to the final rule.	
2807.21—Assigning a grant or lease.	Revises the title to include leases and clarifies when an assignment is or is not required.	Adds two events that may require an assignment. Clarifies that changing only a holder's name does not constitute an assignment and explains how the BLM will process a change only to a holder's name for a grant or lease. It also clarifies that ownership changes within the same corporate family do not constitute an assignment.	Changes made in this section were based on comments received from the public requesting clarity on assignments and name changes
2807.22—Renewing a grant.	Revises the title to include leases and clarifies that if you apply for a renewal before it expires, your grant will not expire until a decision has been made on your renewal request.	No changes were made from the proposed to the final rule.	
Subpart 2809—Grants for Federal agencies.	Existing language in this subpart redesignated as new paragraph (d) of section 2807.17. The title is changed to reflect that it now pertains to competitive leasing for solar or wind energy rights-of-way. This subpart is divided into several added sections as described below.	No changes were made from the proposed to the final rule.	
2809.10—Competitive process for leasing public lands for solar and wind energy projects.	Section 2809.10 provides for solar and wind energy leasing inside designated leasing areas.	Clarifies that leases under this section generally have processing priority over grant applications to the extent they require the same BLM resources. No other changes were made from the proposed to the final rule.	Changes made in this section were made to be consistent with other changes in this final rule.
2809.11—Solicitation of nominations.	Section 2809.11 describes how the BLM will solicit nominations for solar or wind energy development.	The requirement to publish in a newspaper is now optional instead of required.	This change is consistent with other notification requirements in the final rule.

TABLE 1—ABBREVIATED DESCRIPTIONS OF THE MAJOR CHANGES MADE TO 43 CFR PARTS 2800 AND 2880 BY THIS RULE—Continued

43 CFR reference and description	Changes between proposed rule and existing regulations	Changes between final rule and proposed rule	Additional comments
2809.12—Parcel selection.	Section 2809.12 describes how the BLM will select and prepare parcels.	No changes were made from the proposed to the final rule.	
2809.13—Competitive offers for solar and wind energy development.	Section 2809.13 describes how the BLM will conduct a competitive offer for solar or wind energy development.	A reference to lease mitigation requirements is added. The requirement to publish in a newspaper is now optional instead of required.	The reference to mitigation was added in response to comments received from the public. The notification change is consistent with other notification requirements in the final rule.
2809.14—Acceptable bids.	Section 2809.14 describes the types of bids that the BLM will accept.	The words “and mitigation costs” were removed to be consistent with section 2804.30.	Changes made in this section were made to be consistent with other changes in this final rule.
2809.15—How will BLM select the successful bidder?	Section 2809.15 describes how the BLM will select a successful bidder.	No changes were made from the proposed to the final rule.	
2809.16—Variable offsets.	Section 2809.16 identifies when variable offsets will be applied.	Added a new offset factor for preparing draft biological strategies and plans.	Changes made in this section were based on comments received from the public on variable offset factors.
2809.17—Rejection of bids.	Section 2809.17 describes conditions when the BLM may reject bids or re-conduct a competitive offer.	No changes were made from the proposed to the final rule.	
2809.18—Lease terms and conditions.	Section 2809.18 identifies terms and conditions that will apply to leases.	Paragraph (e)(2) of this section is changed so bond amounts for wind turbines reflect their nameplate capacity. Paragraph (e)(3) is added to this section to account for testing.	These changes are consistent with changes to section 2805.20.
2809.19—Applications made inside designated leasing areas.	Section 2809.19 describes situations when an application may be accepted inside a DLA.	This section is revised to clarify how the BLM will handle applications submitted inside DLAs.	The changes made in the final rule were made in response to comments and are intended to clarify the final rule.
2884.10—What needs to be done before filing an application for an oil or gas pipeline right-of-way?	Adds a provision to this section that describes several additional steps, including pre-application meetings, to be taken if an application is for a pipeline 10 inches or more in diameter.	The reference to pre-application meetings and additional requirements for pipelines greater than 10 inches were removed, resulting in no changes being made from the existing regulation.	See the discussion in section 2804.10 of this preamble for additional information on changes made in response to comment.
2884.11—Information submitted with application.	Adds provision to be consistent with POD template development schedule and other requirements.	No changes were made from the proposed to the final rule.	
2884.12—Processing fees for an application or permit.	Adds information on cost reimbursement requirements for work performed by other Federal agencies.	No changes were made from the proposed to the final rule.	
2884.16—Master Agreements.	Adds information on cost reimbursement requirements for work performed by other Federal agencies.	No changes were made from the proposed to the final rule.	
2884.17—Processing Category 6 right-of-way applications.	Adds discussions on right-of-way costs for work performed by other Federal agencies to this section.	No changes were made from the proposed to the final rule.	
2884.18—Competing applications for the same pipeline.	Adds discussions on right-of-way costs for work performed by other Federal agencies to this section.	The requirement to publish in a newspaper is now optional instead of required.	This change is consistent with other notification requirements of this final rule.
2884.20—Public notification requirements for an application.	Adds a provision to this section that we may put a notice on the Internet or use other forms of notification as deemed appropriate.	The requirements to publish in a newspaper are now optional instead of required.	This change is consistent with other notification requirements of this final rule.
2884.21—Application processing by the BLM.	The BLM will not process your application if you are in trespass. Several other minor changes were made to be consistent with other changes made in these regulations.	Changes are made to section 2884.21 consistent with those made to section 2807.21.	Changes made in this section were made to be consistent with other changes in this final rule.
2884.22—Additional information requirements.	No change was proposed for this section.	This section was revised by changing the reference found in paragraph (a) from section 2804.25(b) to section 2804.25(c).	This change was not proposed, but is made to be consistent with other changes in this final rule. No other changes were made to this section.

TABLE 1—ABBREVIATED DESCRIPTIONS OF THE MAJOR CHANGES MADE TO 43 CFR PARTS 2800 AND 2880 BY THIS RULE—Continued

43 CFR reference and description	Changes between proposed rule and existing regulations	Changes between final rule and proposed rule	Additional comments
2884.23—When can my application be denied?.	To be consistent with section 2804.27, section 2884.23 was changed to state that the BLM may deny an application if the required POD fails to meet the development schedule and other requirements for oil and gas pipelines.	No changes were made from the proposed to the final rule.	
2884.24—Fees owed if application is withdrawn or denied.	Changes made to be consistent with section 2804.27, would require an applicant to pay any pre-application costs submitted under section 2884.10(b)(4).	Since pre-application meetings are no longer required in this final rule and additional requirements for pipelines greater than 10 inches were removed, the final rule does not make any changes to this existing provision.	The revisions to this section suggested by the proposed rule are not included in the final rule based on comments received from the public on BLM's criteria for large-scale pipeline projects.
2884.30—Showing of good cause.	There was no section 2884.30 in proposed rule.	This section was added to be consistent with section 2804.40.	This section was added to be consistent with other changes in this final rule.
2885.11—Terms and conditions.	This section makes reference to section 2805.12(b) (bond requirements for FLPMA authorizations) and makes those bonding requirements applicable to MLA rights-of-way. Also, the regulation will be clarified by providing guidance on terms of MLA grants.	No changes were made from the proposed to the final rule.	
2885.15—Rental charges.	Clarifies that there is no reduction in rents for grants or TUPs, except as provided in section 2885.20(b).	No changes were made from the proposed to the final rule.	
2885.16—When is rent paid?.	Requires making a payment for the initial partial year, along with the first years rent. Also, provides for multiple year payments.	No changes were made from the proposed to the final rule.	
2885.17—Consequences for not paying or paying rent late.	New paragraph (e) explains the circumstances under which the BLM would retroactively collect rents or fees.	No changes were made from the proposed to the final rule.	
2885.19—Rents for linear right-of-way grants.	Provides information about where you may obtain a copy of the current rental schedule.	No changes were made from the proposed to the final rule.	
2885.20—Per Acre Rent Schedule calculations.	Would remove an obsolete provision (existing paragraph (b)(1)) that provided for a 25 percent reduction in rent for calendar year 2009.	No changes were made from the proposed to the final rule.	
2885.24—Monitoring fees.	Provides an updated table describing monitoring categories, but without the cost schedule. Paragraph (b) provides information about where to obtain a copy of the current monitoring cost schedule.	Minor revisions were made consistent with changes to section 2805.16.	Changes made in this section were made to be consistent with other changes in this final rule.
2886.12—When you must contact the BLM during operations.	Adds to this section, contact requirements for when there is a need for changes to a right-of-way grant and to correct discrepancies.	No changes were made from the proposed to the final rule.	
2887.11—Assigning a right-of-way grant or TUP.	Clarifies this section to show when an assignment is or is not required.	Adds two events that may require an assignment. Clarifies that a change in a holder's name only does not constitute an assignment.	These changes are made to be consistent with section 2807.21.
2887.12—Renewing a grant.	Clarifies that if you apply for a renewal before it expires, your grant will not expire until a decision has been made on your renewal request.	No changes were made from the proposed to the final rule.	

### III. Final Rule as Adopted and Responses to Comments

#### General Comments by Topic

##### Competitive Process Comments

A number of comments agreed with the BLM's proposals to create a competitive process for solar and wind development.

One comment stated that the proposed rule, if made final, would be a positive first step in improving the existing processes for solar and wind energy development by incentivizing development in appropriate areas, helping developers estimate costs, and providing a fair return to the taxpayer for the use of public lands. The BLM did not make any changes in response to this comment.

Another comment, on the other hand, recommended that the BLM maintain its current pre-application and application processes rather than adding untested or unproven administrative processes to promote competition inside and outside of DLAs. The BLM notes that it has already successfully used competitive processes when authorizing renewable energy development and it continues to gain experience with competitive auctions. The BLM also intends to continue improving its solar and wind energy policies, including by building upon the provisions codified in this final rule, to reduce administrative timeframes and costs in order to support reasonable and responsible project development, such as those policies designed to further streamline application review and processing.

Several comments provided statements on the use of a competitive process for issuing grants.

One comment stated that we should clarify that the competitive bid process applies only to renewable energy authorizations. The BLM only agrees with this comment in part. In this final rule, the BLM has codified competitive processes inside of DLAs that relate only to solar and wind energy rights-of-way. However, the final rule modifies existing regulations so that those same competitive processes may also be used outside of DLAs and for other types of rights-of-way in the future, such as when they are necessary to resolve other situations where there are competing right-of-way and other land use authorization requests or when the BLM otherwise determines it is appropriate to initiate a competitive process for a particular use in a given area.

Specifically, the final rule expands the BLM's ability to initiate a competitive process for other rights-of-way relative to existing regulations. Should the BLM

hold a competitive offer for another type of right-of-way, it would be appropriate for the BLM to use processes similar to those developed for this rule because those policies were developed based on sound competitive principles. Therefore, utilizing them as a model in other areas would promote consistency across the agency.

One comment stated that competitive leasing would both lengthen and complicate project siting, using the recent Dry Lake competitive offering in Nevada as an example, noting that the preparations for competition took years. The BLM believes that much of the work required for competitive leasing has already been completed for solar energy in the SEZs identified in the Western Solar Plan and other DLAs established by other planning efforts. The upfront work done when identifying these areas provides a basis for them to be offered under the most favorable competitive process provisions of this rule. That analysis also increases the certainty that the BLM will approve a project in those areas, which ultimately reduces the overall project review timeframes. The work done in establishing a DLA through the land use planning process, including completion of a NEPA analysis, provides a framework from which future project-specific analyses can tier, which should save time and money for both the BLM and project developers. Additionally, by expanding the circumstances under which the BLM can utilize competitive procedures the final rules provides a more direct path than was available to the BLM when setting up the Dry Lake SEZ sale in Nevada.

To further support development in these areas, the BLM is also developing regional mitigation strategies for many of the identified SEZs. While the existence of a regional mitigation strategy is not a prerequisite for holding a competitive sale, the BLM believes that such strategies further clarify development requirements in a given area allowing auction participants to more carefully evaluate potential costs and requirements when formulating a project or a bid in advance of competitive sale.

Collectively, these efforts and the provisions of this rule are consistent with existing policies to encourage the timely and responsible development of renewable energy while protecting the public land and its resources.

One comment suggested that competition should be used only where there are multiple applications for use of the same land. While the BLM intends to use competition in those

circumstances, it does not believe that is the only circumstances where such processes are appropriate. The existence of competition is not only indicated by competing application; in some situations competition would be determined where other evidence of competitive interests becomes known through emails, letters, and other contact with the public. As a result, the BLM does not believe it is appropriate to limit the use of competitive leasing regulations to just instances of competing applications. Instead, the provisions of this rule have been designed to provide more flexibility. The BLM is able to hold competitive offers inside DLAs, outside DLA, in response to competing applications, and on its own initiative, in order to encourage development in areas where it determines those processes to be appropriate, such as when it determines that fewer resource conflicts are present. In total, the BLM believes that the competitive processes established by this final rule will enable the BLM to encourage solar and wind energy development on public lands, while also protecting the sensitive resources found on those lands.

##### Summary of Key Changes Between the Proposed and Final Rule

One comment suggested that we use a table to identify technical changes, corrections, and clarifications being made to the right-of-way regulations by this rule, similar to the table we included in the preamble of the proposed rule. We agree and have included a similar table in this preamble.

##### Pipeline and Transmission Line Comments

Some comments questioned the BLM's description of pipelines 10 inches or greater in diameter as a measure for large-scale pipeline projects and recommended the removal of additional processes such as mandatory pre-application meetings to facilitate Federal and State reviews of the project. Alternatives for the description of a large-scale project were suggested, such as using a total acreage of disturbance.

In light of these comments, the BLM has decided to remove the description of large-scale pipelines and additional processes required for such projects from the final rule. While some comments included recommendations for alternative ways of determining a threshold for large-scale pipelines, the BLM decided that it must further analyze how it will identify large-scale pipelines before including requirements for such projects in its regulations. If the

BLM were to take such action in the future it would coordinate with other Federal agencies, as appropriate, to identify an appropriate threshold for large-scale pipeline projects and establish consistent, non-duplicative requirements. The removal of the pipeline threshold from the final rule requires deletion of the requirements in the proposed rule that were specifically applicable to large-scale pipeline projects. A more detailed discussion of these revisions can be found in the relevant portions of the section-by-section analysis in this preamble (see sections 2804.10, 2884.10, and 2885.11 of this preamble).

Some comments also questioned the BLM's description of transmission lines with capacities of 100 kV or more as constituting large-scale transmission projects. Those commenters recommended the removal of that threshold and the associated requirements. Some comments suggested that there are no readily identifiable 100 kV transmission projects by which to determine if the proposed threshold is a fair representation of a large-scale project. The BLM does not agree with these comments and believes that the description is appropriate since there is a clear separation between lower voltage transmission lines, generally 69 kV or less, and high voltage transmission lines, beginning at 115 kV of capacity or more. For example, the North American Electric Reliability Corporation established the 100 kV threshold as a bright line criterion to determine which transmission lines are included in the Bulk Electric System, a system that is used by the Regional Reliability Organization for electric system reliability. The BLM is maintaining the description of transmission lines with capacity of 100 kV or the rule as a suitable description to determine large-scale transmission projects.

#### Megawatt Capacity Fee Comments

Some comments argued that the BLM lacks authority to collect a MW capacity fee because the Federal Government does not own the sunlight or the wind, which are inexhaustible resources. While the BLM agrees that sunlight and wind are renewable resources present on the public lands, it does not agree that it lacks the authority to collect a fee for the use of such resources.

Under FLPMA, the BLM is generally required to obtain fair market value for the use of the public lands and its resources, including for rights-of-way. In accordance with the BLM's FLPMA authority and existing policies, the BLM has determined that the most

appropriate way to obtain fair market value is through the collection of multi-component fee that comprises an acreage rent, a MW capacity fee, and, where applicable, a minimum and a bonus bid for lands offered competitively. The BLM determined that the collection of this multi-component fee will ensure that the BLM obtains fair market value for the BLM-authorized uses of the public lands, including for solar and wind energy generation.

The BLM notes that the MW capacity payments are best characterized as "fees" rather than "rent" because they reflect the commercial utilization value of the public's resource, above and beyond the rural or agricultural value of the land in its unimproved state. In the BLM's experience, and in accordance with generally accepted appraisal and valuation standards, the value of the public lands for solar or wind energy generation use depends on factors other than the acreage of the occupied land and that land's unimproved value. Other key elements that add value include the solar insolation level, wind speed and density, proximity to demand for electricity, proximity to transmission lines, and the relative degree of resource conflicts that could inhibit solar or wind energy development. To account for these elements of land use value that are not intrinsic to the rural value of the lands in their unimproved state, the solar and wind right-of-way payments in this final rule incorporate "MW capacity fees" in addition to "acreage rent."

The use of a multi-component fee that comprises both an acreage rent and a MW capacity fee, and in some cases also a minimum and a bonus bid, achieves four important BLM objectives. First, the approach allows BLM to ensure that it is capturing the full fair market value of the land being encumbered by these projects. Second, the approach is consistent with the approach employed by the BLM for other uses of the public land (*i.e.*, it ensures that our approach to acreage rent is consistent across various categories of public land uses, while mirroring the multi-component payments received from activities like oil and gas development where both rent and royalties are charged), ensuring consistency across users. Third, the approach encourages the efficient use of the public lands by reducing relative costs for comparable projects that take up less acreage. That is, for a project with a given MW capacity, the overall payments to the BLM will be lower if the project employs a more efficient technology that produces more MW per acre and thus encumbers fewer acres.

Fourth, the approach is consistent with existing policies governing the BLM's renewable energy program, which have been in place since 2008. As explained in the section-by-section analysis in Section IV of this preamble, this final rule refines the calculation of the fee components (*e.g.*, the MW capacity fee for solar is reduced relative to existing policies) but does not alter the basic multi-component fee structure for solar and wind projects on the public lands.

The BLM's multi-component fee structure also bears similarities to one of the more common structures for solar and wind energy development on private lands, where projects pay a rent for the use of an area of land at the outset and, and then a royalty on the power produced once generation commences. (The BLM recognizes that private-land projects use a variety of fee structures. For example, some projects rely solely on an acreage rent—but in those cases, the BLM believes that the increased value of the land due to project development is captured in other ways, such as by charging a higher base rent that reflects more than the land's unimproved value.)

The acreage rent charged by the BLM is analogous to the rent charged in most private land leases. With respect to the MW capacity fee, the BLM uses the approved electrical generation capacity as a component of the value of the use of the public lands for renewable energy development instead of relying on a royalty like private landowners do. On private lands, such royalties are typically assessed after-the-fact, as a percentage of the value of power actually produced, and the rate can range from 2 to 12 percent. The BLM has determined instead to charge a fee based on the installed nameplate MW capacity of an authorized wind or solar project. This approach is consistent with the BLM's legal authority, including the direction in FLPMA that right-of-way holders "pay in advance" the fair market value for the use of the lands. The BLM considered charging a royalty, assessed as a percentage of power generated, but the FLPMA directive that right-of-way holders must "pay in advance" would require the BLM to collect any such royalty payments in advance of the corresponding power generation and then "true up" at the end of each calendar year. The BLM determined that the MW capacity fee approach in the final rule presents fewer administrative burdens and costs for both the BLM and right-of-way holders than an approach based on in-advance royalty payments followed by annual "true-ups." The BLM worked with the Office of

Valuation Services to compare its combined acreage rent and MW capacity fee against the total stream of payments from a similarly situated private land project to ensure the total payments collected by the BLM are comparable to those collected on private land. Finally, the BLM notes that in retaining the multi-component payment structure for solar or wind developments as separate “rent” and “fee” components as established under existing policy, the BLM is retaining its existing interpretation of how that multi-component structure interfaces with the Rural Electrification Act (IM 2016–122). Under the final rule, consistent with existing policy, the acreage payment remains classified as “rent,” as it is directly tied to the area of public lands encumbered by the project and the constraints that the project imposes on other uses of the public lands. As noted, however, the MW capacity fee is more properly characterized as a “fee” because it reflects the commercial utilization value of the public’s resource, independent of the acreage encumbered. As specified under FLPMA, facilities that qualify for financing under the Rural Electrification Act may be exempt from paying “rental fees.” As explained in IM 2016–122, however, the BLM has determined that such facilities are *not* exempt from paying other components of the fair market value of the land, such as the MW capacity fee, minimum bid, bonus bid, or other administrative costs, as none of those costs are related to the rental value of the unimproved land.

#### Designated Leasing Areas Comments

Several comments requested clarification about the differences between the competitive processes for lands inside and outside of a DLA. Other comments expressed confusion over whether certain requirements of the proposed rule would apply to both “grants” (authorizations issued under subpart 2804 for solar and wind energy development) and “leases” (authorizations issued under subpart 2809). The BLM has expanded multiple provisions in the final rule to clarify the requirements for solar and wind energy development grants and leases, including those relating to competitive processes, rents and fees, bonding, and due diligence.

#### Comments Beyond the Scope of the Proposed Rule

In addition to the general comments discussed above and the more specific ones discussed in the section-by-section portion of this preamble below, the BLM received many other comments that

suggested revisions to the BLMs right-of-way regulations that were beyond the scope of the proposed rule and/or that are better suited for supplemental policy guidance of the type found in BLM manuals, handbooks, or IMs. The BLM did not make any changes to the proposed rule in light of these comments. However, they are discussed in the relevant portions of the section-by-section analysis of this preamble.

#### Additional Comments on the Rule

During the preparation of this final rule, the BLM received additional comments from various stakeholders and other interested parties following the close of the comment period and participated in additional stakeholder engagement meetings as part of the BLM’s regular course of business. During those meetings and in those comments, stakeholders provided additional information clarifying the concerns, comments, and questions they had previously raised through written comments on the proposed rule. The BLM considered this additional information during the drafting of this final rule. This additional information is addressed in the relevant section-by-section discussion of this preamble.

For example, industry stakeholders provided additional information that was previously unavailable regarding their uncertainty, under the proposed rule, about how both acreage rent and MW capacity fee payments would increase over the life of a lease or grant, and particularly their concern that such rents and fees could increase in an unpredictable manner. These comments and the BLM’s responses are discussed further in sections 2806.51 and 2806.61 of this preamble.

Industry stakeholders also raised concern over the factors that the BLM considers when determining a bond amount. This comment and the BLM’s response are discussed further under sections 2805.12(e)(1) and 2805.20(a)(3).

Environmental stakeholders also provided additional substantive discussion of their comments. Specifically, they requested additional detail in the final rule explaining the evaluation criteria that the BLM uses when establishing DLAs going forward. The environmental stakeholders’ comment and the BLM’s response are discussed further in section 2802.11 of this preamble.

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

This rule makes the following changes in part 2800. The language found at section 2809.10 of the existing regulations is revised and redesignated

as section 2807.17(d), while revised subpart 2809 is now devoted to solar and wind energy development in DLAs. This rule also amends parts 2800 and 2880 to clarify the BLM’s administrative procedures used to process right-of-way grants and leases. These clarifications ensure uniform application of the BLM’s procedures and requirements. A more in-depth discussion of the comments and changes made is provided below.

#### Subpart 2801—General Information

Section 2801.5 What acronyms and terms are used in these regulations?

This section contains the acronyms and defines the terms that are used in these regulations. Several comments suggested changes to the proposed rule. These suggestions and comments are analyzed under the applicable definition contained in the final rule.

The following terms are 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 zone rate in effect at the time the authorization is issued. Provisions addressing adjustments in the acreage rent are 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 section 2806.52(a). No comments pertaining to this definition were received and no changes are made from the proposed to the final rule.

“Application filing fee” is a new term that means a filing fee specific to solar and wind energy right-of-way applications for the initial reasonable costs for processing, inspecting, and monitoring a right-of-way. The fee is \$15 per acre for solar and wind energy development applications and \$2 per acre for energy project-area testing applications. The BLM will 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. This definition is revised for consistency with comments received on sections 2804.12 and 2804.30 on application filing fees. See those respective sections of this preamble for further discussion. No other comments were received and no other change is made from the proposed rule to the final rule concerning this definition.

“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 rule adds this definition to section 2801.5 to help clarify regulations. A more detailed explanation of assignments and the changes made is found under section 2807.21. Although some comments were received pertaining to assignments, as discussed later in this preamble, none of them pertain to the definition. No change is made from the proposed to the final rule concerning this definition.

“Designated leasing area” (DLA) is a new term that means a parcel of land with specific boundaries identified by the BLM’s land use planning process as being a preferred location for the leasing of public lands for solar or wind energy development via a competitive offer. Examples of DLAs for solar energy include SEZs designated through the Western Solar Plan; Renewable Energy Development Areas (REDAs) designated through the BLM Arizona Restoration Design Energy Project (REDP) planning process; and Development Focus Areas (DFAs) designated through BLM’s California’s Desert Renewable Energy Conservation Plan (DRECP) planning process. The competitive offer process is discussed in subpart 2809 of this preamble. Further discussion of DLAs can be found under section 2802.11 of this preamble.

*Comments:* Some comments recommended that the definition of DLA should indicate criteria that must be met to designate a DLA, in particular, wind energy-specific DLAs. The comment also suggested the final rule include criteria to identify right-of-way exclusion and avoidance areas. Other comments stated a similar concern, and indicated that land use planning varies by BLM State or field office, so DLA standards should be developed.

*Response:* The BLM considered establishing standard criteria for DLAs as well as for exclusion and avoidance areas, but this approach is not carried forward in the final rule. Doing so could unintentionally limit the BLM’s management of such lands when considering the varied landscapes and resources that the BLM manages. However, the BLM intends to establish guidance, as part of the implementation of this rule, to assist the BLM in establishing DLAs, such as wind energy sites, through its land use planning processes. Further discussion on this issue is found under section 2804.31 of this preamble.

*Comments:* Some comments stated that identifying new DLAs through land

use planning was too time consuming, and therefore DLA designation should be a separate process.

*Response:* Many land use planning efforts take several years to complete and consider many resources and uses in addition to solar or wind energy development. These types of land use planning efforts would not consider a specific project, but instead the effect of such developments in the planning area, and inform the BLM if the lands should be an exclusion or avoidance area, or identified as a DLA for solar or wind energy development. Although the BLM’s land use planning process may be time consuming, it is necessary for the BLM in its orderly administration of the public lands to use this process to properly protect and manage the public lands. When amending a resource management plan, the BLM must be consistent with its planning regulations (see 43 CFR part 1600). Absent a larger planning effort underway for the same planning area, the BLM could use a targeted land use plan amendment to identify a designated leasing area. In such cases, the land use planning process may be less time consuming than suggested by commenters. For further discussion, please see section 2804.31 of this preamble. No specific changes were made in response to this comment.

In addition to the amendments to section 2804.31, the BLM has begun its Planning 2.0 initiative, which is aimed at improving the BLM’s planning process. This initiative includes targeted revisions to the planning regulations (see 43 CFR part 1600) and land use planning handbook, in order to improve the BLM’s use of Resource Management Plans, which guide the BLM’s administration of the public lands. The Planning 2.0 initiative will help the BLM to conduct effective planning across landscapes at multiple scales, create more dynamic and efficient planning processes that are responsive to change, and provide new and enhanced opportunities for collaboration with the public and partners. You can find further information on the BLM’s Planning 2.0 initiative at the following Web site [http://www.blm.gov/wo/st/en/prog/planning/planning\\_overview/planning\\_2\\_0.html](http://www.blm.gov/wo/st/en/prog/planning/planning_overview/planning_2_0.html).

*Comment:* A comment recommended that the BLM use one consistent definition to ensure that DLAs represent areas of fewer resource conflicts for solar and wind energy development.

*Response:* Because of the many variables that the BLM must consider when designating a DLA, the definition provided is intentionally broad and

identifies a DLA as a preferred location for development that may be offered competitively. This definition allows the BLM to identify such areas in land use planning processes using plan-specific criteria to best identify the area. However, we are modifying the definition by removing the example of solar energy zones that was cited in the proposed rule in order to eliminate potential confusion about the future identification of additional DLAs, which may not be identified in the same manner as the solar energy zones. No other comments were received concerning this definition.

“Designated right-of-way corridor” is a term that is defined in existing regulations. The word “linear” has been added to this definition in the final rule to distinguish between these corridors and DLAs. No comments were received concerning this definition change and no changes are made from the proposed rule to the final rule.

“Management overhead costs” is defined in existing regulations as Federal expenditures associated with the BLM. This definition has been expanded in the final rule to include other Federal agencies. This revision is consistent with Secretarial Order 3327 and will help to promote effective cost reimbursement. Under Sections 304(b) and 504(g) of FLPMA, the Secretary may require payments intended to reimburse the United States for its reasonable costs with respect to applications and other documents relating to public lands. Secretarial Order 3327 delegated the Secretary’s authority under FLPMA to receive reimbursable payments to the bureaus and offices of the Department. No comments were received pertaining to this definition change, and no revisions were made from the proposed rule to the final rule.

“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 after the discussion of section 2806.56. While the acreage rent reflects the value of the land itself in its unimproved state, the MW capacity fee reflects the value of the industrial use of the property to generate electricity. Specifically, it captures the additional value of public land used for solar and wind energy generation that are not reflected in the NASS land values.

The BLM revised the definition of MW capacity fee from the proposed to final rule to clarify that the MW capacity fee is calculated for staged developments by multiplying the MW rate by the approved MW capacity for each stage of development. The proposed rule stated that the MW rate would be multiplied to the approved stage of development, but did not specify that it was the approved MW capacity for the stage of development. The BLM made this revision to help improve the public's understanding of the MW capacity fee calculation for staged developments.

*Comment:* One comment acknowledged that fair market value can be determined by using a competitive process and agreed with the proposed rule's approach of using a competitive process to authorize solar and wind energy development on public lands. The comment went on to express a preference for a system that includes the payment of a royalty fee for the use of commercial power facilities on public lands.

*Response:* As explained above, the BLM has established through existing policy, and now by this rule, a multi-component structure for obtaining fair market value from renewable energy development. Since FLPMA directs right-of-way holders "to pay *in advance* the fair market value" for the use of the public lands, subject to certain exceptions (43 U.S.C. 1764(g)), the BLM's existing regulations governing the use of public lands, under Title V of FLPMA, generally require the prepayment of annual rent and fees in amounts determined by the BLM. This requirement is carried forward in existing guidance governing acreage rent and MW capacity fees for wind and solar energy projects and was selected in lieu of other means of obtaining fair market value. Consistent with the BLM's authority under FLPMA, its existing policies, and the proposed rule, the BLM has determined that it will continue to charge in advance both an acreage rent and a MW capacity fee for solar and wind energy projects, as a means of obtaining fair market value for those projects. Given that FLPMA requires payment in advance, the BLM has determined it is appropriate to base that the MW capacity fee on rated MW capacity as opposed to actual generation. In instances where competitive processes are utilized, any minimum and bonus bids represent an additional component of fair market value on top of the annual acreage rent and MW capacity. No other comments were received on the proposed definition of MW capacity fee, and no

changes to the definition were made in this final rule.

"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 (1) the net capacity factor multiplied by (2) the MW per hour (MWh) price multiplied by (3) the rate of return multiplied by (4) the total number of hours per year where:

1. The "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. This rule establishes net capacity factors for different technology types, but the BLM may determine a different net capacity factor to be more appropriate, on a case-by-case or regional basis, to reflect changes in technology, such as a solar or wind project that employs energy storage technologies, or if a grant or lease holder or applicant is able to demonstrate that a different net capacity factor is more appropriate for a particular project design, layout, or location.

The default 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. CSP with storage capacity of 3 hours or more = 30 percent; and
- d. Wind energy = 35 percent.

*Comments:* Several comments were received concerning the definition and description of net capacity factor. One comment stated that the net capacity factors should not be specified in the proposed rule for CSP projects, as they will undoubtedly increase over time with technology improvements and be updated on a regular basis, in a similar manner as rents. CSP can be designed to operate from a range of 10 to 50 percent efficiency depending on the intended use of the facility (e.g., base load or peaker plant). Another comment recommended using an estimate of the capacity factor identified in the POD and the plant's design as the basis for this calculation.

*Response:* The BLM recognizes that there may be technology improvements over time, and that there are variables which may affect a specific project's net capacity factor. For example, a CSP project may be designed to operate at lower or higher efficiency rate depending on its intended use. The BLM took this into account in determining the net capacity factor of the technologies for the final rule. Future rulemaking would be required to

change the established net capacity factors for each technology. The BLM will not incorporate the recommendation to use the project owner's estimate of the capacity factor in the POD to calculate its MW capacity fee. The estimated net capacity factor in a POD would be specific to a particular project, but would be a subjective value that could be inaccurate or misleading. Incorporating the methodology suggested by the comment could raise questions as to whether the BLM was truly collecting a reasonable return for use of the public lands.

However, the BLM has revised the final rule, consistent with this comment and those comments submitted regarding storage technologies, to allow the BLM to determine another net capacity factor to be more appropriate on a case-by-case basis. The BLM could determine another net capacity factor to be more appropriate when there is a change in technology, such as when a project employs energy storage technologies. Determining another net capacity factor may also be appropriate if a project uses a more current version of a technology.

*Comment:* Another comment agreed with the BLM's proposal to use an average net capacity factor for wind energy projects. However, the comment recommended using a net capacity factor of 26 percent as identified in the wind capacity factor for Western States (see the Department of Energy's 2013 Wind Technologies Report) instead of the national average wind capacity factor of 35 percent.

*Response:* While the BLM acknowledges that most solar and wind projects on public lands will be located in the western United States, it nevertheless elected to use the national averages in calculating the net capacity factors for both solar and wind projects, because the BLM believes those values are more representative of the technology that will be deployed on projects developed in the future. The net capacity factor for a given project is greatly influenced by project design, layout, and location. The national average reflects a larger set of projects than the regional average, and is therefore more representative of the full range of older and newer technologies currently sited on public lands.

With respect to the wind capacity factor in particular, the BLM reviewed data from the Department of Energy's 2014 and 2015 Wind Technology Reports (<https://emp.lbl.gov/sites/all/files/lbnl-188167.pdf> and <https://emp.lbl.gov/sites/all/files/2015-windtechreport.final.pdf>, respectively). Based on its review of that data, the



BLM determined that its selection of a 35 percent capacity factor for wind was appropriate for several reasons.

First, the geographic scope of the lands included in the “West Region” of the Department of Energy’s reports does not adequately capture the full extent of BLM lands. Using the geographic distribution classifications set by the Department of Energy, BLM lands are located in both the “West” and “Interior” regions, with 7 states in the West and 4 states in the Interior (Colorado, Montana, New Mexico, and Wyoming). It should also be noted that the four BLM states in the Interior region possess significant wind energy development potential. Accordingly, the BLM believes it is reasonable to select a wind capacity factor between the values for the West and Interior. In the Interior Region the Department of Energy reported capacity factors of 41.2 percent and 42.7 percent in 2014 and 2015, respectively. Data from the 2014 report shows that while the average capacity factor in the West was 27 percent, there was considerable spread in the factors by project, from just below 20 percent to over 37 percent. In the Interior, the spread in capacity factors was from 26 percent to 52 percent. Thirty-five percent represents a reasonable average of these very disparate, project-specific capacity factors.

In addition to looking at capacity factors regionally, the Department of Energy’s analysis also controlled for wind quality. Notably, the Department of Energy determined that even in low wind quality areas, which predominate in the West, new projects achieve 35 percent capacity factors. As explained in the reports, this analysis was based on wind turbine specific power, which is the ratio of a turbine’s nameplate capacity rating to its rotor-swept area. All else being equal, a decline in specific power leads to an increase in capacity factor according to the analysis presented in the report. In general, since the wind industry is shifting towards deploying lower specific power wind turbines at new wind energy projects across the United States, the BLM believes it is reasonable to select 35 percent as the default capacity factor for a wind project in the final rule.

It should also be noted that the BLM considered basing the net capacity factors for these technologies on an average of the annual capacity factors posted by the Energy Information Administration (EIA) 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). However, the BLM is not carrying this approach forward in the final rule

because, as discussed earlier in the preamble regarding net capacity factors, we believe that the 35 percent capacity factor better represents the technologies that will be deployed on projects developed in the future. For this reason, the BLM determined that the EIA annual capacity factors are not appropriate for use in this rule.

Finally, the BLM notes that if an applicant or a grant or lease holder believes that the BLM’s net capacity factor is set too high for a particular project, the project proponent can request that the BLM use an alternative net capacity factor when setting the MW capacity rate for the project. Such a request would be made as described under section 2804.40 for applicants or section 2805.12(e) for grant or lease holders. See the section-by-section portion of this preamble for further discussion of requests for alternative requirements.

No other comments were received, and the definition of “net capacity factor” was not changed from the proposed to the final rule as result of this comment.

2. The “MWh price” equals the 5 calendar-year average of the annual weighted average wholesale price per MWh for the major trading hubs serving the 11 Western States of the continental United States (see sections 2806.52(b) and 2806.62(b)).

*Comment:* One comment believed that rent and fee calculations may be inaccurate based on inaccurate determinations of the capacity factor and the wholesale price of electricity used in the formula. In the proposed rule, the BLM specified the Intercontinental Exchange (ICE) as the source of data for the wholesale price data.

*Response:* As discussed under section 2806.52 for MW capacity fee, ICE was removed as the only vendor for the wholesale data. We revised this definition to account for appropriate wholesale data without limiting it by source. This will allow the BLM to use the best information available, should a company that tracks trading hubs fail to maintain accurate or reliable trade information. No other comments were received concerning this definition.

3. 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-tenth percent.

*Comment:* One comment believed that the BLM should use a 5-year average,

not a 10-year average, eliminate the 4 percent minimum, and consider rounding down or not at all.

*Response:* The BLM disagrees with the suggestion to use a 5-year average. A 10-year average of the 20-year Treasury bond rate provides a more stable rate of return and will benefit the holder when interest rates rise. Under the same concept, this would benefit the BLM when interest rates decline, as is the case in the current cycle.

The BLM also disagrees that it should eliminate a 4 percent minimum rate of return, considering the risk of energy development projects and the fluctuation of energy commodity prices. It is not uncommon for private parties to insist on a minimum return. The 4 percent minimum rate of return recognizes a grant or lease holder’s risk of projects that have other financial safeguards in place, such as performance bonds. The minimum is at the lower end of similar rates in the private sector.

The 4 percent minimum rate of return is established for solar energy in section 2806.52(b)(3)(ii) and for wind energy in section 2806.62(b)(3)(ii). The minimum is not included in the definitions section of this final rule because setting the minimum is a substantive regulatory provision. This is not a change from the proposed rule. No changes are made in this final rule from the proposed rule regarding the rate of return in the definitions section (section 2801.5) or in the specific solar (section 2806.52(b)(3)(ii)) or wind (section 2806.62(b)(3)(ii)) provisions.

With respect to rounding, the BLM did agree that it should revisit the proposed rule’s approach. While it does not agree with the commenter’s suggestion that it should always round down, the BLM did determine upon further review that it should round bond yields to the nearest tenth of a percent to avoid a rounding-based surcharge.

4. 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). No comments were received on the definition of this term and no changes are made to this definition from the proposed rule to the final rule.

“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 also explains which instruments are or are not acceptable.

Acceptable bond instruments include cash, cashier's or certified checks, certificate of deposit, negotiable U.S. Treasury securities, surety bonds from the approved list of sureties, and irrevocable letters of credit. The BLM will not accept a corporate guarantee. These provisions codify the BLM's existing procedures and practices.

*Comment:* A comment suggested adding the words "certificate of insurance or other acceptable security" to each of these paragraphs in appropriate places.

*Response:* The BLM believes that adding the comment's suggestion to the text of the rule is unnecessary, as the definition of acceptable bond instruments includes insurance policies and does not need to be expanded to include a specific form of insurance. Furthermore, the list of bond instruments that are acceptable is not an all-inclusive list. There may be other forms of bond instruments, but they are not specified in the rule as they are not as common a form of bond as those identified. If we had intended the bond list to be an all-inclusive list we may have unintentionally excluded an acceptable bond instrument. No other comments were received and no changes to this definition were made from the proposed rule to the final rule.

"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.

The BLM revised this definition from the proposed to final rule to clarify that the reclamation work described must meet the BLM's requirements. This change is important because the BLM is required to protect the public lands and must determine if the reclamation work done by the holder is acceptable.

No comments were received on the definition of this term and no other changes are made from the proposed to the final rule.

"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 describes the authorizing instrument for use of the public lands as "a particular grant or lease." No comments were received on the definition of this term and no changes are made from the proposed to the final rule.

"Screening criteria for solar and wind energy development" is a term referring to the policies and procedures that the BLM uses to prioritize how it processes solar and wind energy development right-of-way applications outside of

DLAs. Some examples of screening criteria are:

1. Applications filed for areas specifically identified for solar or wind energy development, other than DLAs;
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 were previously established by policy through IM 2011-61, and are further discussed in section 2804.25(d)(2) and section 2804.35 of this 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). No changes were made from the proposed rule to the final rule, nor were any comments received pertaining to this definition. However, there are several comments made on the specific screening criteria proposed that are addressed later in the section-by-section analysis of these criteria.

"Short term right-of-way grant" is a new term meaning 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. No comments were received and no changes are made from the proposed rule to the final rule.

#### Section 2801.6 Scope

The scope in 43 CFR part 2800 clarifies that the regulations in this part apply to all systems and facilities identified under section 2801.9(a). No comments were received and no changes are made from the proposed rule to the final rule on this provision.

#### Section 2801.9 When do I need a grant?

Section 2801.9 explains when a grant or lease is required for systems or facilities located on public lands. In section 2801.9(a)(4), the term "systems for generation, transmission, and distribution of electricity" is expanded to include solar and wind energy development facilities and associated short-term authorizations. Language is also added to section 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) is 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 identifies the type of authorizations issued for solar and wind projects depending on whether they are located inside or outside of DLAs. Authorizations for solar or wind energy development outside a DLA, or authorizations issued non-competitively within a DLA, will be issued under subpart 2804 as right-of-way grants for a term of up to 30 years. Authorizations within a DLA will be issued under subpart 2809 as right-of-way leases for a term of 30 years.

*Comments:* Some comments were received requesting that the site-specific and project-area testing authorizations be made available for solar energy. A comment further suggested that section 2801.9 be revised so that the authorization types would be listed in the order in which actions are taken to develop a project.

*Response:* The BLM revised this section, in response to the comment, by removing the specific references to "wind." As a result, the testing provisions apply to both solar and wind energy. The BLM also revised this section to reflect the order in which actions are taken to develop a project. The "other appropriate actions" listed under paragraph (d)(3) of this section in the proposed rule are moved to paragraph (d)(5) of this section in the final rule. Paragraphs (d)(4) and (5) of this section in the proposed rule are now paragraphs (d)(3) and (4) of this section, respectively.

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

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

Section 2802.11, which explains how the BLM designates right-of-way corridors, is revised to include DLAs. Under this rule, the BLM will identify DLAs 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 DLAs. These factors are unchanged from the existing regulations. This final rule amends paragraphs (a), (b) introductory text,

(b)(3), (4), (6), and (7) and (d) of section 2802.11 to include references to DLAs.

*Comment:* One recommendation was made suggesting that the BLM make it clear that we will not accept applications in areas that are closed to development by means of land use plans or other mechanisms.

*Response:* The comment's recommendation is addressed in the existing rule at section 2802.10(a). This section clarifies that some lands are not available for a right-of-way grant, which includes those lands that the BLM identifies through the land use planning process as inappropriate for rights-of-way, as well as public land orders, statutes, and regulations that exclude rights-of-way, and lands segregated from application.

*Comment:* One comment stated that DLAs are created through the BLM's resource management planning process, but that such plans are changed only every 15 to 20 years. Also, many plans are undergoing or have recently undergone such changes, especially in areas having sage-grouse habitat, but those plans do not designate any DLAs.

*Response:* Due to the timing of the comment submission and the BLM's response, the plans noted in this comment have been finalized and the BLM decisions are issued. The Greater Sage-Grouse Plan Amendments and Revisions did not designate any DLAs. These plans are focused on conservation of the Greater Sage-Grouse and its habitat. The decisions issued in these plans safeguard primary and general habitat from the impacts of development, including solar and wind energy.

However, the BLM may have an opportunity to designate some areas for wind energy development using recent analyses or information that identifies areas suitable for energy development on public lands. Examples of such areas may be those identified as not having significant resource and use siting concerns, as identified in the BLM's wind mapper. The wind mapper is a BLM web-based geographic data viewer, found at <http://wwmp.anl.gov>, that has up-to-date geographic information representing the BLM's land use planning decisions for administering public lands and other pertinent regulatory information, specific to wind energy resources. Using information on the wind mapper, a targeted land use plan amendment may be completed more expeditiously than the 15 to 20 years discussed in this comment.

*Comment:* Another comment suggested that we consider developing a generic EIS process suitable to all prospective solar and wind leases,

coupled with a specific discussion of variations between areas. Also, the comment suggested that we should automate the EIS process to leverage existing GIS and satellite data whenever possible.

*Response:* Although worth considering, this concept is outside the scope of this rule, which is focused on the administrative process of solar and wind energy rights-of-way and competitive processes. However, the BLM plans to evaluate its NEPA process and promote automation of the process where possible. Until that time, the BLM will designate such areas through its existing land use planning process.

*Comment:* Another comment states that the designation of DLAs will waste taxpayers' money and impede development. The cost to the public for the BLM to designate a DLA will not be fully recaptured and the DLA will not provide any additional value to the public through the competitive process.

*Response:* Costs for the preparation of DLAs will be recaptured at the competitive bidding stage as the administrative costs will be paid by the successful bidder. As demonstrated by the BLM's recent competitive actions for solar energy, there is a monetary return to the public for auctions of parcels within renewable energy development areas.

*Comment:* During stakeholder engagement meetings, environmental stakeholders expanded on their comment on the definition of "designated leasing area." The stakeholders suggested that the BLM should not only revise the definition of DLA to include additional specific criteria, but also make changes to section 2802.11 to specify that the BLM consider those criteria when designating DLAs. The stakeholders also recommended that the BLM consider sensitive environmental resources when evaluating potential DLAs.

*Response:* The BLM considered adding additional criteria to section 2802.11 that would be considered when the BLM evaluates an area for inclusion in a DLA, but it ultimately made no changes in the final rule. The existing regulations in section 2802.11(b) already explain in great detail what the BLM considers when making a DLA designation. Adding an undefined term, "sensitive environmental resources," could unintentionally limit the BLM's management of public lands when considering the varied landscapes and resources that are found there. Furthermore, consideration of sensitive resources is already addressed in section 2802.11(b)(2), which requires the BLM to consider "environmental

impacts on cultural resources and natural resources, including air, water, soil, fish, wildlife, and vegetation."

While the BLM did not make any changes to the final rule in response to this comment, it should be noted that the BLM intends to establish guidance, as part of the implementation of this rule, to assist the BLM in establishing DLAs through its land use planning processes. The implementing guidance will allow the BLM to be more specific for these areas without unintentionally limiting itself, and maintain the BLM's flexibility to make any necessary adjustments to the process for evaluating potential DLAs across the varied landscapes that it manages.

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

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

Existing section 2804.10 encourages prospective applicants for a right-of-way grant to schedule and hold a pre-application meeting. Under this final rule, section 2804.10 continues to encourage such meetings regarding some right-of-way grants, and under paragraph (a)(2), would now identify DLAs along with right-of-way corridors as a point of discussion for these meetings if held.

Under existing section 2804.10(a)(2), the BLM determines if your application is on BLM land within a right-of-way corridor. This revised paragraph now includes "or a designated leasing area." The BLM generally will not accept applications for grants on lands inside DLAs. The BLM will offer lands inside DLAs competitively through the process described in subpart 2809, which does not involve submitting an application. The BLM will only accept applications on lands inside DLAs in limited circumstances (see section 2809.19(c) and (d)).

The BLM proposed amending paragraphs (a) introductory text and (a)(2) and (4), and also adding two new paragraphs that would apply to any solar or wind energy project, transmission line with a capacity of 100 kV or more, or pipeline 10 inches or more in diameter. For these types of projects, the BLM proposed mandatory pre-application meetings. Proposed amendments for paragraphs (a) introductory text and (a)(4) are not included in the final rule, since pre-application meetings will not be required and specific requirements associated with them are no longer necessary. Paragraph (b) of the existing regulations will not be redesignated and there will be no new paragraphs (b) and

(c) in this final rule. The only changes to section 2804.10 in the final rule are found in paragraph (a)(2).

Under this final rule, pre-application meetings will not be required for solar and wind energy developments, or any transmission line with a capacity of 100 kV or more. Instead, the BLM will require what we term “preliminary application review meetings” that will be held after an application for a right-of-way has been filed with the BLM. These meetings will fall under the BLM’s cost recovery authority for processing applications and are discussed in greater detail under section 2804.12. Based on comments received, no requirements for pipelines 10 inches or more in diameter are carried forward into the final rule.

**Section 2804.12** What must I do when submitting my application?

In this final rule, section 2804.12 has been retitled from “What information must I submit in my application?” to “What must I do when submitting my application?”. Relocation of the early coordination meeting requirements to this section has resulted in revisions to this section that would make the previous title misleading. As revised, section 2804.12 requires that an applicant must provide specific information, and in the case of solar or wind energy development projects and transmission line projects with a capacity of 100 kV or more, must also complete certain actions when initially submitting an application.

The last sentence in section 2804.12(a) is revised to show that a completed application must include all of the items identified in section 2804.12(a)(1) through (8). The text of paragraphs (a)(1) through (7) are republished without amendment, and new paragraph (a)(8) is added.

*Comments:* Several comments were submitted regarding the BLM’s proposed pre-application requirements for solar and wind energy development and transmission lines with a capacity of 100 kV or more. Comments suggested that the BLM could not place requirements on a developer prior to an application being submitted to the BLM. This general comment was focused on two aspects of the BLM’s proposed requirement for pre-application meetings. The first aspect was that the BLM was requiring that two pre-application meetings be completed prior to a developer submitting an application for a solar or wind energy development project or transmission line with a capacity of 100 kV or more. The second aspect of concern was that the BLM would require the developer to pay cost

recovery for the required pre-application meetings. Under the proposed rule, the BLM would have required both of these prior to submission of an application for use of the public lands.

*Response:* The intent of the pre-meeting requirements is to ensure early coordination with the developer and other Federal, State, and tribal governments to gather information to better inform the developer of different considerations to be made if pursuing their project on BLM-administered lands. Considerations would include existing uses, environmental resources, and cultural or tribal values in the area of the proposed project. Pre-application meetings are currently required by the BLM’s policy. Discussing a proposed project with a developer early on has demonstrated an improvement in project siting and design, avoiding and minimizing impacts the project would have to the public land, and reducing the BLM’s processing timeframes. This final rule has been revised and now requires early coordination, not through pre-application meetings, but through preliminary application review meetings, which are to be held after an application is submitted to the BLM. These requirements for early coordination with developer and other Federal, State, and tribal governments are found under section 2804.12(b). Additional discussion of the preliminary application review meetings is found under section 2804.12(b) of this preamble.

Section 2804.12(a)(8) states that if the BLM requires you to submit a POD, you must include a schedule for its submittal in your application. This requirement was in the proposed rule’s section 2804.10(c)(4), but is now moved to section 2804.12(a)(8) in the final rule. This provision was proposed in section 2804.10 because the early coordination with BLM was done under pre-application meetings. It is moved to section 2804.12 of this final rule to coincide with the timing of the preliminary application review meetings.

Section 2804.12(b) explains requirements for submitting an application for solar or wind energy development (outside of DLAs), or any transmission line with a capacity of 100 kV or more. Requirements under section 2804.12(b) were found at section 2804.10(b) in the proposed rule, but have been moved to this section instead as application processing requirements. This includes the BLM’s requirement for preliminary application review meetings. This provision provides clear instructions to the public about what

they should expect when filing an application for such developments.

The BLM commonly refers to the first filing of an application as an “initial” application due to the BLM’s experience with such projects. In most cases, a project POD goes through several iterations during the BLM’s application review process and may require additional submissions or revisions of the application to accompany the revised plans. Additional applications are not always necessary when revising a project POD, but could be required.

Section 2804.12(b) also contains provisions from section 2804.10(b) and (c) of the proposed rule. These provisions are moved in the final rule in response to comments. An additional provision is added to paragraph (b) of this section to reiterate that the requirements for submitting a solar or wind application are in addition to those described in paragraph (a) of this section for all rights-of-way.

*Comments:* Several comments questioned the requirement to hold pre-application meetings, as well as the BLM’s authority to require conditions for project processing, prior to the submission of an application to the BLM and collecting cost recovery fees for that time period.

*Response:* The early coordination that resulted from the pre-application meetings required by existing BLM policy has been essential to the timely review and approval of solar and wind energy projects on the public lands. However, this final rule moves these meetings and requirements so that they occur after the submission of an application in response to comments received. The changes retain BLM’s intent to ensure earlier coordination on such applications with other Federal, State, local, and tribal governments. Under the final rule, such meetings would be subject to cost recovery requirements.

Section 2804.12(b) also states that your application for a solar or wind energy project, or a transmission line project with a capacity of 100 kV or more, must include a general description of the proposed project and a schedule for submittal of a POD, address all known resource conflicts, and initiate early discussions with any grazing permittees that may be affected by the proposed project. Further, section 2804.12(b) requires that you hold two preliminary application review meetings, within 6 months from the date on which the BLM receives the cost recovery fee payment required under section 2804.14.

Section 2804.12(b)(4), as previously described, is relocated from section

2804.10(c) of the proposed rule. Under this paragraph, the BLM will process an application only if the application addresses the following items: (1) Known potential resource conflicts with sensitive resources; (2) Values that are the basis for special designations or protections; and (3) Applicant-proposed measures to avoid, minimize, and compensate for 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 be 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 will require applicants to identify potential conflicts and how they may be avoided, minimized, or mitigated. The BLM will work with applicants throughout the application process to ensure the most efficient use of public land and to minimize possible resource conflicts. This provision will require an applicant to consider these concerns before submitting an application and, therefore, provide the BLM with potential plans to minimize and mitigate conflicts.

*Comments:* Some comments stated that the BLM should ensure that meetings are structured so that participants are provided all the project information necessary so they can meaningfully assist the BLM to make an appropriate determination about the proposed project.

*Response:* The BLM agrees with these comments and has modified the regulation to have meetings occur after an application is filed, rather than hold the meetings beforehand. The intent of these meetings will be to bring all Federal, State, local, and tribal governments together and provide them with the best available information to have an informed discussion on the right-of-way application. Authorizations for solar and wind energy projects, and transmission lines with a capacity of 100 kV or more, are generally larger and more complex than the average right-of-way authorization, and this extra step will help protect the public lands and make application processing more efficient.

Furthermore, the BLM will not proceed with an application until all appropriate meetings are held and the BLM has notified appropriate grazing permittees (see 43 CFR 4110.4–2(b)). Applicants must pay reasonable or actual costs associated with the requirements identified in section 2804.12(b). Payment for reasonable costs associated with an application must be received by the BLM after the initial

filing of the application and prior to the first meeting, consistent with section 2804.14.

After 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 and procedures to process applications more efficiently. These policies and procedures required pre-application meetings and use of application screening criteria (see section 2804.35 of this preamble) in order to help BLM and the proponent address siting concerns early on in the process.

Pre-application meetings have helped both the BLM and prospective applicants to identify necessary resource studies, and other interests and concerns associated with a project. Further, the meetings have 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 more appropriately sited and had fewer resource issues than those submitted where no pre-application meetings were held. Holding these meetings early in the application process made the applications more likely to be approved by the BLM. This saved the applicant the time and money spent on doing resource studies and developing projects that may not have been accepted or approved by the BLM.

Some prospective applicants chose not to pursue development after these meetings, once 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 these meetings saved money that would have been spent planning a project that the BLM would not have approved. This also saved the BLM time by reducing the number of applications it would need to process and the time spent reviewing resource studies and project plans.

A January 2013 Government Accountability Office report (GAO–13–189) found that the average BLM permitting timeframes have decreased since implementation of BLM's solar and wind energy policies, which include the early inter-agency coordination meeting requirements in this rule. The GAO concluded that applications submitted in 2006 averaged about 4 years to process, while

applications submitted in 2009 and later averaged about 1.5 years to process. At the time of the GAO review, these meetings were pre-application meetings. In the final rule, the timing of these early meetings has been changed until after the submission of an application to the BLM. Based on its experience, the BLM believes that holding inter-agency and government coordination meetings early in the review of a proposed large-scale development will continue to save both the BLM and applicant time and money during the BLM's review and processing of the application.

Based on a review of its records, the BLM identified a range of costs and time estimated associated with the processing of each type of application for a use of the public lands. These cost and time estimates varied between the solar and wind energy and transmission line projects. For solar and wind energy rights-of-way 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 a range of costs was identified between \$260,000 and \$2.1 million, including up to approximately 21,000 BLM staff labor hours and other non-labor costs per project. Based on this review, the BLM observed that projects with early coordination generally had lower costs relative to similarly situated projects.

Based on the BLM's experience, two meetings are usually sufficient to address all known potential concerns with a project, which is why the final rule calls for two meetings. However, the BLM understands that additional 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, therefore, the final rule allows for additional preliminary application review meetings to be held when mutually agreed upon. For example, a project that crosses State lines could require additional coordination with local governments and other interested parties.

*Comments:* Some comments noted concern over the BLM's existing and proposed pre-application process and its open-ended timeframe. Comments were concerned that this would be a deterrent for pursuing development on the public land, even if the project itself was well sited and designed. A developer would need assurances that a project would proceed expeditiously. Suggested timeframes included 30 days between meetings and application submittal.

*Response:* New paragraph (b)(4) specifies that within 6 months from the time the BLM receives the cost recovery fee, you must hold at least two preliminary application review meetings. The first meeting will be held with the BLM to discuss the proposal, the right-of-way application process, the status of BLM land use planning for the lands involved, potential siting and environmental issues, and alternative site locations. The second meeting will be held with appropriate Federal and State agencies and tribal and local governments to discuss concerns as identified above. If you do not believe you need to schedule the first or second meeting described above, you can ask the BLM for an exemption. The process of requesting an exemption is discussed further in section 2804.12(i), under the newly added paragraph labeled "Inter-agency Coordination."

Section 2804.12(c) contains requirements for submitting an application for solar and wind energy development. These requirements, located in section 2804.10(a)(8) and (c)(2) in the proposed rule, have been relocated to section 2804.12(c)(1) and (2) in this final rule. Under section 2804.12(c)(1), the BLM specifies that an application for solar or wind energy development must be submitted for lands outside of DLAs, except as provided for by section 2809.19. Lands inside DLAs will be offered competitively under subpart 2809. See section 2809.19 of this preamble for further discussion. No comments were received and the only changes made to this paragraph are those identified for relocating the requirement to this section and putting it in the context of a requirement for submitting an application.

Section 2804.12(c)(2) requires that an applicant submit an application filing fee with any initial 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 may discourage applicants from applying for more land than is necessary for a proposed project. Under this final rule, application filing fees will be retained by the BLM as a cost recovery fee, instead of being sent to the General Fund of the Treasury as collected revenue as proposed. A similarly structured nomination fee is established following the same criteria and is described in section 2809.11(b)(1).

Paragraph (c)(2) of this section is revised to replace "by the average annual change in the Implicit Price Deflator, Gross Domestic Product (IPD-GDP)" to read as "using the change in

the Implicit Price Deflator, Gross Domestic Product (IPD-GDP)". As proposed, this provision may have been interpreted as limiting how the BLM would use the IPD-GDP when updating this fee. It is appropriate for adjustments that occur annually, such as acreage rent, to refer to the average annual change in the IPD-GDP. However, the application filing fee may be adjusted once every ten years and this adjustment would be based on the cumulative change to the IPD-GDP over the 10-year period.

The application filing fee is the initial fee paid to the BLM for the reasonable costs of processing, inspecting, and monitoring a right-of-way. The BLM will use these funds towards processing your application. The balance of these funds, if any, will be allocated towards a cost reimbursement agreement that is later established between the BLM and the applicant or refunded if the application is denied or otherwise terminated. A cost reimbursement agreement is established under the authority of FLPMA section 304(b) and 504(g). This change is made in conformance with those changes made under section 2804.30(e)(4) in response to comments.

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 between \$15 and \$17 per acre per year. The appraisal consultation report is available for review by contacting individuals listed under the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The BLM is adopting 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 \$15 per acre for solar and wind energy applications and \$2 per acre for wind energy project-area and site-specific testing applications.

*Comments:* Several comments were made concerning the fees identified in the description of requirements for section 2804.12(c)(2). One comment suggested that the \$15 per acre filing fee should be made a part of a cost recovery fee and used to reimburse the BLM for its expenses. In addition, the comment suggested that the fee should be refundable if the lands are later made subject to competition.

*Response:* The BLM has revised this rule, including this section, to make application filing fees part of cost reimbursement paid to the BLM.

Payment of cost reimbursement to the BLM is under Sections 304(b) and 504(g) of FLPMA. Application filing fees and other costs associated with the BLM's processing of applications can be recovered because the BLM's application review and other work facilitates, and will generally be essential for, the BLM's processing, inspecting, and monitoring of a right-of-way. Consistent with FLPMA, application filing fees are retained by the BLM as cost reimbursement and will not be sent to the General Fund of the U.S. Treasury as originally proposed. If lands are later subject to a competitive offer for the use for which application filing fees were provided, (e.g., competition for a site development when development application filing fees are paid), then these fees would be refunded to the unsuccessful bidders who had already paid them, except for the reasonable costs incurred.

*Comment:* One comment opposes the proposed \$15 per acre filing fee for wind energy applications and \$2 per acre fee for wind energy site-specific testing applications as this would increase processing costs. The comment suggested that fees should be as low as possible to encourage wind energy development on public lands.

*Response:* The BLM has removed the application filing fee from site-specific testing applications to address concerns of increasing costs for development on the public lands. Site-specific testing generally takes up less than an acre, so it would not be necessary to encourage a smaller area of use. Project area testing and developments can each encompass thousands of acres and a per acre filing fee is appropriate. This final rule retains a \$2 per acre filing fee for project area testing applications and a \$15 per acre filing fee for development applications to encourage thoughtful development on public lands. Fees for solar and wind energy development applications will be adjusted for inflation once every 10 years, using the Implicit Price Deflator for Gross Domestic Product (IPD-GDP).

Section 2804.12(d) references an applicant's option to request an alternative requirement if the applicant is unable to meet one of the requirements outlined for submitting an application. Requests for an alternative requirement are submitted under section 2804.40. This provision applies to all right-of-way applications submitted to the BLM and is added to the final rule in response to comments submitted on the proposed rule. Further discussion on requesting an alternative requirement is found under section 2804.40.

*Comments:* Some comments stated that the mandatory pre-application meetings included in the proposed rule would discourage a developer from pursuing public lands for development, since the process and costs associated with development on BLM lands are greater than those on private lands. These comments expressed concern that these requirements are overly burdensome and duplicative of the NEPA process.

*Response:* Although costs to develop a project may end up being higher on public lands, the BLM has a different scope of authority and responsibility than agencies and offices that administer developments that occur on private land. The BLM is charged with managing the public lands under principles of multiple use and sustained yield. The BLM must take into account resources and use of the public land, and balance those with each additional proposed use and its impacts to resources for current and future generations.

Based on the BLM's experience, these early coordination meetings help reduce the overall time and costs associated with the BLM's application process. The pre-application meetings described in the proposed rule, which are existing policy, are changed in this final rule to "preliminary application review meetings," which take place after an application is submitted. The BLM believes these meetings will facilitate a more efficient application process and will not discourage development on public lands.

The BLM is required, under NEPA, to consider the environmental impacts of a significant action on the public lands. These early coordination meetings help the BLM and proponent determine the best possible approach for developing a proposed project that would avoid, minimize, reduce or otherwise compensate for its environmental impacts. Based on the BLM's experience, these meetings have reduced the overall time of the NEPA analysis necessary for projects on the public lands. The GAO's report (GAO-13-189) found that the average BLM permitting timeframes have decreased since implementation of BLM's solar and wind energy policies, which include the early inter-agency coordination meeting requirements in this rule.

The BLM added section 2804.12(i), "Inter-agency Coordination," in response to these comments. This paragraph provides that an applicant may request an exemption from some of the requirements of this section, should they participate in an inter-agency

coordination process with another Federal, State, local, or tribal authority. This final rule allows a developer to formally request an exemption to the requirements under section 2804.12, pertaining to application filings and other requirements that may be duplicative of other activities that a developer is completing. In order for a developer to qualify for an exemption from these requirements, the other activities must meet the same criteria as required by the BLM. An example of such a situation would be if a developer had already met with the Department of Energy for purposes similar to what is required under the BLM's first preliminary application review meeting.

No other comments were received and no additional changes made to this section.

Sections 2804.12(e) through (h) are redesignated in the final rule from paragraphs (b) through (e) of the existing regulations and no other changes were made to these paragraphs.

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

Under section 2804.14, applicants must pay for reasonable costs for processing an application as defined by FLPMA. Under section 2804.14(a), the BLM may collect the estimated reasonable costs incurred by other Federal agencies. Applicants may pay those costs to other affected agencies directly instead of paying them to the BLM.

Section 2804.14(b) includes a table of the application processing categories. The specific outdated values for cost recovery categories 1 through 4 have been removed from this table, while the explanations of the categories and the methodology of calculating the costs remain. These numbers are available in writing upon request or may be found on the BLM's Web site at <http://www.blm.gov/>. These cost figures were removed from the regulations because they are outdated after the first year, since the BLM updates these costs annually and has done so since this section of the regulations was originally published. The revision allows the BLM to update these numbers without modifying the CFR and prevents confusion to potential applicants who would see incorrect information. The explanation of how these costs are calculated, formerly found in section 2804.14(c), is moved up to paragraph (b) to provide better context for the amended table. Redundant language is removed from the Category 1 processing fee.

*Comments:* Some comments were received stating that the BLM does not

have authority to collect cost recovery on behalf of other Federal, State, and non-regulatory offices, such as tribal governments and interested public stakeholders. These comments stated that the authority delegated by the Secretarial Order was by the Secretary, and, therefore, delegation of the authority could not apply to any agency or office outside of the Department.

*Response:* Secretarial Order 3327 delegating cost recovery authority applies only to agencies and offices of the Department of the Interior. Sections 304(b) and 504(g) of FLPMA, however, give the Secretary authority to collect payments intended to reimburse the United States, not just the Department of the Interior. Under Section 304(b) of FLPMA, the Secretary may charge for reasonable costs of the United States concerning "applications and other documents relating to [the public] lands." Section 504(g) of FLPMA provides that the Secretary may charge for "all reasonable administrative and other costs incurred in processing" a right-of-way application and costs associated with the inspection and monitoring of right-of-way facilities.

The revision under section 2804.14 and other cost recovery provisions of this rule clarify that the BLM's cost recovery authority is consistent with FLPMA, in that it seeks reimbursement to the United States—*i.e.*, it can seek reimbursement of its own costs as well as those of other Federal agencies. This does not include reimbursement of costs for State and non-regulatory offices. The BLM intends that collecting such reasonable costs for other Federal agencies would primarily arise in situations where the BLM's decision to approve or deny a right-of-way application depends on another Federal agency's issuance of a decision or other determination before or in conjunction with the BLM's right-of-way decision. An example of this can be seen in the BLM's May 2013 Memorandum of Understanding with the Fish and Wildlife Service (FWS), where the BLM and FWS have established a protocol for the BLM to collect and then provide cost recovery funds to the FWS for Endangered Species Act and other work that the BLM determines is necessary for it to process right-of-way applications. A copy of the Secretarial Order and Memorandum of Understanding can be found at the following Web site: [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_information/2013/IB\\_2013-074.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_information/2013/IB_2013-074.html). No other comments were received, and no changes were made to this section of the final rule.



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

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 section 2804.18(a)(6) requires that a Master Agreement also describe existing agreements between the BLM and other Federal agencies for cost reimbursement. 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 maintain consistency for cost reimbursement. No additional comments were received, except for those discussed under section 2804.14, and no changes were made to this section in the final rule.

Section 2804.19 How will BLM process my processing Category 6 application?

Under section 2804.19(a), an applicant for a Category 6 application must enter into a written agreement with the BLM identifying how such applications will be processed. Under this final rule, the final agreement includes a description of any existing agreements the applicant has with other Federal agencies for cost reimbursement associated with the application. No comments were received for this section, and no changes were made from the proposed rule to this section of the final rule.

Under section 2804.19(e), the BLM may collect reimbursement to the United States for its reasonable costs for processing applications and preparation of other documents under this part relating to the public lands. Adding this language to these regulations clarifies the BLM's authority when collecting for other agencies. No additional comments were received, except for those discussed under section 2804.14 and no changes were made to this section of the final rule.

Section 2804.20 How does BLM determine reasonable costs for processing Category 6 or monitoring Category 6 applications?

Section 2804.20 is revised to clarify the scope of the BLM's cost recovery and how the BLM will determine reasonable costs of the United States when processing and monitoring Category 6 applications. In paragraph (a)(1) of this section, "BLM" is changed

to "the Federal Government," to make it clear that the BLM may collect cost recovery for other Federal agencies as well. Processing costs 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 the right-of-way grant. As pre-application requirements are not included in this final rule, section 2804.20(a)(7) was deleted. No additional comments were received, except for those discussed under section 2804.14, and no other changes were made to this section of the final rule.

Section 2804.23 When will the BLM use a competitive process?

Section 2804.23 was previously titled "What if there are two or more competing applications for the same facility or system?" but is revised to read, "When will the BLM use a competitive process?" This change is necessary because, under the final rule, the BLM may use a competitive process even when there are not two competing applications.

Paragraph (a)(1) of this section now requires applicants to reimburse the Federal Government, as opposed to just the BLM, for processing costs, consistent with the cost recovery authority in Sections 304(b) and 504(g) of FLPMA. This means that the BLM could require applicants to reimburse the BLM for the costs incurred by other agencies, such as the U.S. Fish and Wildlife Service, in processing the application.

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

Throughout the proposed rule, the BLM required publication of a notice in the **Federal Register** as well as in a newspaper in general circulation in the area affected by the potential right-of-way. Publication in a newspaper is included in the final rule as one of the "other methods" of public notification that the BLM may use, but is no longer a requirement. The potential area affected by a proposed BLM action may not be covered by a single newspaper. As the BLM considers issues at a

broader scale, such as multi-state transmission lines, several communities may be affected by a single BLM action. The **Federal Register** is a national publication that is available to all interested parties. In addition, the BLM will make available a copy of all **Federal Register** notices on its Web site at [www.blm.gov](http://www.blm.gov). The BLM may use a newspaper to notify the public on a case-by-case basis, as appropriate. The public notification methods throughout this final rule are revised consistent with this section.

*Comments:* Some comments expressed concern that the BLM may determine to hold a competitive offer after an applicant has substantially progressed in the processing of their non-competitive application for a right-of-way grant. These comments argued that this possibility would discourage developers from submitting a solar or wind energy right-of-way application.

*Response:* Proposed paragraph (c) of this section has been revised to state that a competitive process will not be held for public lands where a right-of-way application for solar or wind development has been accepted, including the POD and cost recovery agreement. Adding this criterion provides assurances to prospective applicants that the BLM will not competitively offer lands after considerable time and resources have been committed to processing a particular application.

Under section 2804.23(d), lands outside of DLAs are made available for solar or wind energy applications through the competitive process outlined in section 2804.30. This provision directs the reader to new section 2804.30, which explains the competitive process for solar and wind energy development outside of DLAs. This paragraph is necessary to differentiate between development inside and development outside of a DLA. No comments were received on this paragraph, and no changes are made from the proposed rule to the final rule.

Under section 2804.23(e), lands inside a DLA will now be offered competitively through the process described in subpart 2809. This new paragraph directs the reader to revised subpart 2809, which explains the competitive process for solar and wind energy development inside of DLAs. This paragraph is necessary to differentiate between development inside and outside of a DLA. No additional comments were received for this section, except for those discussed under paragraph (c), and no other



changes were made from the proposed to the final rule.

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

Section 2804.24, which is unchanged from the proposed rule, 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 section 2804.23(c). The BLM only determines competition exists when there are two or more competing applications for the same right-of-way facility or system.

Due to the changes made to section 2804.23, section 2804.24 specifies when

an SF-299 is required. Under both the existing regulations and this final rule, the BLM will implement a competitive process if there are two or more competing applications. Under section 2804.24(a), you do not have to submit a SF-299 if the BLM offers lands competitively and you have already submitted an application for that facility or system.

Under paragraph (a) of this section, 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 will be required to submit an SF-299, but unsuccessful bidders will not.

Paragraph (b) explains that an applicant does not have to use an SF-299 when the BLM is offering lands competitively under subpart 2809. Under subpart 2809, the BLM will offer lands competitively for solar and wind energy development inside DLAs. The successful bidder will be offered a lease if the requirements described in section 2809.15(d) are met. The successful bidder will not have to submit an application using SF-299. The following chart explains when the filing of an SF-299 is or is not required under this final rule:

**WHEN A SF-299 IS REQUIRED**

Type of solar or wind right-of-way	Would have to submit a SF 299?
Have two or more competing applications for the same area, outside of DLAs	Yes.
Lands are offered competitively outside of a DLA 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 DLA and you have not submitted an application	Yes.
You are the successful bidder in a competitive offer outside of a DLA and have been declared the preferred applicant and may apply for a grant.	Yes.
Lands are being offered competitively within a DLA under subpart 2809	No.

No comments were received and, no other changes are made to this section of the final rule.

**Section 2804.25** How will BLM process my application?

This section of the final rule has been modified from the proposed rule to reflect the shift of early BLM coordination from pre-application meetings, under section 2804.10, to preliminary application review meetings, under section 2804.12. These preliminary application review meetings are now required after the initial filing of a right-of-way application for solar or wind projects, or for electric transmission lines with a capacity of 100 kV or more.

Section 2804.25(a) of this final rule has been modified from the proposed rule to include a provision from current section 2804.25(b) that states the BLM will inform you of any other grant applications that involve any of the lands for which you have applied. This new provision has been added as paragraph (a)(2). Paragraph (a) has been reformatted providing an introductory statement and putting the existing requirement for identifying the processing fee as paragraph (a)(1). This is an existing provision of the regulations and is only added to this paragraph as part of formatting revisions

that are made in response to comments submitted concerning confusion with existing requirements of section 2804.25(b).

*Comments:* Some comments were received noting confusion over the proposed section 2804.25(b) and its requirements.

*Response:* This paragraph has been reformatted into two new separate paragraphs, (b) and (c).

New section 2804.25(b) contains existing regulatory requirements that were part of proposed section 2804.25(b). This paragraph helps explain the existing requirements found in section 2808.12 of the regulations. In paragraph (b), the BLM will 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. If you have an outstanding trespass action, the BLM will only process your application, under part 2800 or part 2920, if it will resolve the underlying trespass. Similarly, if you have any debts outstanding, the BLM will only process your application after those outstanding debts are paid. The requirement in section 2808.12 is often overlooked by potential right-of-way applicants and this addition to the regulations would insert the requirement into the application process

and improve applicant understanding of the BLM's process under subpart 2804.

*Comments:* Some comments expressed concern with the clarity of this proposed section and were also unsure whether using an application for a right-of-way to resolve trespass was appropriate. Further, concern was raised over what constituted an unpaid debt to the Federal Government.

*Response:* In response to the comment about clarity, the BLM revised the language in paragraph (b) of this section, by adding paragraphs (b)(1) and (2), discussing when the BLM will not process an application.

Section 2804.25(b)(1) clarifies that the BLM will not process your application if you have an outstanding debt to the Federal Government and then describes what constitutes an outstanding debt to the government. An additional sentence was added to paragraph (b)(1) of this section, explaining that unpaid debts are what are owed to the Federal Government after all administrative collection actions have occurred, including administrative appeal proceedings under applicable Federal regulations and review under the Administrative Procedure Act (APA). Adding this provision to the regulations makes it clear to right-of-way holders and trespassers that the BLM will evaluate applications in this manner.

Paragraph (b)(2) of this section clarifies that if you are in trespass, the BLM will only process an application that would resolve that particular trespass. Reformatting this paragraph in this manner separates the concepts of unpaid debts and existing trespass situations as they pertain to new applications. Under this final rule, the BLM will not always issue a right-of-way to resolve a trespass. The BLM will consider the situation on a case-by-case basis and will evaluate whether the trespass was knowing and willful. The BLM will also consider whether issuing a right-of-way to resolve the trespass is appropriate. If a right-of-way is not an appropriate way to resolve a trespass, the BLM will consider other options for resolving a trespass, such as requiring its removal from public lands.

Section 2804.25(c) contains the requirements from section 2804.25(b) of the existing regulations, under which the BLM may require the submittal of a POD. The POD or other plans must be submitted to the BLM within the period specified by the BLM.

Under paragraph (c)(1) of this section, the BLM requires an applicant to commence resource surveys or studies within 1 year of receiving a request from the BLM. This requirement was identified in the preamble of the proposed rule and carried forward in this final rule. The requirement to begin the surveys or studies within 1 year of the request establishes a default period, which will apply if the BLM does not specify a different time period within which the survey or study must begin. The BLM may identify a different time period through written correspondence with applicants, or by other means, as appropriate. Generally, these surveys or studies will not require a permit from the BLM or any other agency.

Proponents need only coordinate the work with the applicable agencies as appropriate. However, for some surveys or studies, there may be a permit that is necessary, such as when performing pedestrian archaeological surveys. In those instances, the BLM will work with applicants to ensure that the applicable permitting requirements are understood by all parties.

Under paragraph (c)(2) of this section, an applicant could request an alternative requirement to one of the requirements of this section, such as the period of time described in paragraph (c)(1) of this section. However, the applicant must show good cause why it is unable to meet the requirement. This new paragraph directs the reader to new section 2804.40, consistent with revisions made from comments received as discussed under section 2804.40, if

the applicant is unable to meet the requirements of this section. Failure to meet the 1 year requirement for application due diligence may result in denial of the application, unless an alternative compliance period has been requested and agreed to by the BLM. Paragraph (c)(2) of this section gives applicants the ability to address circumstances outside of their control with respect to time periods.

*Comments:* Some comments were received regarding due diligence requirements for applicants to begin resource studies or provide other such survey work to the BLM. Comments recommended varying timeframes for application due diligence ranging from 1 to 3 years after the BLM's approval of survey protocols or other identified study requirements. Comments generally agreed with implementing such requirements for applications.

*Response:* In consideration of the comments received on application due diligence requirements, the BLM determined that a longer timeframe would not be appropriate. Under this final rule, an applicant would be required to begin surveys or inventories within a year of the BLM's request date, unless otherwise specified by the BLM. The BLM determined that a one year default timeframe was adequate to commence surveys and inventories. This rule does, however, leave the BLM with the discretion to establish a different timeframe where appropriate.

Section 2804.25(c) of the existing regulations is redesignated as paragraph (d) of this section. It remains unchanged and is relocated to make room for the reformatting of this section in response to comments submitted on the proposed rule.

The introductory text of section 2804.25(e), which is redesignated from existing paragraph (d), is revised by replacing the words "before issuing a grant" with "in processing an application." This change is made to account for the situation where the BLM would issue a grant without accepting applications. For example, lands leased inside DLAs will 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 do not apply to the leases issued under subpart 2809. However, they will apply to all other rights-of-way, including solar and wind energy development grants outside of DLAs. The process for issuing leases inside DLAs is discussed in subpart 2809. This revision clarifies that the requirements of this section apply to applications.

Section 2804.25(e) is further revised to incorporate new provisions for all rights-of-way as well as specific provisions for solar and wind energy development. Existing section 2804.25(d)(5), which provides the requirement to hold a public meeting if there is sufficient public interest, is moved to section 2804.25(e)(1). Revisions are made in this final rule, consistent with those made in section 2804.23(c). Language is added specifying that a public notice may also be provided by other methods, such as publication in a newspaper in the area affected by the potential right-of-way or the Internet.

Section 2804.25(e)(2) contains three separate requirements for solar and wind energy development applications. Under section 2804.25(e)(2)(i), the BLM will hold a public meeting in the vicinity of the lands affected by the potential right-of-way for all solar or wind energy development 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 is added to provide an opportunity for public involvement early in the process. Under paragraph (e)(2)(ii), the BLM will apply screening criteria when processing an application outside of DLAs. These screening criteria are explained further in section 2804.35. The BLM removed the word "priority" from this requirement to improve reader understanding that the screening criteria are used to determine the priority of applications, not "resource priorities."

Under section 2804.25(e)(2)(iii), the BLM will evaluate an application, based on the input it has received from other government and tribal entities, as well as information received in the application, public meetings, and preliminary application review meetings. The BLM may consider information it has received outside of these meetings when evaluating an application. This paragraph is revised in the final rule to remove reference to pre-application meetings and add preliminary application review meeting requirements, consistent with other changes in this final rule. The BLM has also added more detail to this paragraph explaining why it may deny an application at this point in the process. For example, the BLM may deny an application if you fail to address known resource values raised during preliminary application review (see section 2804.12(c)(4)), or during public meetings (see section 2804.25(e)(2)(i)), or if you improperly site the project. The BLM made this revision to help

improve the public's understanding of this process.

Based on its evaluation of an application, the BLM will either deny or continue processing it. The BLM's denial of an application will be in writing and is an appealable decision under section 2801.10. The denial or approval of all grant applications is at the BLM's discretion.

As noted previously under section 2804.12, you must submit an application for a solar or wind energy development. Requirements for submitting this application are noted in section 2804.25(b) and (c), and these must be fulfilled before an application is ready to be evaluated by the BLM. Section 2804.25(e)(2)(iii) has been revised to explain what criteria must be met in order for the BLM to continue processing your application. These criteria are: Whether the development application is appropriately sited on the public lands (e.g. outside of DLAs—where leasing must proceed under Section 2809 rather than 2804—and outside of exclusion areas), and whether you address known resource values that were discussed in the preliminary application review meetings. Known resource values must also be addressed in general project descriptions and in further detail in a project's POD.

Under section 2804.25(e)(3), the BLM will determine whether the POD schedule submitted with an application meets the applicable development schedule and other requirements or whether an applicant must provide additional information. This is a necessary step that allows the BLM to evaluate the application requirements under section 2804.12. Those requirements can be found in section 2804.12(b) and (c). The BLM determines if the development schedule and other requirements of the POD templates have been met. The POD templates can be found at <http://www.blm.gov>.

Under the proposed rule, paragraph (e)(3) of this section applied to applications for solar and wind energy development, transmission lines with a capacity of 100 kV or more, and pipelines 10 inches or greater in diameter. Under this final rule, this paragraph would apply to all applications for which a POD is required. Although a POD is mandatory for some types of projects, the BLM may require an applicant to submit a POD with any type of right-of-way application under section 2804.25(c) of this final rule (section 2804.25(b) of the existing regulations). Should the BLM require an applicant to submit a POD, the application would be evaluated under this paragraph based on the POD

schedule submitted with the application.

Section 2804.25(e)(4) of this final rule is revised from the proposed rule to include a cross-reference to the Department's NEPA implementation regulations at 43 CFR part 46. The Departmental regulations reinforce the CEQ's regulations and the requirements to comply with NEPA. This cross-reference is made to increase the public's awareness of these requirements and where they may be found, but does not impose any additional requirements on the public.

Redesignated paragraphs (e)(5), (6), (7), and (8) of this section are existing provisions that were formerly found in paragraph (d) of this section. Former paragraph (e) is redesignated as new paragraph (f). No other comments were received or other changes made to the final rule, except that references to the "U.S." were changed to read "United States."

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

Section 2804.26 explains the circumstances in which the BLM may deny an application. The BLM considers the criteria outlined in this section during its decision-making process, which for right-of-way authorizations ends with the issuance of a decision—either a ROD or a Decision Record (DR), or in the absence of a ROD or DR, the perfection of a right-of-way instrument or the issuance of a written decision denying the right-of-way application. Once the BLM issues a ROD or DR to approve a right-of-way, any subsequent BLM determination that is inconsistent with that ROD or DR, including any decision to suspend or terminate the right-of-way, is a separate action that requires the BLM to complete a separate decision-making process.

Section 2804.26(a)(5) explains one such circumstance. This provision of the existing regulations is revised to include "or operation of facilities" and now reads, "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 rule adds text to clarify this requirement, which applies to all rights-of-way. The added paragraphs 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, a confirmed PPA, or contracts for the manufacture and/or supply of key components for solar or wind energy project facilities.

Paragraphs (a)(6), (7), and (8) are added to section 2804.26 to reiterate the new requirements of the final rule and explain that the BLM may deny an application should an applicant not comply with these provisions.

Under section 2804.26(a)(6), the BLM may deny your application if you do not meet the POD submittal requirements under section 2804.12(a)(8) and (c)(1) and 2804.25(e)(3). The final rule is updated to ensure that the citations match the reformatted rule, after changes were made based upon comments received.

Paragraph (a)(7) of section 2804.26 is a new paragraph added to the final rule that corresponds to the provisions by which the BLM will require surveys under section 2804.25(c). Under section 2804.26(a)(7), the BLM may deny your application if you fail to meet its requirements to commence surveys and studies, or provide plans for permit processing as required by section 2804.25(c). This paragraph is new in the final rule and is added to be consistent with the new requirements in section 2804.25(c), which are added based upon public comment.

Section 2804.26(a)(8) references the possible application denial based on the screening criteria established in section 2804.25(e)(2)(iii).

*Comments:* Some comments expressed concern regarding the BLM exercising its authority to deny an application without accounting for the fact that some circumstances may be outside an applicant's control.

*Response:* In response to this generalized concern, the BLM added section 2804.40 to this final rule. Under this new section, an applicant may request an alternative requirement in place of a requirement that they are unable to meet. References are made to this new section in specific parts of the application processing requirements found under subpart 2804.

No other changes were made to this section and no other comments were received.

**Section 2804.27** What fees must I pay if BLM denies my application or if I withdraw my application?

The heading of section 2804.27, "What fees do I owe if BLM denies my application or if I withdraw my application?" is revised to read, "What fees must I pay if BLM denies my

application or if I withdraw my application?”. With the addition of application filing fees, the revised title more clearly describes the requirements of the final rule. A new provision in this paragraph provides that if the BLM denies your application, or if you withdraw it, you must still pay any application filing fees submitted or due under section 2804.12(c)(2), and the processing fee set forth at section 2804.14. Sections 304(b) and 504(g) of FLPMA provide for the deposit of payments to reimburse the United States for reasonable costs with respect to right-of-way applications and other documents relating to the public lands. In the case of preliminary application review meetings, the expense could be considerable, depending on the complexity of the project. The BLM will refund any part of the application filing fees received that is not used for processing the application. This paragraph is revised by removing references to pre-application meetings that were originally proposed for the rule, but not carried forward in the final rule. These revisions are consistent with other changes made in the final rule under section 2804.12 regarding the change from pre-application to preliminary application review meetings. No other comments were received on this section, and no other changes were made to the final rule.

**Section 2804.30** What is the competitive process for solar or wind development for lands outside of designated leasing areas?

Section 2804.30 explains the process for the BLM to competitively offer lands outside of DLAs. This bidding process is similar to that established in subpart 2809 (competitive offers inside DLAs), except that the end result of the bidding is different. Under paragraph (f) of this section, the successful bidder will become the preferred right-of-way applicant. Under this section, the high bidder is not guaranteed a grant, but is identified as the “preferred applicant.” As explained under paragraph (g) of this section, the preferred applicant is the only party that may submit an application for the parcel identified by the BLM, but the BLM must still review and accept the application. This is different from subpart 2809, which provides that the successful bidder for a lease inside a DLA may be offered a lease upon successfully meeting all requirements of section 2809.15.

*Comments:* Three general comments were received on this section. The first comment requested that language be added to encourage additional consultation with members of the

public, such as developers, non-governmental organizations, and stakeholders, during the competitive process outside of DLAs.

*Response:* Many opportunities for public engagement are provided throughout the competitive process for right-of-way applications filed on public lands outside of DLAs. As part of the competitive processes outside of DLAs, the BLM may engage the public through a notice seeking competitive interest in a particular area, which would provide the public and interested stakeholders with an opportunity to comment on the potential development of a particular parcel. If the BLM decides to move forward with a competitive offer for a parcel, a Notice will be published in the **Federal Register** and may also be announced through other means. Upon the completion of the competitive process, the BLM will process an application for the solar or wind energy development, following the requirements of this final rule, which include a mandatory public meeting before the BLM determines whether to deny the application or continue processing it. If the BLM continues to review an application, there may be additional opportunities for public involvement through the NEPA process, including during the notice and comment period. As a result of these measures, the BLM believes that there is adequate opportunity for the public to be fully engaged throughout the competitive process, application review, and NEPA processes for projects outside of DLAs.

*Comments:* The second comment on this section stated that only developers are capable of making a determination of whether development in a particular area will be economically sound and, therefore, a worthwhile pursuit for public land use. The comment contended that developers will not expend the effort necessary to determine the economic suitability for projects before a competitive process is held (either inside or outside areas such as DLAs).

*Response:* While the BLM agrees that only a developer can determine whether a particular project in a particular area makes sense for them, that determination does not necessarily apply to all developers, nor is it the only consideration relevant to the BLM. Each developer may follow a different business model and may consider different funding, financing, and procurement opportunities when assessing a potential project site. In identifying DLAs, the BLM has to consider the environmental and other resource impacts of a potential

development, in addition to the known solar or wind potential for the area. For these reasons, the BLM does not make an economic evaluation when identifying an area for a competitive process. The BLM will rely on developer interest, among other indications of competitive interest in an area, to determine whether utilization of a competitive process is appropriate. Recognizing that determining economic viability for a particular area may involve site-specific testing information, the final rule contains provisions allowing for such activities. For wind or solar energy projects outside of a DLA, interested developers can apply for testing authorizations as described in section 2804.31 of this rule, or apply for a testing authorization inside DLAs prior to a competitive action as described in section 2809.19(d) of this rule.

*Comments:* The third comment on this section suggested that the leasing process should be restructured from a local “electric-centric” focus to a macro-level objective to provide the greatest benefit to “We the People.” This comment suggests that the BLM should explicitly recognize that the available solar and wind resources could be used to provide most of, and potentially all of, the United States’ fuel, electricity, transportation, and natural resource needs.

*Response:* FLPMA directs the BLM to generally receive fair market value for the use of public lands and to utilize and protect public land resources while balancing the use of the public lands for current and future generations. The BLM intends for this rule to promote the development of solar and wind energy on public lands, while also ensuring a fair return to the Federal Government.

Paragraph (a) of section 2804.30 identifies lands available for competitive lease; paragraph (b) of this section explains the variety of competitive procedure options available; and paragraph (c) explains how the BLM identifies parcels for competitive offers. Under this final rule, the BLM may identify a parcel for competitive offer if competition exists or the BLM elects to offer a parcel on its own initiative. The BLM may include lands in a competitive offer in response to interest from the public or industry, or to facilitate an individual State’s renewable energy goals. This is a change from existing regulations, which only allow the BLM to use a competitive process when there are two competing applications; however, the changes made to section 2804.23(c) in this rule give the BLM more flexibility.

Paragraph (d) of this section, "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 also explains that the successful bidder becomes the preferred applicant, which can then 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 (d)(4) of this section requires that the notice identify the minimum bid amount, explain how the authorized officer determined the minimum bid amount, and describe the administrative costs borne by the Federal agencies involved. As indicated in the general discussion section of this preamble, administrative costs are not a component of fair market value, but instead are a cost reimbursement paid to the Federal Government for its expenses. The BLM will publish a notice containing all of the identified elements in the **Federal Register**, and may also use other notification methods, including newspapers in the affected area or the internet. Consistent with sections 2804.23(c), this section's public notice requirements were revised, establishing notice through a newspaper or internet as an additional optional form of notice. This change in the final rule is discussed further in section 2804.23(c) of this preamble. No comments were received on section 2804.30(a) through (d). However, a cross-reference has been updated in section 2804.30(d)(6) to include section 2804.12, due to revisions made to that section based upon comments received.

Under paragraph (e) of this section, the BLM requires that bid submissions include both the minimum bid amount and at least 20 percent of the bonus bid. The minimum bid consists 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 will 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 known or potential

values of the parcel. For example, the BLM may use a percentage of the acreage rent value for the parcel competitively offered. An explanation of the minimum bid amount and how the BLM derived it will be provided in the notice of competitive offer.

*Comments:* Several comments were received pertaining to bidding under section 2804.30(e). One comment suggested that the BLM: (1) Establish global objectives to evaluate bids based on the constitutional greater good for the "People" to meet many objectives of the renewable energy bidding process; (2) Ensure that successful bidders use energy to meet public objectives; (3) Ensure that appropriate values are received for the right to develop energy; (4) Ensure that evaluations of electrical supply include the full costs and benefits to the public; (5) Ensure that effects from manmade impacts on global warming shall be based on transient climate sensitivity; and (6) Focus on "We the People" instead of creating processes that incur higher costs for developments.

*Response:* The comments submitted are suggesting revisions to the final rule that are outside of the BLM's authority to consider. FLPMA directs the BLM to generally receive fair market value for the use of public lands and to utilize and protect public land resources while balancing the use of the public lands for current and future generations. The provisions of this final rule will ensure that the BLM is receiving fair market value for the uses of the public lands that it authorizes.

The second comment suggested that the BLM direct where or how renewable energy that is generated on public lands is deployed. The BLM could place a requirement on the use of the electricity generated, through a term or condition of a right-of-way, but the BLM expects that it would do so only in limited circumstances, if at all, as it is a land management agency charged with managing the public lands under principles of multiple use and sustained yield.

The BLM evaluates proposed projects before issuing a decision to approve, approve with modifications, or deny a project. In general, the BLM will analyze a project using reasonable scientific or other methods, to understand the impacts to the public lands and other lands, uses, resources and other systems outside of its authority to control. These other lands, uses, resources, and other systems outside of the BLM's authority to control could include electrical transmission systems that may be owned or controlled by an Independent System Operator, or the energy needs of

a State or local community as identified by the State government offices, or lands administered by a Federal, State, or private entity. When evaluating prospective projects, the BLM considers their reasonably foreseeable direct, indirect, and cumulative impact on climate change on a local, regional, and national scale, as appropriate.

*Comment:* Another comment suggested that administrative costs discussed under section 2804.30(e)(2)(i) should not be included as part of the minimum bid. The initial costs of preparing for and holding a competitive offer are completed at the volition of the BLM, not an applicant. The comment suggested that including administrative costs as part of the minimum bid will discourage development inside and outside of DLAs. The comment suggested that a successful bidder should essentially pay for the same administrative and NEPA costs as noncompetitive applicants for right-of-ways outside of DLAs.

*Response:* Under the final rule, reimbursement for the reasonable administrative and other costs is generally required from any successful bidder. Consistent with Sections 304(b) and 504(g) of FLPMA, the BLM may recover reasonable administrative and other costs incurred in processing an application for a right-of-way. Administrative and other costs associated with the use of a competitive process to identify a preferred applicant can be recovered because this work facilitates, and will generally be essential to, the BLM's review of a right-of-way application. These costs would be paid only by the preferred applicant. Bidders will be given notice of the administrative costs portion of the minimum bid prior to their bidding at a competitive offer. The BLM believes that it is preferable for a prospective bidder to know these costs, which are required to prepare and hold a competitive auction, before submitting a bid in a competitive offer. Prospective applicants would not otherwise be able to submit an application to the BLM for development of that area without first being the successful bidder. The BLM considers the competitive process described in subpart 2809 for lands inside a DLA to be even more preferable to prospective developers, as a successful bidder would be issued a lease immediately upon paying the full amount of their winning bid.

*Comments:* Comments stated that the mitigation costs identified in section 2804.30(e)(2)(ii) should not be factored into the minimum bid because the successful bidder should have to pay separately for mitigation if and when

construction commences and not at the time of bidding. A successful bidder cannot pay twice for the same mitigation. Several other comments also addressed what should or should not be included as acceptable factors.

*Response:* The BLM has removed the reference to mitigation costs found in proposed section 2804.30(e)(2)(ii), as this may be misleading and open to interpretation. However, the BLM has maintained the acreage rent and the megawatt capacity fee as considerations when determining a minimum bid amount. These factors which are used only to determine the amount above the administrative costs where bidding will start (see section 2804.30(e)(2)(ii)). Their inclusion as a potential consideration in the development of the minimum bid does not count towards other obligations. For example, if the BLM arrives at a minimum bid amount using the annual acreage rent for a lease area, a successful bidder will still be required to pay the first year's acreage rent, as identified in this rule, before being awarded a grant or lease. No offset or discount toward future acreage rent will be provided.

*Comments:* A number of comments expressed concern that requiring unsuccessful bidders to pay application filing fees would discourage prospective developers. They suggested that application filing fees should be refundable if a bidder is not successful.

*Response:* New section 2804.30(e)(4) has been revised based on these comments to refund application filing fees for unsuccessful bidders, except for the reasonable costs incurred by the United States. This change is consistent with the revisions under section 2804.12(c)(2) and discussed further under that section of this preamble.

Under section 2804.30(f), the successful bidder is determined by their submission of the highest total bid for a parcel 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 after the end of the competitive offer. No comments were received pertaining to section 2804.30(f), and no other changes are made from the proposed rule to the final rule.

Under section 2804.30(g), a preferred applicant is the only party who may submit an application for the parcel that is offered. Unlike the process under subpart 2809, the approval of a grant under this paragraph is not guaranteed to a successful bidder. Approval of a grant is solely at the BLM's discretion.

The preferred applicant may also apply for an energy project-area or site-specific testing grant.

*Comments:* A comment suggested adding a new provision to the rule stating that upon making a winning bid, the preferred applicant also secures site control. Adding such a condition would provide more certainty to the process for prospective developers, further incentivizing the competitive bidding.

*Response:* The BLM agrees with this comment and has revised paragraph (g) to make it clear that the BLM will not accept applications on lands where a preferred applicant has been identified, unless submitted or allowed by the preferred applicant in order to provide additional certainty with respect to site control. If ancillary facilities for projects or facilities on adjacent parcels, such as roads or transmission lines, need to be constructed on the parcel where a preferred applicant's project would be sited, the companies constructing the ancillary facilities would need to apply to the BLM for a right-of-way, and the BLM would consult with the preferred applicant before processing any such application. This is intended to provide certainty to the preferred applicant when applying for renewable energy developments on the public lands that applications from other entities will not be accepted for the competitively gained application area unless they are allowed by the preferred applicant.

Section 2804.30(h) describes how the BLM will address certain situations that could arise from a competitive offer. Under paragraph (h)(1) of this section, the BLM retains discretion to 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 will 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 (see 43 CFR part 4 for details). Under paragraph (h)(2) of this section, the BLM may make the next highest bidder the preferred applicant if the first successful bidder does not satisfy the requirements under section 2804.30(f). This allows 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 may reoffer lands competitively under section 2804.30(h)(3) if the BLM cannot identify a successful bidder. If there is a tie, this re-offer could either be limited to tied bidders or include all bidders. This provides the BLM with flexibility to

resolve ties and other issues that could arise during a competitive offer process.

Under section 2804.30(h)(4), if the BLM receives no bids, the BLM may reoffer the lands through the competitive process provided for in section 2804.30. The BLM may also make the lands available through the non-competitive process described in subparts 2803, 2804, and 2805, if doing so is determined to be in the public interest. No other comments were received, and no additional changes were made to final paragraph (h) of this section, except those discussed above.

**Section 2804.31** How will the BLM call for site testing for solar or wind energy applications?

This section, which was not in the proposed rule, is added to this final rule to describe how the BLM will call for site testing for solar and wind energy. This section also explains how the BLM may create a new DLA, through the land use planning process described in new section 2802.11, in response to public interest.

Under new paragraph (a) of this section, the BLM may call for site testing in a DLA by publishing a notice in the **Federal Register** and may also use other notification methods, such as a local newspaper or the Internet. Paragraph (a) also specifies what information will be included in any public notice issued under the section, including the following information: (1) The date, time, and location where site testing applications may be sent; (2) The date by which applicants will be notified of the BLM's decision on timely submitted site testing applications; (3) The legal land description of the area for which site testing applications are being requested; and (4) Qualification requirements for applicants. The BLM is limiting the testing authorizations that would be offered under a call for site testing applications under this section to site-specific grants identified under section 2801.9(d)(1). This limitation is established to reduce the potential for multiple interested parties having overlapping applications. The BLM does not intend to use a competitive process for the site testing. Rather, the BLM intends to determine whether there is competitive interest for solar and wind energy development for these public lands. Should there be overlapping testing applications, the BLM will notify those applicants of the overlap and may hold a competitive offer for that site testing location to determine a preferred applicant.

Paragraph (b) of this section explains that any interested parties may request that the BLM hold a call for site testing

for certain public lands. However, how the BLM responds to those requests is at its sole discretion. The “call for site testing” may be used as a step in the process for lands either inside or outside of DLAs. A subsequent step would be the competitive offer for an application for a development grant under section 2804.30, or for a development lease under subpart 2809, if the area is designated as a leasing area, as described in section 2804.31(c).

Under paragraph (c) of this section, the BLM may determine that areas receiving interest from the public may be appropriate to establish as a DLA. The BLM may turn an area surrounding the site testing into a DLA as described under section 2802.11. Following the designation of an area for competitive leasing, the rules described under subpart 2809 would be used for any subsequent competitive processes in the area. Establishing such an area would be performed by following the land use planning process described in the revised section 2802.11. This process would be completed during the time that testing is being undertaken, which is typically a 3 year process. Designating such an area would allow interested developers to benefit from the incentives provided by development in a DLA. This approach also provides a mechanism for public interest to drive the establishment of DLAs.

*Comments:* Some comments suggested that the BLM retain the discretion to structure the DLA leasing process for wind in accordance with a two-phased development approach. The first phase of this approach would be a competitive process for site testing. The winner of this offer would receive exclusive rights to the parcel offered. The BLM would then create a DLA in the area where this competitive offer was held. The second phase would be a competitive offer for a lease in this newly established DLA.

*Response:* The BLM recognizes that potential developers should have a clear avenue for helping the BLM identify new DLAs. The BLM added the new section 2804.31 to this final rule in direct response to these comments. This new section provides another way for developers to identify and benefit from the competitive process and DLA incentives established in subpart 2809 of this final rule. Providing a mechanism for site testing while DLA designation is ongoing will allow developers to benefit from the specific data they obtain during testing as they evaluate whether a competitive offer or further development of the lands is in their interest.

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

Section 2804.35 explains how the BLM will prioritize review of an application for a solar or wind energy development right-of-way based on the screening criteria for projects outside of DLAs. The BLM will evaluate such applications based on the screening criteria in that section and categorize the application as high, medium, or low priority.

Through existing guidance, the BLM has established screening criteria (see Instruction Memorandum (IM) 2011–061), which identify and prioritize land use for solar and wind energy development rights-of-way. In order to facilitate environmentally responsible development the IM directs BLM to consider resource conflicts, applicable land use plans, and other statutory and regulatory criteria 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 the IM directs that these applications 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 includes criteria similar to those in the IM. The codification of these criteria gives certainty to applicants that such criteria will not change, and therefore provides more certainty as to how an application might be categorized. By specifying these criteria, applications could be tailored to fit them in order to streamline the processing of an application.

*Comment:* One comment indicated that the BLM should clarify the proposed rule’s application prioritization concept. This comment indicated that the proposed rule left several questions unanswered, including: (1) How the BLM’s staff time will be allocated within field staff among projects based on priority and time of submission; (2) Whether BLM staff working on a medium-conflict priority project will shift focus if a high-priority application is submitted; and (3) Whether BLM staff workload will be shifted across different field offices if certain field offices have a disproportionate number of high-priority applications as compared to others, which may have more medium- or low-priority applications.

*Response:* This final rule provides the criteria that the BLM will use to prioritize applications it receives. This allows potential applicants to

understand not only how these applications will be prioritized, but also how they can submit an application that is more likely to become a high priority for the BLM. The BLM’s internal management and workload processes are not addressed as that is not appropriate for a rulemaking. The criteria for determining how workload priorities are addressed are more appropriately handled by the policy guidance for implementing this final rule. Such guidance will elaborate on these points. It should be noted that the BLM will continue to process all applications received, but will prioritize staff workload based upon these priority categorizations.

*Comments:* Comments were received requesting clarity over whether leases awarded under subpart 2809 would be given priority over applications made outside of DLAs.

*Response:* New language has been added to the introductory paragraph of this section to clarify that the BLM generally prioritizes the processing of leases awarded under subpart 2809 over applications submitted under subpart 2804. There are some instances where the BLM may determine that it is in the public interest to prioritize the processing of an application over the processing of a lease. However, the BLM generally intends to prioritize the processing of leases first.

*Comments:* Comments were received requesting that the BLM expand on the criteria used in the rule and better define and describe the resource areas and potential conflicts. Some specific recommendations were made by the commenters. Each comment provided a greater level of specificity or detail than the proposed rule regarding how the BLM should prioritize resource conflicts.

*Response:* The descriptions of the resource conflicts in the final rule are mostly unchanged, except where noted in this section’s discussion. The BLM determined that the level of specificity and detail recommended by commenters is not appropriate for this final rule. Screening applications to prioritize them has only been done by the BLM recently. Based upon the BLM’s experience, it is better to establish broader criteria in this final rule that can then be further refined in its internal guidance. National priorities change and BLM continues to learn more about the resource conflicts associated with solar and wind energy projects. Therefore, the BLM believes that the specific internal guidance, rather than regulatory criteria, is more appropriate to provide a greater level of specificity and detail as recommended



by commenters. This approach gives the BLM flexibility to make changes as workload or conditions on the ground or in the wind and solar industry change. Guidance may need to be updated as national priorities change and the BLM better understands these resource conflicts with solar and wind energy projects. As part of the rule's implementation, the BLM will issue guidance aimed at better describing the BLM's considerations and prioritization of applications. This guidance is expected to be issued after this final rule is published.

Section 2804.35(a) identifies criteria for high-priority applications, which are given processing priority over medium- and low-priority applications. These criteria include:

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

The BLM may have identified lands that are appropriate for solar or wind energy development, but are not inside DLAs. These lands may include areas approved for solar or wind area development for which a right-of-way was never issued or an existing right-of-way was relinquished.

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.

Section 2804.35(b) identifies criteria for medium-priority applications, which will be considered before low-priority applications. These criteria include:

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. 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 a project may adversely affect resources listed nationally;
5. Sensitive plant or animal habitat areas;
6. Lands designated as VRM Class III;
7. Department of Defense (DOD) operating areas with land use or operational mission conflicts; and
8. Projects with proposed groundwater uses within groundwater basins that have been allocated by State water resource agencies.

*Comment:* One comment suggested for Criterion 5, that BLM's designated priority sage-grouse areas be a low priority and not a medium priority.

*Response:* The BLM removed the reference to sage-grouse habitat in this final rule. In September 2015, the BLM issued the Greater Sage-Grouse Plan Amendments and Revisions (80 FR 57633, 80 FR 57639). Those plans generally excluded priority habitat areas from major right-of-way developments, including wind energy. General sage-grouse habitat management areas generally fall into the medium-priority application category under Criterion 5.

With the removal of priority sage-grouse habitat from this final rule in criterion 5, the BLM also revised the specificity of "important eagle use areas" to read as "important species use areas." This revision makes the criterion more broad and applicable to all important species areas, and does not unintentionally exclude other identified important species areas that are not specifically identified for eagles.

*Comments:* Several comments were made concerning the above factors. For Criterion 2, a comment recommended revising the description of "conservation lands" and excluding Alaska from this requirement.

*Response:* The final rule does not revise the section 2804.35(b)(2) as recommended in the comment. This final rule does not define "conservation lands," which include areas of critical environmental concern and lands inventoried and managed for wilderness characteristics. These lands are often identified for their unique characteristics by the BLM to protect scenic, historic, cultural, and other natural values. The status of conservation lands is considered by the BLM when processing solar and wind energy applications. When the BLM considers such lands for wind or solar use, it evaluates the impacts and effects to the resources, including those resources for which conservation lands are designated. Depending on the

proposed development, the impacts to the resources for which the lands were designated for conservation purposes may be very small. Applications, such as those submitted for lands in Alaska, will be reviewed on a case-by-case basis.

*Comment:* Another comment suggested that Criterion 7 be moved to low priority and changed to read "Areas where the Department of Defense has testing, training, or operational mission impacts."

*Response:* The BLM considered the suggestion, but did not revise the rule as suggested. The BLM kept this requirement largely unchanged because the DOD has overlapping interest in some locations with the BLM lands—e.g., withdrawn lands that are transferred to the DOD or have an aerial easement—where solar and wind energy development does not pose significant adverse impacts to the DOD operations. However, we did revise criterion number 7 to read as follows

"Department of Defense operating areas with land use or operational mission conflicts." The BLM will coordinate with the DOD on solar and wind energy applications submitted to the BLM that may affect DOD operations.

Section 2804.35(c) identifies criteria for low priority applications, which 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 specifically designated by the Congress, the President, or the Secretary for the conservation of resource values;
2. Lands near or adjacent to wild, scenic, and recreational river and river segments determined as suitable for wild or scenic river status, if project development may have significant adverse effects on sensitive viewsheds, resources, and values;
3. Lands designated as critical habitat for federally designated threatened or endangered species under the ESA;
4. Lands currently designated as VRM Class I or II;
5. Right-of-way exclusion areas;
6. Lands currently designated as no surface occupancy areas; and

*Comment:* One comment recommended that applications within lands under Criterion 2 not be considered a low priority. This comment further suggested that an additional criterion be added that would read as "Nothing in this section creates a protective perimeter or buffer zone around the special status conservation lands specified in Sections 2804.35(c)(1) and 2804.35(c)(2). The fact that a proposed activity or use on BLM-administered lands outside such special



status conservation lands can be seen or heard within such special status conservation lands shall not accord an application low-priority status even if the use or activity is prohibited within the special status conservation lands.”

*Response:* Nothing in this criterion creates a protective perimeter or buffer zone around the areas described in this section and, therefore, precludes the BLM’s approval of an application that is near or adjacent to such areas. In the BLM’s experience, solar and wind energy development applications are complex and difficult to analyze. If a proposed right-of-way would affect such areas, the BLM will consider effects when processing the application. Potential impacts to these areas and their resources may prove unacceptable, even after mitigation.

The BLM also revised criterion 3 of this section from the proposed to final rule, from “is likely to” to “may” “. . . result in the destruction or adverse modification of that critical habitat.” This revision is necessary because it is difficult to determine based on an application what impacts are “likely.” However, it is the BLM’s responsibility to protect critical habitat. Therefore, any application that may destroy or adversely affect critical habitat will be a categorized as low priority under this final rule.

The low priority status of applications meeting these criteria relates only to the BLM’s management of its workload in processing applications; it is not a proxy for the BLM’s final decision. No other comments were received, nor were any changes made to section 2804.35.

#### Section 2804.40 Alternative Requirements

Section 2804.40 is added to this final rule in response to comments received on the proposed rule.

*Comments:* Several comments expressed concern that the BLM’s proposed requirements were too strict and would be difficult to meet, resulting in applications being denied or a holder’s authorization being terminated. They supported the BLM’s reference to a showing of good cause to support why a developer was unable to meet the BLM’s requirement.

*Response:* The BLM has added this section to the final rule due to the number of comments received discussing the BLM’s requirements that had no specific provision allowing a developer to show good cause why an alternative to a regulatory requirement should be approved.

Section 2804.40 expands on the BLM’s show of good cause provision that was in the proposed rule with

several different new requirements. This new provision replaces the specific provisions originally proposed and now applies to all rights-of-way and to all requirements the BLM has established under this subpart. An applicant may request an alternative requirement from the BLM by following the process outlined in this section. A similar provision is added in section 2805.12(e). That provision is discussed in that section’s preamble discussion.

Paragraph (a) of this section notes that the requester must show good cause for its inability to meet a particular requirement. An applicant may request an alternative requirement for any requirement in this subpart. Requirements include surveys or studies to be completed, timeframes in which to provide information, development and reclamation plans, fees, and other appropriate requirements.

Paragraph (b) of this section states that you must suggest an alternative requirement to the BLM and explain why the alternative requirement is appropriate. The BLM will not approve an alternative requirement without an explanation from the right-of-way holder as to why the current requirement is inappropriate. When implementing this final rule, the BLM intends to issue guidance on what constitutes an “appropriate” alternative requirement.

Paragraph (c) of this section states that a request for an alternative requirement must be in writing and be received by the BLM in a timely manner. In order for the request to be timely, the BLM must have received it prior to the deadline originally given for the relevant requirement. As explained in the final rule, any such request is not approved until you receive BLM approval in writing. The BLM may provide written approval through a letter, email or other written means.

#### Subpart 2805—Terms and Conditions of Grants

Section 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?

The heading for section 2805.10 is revised to read as stated above. This section is updated to reflect the new competitive process for lands inside DLAs (see subpart 2809) by stating that a successful bidder for a solar or wind development lease on such lands will not have to submit a SF–299 application. Instead, in these circumstances, the successful bidder

will have the option to sign the lease offered by the BLM.

Paragraph (a) of this section contains the language from the existing regulations explaining how the BLM will notify you about your application. This paragraph is revised to add a new provision requiring that the BLM send the successful bidder a written response, including an unsigned lease for review and signature. The BLM will notify unsuccessful bidders, and any unused funds submitted with their bids will be returned. If an application is rejected, the applicant must pay any processing costs (see section 2804.14).

In paragraph (a) of this section of the final rule, the BLM changed “will send you an unsigned lease” to “may send you an unsigned lease,” for consistency with revisions to section 2809.15(a). See the preamble for that section for more discussion.

Paragraphs (b) introductory text and (b)(1) and (2) of this section parallel paragraphs (a)(1) and (2) of the existing regulations, and describe the unsigned grant or lease that the BLM will send to you for approval and signature.

Paragraph (b)(3) of this section specifies that in accordance with section 2805.15(e), the BLM may make changes to any grant or lease, including to leases issued under subpart 2809, as a result of the periodic review required by this section. This provision is necessary because it makes clear why the BLM would amend a lease issued under subpart 2809. The terms and conditions of a right-of-way grant or lease may be changed in accordance with section 2805.15(e) as a result of changes in legislation or regulation, or as otherwise necessary to protect public health or safety or the environment. Because any changes to the terms and conditions of a right-of-way grant or lease would occur after the completion of the agency action (the BLM’s decision to approve the right-of-way), the BLM generally anticipates making the change through a separate action, generally initiated at the BLM’s discretion and requiring its own decision-making process.

Sections 2805.10(c), (d) introductory text, and (d)(1) and (2) and 2805.20(d)(3) contain the language from existing sections 2805.10(b), (c) introductory text, and (c)(1) and (2) and 2805.20(c)(3). These provisions remain unchanged from existing regulations. No comments were received and no changes were made from the proposed rule to the final rule.

Section 2805.11 What does a grant contain?

Existing section 2805.11(b) explains how the duration of each potential right-

of-way is determined. This paragraph is revised to include specific terms for solar and wind energy authorizations, because they are unique and different from other right-of-way authorizations. Where the proposed rule discussed only wind energy testing in some portions, the final rule is changed to include both solar and wind for each type of authorization. This revision is made in connection with changes made under section 2801.9(d), where comments requested that site- and project-area testing authorizations include solar energy, and not be exclusive to wind.

Section 2805.11(b)(2)(i) limits 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 will be issued only for a single meteorological tower or study facility and will include any access necessary to reach the site. This authorization cannot be renewed. If a holder of a grant wishes to keep its site for additional time, it must reapply. These authorizations are intended for testing, not energy generation, and are limited to an area large enough for only a single tower or study facility. If a developer wishes for a larger study area, it can apply for a project-area testing grant under paragraph (b)(2)(ii) of this section.

Section 2805.11(b)(2)(ii) provides for an initial term of 3 years for project-area energy testing. Such grants may include any number of meteorological towers or study facilities inside the right-of-way. Any renewal application must be submitted before the end of the third year if a proponent wishes to continue the grant. For the BLM to be able to renew such an authorization, the project-area testing grant holder must submit two applications, one for renewal of the project-area testing grant and one for a solar or wind energy development grant, plus a POD for the facility covered by the development application. Renewals for project-area testing grants may be authorized for one additional 3-year term.

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

Section 2805.11(b)(2)(iv) provides for an initial grant term of up to 30 years for solar and wind energy grants outside of DLAs, with a possibility of renewal in accordance with section 2805.14(g). A holder must apply for renewal before the end of the authorization term.

Section 2805.11(b)(2)(v) provides for a 30-year term for solar and wind energy

development leases issued under subpart 2809. A holder may apply for renewal for this term and any subsequent terms of the lease before the end of the authorization.

*Comment:* A comment suggested that the standard term be 40 years for both solar and wind energy grants (outside of DLAs) and up to 100 years for leases (inside of DLAs), with a condition of the grant or lease providing for renegotiation every 10 years. Other comments suggested longer terms for grants and leases.

*Response:* The final rule remains as proposed. The comment did not provide any justification for adding the additional years to the term of the grant or lease or explain why the additional time is necessary. Generally, it takes 1 year to secure a PPA after a project is authorized and an additional 2 to 3 years to construct. Since the term of a PPA is generally 20 to 25 years, the BLM believes that a 30 year period is sufficient to cover the developer's needs for constructing and operating a facility, while protecting the public lands from unnecessary burdens. If a longer term is suitable or desired by a developer, an application to renew the grant or lease may be submitted to the BLM pursuant to the applicable requirements.

For all grants and leases under this section with terms greater than 3 years, the actual term will 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 section 2885.11 later in this preamble) as FLPMA rights-of-way may be issued for terms greater than 30 years, while an 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.

Section 2805.11(b)(3) contains the language from section 2805.11(b)(2) of the existing regulations, but further requires that grants and leases with terms greater than 3 years include the number of full years specified, plus the partial year, if any. A grant that is issued for a term of 3 years will expire on its anniversary date, 3 years after it was first issued. This change affects the duration of all FLPMA right-of-way grants that are issued or amended after the final rule becomes effective. This change provides specific direction for consistently calculating the term of a right-of-way grant or lease.

No other comments were received, nor were any changes made to this section.

Section 2805.12 What terms and conditions must I comply with?

Section 2805.12 lists terms and conditions with which all right-of-way holders must comply. This section is reorganized to better present a large amount of information. Paragraph (a) of this section carries forward, without adjustment, most of the requirements from the existing regulations found at section 2805.12. 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. Paragraph (d) describes specific requirements for energy site or project testing grants. Paragraph (e) is a show of good cause condition that is added to the final rule consistent with the provisions added as new section 2804.40. All requirements of paragraph (a) are part of the existing regulations and are not discussed in this preamble unless we received a substantive comment.

*Comments:* Two general comments were received concerning this section. One comment stated that terms and conditions for leasing public lands for power generation should be the same regardless of the power source. The second comment suggested that the free market should drive success, not government policy on the terms and conditions of an authorization.

*Response:* The BLM processes each development proposal for use of public lands on a project-by-project basis. All of the terms and conditions in section 2805.12 would apply to power generation authorizations, regardless of the technology used. However, based on the BLM's experience with solar and wind energy developments, additional terms and conditions are required for such authorizations on public lands because the different types of technology may have varying impacts on the public lands and the resources they contain. For example, a string of wind turbines or an array of solar panels will have a different footprint, and accordingly will have a different impact on the lands and resources than other energy generation types.

Separately, the free market alone (a market without oversight), cannot determine the use of the public lands, as those lands are managed by the BLM on behalf of the American public. The terms and conditions of each BLM authorization address the protection of the public lands and resources, consistent with the BLM's responsibility to manage the public lands under

FLPMA's multiple use and sustained yield mandate. Without regulations that ensure the necessary terms and conditions are put in place, development of the public lands could result in the unacceptable loss of the public lands and the resources they contain.

The BLM regularly engages the public, including private businesses, to seek comments and input on the BLM's administration of the public lands. The BLM will continue to do so through this rulemaking and its other decision-making processes.

Section 2805.12(a)(5) contains language from existing section 2805.12(e) with two small changes. The word "phase" was changed to "stage" to prevent confusion with the use of "phase-in of the MW capacity fee" and similar phrases in this rule.

This paragraph also prohibits discrimination based on sexual orientation. Adding sexual orientation as a protected class in this regulation is consistent with the policy of the Department 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). Several comments were received either for or against modifying this paragraph.

*Comments:* One comment recommended that additional language be added to identify "pregnancy and gender relations" as protected classes, while another recommended deleting "sexual orientation" from the rule.

*Response:* We did not revise the rule as a result of these comments. This paragraph refers to existing Federal law prohibiting discrimination and does not add or expand upon requirements under existing law.

*Comments:* Some comments suggested that the BLM include greater connection between the rule and landscape-level mitigation as described in Secretarial Order 3330 and subsequent reports, and be consistent with the BLM's IM 2013-142, interim policy guidance for offsite mitigation.

*Response:* Developing landscape-level mitigation policy for use of the public lands is an ongoing BLM effort. Examples of landscape mitigation plans are the solar regional mitigation strategies. The BLM is currently developing regional mitigation strategies for many of the SEZs established as part of the Western Solar Plan. For an example of a complete mitigation plan, see the BLM's Dry Lake regional mitigation strategy known as Technical Note 444, which may be found on the BLM's Web site at: [http://www.blm.gov/style/medialib/blm/wo/blm\\_library/](http://www.blm.gov/style/medialib/blm/wo/blm_library/)

*tech\_notes.Par.29872.File.dat/TN\_444.pdf.* Since more detailed requirements and guidance will be addressed in the BLM's policies, handbooks, and other forms of guidance that are currently under development, the BLM did not make any changes in response to this comment.

Section 2805.12(a)(8)(iv) is added to the final rule based upon comments on the proposed rule to incorporate clear measures that are consistent with landscape-level mitigation and the BLM's IM 2013-142 for offsite mitigation. The added provision clarifies that the BLM can require offsite mitigation to address residual impacts associated with a right-of-way. Any compensatory mitigation requirements would be established through a land use planning decision or implementation decision, possibly relying on a previously developed strategy, such as a solar regional mitigation strategy.

Section 2805.12(a)(8)(vi) requires compliance with project-specific terms, conditions, and stipulations, including proper maintenance and repair of equipment during the operation of a grant. This is an existing policy requirement affecting all rights-of-way and in this rule is expanded to include leases offered under revised subpart 2809. In addition, this provision requires a holder to comply with the terms and conditions in the POD. This may include project-specific conditions to maintain the project in a manner that will not unnecessarily harm the public land by poor maintenance and operational practices. Any holder that does not comply with the POD approved by the BLM would be subject to remedial actions under section 2807.17, which may include the suspension or termination of the grant or lease.

*Comment:* Another comment suggested adding language that the BLM implement a condition to begin early coordination with State fish and wildlife offices.

*Response:* In the proposed rule, the BLM identified two pre-application meetings under section 2804.10. One meeting was focused on early coordination among the BLM, applicant, and other Federal, State, and tribal authorities. This early coordination requirement has been carried forward in the final rule under section 2804.12 as part of a preliminary application review meeting for proposed solar and wind energy projects and transmission lines with a capacity of 100 kV or more. No other change has been made in the final rule. Early coordination among Federal and State wildlife offices has been carried forward into the final rule.

Paragraph (a)(8)(vii) of this section discusses the use of State standards and requires the right-of-way holder to comply with such standards when they are more stringent than Federal standards.

*Comment:* A comment suggested that we add the word "environmental" so that the paragraph would now read, "When the State [environmental] 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."

*Response:* Under FLPMA, the BLM considers an array of State standards, including those relating to public health and safety. Under the existing regulations, the BLM may apply State standards when those standards do not conflict with Federal law or policy for the administration of the public lands. No revision was made to the text of this paragraph in response to this comment.

Paragraph (a)(8)(viii) of this section requires that a grantee or lessee grant the BLM an equivalent authorization for an access road across the applicant's 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.

*Comment:* One comment was concerned that the BLM was proposing to revise section 2804.25 rule to read, "If your application is for a road, BLM will determine if it is in the public interest to require you to grant the U.S. an equivalent authorization across land you own." The comment raised concern that section 2805.12(a)(8) appeared to be directed at landowners and not utility companies. The comment expressed concern about waiving rental payments and who would be responsible for maintenance and repair of damage caused to the road.

*Response:* The BLM did not propose to revise section 2804.25 to read as noted. The quoted text from the comment is from regulations that were formerly found at existing section 2804.25(d)(3) and are now identified as section 2804.25(e)(6) of this final rule. The paragraph was redesignated in this final rule after the rest of the section was revised. In section 2805.12, the requirement regarding reciprocal rights-of-way has also been redesignated as section 2805.12(a)(8)(viii).

This text in the final rule, which remains unchanged from the text in the existing regulation, is used by the BLM for administration of the public lands. Where there are inter-mixed or

adjoining private and public lands, the issuance of reciprocal right-of-way authorizations would allow the BLM to cross your land to inspect and administer the public lands as well as grant you access across the public lands for purposes of ingress and egress to your property. The reciprocal authorization may include use for the public to access your land, but does not require such an authorization as the intended use is for the BLM to utilize the right-of-way. A reciprocal right-of-way is not intended as a public use access, such as those issued by a State's Department of Transportation or the Federal Highway Administration. Each reciprocal authorization is evaluated on a case-by-case basis, and additional questions may be addressed at that time.

*Comment:* A comment raised further concerns about the proposed requirements of section 2805.12(a)(3), which read "Build and maintain suitable crossings for existing roads and significant trails that intersect the project," noting that this should only be applicable if the roads or trails are used by the grant holder. The comment also noted that the grant holder should not be responsible for repairing or maintaining these roads or trails if they have not caused or contributed to damages.

*Response:* The BLM did not propose to revise the terms and conditions found at section 2805.12 to read as noted in the comment. The quoted text is from section 2805.12(c) of the existing regulations, now identified as section 2805.12(a)(3) of this final rule. The paragraph is redesignated in the final rule for readability, and is not amended further.

This condition is retained from the existing regulations as the BLM must allow for multiple-use of the public lands. Should a right-of-way be granted, it does not displace other uses of the public land, including use of existing trails and other crossing that may intersect the project. The BLM will require that such trails and accesses are maintained by the right-of-way grant holder only to the extent that they have impacted it. If there is damage to the trail or access that is not the fault of the grant holder, then they will not be required to repair or fix it.

*Comment:* A comment raised concerns over the proposed requirements of section 2805.12(a)(4), "Do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the right-of-way area." The comment noted that utilities frequently perform fire prevention activities as part of regular maintenance, which are frequently delayed by the

BLM. The comment further noted that the grant holder should not be responsible for performing activities outside of the right-of-way, and that the fighting of fires should be the responsibility of the BLM, not the grant holder.

*Response:* The BLM did not propose to revise the terms and conditions found at section 2805.12 to read as noted by the comment. The quoted text is from regulations that were formerly found at 2805.12(d) and are now identified as section 2805.12(a)(4) of this final rule. The paragraph is redesignated in the final rule for readability. This condition is retained from the existing regulations in this final rule without amendment. The condition requires the holder of an authorization to do everything that is reasonable to prevent or suppress wildfires. This condition is not intended to require a grant holder to perform actions outside of a right-of-way, unless the actions are related to the right-of-way, such as trimming trees as a component of BLM-authorized regular maintenance on an overhead transmission line. Other actions outside of the right-of-way, which are not related to the right-of-way, would not be the holder's responsibility.

Additionally, this condition does not delay actions that are already permitted in the right-of-way grant, which would be completed by a grant holder to prevent or suppress wildfires. However, actions proposed to be taken by a grant holder may be delayed if they are outside the permission granted by the BLM.

*Comment:* One comment raised concerns over the BLM proposing to revise the terms and conditions to read, "Assume full liability if third parties are injured or damages occur on or near the right-of-way." The comment raised concerns that this appeared to be an unreasonable requirement since a grant holder does not generally have authority to enforce laws. The comment also said that grant holders could be responsible for damages related to faulty equipment, but should not be responsible for actions outside of lands they are authorized to use, and for actions that are not their own, such as those by vandals or even the BLM.

*Response:* The BLM did not propose to revise the terms and conditions found at section 2805.12 to read as noted. The quoted text is from regulations that were formerly found at section 2805.12(h) and are now identified as section 2804.12(a)(7) of this final rule. The paragraph is redesignated in the final rule for readability.

The condition is retained from existing regulations in this final rule

without amendment. The condition does not require that a holder should enforce the laws and regulations on public lands. However, the condition provides notice that, when agreeing to be a right-of-way holder on the public lands, the grant holder assumes responsibility for the permitted use. A holder assumes the responsibility for any injury or damages caused that are associated with their right-of-way. Injury or damages could be those that are directly caused by the grant holder, such as by electrocution or collision with a permitted use, or indirectly, such as those from flood events which can carry objects outside of the permitted right-of-way, but are still the responsibility of the grant holder.

Section 2805.12(a)(15) requires that a grant holder or lessee provide, or make available upon the BLM's direction, any pertinent environmental, technical, and financial records for inspection and review. Any confidential or proprietary information will be kept confidential to the extent allowed by law. Review of the requested records facilitates the BLM's monitoring and inspection activities related to the development it authorizes. The records will also be used to determine if the holder is complying with the requirements for holding a grant under section 2803.10(b).

*Comments:* Several comments stated that: (1) The BLM does not have authority to make such requirements; (2) In the case of a PPA or other similar type agreements, the BLM has no need to see such documents; and (3) These documents relate to private party transactions and are subject to confidentiality provisions.

*Response:* The BLM does not need all of the documents described in this paragraph for every right-of-way. However, in some circumstances the BLM might need these documents when processing an application or where the BLM may need verification that such an agreement has been put in place, such as if a variable offset is to be awarded under the competitive leasing process inside a DLA. Information that is proprietary or confidential that is submitted to the BLM will be treated as such to the extent allowed by law. The BLM will require information under this provision, including PPAs, only if it is necessary for the BLM's administration of an authorization.

Section 2805.12(b) requires that grant holders and lessees comply with the bonding requirements of added section 2805.20. The former bonding requirements were lacking in detail and this new section will help clarify the requirements of a grant or lease. This paragraph is revised in this final rule to

state that the BLM will not issue a Notice to Proceed or give written approval until the grant holder complies with the bonding requirements of section 2805.20. This revision clarifies that when required by the BLM, a bond must be obtained before beginning ground-disturbing activities. No comments were received and no other changes made from the proposed rule to the final rule.

Section 2805.12(c) identifies specific terms and conditions for grants and leases issued for solar or wind energy development, including those issued under subpart 2809. Several comments were received on this paragraph and these are discussed at the end of section 2805.12(c)(6). Minor revisions are made from the proposed to the final rule to improve readability, but any significant changes are discussed in detail in this preamble.

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

Section 2805.12(c)(2) requires that construction 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. This section is revised from the proposed to final rule to include a "or as otherwise authorized by the BLM." This revision is consistent with other sections of this final rule where the BLM retains discretion to approve or authorize different timeframes or requirements. The BLM may approve a request for an alternative requirement (see section 2805.12(e)), but the BLM may also authorize a different timeframe in the approved POD. The BLM made similar revisions to the requirements described in section 2805.12(c)(3)(ii) and (iii). Further discussion of a staged development is found under section 2806.50.

Section 2805.12(c)(3) describes the requirements for projects that include staged development in the POD, unless other agreements have been made between the developer and the BLM. Minor revisions are made from the proposed to the final rule to improve readability, but any significant changes are discussed in detail in this preamble.

Under paragraph (c)(3)(i) of this section, a developer must 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.

Paragraph (c)(3)(ii) of this section requires that each stage of construction after the first begin within 3 years after construction began for the previous stage of development. Construction must be completed no later than 24 months after the start of construction for that stage of development, unless otherwise authorized by the BLM.

These time periods were selected after evaluating the timing of other completed energy development projects. These timeframes will help 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.

Section 2805.12(c)(3)(iii) limits the number of development stages to three, unless the BLM specifically approves additional stages. The BLM will generally approve up to three stages for solar and wind energy development. An applicant may request approval of additional stages with a showing of good cause under section 2804.40. This request must be accompanied by a supporting discussion showing good cause for your inability to meet the conditions of the right-of-way. A grant holder may request alternative stipulations, terms, or conditions under section 2805.12(e). The BLM revised paragraph (c)(3)(iii) of this section, from the proposed to final rule by removing "in advance" when referring to the BLM's approval. The requirement in this section is unchanged from the proposed rule but is rephrased for consistency with other sections of the final rule. The addition of 2805.12(e) provides additional information about the requests for alternative requirements.

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

Section 2805.12(c)(4) requires the holder to maintain all onsite electrical generation equipment and facilities in accordance with the design standards of the approved POD. This paragraph reiterates the requirement to comply with the POD that must be submitted as scheduled under section 2804.12(c)(1).

Section 2805.12(c)(5) provides requirements for repairing or removing damaged or abandoned equipment and

facilities within 30 days of receipt of a notice from the BLM. The BLM will 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 must 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 section 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. The citation in this section is revised in the final rule from section 2807.17 to sections 2807.17 through 2807.19. Sections 2807.18 and 2807.19 are existing sections of the regulations, which are not a part of this final rule, that describe the BLM's processes for suspending or terminating rights-of-way. This revision does not represent a change in meaning, but provides more information for the reader.

*Comments:* Comments disagreed with the proposed rule and suggested that it would require arbitrary and disparate terms and conditions between rights-of-way issued under subpart 2804 and those issued under subpart 2809. The comments stated that the authority granted by FLPMA does not authorize the BLM to penalize developers who submit an application for and obtain BLM approval for rights-of-way on other BLM managed lands (*i.e.*, non-DLAs).

*Response:* The BLM disagrees. A focus of the proposed and final rule is to encourage solar and wind energy development inside DLAs. Encouraging DLA developments is meant to locate large scale developments in areas with lesser impacts to resources and uses of the public lands. Incentivizing the use of DLAs is achieved by increasing certainty, longevity, and reducing some costs in a DLA relative to other areas. The proposed rule does not increase costs and uncertainty outside of the DLAs. In areas outside of DLAs, the BLM is simply incorporating its processes established by policy for solar and wind energy. The BLM believes that the final rule will reduce costs and increase certainty inside of DLAs and maintain the streamlined application process for lands outside of DLAs.

*Comments:* Some comments stated that a CFR reference cited in 2805.12(c)(6)(iii) was incorrect.

*Response:* The comment is correct and this reference is revised to paragraph (c)(7) of this section. Furthermore, another citation was updated in this paragraph, referring to submitting a written request for an extension for a timeline in a POD. The updated reference now cites paragraph (e) of this section where a right-of-way holder may request an alternative requirement.

*Comment:* Some comments opposed the requirement in section 2805.12(c)(7) that a bond include Indian cultural resource identification, protection, and mitigation. The comments assert this is in error because there are no distinguishing factors that can justify requiring cultural resource bonding for non-DLA authorizations, but not for DLA authorizations.

*Response:* Paragraph (c) applies to all solar and wind energy rights-of-way, both leases issued under subpart 2809 and grants issued under subpart 2804. This requirement does not distinguish between requirements for grants and leases.

However, the BLM recognizes that these costs are difficult to determine and revised this section to specifically include “the estimated costs of cultural resource and Indian cultural resource identification, protection, and mitigation for project impacts.” This revision helps tie the required costs to the impacts of the project.

*Comment:* One comment suggested that bonding for cultural, scenic, and wildlife impacts adds unnecessary risk to a project. The comment stated that bonding for such impacts is unnecessary for solar activities, as the majority of mitigation expenses are incurred during construction, and operation expenses are minimal and easily covered by fixed PPA revenues in excess of low operational costs.

*Response:* The bond instrument required by the BLM is necessary to protect public lands and their resources. A minimum bond and standard bond amount are provided in sections 2805.20 and 2809.18 of this final rule. Including these amounts in the rule provide the opportunity for a developer to incorporate these costs in their project plan, reducing unexpected and unnecessary risk to a project that may keep it from proceeding.

The bonding requirement for cultural, scenic, and wildlife impacts protects the public land resources when developing the land for various uses. For example, possible damages to the public land that would need to be covered by a bond could include surface disturbing activities, recontouring of soils to alter the flow of water, and the removal of

vegetation. Other damages could be those to resources outside the right-of-way that are diminished, such as water supply or biological resources. No revision to this paragraph is made as a result of this comment.

*Comment:* One comment suggested that the BLM’s timeframes are too restrictive and would be a disincentive to the development of solar and wind energy on public lands.

*Response:* No changes were made to this provision; however, the addition of section 2805.12(e) allows adjustments of the timeframes, provided that a good cause rationale is submitted by the project proponent and the BLM approves the request. No other comments were received or changes made to the paragraphs under section 2805.12(c).

Section 2805.12(d) describes specific requirements for energy site or project testing grants. Because these are short term grants, for three years or less, the BLM believes it is appropriate to require facilities to be installed within 12 months of 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.

No comments were received on this paragraph. However, two revisions have been made as follows. The word “wind” has been removed from the text of the paragraph describing the energy site- and project-area testing grants, to make it clear that these grants are not limited to wind project proponents, but are also available to solar project proponents. This change is consistent with other parts of the final rule where commenters requested that the BLM make the site- and project-area testing grants available for both solar and wind energy. Additionally, the language from the proposed rule that required a showing of good cause for an extension of project timelines has been revised to direct the reader to paragraph (e) of this section in the final rule, which governs reporting requirements for instances of noncompliance and requests for alternative stipulations, terms, or conditions. No other comments were received and no additional changes were made to this section.

Section 2805.12(e) addresses reporting requirements for instances of noncompliance, and requests by project proponents for alternative stipulations, terms, or conditions of the approved right-of-way grant or lease. This provision was added to the final rule based on comments received. This section is similar to section 2804.40 of the final rule, but that section applies to subpart 2804 of the final rule and the

application process for a grant, whereas this section applies to grant and lease holders and applies to the terms, conditions, and stipulations of all approved authorizations. Under this section, a holder must notify the BLM of noncompliance, and may request an alternative requirement during project operation.

Paragraph (e)(1) of this section provides that a holder of a right-of-way must notify the BLM as soon as the holder either anticipates noncompliance or learns of its noncompliance with any stipulation, term, or condition of the approved right-of-way grant or lease. Notification to the BLM must be in writing and show good cause for the noncompliance, including an explanation of the reasons for failure.

*Comments:* As noted previously in the preamble of this final rule, the BLM participated in stakeholder engagement meetings as part of the BLM’s regular course of business. During some such meetings, stakeholders clarified the concerns they had previously raised through written comments on the proposed rule. Specifically, industry representatives expressed concern that the rule did not include provisions giving the BLM flexibility to respond to project-specific or regional circumstances by, for example, adjusting capacity factors based on technical considerations or adjusting county zone assignments using land value assessments, which could be more accurate than NASS land values in a given area.

Industry also provided additional information regarding its concern that the proposed rule’s bonding requirements were too rigorous. Commenters suggested that the BLM add provisions to the rule that authorize it to consider other factors when determining a bond amount, instead of only the reclamation cost estimate.

*Response:* The BLM agrees that it may be reasonable to set alternative terms, conditions, and stipulations, and to consider other factors in setting bond amounts on a project-specific or regional basis. After considering this comment, the BLM included a new provision in the final rule, section 2805.12(e)(2), under which a grant or lease holder may request an alternative to the terms, conditions, and stipulations of their authorization, including requesting an alternative bonding requirement. The requested alternative requirement could include those identified in a project’s POD, the right-of-way’s terms and conditions, or other such requirements, such as a request for an extension of time. A request for an alternative payment

requirement may include a request for an alternative net capacity factor or per acre zone rate consideration. Requests may be submitted after notification has been provided as required in paragraph (e)(1) of this section or at the holder's request. However, this section specifically notes that any request for an alternative must comply with applicable law in order to be considered.

The BLM recognizes that some requests, such as those related to acreage rent, may be appropriately considered on a larger, regional scale. Under the authority in section 2806.70 of this final rule, therefore, the BLM may adjust the acreage rent schedule or MW capacity fee applicable to a particular project or in a given area, so long as the BLM determines such changes are based on reasonable methods for determining appropriate values for the use of public land resources.

With respect to bonding requirements, the BLM recognizes it may be appropriate to consider other factors in addition to the reclamation cost estimate, such as the salvage value of project components. The BLM amended both sections 2805.12(e)(2) and 2805.20(a)(3) to accommodate that possibility, as discussed further in the section of this preamble that discusses section 2805.20(a)(3). Any proposed alternative to bonding must provide the United States with adequate financial security for the potential liabilities associated with any particular grant or lease. For example, a request for an alternative bonding requirement may include a holder's request for consideration of project salvage values, but must also include the cost for processing and handling salvage actions.

No alternative requirements request is approved unless and until you receive BLM approval in writing.

*Comments:* As discussed in section 2804.40, several comments on various rule provisions expressed concern that a developer may not be able to meet BLM requirements. Comments said that failure to meet such requirements may be due to delays or environmental changes outside a developer's control, statutory or policy changes, or other unanticipated situations.

*Response:* The BLM believes that new paragraph (e) of this section addresses these concerns. The BLM intends to issue policies to address how it will implement these provisions following the issuance of this final rule. Consistent use of the final rule's requirements and clear expectations will be outlined in these policies, to

include the provisions of this paragraph and those of section 2804.40.

**Section 2805.14** What rights does a grant convey?

The BLM has added two new paragraphs to section 2805.14, both addressing applications for renewal of existing grants or leases. Paragraph (g) states that a holder of a solar or wind energy development grant or lease may apply for renewal under section 2807.22. Paragraph (h) of this section states that a holder of an energy project-area testing grant may apply for a renewal of such a grant for up to an additional 3 years, provided that the renewal application also includes an energy development application. Paragraph (g) is added to this rule to explain how one may apply for a solar or wind energy development grant or lease renewal. The BLM added 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 energy development at a proposed project site is feasible. Revisions in this final rule were made consistent with those made in section 2801.9 for project-area grants.

The proposed rule stated that specific project-area grants were for only wind energy, but based upon comments received, project-area grants have been expanded to include project-area testing grants for solar energy as well. No other comments were received or additional changes made to this section.

**Section 2805.15** What rights does the United States retain?

In section 2805.15, the word "facilities" and a reference to section 2805.14(b) are added to the first sentence of paragraph (b) to clarify that the BLM may require common use of right-of-way facilities. The sentence now makes clear that the BLM retains the right to "require common use of your right-of-way, including facilities (see section 2805.14(b)), subsurface, and air space, and authorize use of the right-of-way for compatible uses." The term "facility" is defined in the BLM's existing regulations at section 2801.5 and means an improvement or structure owned and controlled by the grant holder or lessee. Common use of a right-of-way occurs when more than one entity uses the same area for their authorization. This revision facilitates 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 is authorization for a roadway and an adjacent transmission line. In this case,

maintenance of the transmission line would include use of the adjacent roadway. Under existing section 2805.14(b), the BLM may authorize or require common use of a facility as a term of the grant and a grant holder may charge for the use of its facility. Section 2805.15(b) is revised to include a reference to section 2805.14(b).

*Comment:* Two comments were received on this proposed change. One comment suggested clarifying that the change in section 2805.15(b) is intended to harmonize this paragraph with section 2805.14(b). The comment made special note that they do not protest this amendment to include "facilities," so long as this was the only intent of the requirement.

*Response:* The BLM agrees with the comment, and believes that the proposed adjustments to this rule would make the regulations consistent and not open to interpretation. The intent of this revision is not to go beyond what is discussed in the preamble for this paragraph. No changes to the proposed rule are necessary in response to this comment.

*Comment:* The second comment stated that the rule deletes language from the existing section that prohibits charges for the common use of rights-of-way. The comment recommended modifying the section, but not deleting it, suggesting that the modification should prohibit charges except for pro-rata, fair-share cost allocations for the shared construction and/or operation and maintenance of facilities authorized under a grant or lease. The comment expressed concern that if this section is not modified, the first holder could intentionally charge a prohibitively expensive fee for common use.

*Response:* The proposed rule did not delete this requirement from the existing regulations. Instead, it added the two words "including facilities." Requiring a pro-rata, fair-share cost allocation agreement between private parties is outside BLM's role of administering the public lands. The BLM believes that two private parties should reach an agreement without the BLM dictating its conditions. The BLM did not make any change in response to this comment since dictating third party contracts is beyond the scope of this rule.

No other comments were received, nor were any additional changes made to this section.

**Section 2805.16** If I hold a grant, what monitoring fees must I pay?

The table of monitoring categories in section 2805.16 no longer has the outdated dollar amounts for the 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 is adjusted annually for inflation using the same methodology as the table in section 2804.14(b). The table now includes only the definition of the monitoring categories in terms of hours worked, instead of providing specific dollar amounts. Also, the word

“application” found in each category is changed to “inspecting and monitoring” to clarify that the inspecting and monitoring does not apply to right-of-way applications. 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 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. As the regulations will no longer identify the costs by category, the current cost information is provided in the following table. The monitoring fees and work hours for FY 2015 are as follows:

MONITORING CATEGORIES AND FEES FOR FY 2016

Monitoring category	Federal work hours	Fees for FY 2016
(1) Inspecting and monitoring of new grants, renewals, and amendments to existing grants.	Estimated Federal Work are >1 <=8	\$122.
(2) Inspecting and monitoring of new grants, renewals, and amendments to existing grants.	Estimated Federal Work are >>8 <=24.	428.
(3) Inspecting and monitoring of new grants, renewals, and amendments to existing grants.	Estimated Federal Work are ><24 <=36.	806.
(4) Monitoring of new grants, renewals, and amendments to existing grants.	Estimated Federal Work are >36 <=50.	1,156.
(5) Master Agreements .....	Varies .....	As specified in the agreement.
(6) Inspecting and monitoring of new grants, renewals, and amendments to existing grants.	Estimated Federal Work are >50 ..	As specified in the agreement.

Consistent with revisions made under monitoring fees table in 2805.16(a), the BLM is adding the words “inspecting and” to section 2805.16(a). This additional language is not a change from current BLM practice or policy and will allow the BLM to inspect and monitor the right-of-way to ensure project compliance with the terms and conditions of an authorization. Under this provision, if a project is out of compliance, the BLM could inspect the project to ensure that the required actions are completed to the satisfaction of the BLM, such as continued maintenance of the required activity or efficacy of the requirement.

The BLM added a new sentence to paragraph (a) of this section that directs the reader to section 2805.17(c), which is an existing section of the regulations that describes category 6 monitoring fees. The two sentences preceding this revision describe when the other monitoring categories are updated, but there was no reference for category 6 monitoring fees. This revision is made for consistency with how the other monitoring categories are described in this section. No comments were received and no other changes are made from the proposed rule to the final rule.

Section 2805.20 Bonding Requirements

Section 2805.20 provides bonding requirements for all grant holders or lessees. These provisions are moved from existing section 2805.12. Under the existing regulations, bonds are required only at the BLM's discretion. This

expanded section explains the details of when a bond is required and what the bond must cover. This is not a change from existing practice and is intended to provide clarity to the public. Specific bonding requirements for solar and wind energy development are outlined in paragraphs (b) and (c) of this section. This final rule explains requirements for the performance of the terms and conditions of a grant or lease and reclamation of a right-of-way grant or lease area.

*Comments:* One comment indicated that solar facilities should not be subject to the same bonding framework as surface mining. The proposed bonding imposes unnecessary costs on the solar industry without providing any additional land protection. Surface mining operations may be abandoned and there is often significant surface disturbance, which is not the case with solar developments. Some comments said that acceptable bonding instruments should include corporate guarantees backed by financial tests. Bonding costs could be expensive, even doubling annual operating costs. The use of letters of credit could significantly reduce the bond amounts. Also, the BLM could have an initial lower bond amount until decommissioning is near and at that time the bond could be increased.

*Response:* The framework used by surface mining development was a starting point for the solar and wind energy development process on what to consider when completing a RCE and determining the bond amount. However,

this framework has been adapted to address circumstances specific to solar and wind energy development as well as all other right-of-way developments on the public lands. The bond amounts, as determined by an RCE or those using a standard bond, are necessary to ensure the protection of the public lands.

Corporate guarantees are not an acceptable form of bond for the BLM. They are too risky to accept, even when financial tests are used, because they require continual confirmation of the quality of the corporate guarantee. However, irrevocable letters of credit are accepted by the BLM. Furthermore, the BLM cannot accept a lesser bond amount until the decommissioning of a grant or lease, because the BLM cannot be responsible for the financial stability of any company, nor can it bear the risk that a company may default or go bankrupt during the term of a grant, before decommissioning. To secure an increased bond at that time would be difficult if not impossible and having such a regulatory provision would place the public lands at unnecessary risk from the impacts of unreclaimed developments.

Section 2805.20(a) provides 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 also includes the language from existing section



2805.12(g), which details bonding requirements.

Consistent with other revisions made in the final rule for better understanding of the rule, section 2805.20(a) is revised to add “costs associated with” when discussing what a bond will cover when terminating a grant. This added language makes it clear that the bond covers costs associated with terminating a grant.

*Comments:* Some comments suggested expanding the language of this and subsequent bonding paragraphs to include “certificate of insurance or other acceptable security” in appropriate places.

*Response:* Adding the language “certificate of insurance or other acceptable security” is unnecessary in the text of the regulation as the definition of acceptable bond instruments includes insurance policies, and therefore a specific form of insurance does not need to be included in the text of the regulation. Furthermore, the list of bond instruments that are acceptable is not an all-inclusive list. There are other forms of bond instruments, but they are not specified in the text of the rule because they are not as common as the ones identified. If the bond instrument list were to be considered as “all inclusive” it could unintentionally exclude acceptable bond instruments. As a result, the recommended addition to the rule text is not incorporated in the final rule.

Section 2805.20(a)(1) requires 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 allows the BLM to accept a State bond to satisfy a portion of the BLM’s bonding requirement, thus, limiting double bonding.

*Comment:* One comment was received pertaining to this paragraph. The comment stated that bond requirements are unnecessary for “regulated entities” and that additional bonding requirements are duplicative and pose additional costs on a public utility’s customers.

*Response:* The BLM disagrees, because regulated utilities present the same risks as unregulated utilities. Under section 2805.20(a), a bond is not required for all authorizations. Requirement of a bond for an authorization is at the discretion of the BLM and is dependent on the scale of the development and potential for risk

to the public lands. Also, the BLM may accept a bonding instrument submitted to the State if it meets the criteria identified in paragraphs (i) through (iii) of section 2805.20(a)(1). The intent of the bonding provisions in section 2805.20(a)(1)(iii) is to mitigate the potential for duplicative costs to right-of-way holders using the public lands.

An additional requirement is added to paragraph (a) in this final rule that requires periodic review of bonds for adequacy. This provision is added to ensure consistency with the provisions added in response to comments on section 2805.20(c). This additional requirement includes bonds held by a State and accepted by the BLM and applies to all bonds held by the BLM, regardless of the size or complexity of an authorized project. The frequency of the bond adequacy reviews will be described in greater detail within BLM guidance issued as part of implementation of this rule. Review frequency, as described in the recently issued instruction memorandum 2015–138, will be no less than once every 5 years, giving review priority to those that pose a greater risk to the public lands.

Under section 2805.20(a)(1)(i), a State 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 section 2805.20(a)(1)(ii), a State bond must be held or approved by a State agency for the same reclamation requirements as the BLM requires.

Under section 2805.20(a)(1)(iii), a State 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.

*Comment:* One comment concerning this paragraph stated that section 2805.20(a)(3) makes clear that a bond will not be required for solar energy projects developed inside DLAs, and bonds will be required for solar projects outside DLAs.

*Response:* This comment is not correct. Section 2809.18(e) requires a specific performance bond for leases authorized under subpart 2809, identified as a standard bond. Standard bonds are not determined by a RCE, but rather are set as specified in the regulations.

Under section 2805.20(a)(2) a bond must be approved by the BLM’s authorized officer. This approval ensures that the bond meets the BLM’s standards. Under section 2805.20(a)(3), the bond amount is determined by the BLM based on a RCE, and must also

include the BLM’s costs for administering a reclamation contract. As defined in section 2801.5, a RCE identifies an appropriate amount for financial guarantees for uses of the public lands. An additional requirement is included in paragraph (a)(3) requiring periodic review of bonds for adequacy. This requirement was added to ensure consistency with the provisions added to section 2805.20(c). Both paragraphs (c)(3) and (4) of this section contain a stipulation that they do not apply to leases issued under subpart 2809. Bonds issued under subpart 2809 for leases inside DLAs have standard amounts. Bond acceptance and amounts for solar and wind energy facilities outside of DLAs are discussed in paragraphs (b) and (c) of this section.

Paragraph (a)(3) of this section is revised from the proposed to final rule to improve readability. Specifically, the BLM removed the second sentence of the paragraph that stated the BLM may require you to prepare an acceptable RCE. The first sentence of this paragraph is revised to include “, which the BLM may require you to prepare and submit.” This revision is intended to improve the reader’s understanding of the final rule and its requirements by streamlining the text of the rule.

In addition to the changes made for readability, this paragraph is revised by adding, “The BLM may also consider other factors, such as salvage values, when determining the bond amount.” This revision responds to concerns raised in stakeholder engagement meetings and is consistent with section 2805.12(e)(2) of this final rule, which specifies that a developer may request an alternative requirement for bonding.

A request for an alternative bonding requirement may include a holder’s request for consideration of project component salvage values. Such a request may reduce the BLM’s bond determination amount, even to an amount below the minimum or standard bond amount. However, the request must be fully supported by documentation from the requestor that includes the costs for processing and handling salvage materials, such as information about distribution centers for such materials and other reasonable considerations. Further, as noted under paragraph 2805.12(e)(2), requests for an alternative bonding requirement must comply with applicable law in order to be considered, and must provide the United States with adequate financial security for potential liabilities.

Regardless of the nature of the request, any such request is not approved until you receive BLM approval in writing.

Section 2805.20(a)(4) requires that a bond be submitted on or before the deadline provided by the BLM. Current regulations have no such provision, and this revision makes it clear what the BLM expects when it requires a bond instrument. The BLM believes this provision will improve the timely collection of bonds. The timely submittal of a bond promotes efficient stewardship of the public lands and ensures that the bond amount provided is acceptable to the BLM and available prior to beginning ground-disturbing activities.

Section 2805.20(a)(5) outlines 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 section 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. If a replacement bond is 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.

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

Section 2805.20(b) and (c) identify specific bond requirements for solar and wind energy development respectively outside of DLAs. A holder of a solar or wind energy grant outside of a DLA will be required to submit a RCE to help the BLM determine the bond amount. For solar energy development grants outside of DLAs, the bond amount will be no less than \$10,000 per acre. For wind energy development grants outside of DLAs, the bond amount will be no less than \$10,000 per authorized turbine

with a nameplate generating capacity of less than one MW, and no less than \$20,000 per authorized turbine with a nameplate generating capacity of one MW or greater.

Section 2805.20(d) is new to the final rule. This paragraph separates site- and project-area testing authorization bond requirements from section 2805.20(c). This change is consistent with other provisions that have been modified to expand the wind energy site- and project-area testing authorizations in the proposed rule to include solar energy. With this adjustment, meteorological and other instrumentation facilities are required to be bonded at no less than \$2,000 per location. These bond amounts are the same as standard bond amounts for leases required under section 2809.18(e)(3).

The BLM recently completed a review of bonded solar and wind energy projects and based the bond amounts provided in this final rule on the information found during the review. When determining these bond amounts, the BLM considered potential liabilities associated with the lands affected by the rights-of-way, such as potential impacts to cultural values, wildlife habitat, and scenic values. The range of costs included in the 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 the review to determine an appropriate bond amount to cover potential liabilities associated with solar and wind energy projects.

Minimum bond amounts are set for solar development for each acre of authorization because solar energy development encumbers 100 percent of the lands and excludes them from other uses. The recent review of bonds showed a range of bond amounts for solar energy development of approximately \$10,000 to \$18,000 per acre of the rights-of-way on public lands. Minimum bond amounts for wind energy development are set for each wind turbine authorized on public land, rather than per acre, because the encumbrance is factored at 10 percent and is not exclusive to other uses. The review showed that the bond amounts for recently authorized wind energy development ranged between \$22,000 and \$60,000 per wind turbine. Recently bonded wind energy projects use wind turbines that are one MW or larger in nameplate capacity, whereas older projects generally use turbines that are less than one MW.

*Comment:* Some comments suggested that bonds should not be required for solar facilities on the public lands

because they pose low environmental risk and that some solar energy generation technologies have less potential impacts than others and, therefore, less risk.

*Response:* The BLM agrees that generally, solar facilities do not pose the same environmental hazards as other energy development facilities. However, the BLM's requirement for bonding is not only for the potential environmental risks that a development poses on the public lands. Rather, a bond is required to cover direct impacts to the resources and their reclamation to a condition as near as possible to what they were before development occurred.

This comment is specific to solar energy, but raises the question of lesser risk for certain developments, which is an issue that arises with respect to wind energy as well. In the BLM's review of recently bonded solar and wind energy projects, for example, the range of bond amounts identified was for newer wind energy turbines, with a nameplate capacity of one MW or greater. These wind energy turbines are larger, have a greater footprint, and require larger and more equipment and materials to install and remove than wind turbines that have a smaller nameplate capacity. In order to accommodate developments that employ smaller wind turbines that pose lesser risk to resources, the BLM is including in the final rule the existing policy requirement of a \$10,000 minimum bond amount for projects utilizing smaller turbines. Turbines with a nameplate capacity of one MW or greater will have a minimum bond amount of \$20,000, consistent with the proposed rule. A reclamation cost estimate will still be required for each project on lands outside of designated leasing areas, as described in section 2805.20(a)(3) of this rule. The BLM's bond amount determination for wind energy projects using turbines with lesser nameplate capacities could exceed the minimum bond amount based upon site-specific risks.

#### *Subpart 2806—Annual Rents and Payments*

Existing subpart 2806, has been retitled to more clearly and consistently identify the content of and revisions to this subpart of the final rule. The content and revisions to this subpart of the final rule include those requiring a payment of an acreage rent and MW capacity fee for rights-of-way. Retitling this subpart makes it clear that the BLM may require payments that are not specifically a rent.

Section 2806.12 When and where do I pay rents?

The heading of section 2806.12 is revised by adding the words “and where.” This revision is not a change in the BLM’s practice or policy, but is intended to help clarify where rental payments should be made.

Section 2806.12(a) describes the proration of rent for the first year of a grant. Specific dates are used for proration to prevent any confusion to grant holders and promote consistent implementation by the BLM. Rent is prorated for the first partial year of a grant, since the use of public lands in such situations is for only 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. Consistent with other sections of the final rule, a revision to paragraph (a)(2) has been made to delete the reference to wind energy in connection with site-specific testing.

Paragraph (b) of this section is revised by removing the word “other” from the first sentence. This revision is intended to clarify that all rental payments must be made in accordance with the payment plan described in section 2806.24. This revision is made to improve readability, but does not constitute a change from existing requirements.

Section 2806.12(d) directs right-of-way grant holders to make rental payments as instructed by the BLM or as otherwise provided for by Secretarial Order or legislative authority. This provision acknowledges that either the Secretary or Congress may take action that could affect rents and fees. The BLM will provide payment instructions for grant holders that will include where payments may be made. The word “must” is added into the first sentence of this paragraph to improve readability and for consistency with the phrasing of other requirements in this final rule. This revision does not constitute a change from existing requirements. No comments were received on this section, and no other changes were made from the proposed rule to the final rule.

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

Section 2806.13 is revised from “What happens if I pay the rent late?” to read “What happens if I do not pay rents and fees or if I pay the rents and fees late?” This change addresses the addition of paragraph (e) to this section,

which specifies that the BLM may retroactively bill for uncollected or under-collected rents and fees. The BLM will collect rent retroactively 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 is amended by removing language from the existing rule that stated a fee for a late rental payment may not exceed \$500 per authorization. The BLM determined that the current \$500 limit is not a sufficient financial incentive to ensure the timely payment of rent. Therefore, under this final rule, late fees will now be proportional to late rental amounts, to 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 collected consistently with any rent due.

New paragraph (g) of this section allows 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 is further incentive to timely pay rents and fees to the BLM.

*Comment:* A comment suggested that the BLM should be responsible for clerical and other possible errors, and that the holder should not be responsible for payment of rents, fees, or late payments if such an error occurs due to the BLM. Further, the comment suggested a 6 month time limit for enforcing such corrections that would be retroactive, and that a late payment fee would be no more than 5 percent of the total rents and fees.

*Response:* The BLM considered the 6-month and 5 percent limits suggested by the comment and decided to not include these limits in the final rule. When entering into a right-of-way agreement with the BLM, a holder agrees to the terms and conditions for the use of the public lands. Included as part of these terms and conditions is the requirement that a holder pay, in advance, the appropriate amount for the use of the public lands. Generally, the BLM sends a bill or other notice to a holder that is a notice of payment due to the BLM, as agreed to in the right-of-way grant. Even if the BLM were to make a clerical or administrative error when transmitting a notice of payment obligations, such an error in a notice would not permanently relieve a right-of-way grant holder from its independent requirement to pay the appropriate amount for the use of the public lands as specified in the grant.

No other comments were received for this section, and no changes were made to the final rule.

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

In section 2806.20, the address to obtain a current rent schedule for linear rights-of-way is updated. Also, district offices are added to State and field offices as a location where you may request a rent schedule. These minor corrections are made to provide current information to the public. No comments were received on this provision, and no changes are made from the proposed rule to it in the final rule.

Section 2806.22 When and how does the per acre rent change?

A technical change in section 2806.22 corrects the acronym IPD–GDP, referring to the Implicit Price Deflator for Gross Domestic Product. No comments were received and no changes are made from the proposed rule to the final rule.

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

In the existing regulations, paragraph (b) of this section provides for phasing in the initial implementation of the Per Acre Rent Schedule by allowing a one-time reduction of 25 percent of the 2009 acreage rent for grant holders. This paragraph was flagged for removal in the proposed rule and is being removed by this final rule because the phase-in for the updated rent schedule referenced in that provision ended in 2011 and thus is no longer applicable. No comments were received and no other changes are made from the proposed rule to the final rule.

Section 2806.24 How must I make payments for a linear grant?

Section 2806.24(c) explains how the BLM prorates the first year rental amount. The rule adds an option to pay rent for multiple year periods. The new language requires payment for the remaining partial year along with the first year, or multiples thereof, if proration applies. No comments were received and no other changes are made from the proposed rule to the final rule.

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

Section 2806.30 is amended by removing paragraph (b), which contained the communications site rent schedule table. Paragraph (c) is redesignated as new paragraph (b). Section 2806.30(a) is revised to remove redundant language referring to the BLM communication site rights-of-way

rent schedule. Section 2806.30(a)(1) is revised to update the mailing address. Section 2806.30(a)(2) is revised by removing references to the table that has been removed. This paragraph still describes the methodology for updating the schedule, but directs the reader to the BLM's Web site or BLM offices instead. No comments were received, and no other changes are made inform the proposed rule to the final rule.

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

Section 2806.34(b)(4) is revised to fix a citation in the existing regulations that was incorrect. No comments were received, and no other changes are made from the proposed rule to the final rule.

**Section 2806.43** How does BLM calculate rent for passive reflectors and local exchange networks? and **Section 2806.44** How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses?

Sections 2806.43(a) and 2806.44(a) are each revised by changing the cross-reference from section 2806.50 to section 2806.70. Section 2806.50 is redesignated as section 2806.70, and these citations are updated to reflect this change.

Section 2806.44 is retitled from "How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses subject to the communication use rent schedule and communication uses whose rent BLM determines by other means?" to read as above. This section has been retitled to more clearly identify the content and additions made. The addition is a new introductory paragraph describing that this section applies to grants or leases. Such authorizations may include a mixture of communication uses, some of which are subject to the BLM's communication rent schedule. Such rent determinations will be made under the provisions of this section. No comments were received, and no other changes are made from the proposed rule to the final rule.

**Sections 2806.50 Through 2806.68** Rents and Fees for Solar Energy Rights-of-Way and Wind Energy Rights-of-Way

Sections 2806.50 through 2806.58 and sections 2806.60 through 2806.68 provide new rules for the rents and fees for solar and wind energy development, respectively. The rents and fees described in these sections, along with the bidding process, will help the BLM generally receive fair market value for

the use of public lands. There are similarities between the provisions governing solar and wind energy grants and leases. For example, each type of project and authorization instrument is subject to acreage rent and MW capacity fee obligations. However, there are differences in the final rule with respect to wind and solar projects (e.g., solar energy projects assume 100% encumbrance within the project footprint, whereas wind energy projects assume 10% encumbrance). There are also differences in the way acreage rent and MW capacity fees are applied to solar energy grants versus leases. These differences are discussed in sections 2806.52 and 2806.54; wind energy grants and leases are discussed in sections 2806.62 and 2806.64, respectively. Section 2806.50 is retitled "Rents and fees for solar energy rights-of-way." The former regulation at section 2806.50 has been redesignated as section 2806.70. Section 2806.51 is added to this final rule in response to comments received regarding potential payment uncertainty.

Revised section 2806.50 requires a holder of a solar energy right-of-way authorization to pay annual rents and fees for right-of-way authorizations issued under subparts 2804 and 2809. Those right-of-way holders with authorizations issued under subpart 2804 will pay rent for a grant and those right-of-way holders with authorizations issued under subpart 2809 will pay rent for a lease. Payment obligations for both types of right-of-way authorizations now consist of an acreage rent and MW capacity fee. The acreage rent must be paid in advance, prior to the issuance of an authorization, and the MW capacity fee will be phased-in after the start of energy generation. Both the acreage rent and MW capacity fee must be paid in advance annually during the term of the authorization. The initial acreage rent and MW capacity fee are calculated, charged, and prorated consistently with the requirements found in sections 2806.11 and 2806.12. Rent for solar authorizations vary depending on the number of acres, technology of the solar development, and whether the right-of-way authorization is a grant or lease.

The BLM received some comments that generally applied to its rental provisions of the final rule. The BLM also revised sections 2806.50 through 2806.68 to improve the readability of these sections.

*Comment:* One comment on the rental provisions stated that the proposed rule requires full payment immediately upon the award of an authorization. The comment suggested that payment should begin at the time infrastructure

is placed in service instead at the time of award.

*Response:* The BLM does not require full payment immediately upon award of an authorization. Both an acreage rent and MW capacity fee are charged for solar and wind energy authorizations, but only the acreage rent is paid at the time a right-of-way is authorized. Acreage rent is charged upon the authorization of such developments as the public lands are being encumbered. The MW capacity fee may be phased-in during the term of the right-of-way as approved in the POD. This meets the concerns of the comment because the rules do not require full payment of rents and fees immediately upon authorization of a right-of-way.

*Comments:* Some comments stated that the BLM does not have authority to levy a MW capacity fee. These comments argued that because the Federal Government lacks an ownership interest in sunlight or the wind, it cannot sell the rights to use them for profit (unlike the sale of Federal mineral interests at fair market value), charge a royalty against sale proceeds (unlike Federal oil and gas rights), or charge rent for the use of sunlight (unlike Federal land surface occupancy rights). Aside from the ownership issue, these commenters argued that the MW capacity fee is an inappropriate element of fair market value because it is based on the value of electricity generated and sold, rather than the value of the underlying land itself. For example, the comments pointed out, if two facilities occupy the same amount of land, but one has more efficient technology, the more efficient facility would pay more because of the additional electricity generated, not because of land rental values. The comments recommended that, for solar and wind energy generation rights-of-way, the BLM should exclusively charge rent, through a per acre rent schedule informed only by the NASS.

*Response:* FLPMA generally requires the BLM to obtain fair market value for the use of the public lands, including for rights-of-way. In accordance with the BLM's authority, and similar to valuation practices for solar and wind energy development on private lands, the BLM uses electrical generation capacity as a component of the value it assigns to the use of the lands by the projects. From information the BLM has been provided by industry or has otherwise collected, the BLM determined that private land owners customarily charge a "royalty," typically a percentage of the value of actual production, for the use of private land. As explained above, the BLM has

elected in this final rule to charge a fee based on installed MW capacity rather than a royalty. This fee, when added to the applicable acreage rent and any minimum and bonus bids received, ensures that the BLM will obtain an appropriate value for the use of the public lands by solar and wind energy projects.

The BLM classifies MW capacity payments as “fees” rather than “rent,” because they reflect the commercial utilization value of the public’s resource, above and beyond the rural or agricultural value of the land in its unimproved state. In the BLM’s experience and consistent with generally accepted valuation methods, the value of the public lands for solar or wind energy generation use depends on factors other than the acreage occupied and the underlying land’s unimproved value. Other key factors include the solar insolation value or wind speed and density, proximity to demand for electricity, proximity to transmission lines, and the relative absence of resource conflicts that tend to inhibit solar and wind energy development. To account for these elements of land use value that are not intrinsic to the rural value of the lands in their unimproved state, under this final rule, solar and wind right-of-way payments include “MW capacity fees” in addition to the “acreage rent” as a component of fair market value for these authorizations.

The acreage payment remains classified as “rent” under the final rule, as it is directly tied to the area of public lands encumbered by the project and the constraints the project imposes on other uses of the public lands. Electric or telephone facilities that qualify for financing under the Rural Electrification Act may be exempt from paying a “rental fee,” which includes the solar or wind energy acreage rents. However, as explained in IM 2016–122, and consistent with the BLM’s current practice, any such facilities must pay other costs associated with the fair market value of the land, such as the MW capacity fee, minimum bid, or bonus bid, because these other payments are independent of the land acreage and value of the unimproved land, and therefore are not appropriately termed “rental fees.”

The use of an acreage rent and MW capacity fee is also intended to encourage a developer to more efficiently use the public lands encumbered by a project. In the situation where two parcels with the same MW capacity for projects have differing technologies, the more efficient technology (and therefore the higher approved MW capacity) would be

paying more in fees, but less in acreage rent for the same generation capacity as the more efficient technology would allow a developer to pay less in acreage rent to achieve the same approved MW capacity.

The BLM intends to evaluate the adequacy and impact of the provisions of this final rule after it has had an opportunity to observe how the payment requirements and rate adjustment methods put in place affect the BLM’s ability to support renewable energy development and simultaneously collect fair market value from the projects it authorizes.

#### Section 2806.50 Rents and Fees for Solar Energy Rights-of-Way

The BLM revised section 2806.50 to include site- and project-area testing. In the proposed rule, rights-of-way for site-specific and project-area testing were allowed only for wind energy. The final rule deletes the word “wind”, to make the provision generally applicable to wind or solar energy testing. This change is made in response to a comment, which will be discussed under section 2806.58 of this preamble. No other comments were received, and no other changes made to the final rule.

#### Section 2806.51 Scheduled Rate Adjustment

*Comments:* After the comment period of the proposed rule closed, the BLM continued to hold general meetings with stakeholders about the BLM’s renewable energy program. In some of those meetings, stakeholders asked questions about the proposed rulemaking and clarified concerns they had raised through their written comments. Industry representatives shared additional information regarding their concerns with the proposed rule’s approach to calculating annual payment requirements, including uncertainty about potential future payment requirements over the life of the right-of-way authorization. Specifically, commenters expressed concerns about the potential for NASS values in certain areas to jump significantly between surveys, resulting in unexpected and unsustainable changes in the per acre zone rates for those lands.

The BLM understands that when financing a project, developers must predict project costs, including for the construction, operation, and maintenance phases of the project. Included with these costs are expenses for land use, such as annual payment requirements of a BLM grant or lease. The BLM also understands that in some areas there is the potential for NASS land values to change significantly from

one 5-year period to the next in a manner that is unpredictable, and that can result in significant acreage rent increases or decreases. For lands that experience those large changes in NASS land values, the standard rate adjustment method’s periodic update to rates may create financial uncertainty. This may, in turn, complicate project financing and require a developer to pay a higher cost of capital.

*Response:* The BLM agrees with these comments and recognizes that increasing payment certainty over the term of the grant or lease may help facilitate project financing and even reduce financing costs. To respond to these comments and concerns, the BLM added section 2806.51 to the final rule. This section allows a grant or lease holder to choose one of two rate adjustment methods, the “standard” rate adjustment method, or the scheduled rate adjustment method.

Under the standard rate adjustment method, which was described in the proposed rule and is now named in the final rule, the BLM will periodically reassess the rates it charges for use of the public lands and resources based on the latest NASS survey data and the applicable western hub energy prices, as well as other data discussed in greater detail in connection with section 2806.52 of this final rule.

By contrast, if the grant or lease holder chooses the scheduled rate adjustment method, the BLM will implement scheduled, predictable rate increases over the term of the grant. Under this approach, annual project costs are easily modeled, which increases the certainty as to future costs. By selecting the scheduled adjustment method a proponent would trade the potential upsides of rate adjustments pegged to a fluctuating national indicator (which may only increase slightly in a given period, or may even go down) for greater payment certainty.

Based on historical trends, the BLM expects that in some areas, the rates under the standard rate adjustment method will increase by more than they would under the scheduled rate adjustment method. However, the opposite is also true: in other areas, rates under the standard method may increase by very little, or even decrease, while rates under the scheduled rate adjustment method will increase by a fixed amount at fixed intervals. The BLM determined that it is appropriate to allow developers to choose between these rate adjustment methods, as some grant or lease holders may want to take advantage of the possibility that NASS values could stay nearly constant or

even go down, while other holders may want to increase payment certainty.

The adjustments contemplated under the scheduled rate increase are similar to the terms found in many power purchase agreements, which build in fixed annual increases. The BLM based the scheduled adjustment approach on an evaluation of market trends over the last 10 years. The trend over that period is consistent with a longer term trend showing power pricing has increased generally. The BLM believes that the scheduled rate adjustment method provides certainty for prospective developers while also ensuring that the BLM will obtain fair market value for the use of the public lands.

Paragraph (a) of this section provides that a holder may choose the standard rate adjustments for a right-of-way, which are detailed in section 2806.52(a)(5) and (b)(3) for grants, or section 2806.54(a)(4) and (c) for leases, or the scheduled rate adjustments for a right-of-way, which are detailed in section 2806.52(d) for grants, or section 2806.54(d) for leases. If a holder selects the standard adjustment method, the BLM will increase or decrease the per acre zone rate and MW rate for the authorization, as dictated by the specified calculation method, at fixed intervals over the term of a grant or lease. If a holder selects the scheduled rate adjustment method, the BLM will increase the per acre zone rate and MW rate by a fixed amount, described in section 2806.52(d) or 2806.54(d), respectively, at those same intervals. The BLM created the scheduled rate adjustment method using percentages and values that reflect current market conditions and trends; if, in the future, the BLM considers it necessary to revise the applicable rates in the scheduled rate adjustment provisions, it will do so via rulemaking.

Once a holder selects a rate adjustment method, the holder will not be able to change the rate adjustment method until the grant or lease is renewed. This rule clearly articulates the differences between these methods. As such, a holder will not be able to change its selection in the future, if one method proves more favorable than another during the term of the authorization. The rates paid by grant or lease holders that chose the standard adjustment approach may, in some cases, diverge from the rates paid by grant or lease holders that chose the scheduled adjustment approach. The BLM believes, however, that over the length of the grant or lease both methods will provide fair market value for the underlying authorization to use the public lands and resources.

Paragraph (b) of this section requires that a holder provide written notice to the BLM, before a grant or lease is issued, if the holder wishes to select the scheduled rate adjustment. In the absence of such a notice, the BLM will continue to use the standard rate adjustment method for the authorization.

The BLM will generally not consider a request for an alternative rate structure or terms from holders that select the scheduled rate adjustment method. The holder knows what their rates will be when selecting the scheduled rate adjustment method and is committing to those rates, understanding that they cannot change this selection. Paragraph (c) of this section explains how the final rule will affect existing grant holders. Like new grant holders, existing grant holders also have the option to choose between standard or scheduled rate adjustments. The holder of a solar or wind energy grant that is in effect prior to the effective date of this final rule may request that the BLM apply the scheduled rate adjustment to their grant, rather than the standard rate adjustment. Any such request must be received by the BLM in writing within 2 years of this rule's publication in the **Federal Register**. The BLM determined that 2 years was a reasonable amount of time for grant holders to consider the benefits of the different rate adjustment methods.

For existing grant holders that choose the scheduled rate adjustment method, the BLM will apply the scheduled rate adjustment in section 2806.52(d) to the rates in effect prior to the publication of this final rule.

For existing grant holders that choose the scheduled rate adjustment method, however, the BLM will first adjust the rates in existing grants and leases upward by 20%, to account for the fact that the BLM elected not to undertake the most recent adjustment under its existing guidance because of the pendency of this rulemaking process. The scheduled rate adjustment method will then apply, resulting in fixed rate increases at set intervals thereafter.

The BLM will continue to apply the standard rate adjustments to the rates for existing grant holders unless and until written notice is received requesting the scheduled rate adjustment method. As previously mentioned, the standard rate adjustment is BLM's default method and current practice, as outlined in existing policy.

#### Section 2806.52 Rents and Fees for Solar Energy Development Grants

Section 2806.52 requires a grant holder to make annual payments that

include the acreage rent and MW capacity fee.

Comments: Some comments expressed confusion over whether certain costs in the proposed rule were a "rent" or a "fee."

Response: The introductory paragraph for section 2806.52 in the final rule has been revised to clarify what is a "rent" and what is a "fee." "Rent" is now described as an "acreage rent," and "fee" has been clarified as a "MW capacity fee." Paragraph (a) of this section describes the acreage rent requirements and calculation methodology, and paragraph (b) of this section describes the MW capacity fee requirements and calculation methodology.

Section 2806.52(a), "Acreage rent," describes the acreage rent payment for solar energy grants. "Acreage rent," as defined in section 2801.5, means rents assessed for solar energy development grants and leases that are determined by the number of acres authorized for the grant or lease times the per acre zone rate. Under existing policy, entities that qualify for financing under the Rural Electrification Act may be exempted from paying solar acreage rent (IM 2016-122).

Comments: Several comments were concerned about using the values set for NASS and believed that they would not apply to vacant BLM land. Comments suggested that solar and wind energy development should be appraised or assessed differently than other authorization types, such as linear rights-of-way. To determine the acreage rent for such developments following the same criteria as linear facilities would make development cost prohibitive on the public lands due to unfairly applying a linear acreage rent.

Response: In response to these comments, both sections 2806.52 and 2806.62 are revised to incorporate State-specific reductions from the baseline NASS values in the calculation of acreage rents. The proposed rule used the linear rent schedule as the basis for determining acreage rent values by proposing solar and wind acreage rent as a percentage factor of the linear rent schedule. Using a percentage factor for acreage rent allows the BLM to adopt the linear rent calculation and effectively change the encumbrance factor to be specific for solar or wind energy.

For the final rule, the BLM has further modified the calculation used to determine acreage rent for solar and wind energy authorizations. The BLM recognizes that the NASS agricultural values may not always be a fair representation of public lands because

they include the agricultural improvements (e.g., buildings, ditches, irrigation) to the land. To account for this possibility, the final rule uses the NASS agricultural values as a baseline for the determination of acreage rent, then incorporates a 20 percent or greater State-specific reduction that accounts for the extent to which the NASS values reflect agricultural improvements to land in each State. By applying these State-specific reductions to the baseline NASS values when calculating acreage rent, the BLM more accurately identifies the value of unimproved land for a project site.

The proposed rule based the acreage rent calculation on the linear rent schedule, which uses a nationwide reduction of 20 percent. In the final rule, the State-specific factors will be no less than the 20 percent reduction initially proposed for the rule, but may be greater. A more detailed discussion on how these values are calculated and a table showing the specific values for each State is found under section 2806.52(a)(2) of this preamble.

Paragraph (a)(1) summarizes how the BLM identifies a per acre zone rate using the NASS land values. Paragraph (a)(2) describes how the BLM adjusts the per acre zone rate, by 20 percent or more, to account for agricultural improvements to the lands in each State. A State with a larger calculated reduction than the minimum 20 percent may lower a particular county's acreage rent. In the case of some States, such as Utah, the State-specific reduction that applies to unimproved agricultural land values is approximately 50 percent. This is discussed in greater detail under section 2806.52(a)(2).

Using this methodology, the BLM is able to establish a method for calculating acreage rents for solar and wind energy developments that are appropriate for the location of the

development. New section 2806.52(c) is added to this final rule providing the BLM's implementation of the acreage rent and MW capacity fee for solar energy developments.

Under section 2806.52(a)(1), the acreage rent for solar energy rights-of-way 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 zone rate in effect at the time the authorization is issued. Under section 2806.52(a)(1), the initial per acre zone rate for solar energy authorizations is now established by considering four factors; the per acre zone value multiplied by the encumbrance factor multiplied by the rate of return multiplied by the annual adjustment factor. This calculation is reflected in the following formula —  $A \times B \times C \times D = E$ , where:

“A” is the per acre zone value, as described in the linear rent schedule in section 2806.20(c);

“B” is the encumbrance, equaling 100 percent;

“C” is the rate of return, equaling 5.27 percent;

“D” is the annual adjustment factor, equaling the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS census data becomes available; and

“E” is the annual per acre zone rate.

The BLM will adjust the per acre zone rates each year, based on the average annual change in the IPD–GDP, consistent with section 2806.22(a). Adjusted rates are effective each year on January first.

Under new section 2806.52(a)(2), counties (or other geographical areas) are assigned to a Per Acre Zone Value on the solar energy acreage rent schedule, based on the State-specific

percent of the average land and building value published in the NASS Census.

The BLM currently uses an acreage rent schedule for linear rights-of-way to determine annual payments. The rent schedule separates land values into 15 different zones and establishes values for each zone ranging from \$0 to \$1,000,000 per acre. These values are based on the published agricultural values of the land, as determined by the NASS. Solar and wind energy acreage rents will be determined using the same zone values as linear rights-of-way. However, the BLM will use a state specific reduction when assigning lands to a zone.

The Per Acre Zone Value is a component of calculating the Per Acre Zone Rate under paragraph (a)(1) of this section. The calculation in this paragraph establishes a State-specific percent factor that represents the difference between the improved agricultural land values provided by NASS and the unimproved rangeland values that represent BLM land. This calculation is reflected in the following formula— $(A/B) - (C/D) = E$ , where:

“A” is the NASS Census statewide average per acre value of non-irrigated acres;

“B” is the NASS Census statewide average per acre land and building value;

“C” is the NASS Census total statewide acres in farmsteads, homes, buildings, livestock facilities, ponds, roads, wasteland, etc.;

“D” is the total statewide acres in farms; and

“E” is the State-specific percent factor or 20 percent, whichever is greater.

The county average per acre land and building values that exceed the 20 percent threshold for solar and wind energy development are as follows for BLM managed lands.

TABLE OF STATE-SPECIFIC FACTORS AND OTHER DATA FOR APPLICABLE STATES

State	Existing regulations and proposed rule: Nationwide 20 percent factor (%)	Final rule state-by-state calculated factor (%)	Final rule state-specific factor (%)
Alaska .....	20	12	20
Arizona .....	20	49	49
California .....	20	51	51
Colorado .....	20	24	24
Idaho .....	20	29	29
Montana .....	20	12	20
Nevada .....	20	16	20
New Mexico .....	20	24	24
North Dakota .....	20	5	20
South Dakota .....	20	5	20
Oregon .....	20	2	20
Texas .....	20	-1	20



TABLE OF STATE-SPECIFIC FACTORS AND OTHER DATA FOR APPLICABLE STATES—Continued

State	Existing regulations and proposed rule: Nationwide 20 percent factor (%)	Final rule state-by-state calculated factor (%)	Final rule state-specific factor (%)
Utah .....	20	54	54
Washington .....	20	21	21
Wyoming .....	20	16	20
Average .....	20	21	27

*Assignment of counties example:* This example uses the zone numbers and values of the acreage rent schedule to assign Clark County, Nevada, to the appropriate zone. Current NASS land values for Clark County are \$5,611 per acre. The state-specific factor for Nevada is 16 percent, which is less than the 20 percent minimum established in this rule. Therefore, the BLM applied a 20 percent reduction to the NASS land values, which results in a per acre value of \$4,489. Based on this, Clark County is assigned to zone 7 (counties with zone values between \$3,394.01 and \$4,746 per acre). For the purposes of calculating the acreage rent, the BLM will use the value for zone 7, which is \$4,746 per acre.

The following paragraph is an acreage rent example describing the acreage rent for solar energy development.

*Acreage rent example:* The 2016 acreage rent for a 4,000 acre solar energy development in Clark County, Nevada (zone 7) would be \$1,021,480 (4,000 acres  $\times$  \$255.37 per acre). Please note that the acreage rent calculation rounds the per acre dollar amount for the county to the nearest cent. In this example ( $\$4,746/\text{acre} \times 100\% \times 5.27\% \times 1.021\%$ ) is rounded to \$255.37 per acre.

As specified in new section 2806.52(a)(3), the initial assignment of counties to the zones on the solar energy acreage rent schedule is based upon the NASS Census data from 2012 and is established for year 2016 through 2020. Subsequent reassignments of counties will occur every 5 years following the publication of the NASS Census as is described in section 2806.21.

*Comment:* The BLM received comments expressing concern that the assignment of some counties or regions to zones on the solar acreage rent schedule may not accurately reflect the value of those lands.

*Response:* The BLM recognizes that it may be necessary to adjust the initial assignment of counties to zones on the solar energy acreage rent schedule. Section 2806.52(a)(3) of the final rule is revised to clarify that the BLM may, on

its own initiative or in response to requests, adjust initial NASS survey data-based county assignments on a regional basis if it determines that assignments based solely on NASS data do not accurately reflect the values of the BLM lands in question. A similar clarification was made to section 2806.62(a)(3).

Section 2806.52(a)(4) requires acreage rent payments each year, regardless of the stage of development or status of operations of a grant. Acreage rent must 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 annually and in full upon issuance of the grant. In the event of undue hardship, a rent payment plan may be requested and approved by a BLM State director, consistent with section 2806.15(c), so long as such a plan is in the public interest.

Section 2806.52(a)(5) states that the BLM will adjust the per acre zone rates each year based on the average annual change in the IPD-GDP as determined under section 2806.22(a). The acreage rent also will adjust each year for solar energy development grants issued under subpart 2804. The BLM will use the most current per acre zone rates to calculate the acreage rent for each year of the grant term, unless the holder selects the scheduled rate adjustment method under section 2806.52(d). The acreage rent for a solar energy development lease is adjusted under section 2806.54(a)(4).

This paragraph is revised in the final rule by removing “for authorizations outside of designated leasing areas, the BLM . . .” from the first sentence and replacing it with “We.” This edit is consistent with the acreage rent adjustment provision for wind energy (see section 2806.62(b)(5)). It is necessary because the BLM may issue a grant inside a DLA in some situations (see section 2809.19) and the proposed section would have been inaccurate. This paragraph is also revised in the

final rule by including the reference to the scheduled rate adjustment option, as described in section 2806.51 of this preamble.

Section 2806.52(a)(6) explains where you may obtain a copy of the current per acre zone rates for solar energy development (solar energy acreage rent schedule) from any BLM State, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 20 M St SE., Room 2134LM, Attention: Renewable Energy Coordination Office, Washington, DC 20003. This paragraph is added so the public is aware of where to obtain a copy of the solar energy acreage rent schedule described under this section. The BLM also posts the solar energy acreage rent schedule online 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).

Section 2806.52(b), “MW capacity fee,” describes the components used to calculate this fee. Paragraphs (b)(1), (2), (3), and (4) explain the MW rate, MW rate schedule, adjustments to the MW rate, and the phase-in of the MW rate. As explained in IM 2016-122, electric and telephone facilities that qualify for financing under the Rural Electrification Act must pay the MW capacity fee and other payments required under this rule, except the acreage rent.

*Comments:* Some comments noted uncertainty regarding the meaning or definition of words in the proposed rule, such as “MW capacity fee” and its component parts of the MW rate, MW hour price, net capacity factor, and rate of return.

*Response:* The BLM acknowledges that this rule introduces a number of new terms and concepts. The BLM attempted to clearly define these terms in section 2801.5(b). Some of the terminology is similar as some terms relate to the same general subject matter (e.g., MW capacity fee and MW rate). The BLM has revised the regulations and provided additional discussion in the preamble to help facilitate a better understanding of the rule and its requirements. For example, a more specific citation is provided in section

2806.52(b)(1) and other locations in the final rule to help readers better locate and understand the terms of the final rule. These revisions and terms are discussed in greater detail throughout the preamble for sections 2806.50 through 2806.68.

The MW capacity fee, as defined in section 2801.5(b), refers to payment, 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 is the total authorized MW capacity approved by the BLM for a project, or an approved stage of development, multiplied by the appropriate MW rate. The MW capacity fee is prorated and must be paid for the first partial calendar year in which generation of electricity starts or when identified within an approved POD. This fee captures the increased value of the right-of-way for the particular solar or wind-project use, above the limited rural or agricultural land value captured by the acreage rent. The MW capacity fee will vary, depending on the size and type of solar project and technology and whether the solar energy right-of-way authorization is a grant (issued under subpart 2804) or a lease (issued under subpart 2809). The MW capacity fee is paid annually either when electricity generation begins, or as otherwise stated in the approved POD, whichever comes first. If 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 by the right-of-way applicant must identify the stages of development for the solar or wind energy project's energy generation, including the time by which energy generation is projected to begin. The BLM will generally allow up to three development stages for a solar energy project. As the facility becomes operational, the approved MW capacity will increase as described in the POD. These stages are part of the approved POD and allow the BLM to enforce the diligence requirements associated with the grant.

*Comments:* Other comments suggested that a bid could include an alternative payment structure to the BLM over the life of the project. This alternative payment structure would replace the acreage rent and MW capacity fee described in this final rule. The comments further suggested that the BLM reduce costs to developers by eliminating the MW capacity fee, conducting regional mitigation planning for DLAs, and performing a majority of the work necessary for the NEPA and

Section 7 (endangered species) reviews early in the process inside DLAs.

*Response:* As explained elsewhere in this preamble, the BLM has determined that the rule's multi-component payment structure, involving both an "acreage rent" and "MW capacity fee" constitute the full fair market value for the use of the public lands by a wind and solar energy project. An alternative payment structure may not provide a fair return for the use of the public lands, and therefore, would be inconsistent with the BLM's obligations under FLPMA. The rule's structure is consistent with existing policy. That said, the final rule does allow the BLM to establish alternate fiscal terms for an individual project or region upon sufficient showing by an applicant that such alternative terms are justified. These alternative terms, if approved by the BLM, would be used in lieu of the default terms established by the rule inside and outside of designated leasing areas.

Under the rule's multi-component structure, the "acreage rent" represents the value of the raw undeveloped land, while the MW capacity fee represents the value for this particular commercial use of the public lands above and beyond the rural or agricultural value of the land in its unimproved state. Both are necessary components of obtaining the fair market value for the use of the public lands for wind and solar energy development. As explained above, this multi-component structure bears similarities to private land leases, which typically involve a land rent and royalty rate.

As suggested by the comments, the BLM does perform a majority of the work up front for the NEPA and Section 7 compliance processes for right-of-way leases inside DLAs. Mitigation work and costs may be identified in some cases before a competitive process occurs, such as in Dry Lake Valley solar energy zone in Nevada. The BLM held a competitive process in 2014 and reached a decision within 10 months of the auction. This was less than half the time it generally takes to process the project applications.

The BLM had great success in the Dry Lake Valley solar auction, at least in part, because there was a regional mitigation strategy in place. However, there may be instances in the future where a mitigation strategy is not appropriate or necessary. The BLM will not include a requirement for mitigation strategies in this final rule, but will be consistent with its interim policy guidance for offsite mitigation (IM 2013–142).

*Comments:* Some comments argue that the value of land for purposes of renewable energy development should be determined exclusively by MW capacity fees or by fees based on the number of MWs actually produced and delivered, not by the right-of-way's acreage value.

*Response:* Under the final rule, the BLM does not calculate annual charges for solar and wind energy development by using only a MW capacity fee, as suggested by the comments. The BLM has determined that requiring an acreage rent and MW capacity fee is the best method, consistent with applicable legal authorities, for determining the appropriate value of a solar or wind energy development right-of-way. The BLM also notes that the MW capacity fee and acreage rent in the final rule have been discounted from comparable costs that are typically charged in the private sector to account for the cost to comply with the terms and conditions of the BLM's authorization (bonding, due diligence, etc.).

*Comments:* A comment suggested that the BLM treat solar and wind energy technologies the same when setting acreage rents and MW capacity fees. Another comment suggested that the BLM give additional consideration to the use of energy storage technologies when setting acreage rents and MW capacity fees.

*Response:* In the BLM's examination of the different energy generation technologies it was determined that some technologies, such as CSP, are generally more efficient (*i.e.*, generate more energy using the same amount of sunlight) than other technology types and often require that the site selected for development include certain specific characteristics, such as limited grade. This is evidenced by the average efficiencies of the various solar technologies as reflected in the capacity factors on the EIA's Web site. Since the efficiencies of PV and CSP technologies are inherent to the technologies and are, in part, related to the particular conditions of the land to be used, the BLM maintained this distinction in the final rule and did not implement the comment's suggestion on limiting the various solar technology MW capacity fees to a single non-distinct fee.

The BLM did reconsider how it considers storage when charging a MW capacity fee. The BLM will maintain the proposed net capacity factor for CSP with storage capacity of 3 hours or more. CSP is a technology which is generally engineered with storage, which increases the efficiency, but decreases overall net capacity. The BLM is confident, based on its experience,

that this is the appropriate net capacity factor for this technology based on the technology currently deployed and available information.

However, the BLM does recognize that storage could have implications for other technology types as well. Based upon the premise that storage increases the efficiency of a project, the BLM requested that the National Renewable Energy Laboratory (NREL) provide a report on the status of energy storage in the United States. The BLM hoped to use this report to establish in the regulations an appropriate methodology for determining the value of storage for solar and wind projects on public lands. However, NREL's report noted that energy storage is an emerging and rapidly growing market, so there is not enough empirical data and commercial experience on storage to support an accurate calculation for valuing storage. Therefore, the BLM determined that it would be premature to add energy storage values to the regulations at this time beyond the one provided for CSP with 3 hours of storage.

In this final rule, the BLM adds a new sentence under the definition of MW rate to explain that in the future, the BLM may establish a different net capacity factor on a case-by-case basis, such as when a project uses storage, and the BLM determines that the efficiency rating varies from the established net capacity factors in this final rule. For example, if a wind energy project includes storage in its design, the BLM may determine an appropriate net capacity factor for that project.

Section 2806.52(b)(1) identifies 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 uses 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 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 is placing wind turbines in a steady wind speed location using 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 will 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 Department of Energy 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 rule establishes the net capacity factor for each technology as follows:

Technology type	Net capacity factor (%)
Photovoltaic (PV) .....	20
Concentrated Photovoltaic (CPV) or Concentrated Solar Power (CSP) .....	25
CSP w/Storage Capacity of 3 Hours or More .....	30
Wind Energy .....	35

As previously discussed in this preamble, the BLM has revised the proposed description of net capacity factor in this final rule. This final rule maintains the proposed net capacity factor for CSP with storage capacity of 3 hours or more at 30 percent. The BLM adds in this final rule a description of the net capacity factor in the definition recognizing that as technology evolves, the BLM may determine a net capacity factor for a specific project on a case-by-case basis in the future, as appropriate. This will better allow the BLM to receive fair market value payment for use of the public lands in the rapidly changing storage market.

The BLM intends to periodically review the efficiency factors for the various solar and wind technologies.

In the proposed rule, the BLM considered basing the net capacity factors for these technologies on an average of the annual capacity factors listed by the 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). However, the BLM decided not to go forward with this provision and removed it from the final rule because those annual capacity factors are not reviewed or confirmed by technical experts, such as those at the National Laboratories, and therefore, they are not a sufficiently reliable source of information on which to base the net capacity factor. Further, EIA may not continue to maintain and update this information in the future, and therefore, it may not be a viable source of information in the future.

**MWh price.** This component of the MW rate formula is the full 5 calendar-year average of the annual weighted average wholesale prices of electricity per MWh for the major trading hubs serving the 11 Western States of the continental United States. This wholesale price of the 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. Several comments were submitted concerning the MWh price.

**Comment:** One comment suggested that this component not be rounded to the nearest half cent.

**Response:** The BLM proposed to round the MWh price to the nearest 5-dollar increment. In other portions of the regulations the BLM rounds to the nearest cent. The proposed rule was explicit that the MWh price would be rounded to the nearest 5-dollar increment, but the final rule has been adjusted to round the MWh price to the nearest dollar increment. Rounding to the nearest dollar increment is consistent with current BLM practices for calculating annual payments. The BLM declined, however, to adopt the commenter's suggestion and round to the nearest half cent, because the MWh price is an estimated 5-year average of wholesale prices. Providing a more specific calculated MWh price could give a false precision to the actual rates provided by the BLM.

**Comment:** Another comment stated that we should not rely on the ICE trading hub as our source for data. Relying on a single vendor for determining the MWh price may lead to inaccurate fees if the vendor's data is inaccurate. There are other vendors that have current data available for the major trading hubs in the West as well.

*Response:* The proposed rule identified the ICE as the source of data to be used in calculating the MWh price. However, the final rule is revised to remove ICE as the only source of the major trading hub data in section 2806.52(b)(3)(i). Removing the specific source of data from the final rule is consistent with the proposed rule, in that the BLM has indicated that other sources may be used in the future should ICE stop providing such data. Furthermore, since publication of the proposed rule, the BLM became aware that the ICE no longer provides such market data for free to the public, but now offers these data under a paid subscription. Future updates to the MWh price may use ICE or other similar purveyors of market data to determine the major trading hubs and the wholesale market prices of electricity. Under this final rule, the BLM is using market data from SNL Financial to calculate the 5-year average of the annual weighted average wholesale price per MWh.

*Comments:* Several comments requested an update of the MWh price and stated that any update being made should include language to identify the most recent full calendar year data and to remove the uncertainty of how the BLM will determine the most recent 5-year data with future updates. Commenters further indicated that the data used in calculating the MWh price were skewed to numbers higher than the

true recent market average since market pricing for the year 2008 were much higher than the years preceding or following it.

*Response:* The BLM understands the concern regarding the intent to establish the MWh price using current market data. In the proposed rule, market data from calendar years 2008 through 2012 were used to determine the MWh price. In the final rule section 2806.52(b)(3)(i), the BLM updated the MWh price to reflect the most recent full 5 calendar-year data (that is, data from 2010–2014) from the major trading hubs located in the West.

In addition, the BLM adjusted provisions governing revisions to the MWh price to account for the fact that under section 2806.50, the BLM bills customers in advance for the following year. Specifically, the BLM revised the final rule so that the next update to the MWh price will occur for 2021, not 2020. This will allow the BLM to set the new price during 2020 using the most current market data for the previous five full years (2015–2019) without using the 2014 data twice. Market data for 2019 are not expected to be available until early 2020. Once data are available, the BLM will calculate the new, 2021–2025 MW capacity fee using the full five calendar-year average of the market data for 2015–2019, and notify existing right-of-way holders of the new fee.

In addition to using years 2010 through 2014 in calculating the MWh price, and adjusting the provisions

governing revisions to that price, the BLM also revised the final rule to require that the MWh price be rounded to the nearest dollar increment, as opposed to the proposed rule’s approach of rounding up to the nearest five-dollar increment. The BLM made this change to avoid imposing a surcharge due solely to rounding. The BLM found that at the current MWh price, rounding to the nearest five-dollar increment could impose a surcharge of up to 5 percent, or \$158 per MW of project capacity. Rounding to the nearest dollar increment will limit the surcharge without implying false precision.

Note that the current MW rate is \$38 per MWh as calculated using wholesale market data from SNL Financial for the major trading hubs in the west. The calculation for the MWh price is described in more detail in following paragraphs with a table provided showing the averages for the trading hubs used in the calculation.

When calculating the MWh price, the BLM used the yearly average value for each of the major trading hubs that cover the BLM public lands in the West. The BLM then calculated the overall annual average yearly hub value for each of the years 2010–2014, and then averaged these five annual values to establish the MWh price. The average of the five annual average values for 2010 through 2014 is \$38.07, so the BLM set the MWh price at \$38.00.

Year	Mid-Columbia Hub	Palo-Verde Hub	Four Corners Hub	Mead Hub	SP15–EZ CA Hub*	NP15 Hub	CA–OR Border Hub	West US	Avg.
2010 .....	\$35.86	\$38.79	\$40.13	\$40.07	\$39.86	\$39.81	\$38.80	\$39.05	\$39.05
2011 .....	29.48	36.43	36.66	37.02	36.78	36.00	32.93	35.04	35.04
2012 .....	22.90	29.68	30.59	30.87	34.86	32.03	27.09	29.72	29.72
2013 .....	37.59	37.66	.....	39.84	48.34	43.97	40.19	41.27	41.27
2014 .....	38.67	42.42	.....	44.84	51.13	51.06	43.48	45.27	45.27
2010–2015 Avg. ....	.....	.....	.....	.....	.....	.....	.....	38.07	.....

*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 range from 2 to 12 percent, but is typically around 5 percent, as identified in the appraisal consultation report 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.

An applicant 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 compliance with the terms and conditions of the authorization, including any payment obligations. This reduces the BLM’s risk and should allow the BLM to use a “safe rate” of return, *i.e.*, the prevailing rate on guaranteed government securities that includes an allowance for inflation. The BLM has established 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 to the nearest one-tenth percent, with a

minimum rate of 4 percent. Applying this criterion, the initial rate of return is 4 and 3 tenths percent (the 10-year average of the 20-year U.S. Treasury bond yield (4.32 percent), rounded to the nearest one-tenth percent).

This final rule is revised to round the rate of return to the nearest one-tenth percent to address a commenter’s concern that BLM’s usual rounding convention (rounding to the nearest one half percent) could result in rate jumps due only to rounding; rounding to the nearest one-tenth percent will limit the change in BLM’s rates without giving a false impression of precision.

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 current 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**  
[2016–2020]

Type of energy technology	Hours per year	Net capacity factor	MWh price	Rate of return	MW rate 2016–2020
Solar—Photovoltaic (PV) .....	8,760	0.20	\$38	0.043	\$2,863
Solar—Concentrated photovoltaic (CPV) and concentrated solar power (CSP) .....	8,760	0.25	38	0.043	3,578
CSP with storage capacity of 3 hours or more .....	8,760	0.30	38	0.043	4,294
Wind—All technologies .....	8,760	0.35	38	0.043	5,010

For lease holders that choose the standard rate adjustment method, the periodic adjustments in the MW rate are discussed in connection with section 2806.52(b)(3). Under that section, adjustments to the MW rate will occur every 5 years, beginning with the 2021 rate, by recalculating the MWh price and rate of return, as provided in section 2806.52(b)(3)(i) and (ii), respectively.

Section 2806.52(b)(3)(i) requires that the MW rate be adjusted using the full 5 calendar-year average of the annual weighted average wholesale price per MWh for the major trading hubs serving the 11 Western States of the continental United States. The next update for the MW rate will use years 2015 through 2019, rounded to the nearest dollar increment. Following this methodology, the resulting MWh price will be used to determine the MW rate for each subsequent 5-year interval. The availability of data to establish the MWh price is described in this preamble in the discussion of the definition of MWh price, a component of the MW rate in section 2801.5(b).

As noted above, section 2806.52(b)(3)(ii) provides that when adjusting the rate of return, the BLM will use the 10-year average of the 20-year U.S. Treasury bond yield for the full 10 calendar-year period preceding the rate of return adjustment. The rate of return is rounded to the nearest one-tenth percent, and must be no less than 4 percent. In the final rule, the rate of return was calculated using years 2003 through 2012 of the 20-year U.S. Treasury bond yield (4.32 percent), rounded to the nearest one-tenth percent (4.3 percent). The rate of 4.3 percent will be used for calendar years 2016 through 2020. The rate of return will be recalculated every 5 years beginning in 2020, by determining the 10-year average of the 20-year U.S. Treasury bond yield for the previous ten calendar years (2010 through 2019, for

2020) rounded to the nearest one-tenth percent. The resulting rate of return, if not less than 4 percent, will be used to determine the MW rate for calendar years 2020 through 2024, and so forth. The 20-year U.S. Treasury bond yields are tracked daily and are 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 section 2806.52(b)(4)(i), the BLM will provide for a 3-year phase-in of the MW capacity fee for solar energy development grants issued under subpart 2804 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 2016, 25 percent of the capacity fee would be assessed for July through December of 2016 and 50 percent of the capacity fee would be assessed for January through December of 2017. One hundred percent would be assessed thereafter.

This BLM will apply the phase-in after electricity generation begins, or is scheduled to begin in the approved POD, whichever comes first. The proposed rule stated that the BLM would apply the phase-in “. . . after the generation of electricity starts.” The BLM revised section 2806.52(b)(4)(i), from the proposed to final rule, for consistency with other sections, including section 2806.52(b). The BLM made a corresponding revision to section 2806.62(b)(4)(i).

Under section 2806.52(b)(4)(ii), this rule explains the staged development of a right-of-way. Such staged development, consistent with the rule in section 2805.12(c)(3)(iii), can have no more than three development stages, unless the BLM approves in advance

additional development stages. 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.

Section 2806.52(b)(5) is added to this final rule to explain that the general payment provisions of subpart 2806, except for section 2804.14(a)(4), apply to the MW capacity fee. For example, section 2806.12 explains when and where a grant holder must pay rent. These requirements would also apply to the MW capacity fee. Although the MW capacity fee is charged to reflect the commercial utilization value of the public's resource, it is an annual payment required to the BLM and these general payment provisions will apply.

The final rule specifies that section 2804.14(a)(4) does not apply to the MW capacity fee. As explained in IM 2016–122, the MW capacity fee is not a rental fee, and therefore must be paid by electric and telephone facilities that qualify for financing under the Rural Electrification Act. A new section (see section 2806.62(b)(4)) that parallels this requirement is added into the wind energy provisions for consistency.

Section 2806.52(c) is included in the final rule in support of revisions the BLM has made to charge fairly for the use of solar and wind energy authorizations. See the comment discussion under section 2806.52(a) for further information.

Section 2806.52(c) describes how the BLM will reduce the acreage rent and the MW capacity fee. The BLM will compare the total annual payment of the acreage rent and MW capacity fee for 2017 to the base rent and MW capacity fee currently established by policy for the 2016 billing year. Any net increase in costs to a right-of-way holder will be

reduced by 50 percent for the 2017 billing year. This one-year reduction is intended to ease the transition for grant holders from the current policies to this final rule. If 2017 is the first year for which you make an annual payment, the phase-in described under section 2806.52(b)(4) will apply without the BLM implementation reduction of 50 percent. The rates established by policy will remain in effect until 2017 for rights-of-way that are not issued under subpart 2809 of this final rule in order to provide notice of the adjusted rent and fees to existing holders.

Section 2806.52(d) is added to this final rule to establish the method by which the BLM will perform scheduled rate adjustments for solar and wind energy grants. In order for scheduled rate adjustments to be applied to a grant, a grant holder must have selected the scheduled rate adjustment method and notified the BLM, as provided in section 2806.51 of the final rule.

Paragraph 2806.52(d)(1) specifies which rates will be used initially for the scheduled rate adjustments. For new grants, the BLM will use the per acre zone rate (see section 2806.52(a)(1)) and MW rate (see section 2806.52(b)(1)) in place when your grant is issued. For existing grants that are in place prior to the publication of this final rule, the BLM will use the per acre zone rate and MW rate in place prior to this rule's publication, as adjusted in paragraph (d)(6) of this section and discussed further in corresponding section 2806.52(d)(6) of this preamble.

Section 2806.52(d)(2) specifies that the per acre zone rate will be adjusted in two ways: Annually, the rate will adjust upward by the current average change in the IPD-GDP, as described in section 2806.22(b); and every five years, the rate will adjust upward by an additional 20 percent. In other words, under the scheduled rate adjustment method, per acre zone rates will be adjusted in years 1 through 5 by the IPD-GDP; in year 6, the BLM will apply a 20 percent increase to the year-5 rate. The same two-part adjustment process will then repeat itself in years 6-10 (IPD-GDP) and year 11 (20%); years 11-15 (IPD-GDP) and year 16 (20%); years 16-20 (IPD-GDP) and year 21 (20%); years 21-25 (IPD-GDP) and year 26 (20%); and finally, years 26-30 (IPD-GDP). If the grant is renewed, the rates in place at the time of renewal, as identified in section 2806.52(d)(1), will be used to establish the initial rates for the term of the renewed right-of-way.

As explained previously in connection with section 2806.51, the BLM developed the scheduled rate adjustment method in response to

concerns that NASS values in certain areas have the potential to jump significantly. To address this concern while ensuring the BLM obtains fair market value for these uses of the public lands, the BLM reviewed changes in national per acre land values in NASS and determined that making fixed rate adjustments of 20 percent every 5 years would reflect historical trends.

The BLM reached this conclusion as follows. The NASS values are released every 5 years, reflecting the increases and decreases in land values. Over a period of 10 years, land values could change drastically in some counties, but the national and western state average changes in land values over the 10-year period from 2003 and ending 2012 were an 80 percent and a 65 percent increase, respectively. For the BLM lands in the west, the range in land value changes were increases of 33 to 253 percent. The BLM determined from these findings that the scheduled rate adjustment method, including both the annual IPD-GDP adjustment and the every-five-year scheduled adjustment, should target an upwards adjustment of about 60 percent for every 10 year period.

To achieve this outcome, over the term of a grant, the BLM will make five 20-percent adjustments to the per acre zone rates, in years 6, 11, 16, 21, and 26. Compounded, these five 20-percent adjustments will result in a 150 percent increase in the per acre zone rate over the 30-year life of the grant (on top of whatever increases are dictated by the annual change in IPD-GDP). This adjustment is within the identified historic range of changes in land values from NASS, which reflect a change between 99 and 759 percent over a 30-year period, and is also in line with industry's recommended rate increase of 4 percent per year (which amounts to 324 percent over a 30 year period, if compounded annually).

Section 2806.52(d)(3) specifies that the MW rate will also increase by 20 percent every 5 years. The BLM reviewed national changes in power pricing since 1960 and determined that adjusting the MW rate by 20 percent every 5 years is appropriate. Since 1960, power pricing has increased by over 450 percent, but over the last 30 years, it has increased approximately 90 percent. Pricing trends show that power pricing seldom drops on an annual basis. The BLM will make 5 20-percent adjustments to the MW rate, which amounts to a 150 percent increase when compounded over the 30-year life of the grant. This 150 percent adjustment is in line with the 4 percent annual rate increase indicated by industry

representatives. It is also in line with historical changes in power prices.

Section 2806.52(d)(4) makes it clear that the scheduled rate adjustment option will enter into effect in year 1 of the rule, for both the acreage rent and MW capacity fee. The phase-in (see section 2806.52(b)(4)) and initial implementation (see section 2806.52(c)) sections apply only for grants to which the standard rate adjustment applies. Grant holders that select the scheduled rate adjustment method choose a defined payment stream over the variable rates that may be applied with the standard rate adjustment method. As such, phase-ins are not included with the scheduled rate adjustment method.

Section 2806.52(d)(5) explains that if the approved POD provides for staged development of the project, the BLM will calculate the MW capacity fee in each year using the MW capacity approved for that stage.

Section 2806.52(d)(6) specifies that the existing rates for grant holders that select the scheduled rate adjustment method will be adjusted for year 1. The adjustment reflects the fact that, due to this rulemaking process, the BLM did not make the rate adjustments called for under existing policy in either 2008 (for wind energy) or 2010 (for solar energy). If the BLM does not update the rates for existing grant holders as specified in this section, it could be as long as 12 years between rate updates.

Accordingly, in year 1 of this rule, the BLM will increase the per acre zone rate for these grant holders by 20 percent plus the annual change in the IPD-GDP, as described in section 2806.22(b), and increase the MW rate by 20 percent. The scheduled rate adjustments will then be based off of these adjusted, year-1 rates.

No additional comments were received, nor were other changes made to this section of the final rule, except for minor changes to improve readability.

#### Section 2806.54 Rents and Fees for Solar Energy Development Leases

The title of this section is revised by removing "inside designated leasing areas." In conjunction with a previous comment, the BLM has made various edits to the final rule to improve readability. The difference between grants and leases is explained earlier in this preamble, so this language is unnecessary and potentially confusing.

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 first-year of acreage rent must be paid in advance, prior to

BLM's issuance of a lease, and the MW capacity fee will be phased-in and calculated based on the total authorized MW capacity of the solar energy development. Rents or fees for solar authorizations will vary depending on the number of acres, technology employed by the solar development, and whether the right-of-way authorization is a grant or lease.

There are many similarities in the rent and MW capacity fee for leases and grants for solar development. This section references the rent and MW capacity fee of grants under subpart 2804, as appropriate, and provides further discussion on how the rent MW capacity fee for a lease differs from that of a grant. Unlike grants, leases issued under subpart 2809 will be charged the full amount of the acreage rent and MW capacity fee schedules once this final rule is effective as there are no existing solar energy development leases. Although the BLM held a competitive offer relating to solar energy development in the Dry Lake SEZ, the successful bidders submitted applications and received right-of-way grants.

Paragraph (a) of this section identifies the acreage rent for a solar lease, which will be calculated in the same way as acreage rent for solar grants outside a DLA (see section 2806.52(a)). The acreage rent for the first year of a lease must be calculated and paid prior to BLM's issuance of a lease. Zone rates and payment of the acreage rent are the same for leases as they are for grants. For the per acre zone rates, see section 2806.52(a)(1). For the assignment of counties, see section 2806.52(a)(2) and (3). For the acreage rent payment, see section 2806.52(a)(4).

Consistent with other revisions in this final rule, the BLM added "This acreage rent will be based on the following:" at the end of section 2806.54(a). This revision makes it clear that the following paragraphs will be the basis for BLM's acreage rent for leases in DLAs.

Section 2806.54(a)(4) describes the adjustments to the acreage rent that may be made for a lease. Once an acreage rent is determined for a lease under paragraph (a) of this section, any adjustments in the annual acreage rent will be made at 10-year intervals thereafter—the first adjustment would be made in year 11 of the lease term and the next in year 21. During the 10-year periods, the acreage rent for a lease will remain constant and not be adjusted.

The BLM will, however, adjust the per acre zone rates of the acreage rent schedule each year based on the average annual change in the IPD-GDP, as

described in section 2806.22(a). This annual adjustment will not be applied to the acreage rent payments for a lease until the next 10-year interval, where the payment will be recalculated using the current acreage rent schedule. The BLM will use the most current per acre zone rates to calculate the acreage rent when first determining a new lease's acreage rent or when recalculating the acreage rent for the next 10-year period of a lease, unless the holder selected the scheduled rate adjustment method under section 2806.54(d).

Section 2806.54(b) identifies the MW capacity fee for solar development leases, which will be calculated in the same way as the MW capacity fee for solar grants outside of a DLA. The phase-in of the MW capacity fee is different from grants. For an explanation of when the BLM requires payment of the MW capacity fee, see section 2806.52(b). For the MW rate, see section 2806.52(b)(1). For the MW rate schedule, see section 2806.52(b)(2). For periodic adjustments in the MW rate, see section 2806.52(b)(3).

Reference to section 2806.52(b) has been added to the final rule. In conjunction with a previous comment, the BLM has made various edits to the final rule to improve readability. The BLM has explained when and how it will require payment and adding this specific citation will make this section more understandable.

Section 2806.54(c) describes the MW rate phase-in for solar energy development leases. Unless the holder selected the scheduled rate adjustment method under section 2806.54(d), 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.

In order to improve readability in this section, the BLM provided a more specific citation to section 2806.52(b)(2). This should help direct the reader to the appropriate section of this final rule.

Section 2806.54(c)(1) provides for a 10-year phase-in of the MW capacity fee, plus the initial partial year, if any. For the first ten years of a lease, the MW capacity fee is 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 section 2806.52(b)(2). The phase-in applies to the MW rate for either solar or wind energy leases (see section 2806.64(c)).

Section 2806.54(c)(2) applies to the MW rate phase-in for years 11 through 20 of a lease. The MW capacity fee for years 11 through 20 will be calculated

by multiplying the MW capacity by 100 percent of the MW rate.

Section 2806.54(c)(3) applies to the MW rate for years 21 through 30 of a lease. The MW capacity fee for years 21 through 30 will be calculated by multiplying the MW capacity by 100 percent of the MW rate. If the POD requires that electricity generation will begin after year 10 of the lease, the MW capacity fee will be calculated using section 2806.54(c)(2) or (3), as appropriate.

*Comments:* Some comments suggested establishing a low cost payment structure, which is different from that proposed. The suggested payment structure would include a phase-in during the first half of a project's life and then raise fees to regular (full) rates for all solar and wind leases. The payment structure could require an upfront cost payment, and then full costs only when financial costs are being incurred by the developer. An example would be to reduce payments to 10 percent of the gross lease rate for the first 15 years for a lease within a designated solar energy development leasing area.

*Response:* The BLM did not change the payment structure as suggested by the commenter. FLPMA requires that the BLM generally receive fair market value for the use of the public lands. The suggested low cost payment structure may not provide fair market value.

*Comments:* Some comments suggested removing the distinction between solar or wind technologies and their respective base rent or fees (*i.e.*, wind is 30 percent and solar is 25 percent without differentiation between technologies). The comment also suggested that the BLM incentivize storage for solar facilities, to promote grid stability, by offering a reduced rate.

*Response:* The BLM's methodology for collecting fair market value through rents and fees is similar to market comparable practices from non-Federal lands. Use of a technology-specific net capacity factor is appropriate for determining the MW rate for solar and wind energy development. Further, the BLM is not responsible for directing a technology's costs or its success in the energy market. Intentionally setting rates below market values or without market support, such as by establishing a net capacity factor, is not appropriate for this final rule. These suggestions have not been incorporated into the final rule, and the language in the proposed rule is carried forward to the final rule, with some revision as noted in the discussion of section 2806.52(b).



*Comment:* Another comment recommends that if a MW capacity fee is adopted in the final rule for leases (issued under subpart 2809), the MW rate should be phased-in at 50 percent for the life of the lease; for grants (issued under subpart 2804), the MW rate should be phased-in over a 5-year period. The comment also recommends using the MW rate in effect when the lease or grant is issued without adjustment. PPAs are generally fixed for a term, usually 20 years. A developer places a higher premium on certainty and stability of the MW capacity fee over the potential for reduced rates in the future in case of a long-term downward trend in prices.

*Response:* The BLM is aware that certainty and stability are factors to consider when developing and establishing its rules. However, based on the BLM's experience, most solar and wind energy developments break even with the costs of constructing and operating a facility within 15 to 20 years after the start of generation of electricity. The BLM has taken this into account as part of its formulation of the MW rate updates and phase-in.

The MW rate is set when a lease is issued, and not updated until year 21 of the lease. The MW rate is phased-in for the first 10 years at 50 percent of the full rate, after which the MW rate is no longer phased-in. Any updates to the MW rate schedule will not result in an adjustment to leases during the 10-year phase-in or the first 20 years of the lease. Only at year 21 and each following 10-year interval will the MW rate adjust, using the currently established MW rate schedule.

A grant's MW rate, however, is set each year, beginning when a project starts generating electricity. The MW rate is phased-in for the first 3 years at 25/50/100 percent of the MW rate, respectively. The BLM will recalculate the MW rate schedule once every 5 years, at which time the next year's payment by a developer will adjust consistent with the updated MW rate schedule.

Section 2806.54(c)(4) describes the MW capacity fee of the lease if it were to be renewed. The MW capacity fee is calculated using the then-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 will be adjusted using the then-current MW rate at the beginning of each subsequent 10-year period of the renewed lease term.

Under section 2806.54(c)(5), the rule provides for the staged development of leases. Such staged development, consistent with section

2805.12(c)(3)(iii), will have no more than three development stages, unless the BLM approved more development stages in advance. 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 as described in section 2806.54(c).

Section 2806.54(d) is added to this final rule to establish the method by which the BLM will perform scheduled rate adjustments for leases, similar to the scheduled rate adjustments for grants in section 2806.52(d). In order for scheduled rate adjustments to be applied to a lease, a lease holder must have selected the scheduled rate adjustment method, as required in section 2806.51.

Section 2806.54(d)(1) specifies which rates will be used initially for the scheduled rate adjustments. The BLM will use the per acre zone rate (see section 2806.52(a)(1)) and MW rate (see § 2806.52(b)(1)) that are in place when your lease is issued.

Section 2806.54(d)(2) specifies that the per acre zone rate will be increased every 10 years by the change in the IPD-GDP for the preceding 10-year period. (In contrast, the per acre zone rate for grants is adjusted every 5 years.) The 10-year average IPD-GDP change used for this increase is the same that is used to adjust the per acre rent schedule annually for linear rights-of-way under section 2806.22(b), except that it will be adjusted once cumulatively every ten years, rather than annually. For example, the current annual change in IPD-GDP is 2.1 percent, which would result in a roughly 21 percent change in year ten. In addition to the IPD-GDP change, a 40 percent increase every 10 years will be applied as part of the scheduled rate adjustment (in contrast to a 20 percent increase every 5 years for grants). The BLM will continue to apply this adjustment every 10 years (that is, in years 11 and 21 for the 30-year lease).

Similar to the approach taken for grants, the BLM reviewed changes in national per acre land values in NASS when establishing the 40 percent adjustment. Over the term of a lease, the BLM would make two adjustments to the per acre zone rates. These two adjustments would compound on each other, for a cumulative increase of 96% over the 30-year life of the lease. This adjustment is within the identified change in land values from NASS and is also in line with industry's recommendation of an annual change in rates limited to no more than 4 percent. (A 4 percent annual increase, compounded annually over 30 years,

amounts to a 324 percent increase over the life of the lease.) For further discussion on this, see the preamble discussion of section 2806.52(d)(2).

Section 2806.52(d)(3) specifies that likewise, the MW rate will increase by 40 percent every 10 years. The BLM reviewed national changes in power pricing since 1960 and determined that 40 percent adjustments to the MW rate every 10 years are appropriate. Over the term of the lease, the BLM would make 2 adjustments to the MW rate (in years 11 and 21). These 2 adjustments would compound on each other for a cumulative increase of 96% over the 30-year life of the lease. This adjustment is within the identified range of power pricing changes and is also in line with industry's recommendation of an annual change in rates limited to no more than 4 percent. (A 4 percent annual increase, compounded annually over 30 years, amounts to a 324 percent increase over the life of the lease.) For further discussion on this, see the preamble discussion of section 2806.52(d)(3).

Section 2806.54(d)(4) specifies that the phase in of the MW rate for standard rate adjustments in section 2806.54(c) does not apply to authorizations that are using the scheduled rate adjustments. Instead, for years 1 through 5 of a lease, plus any initial partial year, the MW capacity fee is 50 percent of the otherwise applicable solar rate. This reduction is applied only to new leases and only during the initial term; the phase-in will not be applied to leases when renewed.

Like the phase-in period under the standard rate adjustment method, the initial MW capacity is also subject to a phase-in; however, it is shorter (a 5-year period instead of a 10-year period). Again, the purpose of the phase-in period is to provide a financial incentive to developers to use the public lands within their grant earlier (since the clock on the phase-in starts running at lease issuance, even though the obligation to pay the MW capacity fee does not attach until power generation commences). The BLM selected a 5-year phase-in under the scheduled rate adjustment method instead of the 10-year phase-in from section 2806.54(c) because of the difference in rate structures. Under the standard rate adjustment, the MW capacity fee will not adjust for the first 20 years of a lease term, and that initial rate is phased-in for the first half of that period (10 years). Under the scheduled rate adjustments, the rate adjusts every 10 years and the phase-in is provided for half of the initial rate period (5 years). Both the 10-year and 5-year phase-in are consistent with market practices.

Section 2806.54(d)(5) explains that if the approved POD provides for staged development of the project, the BLM will calculate the MW capacity fee using the MW capacity approved for that stage. Only development stages in operation during the first 5 years of a lease will be phased-in.

*MW capacity fee-example 1:* The MW capacity fee for a 400-MW photovoltaic solar energy right-of-way grant would be \$1,145,200 per year (400 MWs  $\times$  \$2,863 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 \$143,150 (400 MWs  $\times$  \$2,863 per MW  $\times$  25 percent  $\times$  0.5 year); in the second year after the start of electricity generation, the MW capacity fee would be \$572,600 (400 MWs  $\times$  \$2,863 per MW  $\times$  50 percent  $\times$  1 year); and in the third year after the start of electricity generation, and each year thereafter, the MW capacity fee would be \$1,145,200 per year (400 MWs  $\times$  \$2,863 per MW  $\times$  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 would be \$1,431,200 per year (400 MWs  $\times$  \$3,578 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 \$357,800 (400 MWs  $\times$  \$3,578 per MW  $\times$  25 percent  $\times$  1 year); in the second year after the start of electricity generation, the MW capacity fee would be \$715,600 (400 MWs  $\times$  \$3,578 per MW  $\times$  50 percent  $\times$  1 year); and in the third year after start of generation and each year thereafter, the MW capacity fee would be \$1,431,200 per year (400 MWs  $\times$  \$3,578 per MW  $\times$  1 year).

*MW capacity fee-example 3:* The MW capacity fee for a 400 MW solar power right-of-way grant with a storage capacity of 3 hours or more would be \$1,717,600 per year (400 MWs  $\times$  \$4,294 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 \$429,400 for a solar energy right-of-way (400 MWs  $\times$  \$4,294 per MW  $\times$  25 percent  $\times$  1 year); in the second year after the start of electricity generation, the MW capacity fee would be \$858,800 (400 MW  $\times$  \$4,294 per MWs  $\times$  50 percent  $\times$  1 year); and in the third year after the start of electricity generation, and each year thereafter, the MW capacity fee would

be \$1,717,600 per year (400 MW  $\times$  \$4,294 per MWs  $\times$  1 year).

*Acreage rent and MW capacity fee example for a solar energy development grant:* The annual acreage rent and MW capacity fee for 2016 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 approximately \$2,231,480. (The acreage rent of \$1,021,480 (4,000 acres  $\times$  \$255.37 per acre) plus the MW capacity fee of \$1,261,600 (400 MWs  $\times$  \$3,154 per MW) equals \$2,283,080).

No comments were received and no changes are made from the proposed rule to the final rule.

#### Section 2806.56 Rent for Support Facilities Authorized Under Separate Grant(s)

Under this section, support facilities for solar development will be authorized under a grant. Support facilities may include administration buildings, groundwater wells, and construction laydown and staging areas. Rent for support facilities authorized under separate grants is determined using the Per Acre Rent Schedule for linear facilities under existing section 2806.20(c). No comments were received and no changes are made from the proposed rule to the final rule.

#### Section 2806.58 Rent for Energy Development Testing Grant(s)

*Comments:* Several comments suggested that site- and project-area testing should be allowed for both solar and wind energy.

*Response:* The final rule now includes site- and project-area testing authorizations for both solar energy and wind energy. New section 2806.58 has been added in this final rule to incorporate this change. Changes in this section are consistent with section 2806.68, which did not receive any comments, but was modified to remove the word “wind” from the naming of the type of grants to remain consistent with the types of authorizations that the BLM will issue.

Section 2806.58(a) describes the rent for any energy site-specific testing grant. A minimum rent is established as \$100 per year for each grant issued. Under this paragraph rent is set by incorporating into the final rule the site-specific rent amount found in the BLM’s IM No. 2009–043, as follows: Site-specific grants are authorized only for one site and do not allow multiple sites to be authorized under a single grant; however, a single entity may hold more than one site-area testing grant. If a BLM office has an approved small site rental schedule, that office may use the rents,

so long as the rent exceeds the \$100 minimum. Small site rental schedules are provided to the BLM from the Department’s Office of Valuation Services and reflect accurate determination of market value. In lieu of annual payments for a site-specific testing grant, a grant holder may pay for the entire 3-year term of the grant. See sections 2801.9(d)(1) and 2805.11(b)(2)(i) of this preamble for further discussion of site-specific energy testing grants.

Section 2806.58(b) describes the rent for any energy project-area testing grant. A per-year minimum rent is established at \$2,000 per authorization or \$2 per acre for the lands authorized by the grant, whichever is greater. The appraisal consultation report by the Office of Valuation Services supports the rent established in this final rule. Project-area grants may authorize multiple meteorological or instrumentation testing sites. There is no additional charge or rent for an increased number of sites authorized under such grants. See sections 2801.9(d)(2) and 2805.11(b)(2)(ii) of this preamble for further discussion of project-area energy testing grants.

#### Section 2806.60 Rents and Fees for Wind Energy Rights-of-Way

Section 2806.60 requires a holder of a wind energy right-of-way authorization to pay annual rent and MW capacity fees for right-of-way grants issued under subpart 2804 and leases issued under subpart 2809.

As noted earlier in this preamble, there are similarities between rents and MW capacity fees for solar and wind energy, as well as between rents and MW capacity fees for authorizations issued under subparts 2804 and 2809. The BLM intentionally designed the rents and fees for solar and wind energy development projects 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 is the same for wind as for solar. Many of the terms and conditions of a lease issued under this subpart will also be the same. No comments were received on this section, and no changes were made between the proposed and final versions of this section, other than those discussed in connection with section 2806.50 of this preamble.

#### Section 2806.61 Scheduled Rate Adjustment

Section 2806.61 is added to the final rule, consistent with section 2806.51 of this final rule. This section parallels

2806.51 with no substantive differences, except that this section applies to wind energy grants and leases instead of solar energy grants and leases. See section 2806.51 of this preamble for further discussion. Parallel changes are also made in sections 2806.62(d) and 2806.64(d) of this preamble. See sections 2806.52(d) and 2806.54(d) of this preamble for further discussion of those sections.

**Section 2806.62 Rents and Fees for Wind Energy Development Grants**

Section 2806.62 parallels section 2806.52, which discusses rents and MW capacity fees for solar energy development grants. The discussion on all components of the wind energy development grants duplicates the provisions for solar rents and fees, except for paragraph (a)(1) of this section which discusses the per acre zone rates and paragraphs (a)(6) and (7) and (b)(4)(iii) of this section, which discuss the BLM implementation of the new acreage rent and MW capacity fee. Revisions have been made to the requirements of this section consistent with comments on the proposed rule. See comments discussed under section 2806.52 for further information and details regarding the revisions made to the final rule.

Section 2806.62(a) addresses the acreage rent for wind energy development. See section 2806.52(a) for a discussion of 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 zone rate in effect at the time the authorization is issued. The annual zone rate is derived from the wind energy acreage rent schedule in effect at the time the authorization is issued.

Section 2806.62(a)(1) addresses per acre zone 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 approximately 100 percent of the land, while wind energy projects encumber approximately 10 percent of the land. Therefore, for wind, the per acre zone rate is calculated using a 10 percent encumbrance factor instead of 100 percent encumbrance factor.

Under section 2806.62(a)(1), the initial per acre zone rate for wind energy projects is now established by considering four factors: the per acre zone value multiplied by the encumbrance factor multiplied by the rate of return multiplied by the annual adjustment factor. This calculation is reflected in the following formula –  $A \times B \times C \times D = E$ , where:

“A” is the per acre zone value are the same per acre zone values described in the linear rent schedule in section 2806.20(c);

“B” is the encumbrance equaling 10 percent;

“C” is the rate of return equaling 5.27 percent;

“D” is the annual adjustment factor equaling the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS census data becomes available; and

“E” is the annual per acre zone rate. The BLM will adjust the per acre zone rates each year, based on the average annual change in the IPD–GDP, as described in section 2806.22(a). Adjusted rates are effective each year on January first.

Under section 2806.62(a)(2), counties (or other geographical areas) are assigned a Per Acre Zone Value on the wind energy acreage rent schedule, based on the State-specific percent of the average land and building value

published in the NASS Census. The Per Acre Zone Value is a component of calculating the Per Acre Zone Rate under paragraph (a)(1) of this section. As specified in new section 2806.62(a)(3), the initial assignment of counties to the zones on the wind energy acreage rent schedule will be based upon the NASS Census data from 2012 and be established for calendar years 2016 through 2020. Subsequent reassignments of counties will occur every 5 years following the publication of the NASS Census, as described in section 2806.21. State-specific percentage factors will be recalculated once every 10 years at the same time the linear rent schedule is updated, as described in section 2806.22(b).

Section 2806.62(a)(2) provides the calculation to establish a State-specific percent factor that represents the difference between the improved agricultural land values provided by NASS and the unimproved rangeland values that represent BLM land. The calculation for determining the State-specific percent factor is  $(A/B) - (C/D) = E$ , where:

“A” is the NASS Census statewide average per acre value of non-irrigated acres;

“B” is the NASS Census statewide average per acre land and building value;

“C” is the NASS Census total statewide acres in farmsteads, homes, buildings, livestock facilities, ponds, roads, wasteland, etc.;

“D” is the total statewide acres in farms; and

“E” is the State-specific percent factor or 20 percent, whichever is greater.

The county average per acre land and building values that exceed the 20 percent threshold for solar and wind energy development are as follows for the BLM managed lands:

TABLE OF STATE-SPECIFIC FACTORS AND OTHER DATA FOR APPLICABLE STATES

State	Existing regulations and proposed rule: nationwide 20 percent factors (%)	Final rule state-by-state calculated factors (%)	Final rule state-specific factors (%)
Alaska .....	20	12	20
Arizona .....	20	49	49
California .....	20	51	51
Colorado .....	20	24	24
Idaho .....	20	29	29
Montana .....	20	12	20
Nevada .....	20	16	20
New Mexico .....	20	24	24
North Dakota .....	20	5	20
South Dakota .....	20	5	20
Oregon .....	20	2	20
Texas .....	20	-1	20
Utah .....	20	54	54

TABLE OF STATE-SPECIFIC FACTORS AND OTHER DATA FOR APPLICABLE STATES—Continued

State	Existing regulations and proposed rule: nationwide 20 percent factors (%)	Final rule state-by-state calculated factors (%)	Final rule state-specific factors (%)
Washington .....	20	21	21
Wyoming .....	20	16	20
Average .....	20	21	27

The following table lists the paragraphs where the wind energy grant provision parallels the solar energy

provision for the same topic. The discussion for each relevant wind energy provision is found in this

preamble under the associated solar energy provision.

Topic	Wind	Solar
Acreage Rent .....	43 CFR 2806.62(a) .....	43 CFR 2806.52(a).
Per acre Zone Rate .....	43 CFR 2806.62(a)(1) .....	43 CFR 2806.52(a)(1).
Assignment of Counties .....	43 CFR 2806.62(a)(2) .....	43 CFR 2806.52(a)(2).
Initial Assignment of Counties .....	43 CFR 2806.62(a)(3) .....	43 CFR 2806.52(a)(3).
Acreage Rent Payment .....	43 CFR 2806.62(a)(4) .....	43 CFR 2806.52(a)(4).
Acreage Rent Adjustments .....	43 CFR 2806.62(a)(5) .....	43 CFR 2806.52(a)(5).
Obtain a Copy of Rent Schedule .....	43 CFR 2806.62(a)(7) .....	43 CFR 2806.52(a)(6).
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).
Scheduled Rate Adjustment .....	43 CFR 2806.62(d) .....	43 CFR 2806.52(d).
Initial Rates Used .....	43 CFR 2806.62(d)(1) .....	43 CFR 2806.52(d)(1).
Acreage Rate Adjustment .....	43 CFR 2806.62(d)(2) .....	43 CFR 2806.52(d)(2).
MW Rate Adjustment .....	43 CFR 2806.62(d)(3) .....	43 CFR 2806.52(d)(3).
MW Rate Phase-in .....	43 CFR 2806.62(d)(4) .....	43 CFR 2806.52(d)(4).
Stage of Development .....	43 CFR 2806.62(d)(5) .....	43 CFR 2806.52(d)(5).
Existing Grants .....	43 CFR 2806.62(d)(6) .....	43 CFR 2806.52(d)(6).

Section 2806.62(a)(6) is added to this final rule to explain that holders of wind energy development grants must pay acreage rent as described in section 2806.62(a), except that for holders of wind energy development grants, the acreage rent will be phased in as described in section 2806.62(c).

Section 2806.62(b)(4)(i) addresses the term of the MW rate phase-in. Paragraphs (b)(4)(i)(A), (B), and (C) of this section address the percentages of the phase-in. See section 2806.52(b)(4)(i) for a discussion of the term of the MW rate phase-in and paragraphs (b)(4)(i)(A), (B), and (C) for the percentages of the phase-in. No change is made to the final rule, other than the change made for consistency with section 2806.52(b)(4)(i).

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

MW rate phase-in for a staged development, paragraph (b)(4)(ii)(A) for the percentages of the phase-in, and paragraph (b)(4)(ii)(B) for the calculation of the rent for the phase-in of a staged development.

New section 2806.62(b)(4)(iii) states that the MW rate will be implemented as described in section 2806.62(c).

*Comment:* A comment noted that the BLM has not yet designated any wind energy zones or other preferred wind energy development areas that would become a DLA. Without any such areas designated for wind energy, the BLM's rule would put wind energy at a disadvantage in comparison to solar energy since wind energy would not be able to benefit from the incentives available for development in such areas.

*Response:* The BLM agrees that there are currently no wind energy development areas and that wind energy developers cannot yet benefit from the incentives provide for DLAs in subpart 2809 of this final rule. The BLM intends to establish wind energy DLAs in the future. However, this would be done through amending or revising a land use

plan, which can take several years. Therefore, the BLM has added section 2806.62(c) to this final rule to explain how the BLM will implement the acreage rent and MW capacity fee for wind energy grants.

Developers that submitted an application prior to the publication of the proposed rule would not have known the potential incentives for developing inside a DLA. This final rule provides a payment reduction to developers that had committed to a project on the public lands before this rule was proposed. However, developers that submitted applications after the publication of the proposed rule were aware of the BLM's proposed rule and incentives and knew that they did not qualify for these incentives.

Section 2806.62(c) implements this payment reduction. Specifically, section 2806.62(c) applies to all wind energy development grants that have made a payment for billing year 2016, or for which an application to the BLM was filed before September 30, 2014. This is explained in the following paragraphs.

Under paragraph 2806.62(c)(1) of this section, the BLM will reduce the acreage rent and the MW capacity fee. The BLM will compare the total annual payment of the acreage rent and MW capacity fee for 2017 to the total annual payment currently required by policy for the 2016 billing year. Any net increase in costs to a right-of-way holder will be reduced by 50 percent for 2017 billing year. This one-year reduction is intended to ease the transition for grant holders from the current policies to this final rule. If 2017 is the first year for which you make an annual payment, the phase-in described under section 2806.52(b)(4) will apply without an implementation reduction of 50 percent. The rates established by policy will remain in effect until 2017 for rights-of-way that are not issued under subpart 2809 of this final rule in order to provide notice to existing holders of the adjusted rent and fees.

Section 2806.62(c)(2) explains how the BLM will implement the acreage rent and MW capacity fee for wind energy grants for which an application to the BLM was filed before September 30, 2014. In addition to the timely filing requirement, a grant holder must also have an accepted POD and cost recovery agreement established before September 30, 2014.

The BLM intends for this section to apply to applications that were filed before the BLM issued the proposed rule on September 30, 2014. Anyone who submitted an application before this

date would not have known about the proposed requirements of the final rule, including updates to the payment requirements and the incentives for developing inside a DLA.

Under paragraph (c)(2)(i) of this section, the BLM will reduce the acreage rent of the grant for the first year by 50 percent. This reduction applies only to the first year's annual payment, even if it is for a partial year. If the BLM requires an upfront payment for the first partial year and next full calendar year, only the partial year will be reduced by 50 percent. The BLM may require such payment for the year in advance for rights-of-way authorized consistent with section 2806.12 of this final rule. No reduction will be applied to the acreage rent for the subsequent years of the grant.

Under paragraph (c)(2)(ii) of this section when the project has reached a point where the BLM requires a MW capacity fee payment, the MW capacity fee will be reduced by 75 percent for the first and second year and 50 percent for the third and fourth year of the grant. The first year is the initial partial year, if any, after electricity generation begins. The fifth and subsequent years will be charged at 100 percent of the MW capacity fee. This reduction applies to each approved stage of development.

No further comments were received and no other changes were made to this section, beyond those that were already discussed in this preamble in connection with section 2806.52.

**Section 2806.64 Rents and Fees for Wind Energy Development Leases**

The title of this section was revised by adding “and fees” and removing “inside designated leasing areas.” This was done to be consistent with the title of section 2806.54.

See section 2806.54 for a discussion of all components of rent for a wind energy development lease, except for section 2806.54(a)(1), which discusses the per acre zone rates. Section 2806.54(a)(1) does not apply to wind energy development grants and leases because solar and wind energy acreage rents are calculated using different encumbrance factors. Section 2806.64(a)(1) addresses the per acre zone rate for wind energy leases. See section 2806.54(a)(1) for a discussion of acreage rent.

Section 2806.64(a)(1) addresses per acre zone rates for wind energy leases. See section 2806.62(a)(1) for a discussion of acreage rent, which differs from solar energy development. The per acre rents are calculated using the methodology discussed in section 2806.62(a)(1), which reflects the 10 percent encumbrance factor for wind energy development.

The following chart lists the paragraphs where the wind energy lease provisions parallel the solar energy provisions for the same topic. The discussions for each relevant wind energy provision are found in the preamble under the associated solar energy provision.

Topic	Wind	Solar
Acreage Rent .....	43 CFR 2806.64(a) .....	43 CFR 2806.54(a)
Per acre Zone Rate .....	43 CFR 2806.64(a)(1) .....	43 CFR 2806.54(a)(1)
Assignment of Counties .....	43 CFR 2806.64(a)(2) .....	43 CFR 2806.54(a)(2)
Acreage Rent Payments .....	43 CFR 2806.64(a)(3) .....	43 CFR 2806.54(a)(3)
Acreage Rent Adjustments .....	43 CFR 2806.64(a)(4) .....	43 CFR 2806.54(a)(4)
MW Capacity Fee .....	43 CFR 2806.64(b) .....	43 CFR 2806.54(b)
MW Rate .....	43 CFR 2806.64(b)(1) .....	43 CFR 2806.54(b)(1)
MW Rate Schedule .....	43 CFR 2806.64(b)(2) .....	43 CFR 2806.54(b)(2)
MW Rate Adjustments .....	43 CFR 2806.64(b)(3) .....	43 CFR 2806.54(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)
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)
Scheduled Rate Adjustment .....	43 CFR 2806.64(d) .....	43 CFR 2806.54(d)
Initial Rates Used .....	43 CFR 2806.64(d)(1) .....	43 CFR 2806.54(d)(1)
Acreage Rate Adjustment .....	43 CFR 2806.64(d)(2) .....	43 CFR 2806.54(d)(2)
MW Rate Adjustment .....	43 CFR 2806.64(d)(3) .....	43 CFR 2806.54(d)(3)
MW Rate Phase-in .....	43 CFR 2806.64(d)(4) .....	43 CFR 2806.54(d)(4)
Stage of Development .....	43 CFR 2806.64(d)(5) .....	43 CFR 2806.54(d)(5)
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

No comments were received on this section, and no changes were made from the proposed to the final version of this section, beyond those discussed in connection with section 2806.54.

#### Section 2806.66 Rent for Support Facilities Authorized Under Separate Grants

This section states that if a wind energy development project includes separate right-of-way authorizations for support facilities such as wells, control structures, staging areas, or linear rights-of-way (e.g., roads, pipelines, transmission lines, etc.), then the rent schedule will be determined using the Per Acre Rent Schedule for linear facilities found at section 2806.20(c). No comments were received on this section, and no changes were made from the proposed to the final version of this section, beyond those discussed in connection with section 2806.56.

#### Section 2806.68 Rent for Energy Development Testing Grant(s)

Section 2806.68(a) describes the rent for any energy site-specific testing grant. A minimum rent is established as \$100 per year for each grant issued. Under this section, rent is set by incorporating in this final rule the site-specific rent amount from IM 2009–043, Wind Energy Development Policy. Site-specific grants are authorized only for one site and do 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, so long as the rent schedule charges more than the \$100 minimum rent per year found in the regulations. Since small site rental schedules are provided to the BLM by the Department's Office of Valuation Services, they represent a third party determination of market value. In lieu of annual payments for a site-specific testing grant, a grant holder may pay for the entire 3-year term of the grant. See sections 2801.9(d)(1) and 2805.11(b)(2)(i) of this preamble for further discussion of site-specific energy testing grants.

Consistent with comments received and discussed under section 2801.9 of this preamble, the title of this section is changed from the proposed rule to read as shown above. A similar change was made for the title of paragraphs (a) and (b) of this section. These changes are made in order to ensure the headings of the rule are consistent with revisions to the final rule that will allow site-specific and project-area testing to be

available for both solar and wind energy testing.

Section 2806.68(b) describes the rent for a wind energy project-area testing grant. A per-year minimum rent is established at \$2,000 per authorization or \$2 per acre for the lands authorized by the grant, whichever is greater. The appraisal consultation report by the Office of Valuation Services supports the rent amounts established in this final rule. Project-area grants may authorize multiple meteorological or instrumentation testing sites. There is no additional charge or rent for an increased number of sites authorized under such grants. See sections 2801.9(d)(2) and 2805.11(b)(2)(ii) of this preamble for further discussion of project-area energy testing grants.

No further comments were received on this section and no additional changes were made in the final rule.

Section 2806.70 How will the BLM determine the payment for a grant or lease when the linear, communication use, solar energy, or wind energy payment schedules do not apply?

Section 2806.70 is redesignated from existing section 2806.50 and is retitled as shown above. This section provides guidance on how the BLM determines the payment for a grant or lease when the linear rent schedule, the communication use rent schedule, the solar acreage rent and MW capacity fee provisions, or the wind acreage rent and MW capacity fee provisions are not applicable.

The title of this section is amended by replacing "rent" with "payment" in two places. This final rule introduces the concept of MW capacity fees, which are a payment to the BLM for the commercial utilization value of the public lands, above the rural land values. The term "payment" includes both rents and fees, which is why it was selected. No other change is intended by this revision.

The only other change to this redesignated section is that solar and wind energy rights-of-way are now included in the listed rent schedules. No comments were received and no other changes are made from the proposed rule to the final rule.

#### Subpart 2807—Grant Administration and Operation

Section 2807.11 When must I contact BLM during operations?

This section is revised to make it clear that you must notify the BLM when your use requires a substantial deviation from the issued grant. Under the changes made to section 2807.11(b),

"substantial deviations" from the right-of-way grant now require an amendment to the 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 subpart 2806, or bonding requirements under subparts 2805 and 2809.

Consistent with other revisions to the final rule intended to improve readability, the BLM revised paragraph (b) of this section to read as "the BLM's" instead of "our." This revision is intended to improve understanding of who the BLM is referring to in the final rule.

*Comment:* One comment asked the BLM to narrow the circumstances under which a right-of-way holder must notify the BLM, suggesting that these reporting requirements be limited to changes that necessitate an assignment under the standards identified in section 2807.21(h).

*Response:* The requirement to report changes in partners, financial conditions, or business or corporate status is a requirement of the existing regulations found under section 2807.11(c). Section 2807.11(c) was not proposed for revision and is not revised or redesignated by this final rule. In addition, the BLM must have accurate and up-to-date information about right-of-way holders in order to facilitate its management of the public lands.

Paragraph (d) of this section requires you to contact the BLM when site-specific circumstances or conditions result in the need for you to propose 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 proposed "minor deviations" include 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 proposed non-substantial deviations might include the modification of mitigation measures or project materials. For purposes of this provision, project materials 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, which is why the BLM needs to understand any changes to those materials. The requested changes may be considered as grant or lease modification requests. Proposals for non-substantial deviations

will require review and approval by the authorized officer or other appropriate personnel. The preliminary application review meetings found under section 2804.12 and public meetings found under section 2804.25 are not required for an assignment.

Paragraph (e) requires that right-of-way holders contact the BLM to correct discrepancies or inconsistencies.

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

Section 2807.17(d) contains the provisions formerly located at section 2809.10. This section was redesignated in order to make room for the renewable energy right-of-way leasing provisions. No comments were received and no changes are made from the proposed rule to the final rule.

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

Some revisions were made to this section in response to comments, which are discussed in the following paragraphs. A summary of other revisions to this section is included after these comments and responses.

*Comments:* Some comments noted confusion over the BLM's requirements for name changes and assignments, specifically, what constitutes a name change or assignment. Additionally, comments noted that mergers and acquisitions are not assignments and that a name change or assignment should not be the basis for or occasion on which the BLM redrafts the terms and conditions of right-of-way agreements.

*Response:* Section 2807.21 is revised to provide clarity on the BLM's requirements for assignments and name changes. Section 2807.21(b) and (c) of the proposed rule have been combined into section 2807.21(b) in this final rule. As a result of these changes, several paragraphs are also redesignated in the final rule. The BLM agrees with commenters that name changes should not necessitate the rewriting of the terms and conditions of a right-of-way agreement.

The BLM disagrees with the commenter equating mergers and acquisitions with name changes. A merger or acquisition is different in character as they can result in material changes to the corporate structure under which a right-of-way grantee or leaseholder operators. Such changes can affect financial positions or the technical capability of a parent company. As a result, the BLM determined that it was appropriate to expand the definition of assignment in

both the final and proposed rules to include changes in ownership and other related change in control transactions, including "mergers or acquisitions." However, recognizing that there are changes in corporate structure within the same corporate family that may technically constitute change in control transactions, but that do not implicate BLM's concern about technical and financial capability of a grant- or leaseholder's parent, the BLM has revised section 2807.21(a)(2) and (b)(2) to clarify that change in control transaction within the scope of that provision do not include transactions or restructurings within the same corporate family.

When a right or interest in a right-of-way grant or lease is assigned from one party to another, the involved parties are identified as the assignor and assignee. The BLM generally evaluates the assignee, the party that is intended to receive the right or interest, as if they were a new applicant. The BLM may determine that additional terms and conditions are required when assigning the right or interest and would include them as a term or condition of the grant at the time of assignment. New terms and conditions could include the requirement to bond the authorized facility, such as in the case when a potential assignee of a grant has a poor history of meeting the terms and conditions of a BLM grant, that may have not applied to the assignor. The evaluation and determination of whether new terms and conditions should be applied would occur when the BLM considers the proposed conveyance of a right-of-way.

Other revisions to the terms and conditions that may occur with assignments are those which the BLM retains authority to revise, such as rents, fees, bonding, and other revisions identified under section 2805.15(e). Section 2805.15(e) allows the BLM to amend the terms and conditions of a right-of-way grant or lease as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment. Because any changes to the terms and conditions of a right-of-way grant or lease would occur after the completion of the agency action (the BLM's decision to approve the right-of-way), the BLM anticipates doing so through a separate action, generally initiated at the BLM's discretion and requiring its own decision-making process.

Updating corporate or individual filings within a State where only a name is changed, but the filing does not transfer a right or interest to another party, qualifies as a name change. Name

changes for a right-of-way grantee or lessee do not require a NEPA analysis and the right-of-way would not be subject to revision. When changing a name, the BLM does not issue a new right-of-way grant or lease, but would re-issue the same right-of-way grant or lease with the new name on it. This is because the BLM would be dealing with the same entity to which it had originally authorized the right-of-way. Name changes are an administrative action taken by the BLM to update its records showing the proper name of the entity it has authorized. In the case of a name change, there is no assignment, in whole or part, of any right or interest in a grant or lease.

A name change would occur if an entity had filed paperwork with a State for a name change. Re-issuing a grant or lease with the new name would only provide the BLM an opportunity to notify the right-of-way holder of updated rent, bonding, or other such revised provisions made under section 2805.15(e).

Section 2807.21 is amended by revising the section heading and existing paragraphs (a), (d), and (f); adding paragraphs (b), (g), and (h); and making other appropriate redesignations of the remaining paragraphs. We are further revising this section with a few changes made in the final rule in response to comments, which will be explained in greater detail in the discussion of each specific paragraph. The heading for this section is changed from "May I assign my grant?" to read as "May I assign or make other changes to my grant or lease?" The existing regulations do not cover all instances where an assignment is necessary and the section is revised to address situations where assignments may not be required. The changes are necessary to: (1) Add and describe additional changes to a grant other than assignments; (2) Clarify what changes 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 assignment, a private party's business transaction would not be recognized by the BLM and this lack of recognition could hinder a new holder's management and administration of the right-of-way. This rule also clarifies the responsibilities of a grant holder should such private party transactions occur.

Paragraph (a) of this section is revised to describe two events that may necessitate an assignment: (1) A transfer by the holder of any right or interest in the right-of-way grant or lease to a third



party (e.g., a change in ownership); and (2) A change in control involving the right-of-way grant or lease holder such as a corporate merger or acquisition.

Paragraph (a)(1) in this final rule is revised by removing the word “voluntary” when describing a transfer. There are some situations, such as bankruptcy, when a transfer may be involuntary. The BLM did not intend to exclude those circumstances from this section.

Paragraph (a)(2) is revised to remove reference to changes in status as a “wholly owned subsidiary.” That provision created confusion and was removed. No additional comments were received and no further changes were made to this paragraph.

New paragraph (b) of this section is revised to clarify and remove ambiguities in this section of the rule that explains the circumstances that do not constitute an assignment, but may necessitate filing new or revised information. A change in the holder's name only does not require an assignment nor do changes in a holder's articles of incorporation. However, sometimes a change in a holder's name or articles of incorporation may indicate that an assignment occurred. The BLM will review the documentation filed with it in order to determine if a transfer in part or whole of the right-of-way has occurred or a change in control transaction of the grant-holder or lease holder has occurred.

This section is revised from the proposed to the final rule to help further explain these situations more clearly to the public. The introductory text of paragraph (b) of this section is revised to clarify that even though an assignment may not be necessary, some circumstances may necessitate filing new or revised information. Paragraphs (b)(1), (2) and (3) of this section provide examples for when this filing may be necessary. Paragraph (b)(1) of this section is added to this final rule to explain that transactions within the same corporate family do not constitute an assignment. Paragraphs (b)(2) and (3) of this section contain the provisions of proposed paragraphs (b) and (c) of this section with some minor revisions.

Existing paragraph (b) of this section is revised and redesignated as paragraph (c). As revised, this paragraph requires the payment of application filing fees in addition to processing fees. This revision promotes consistency between applications for assignments and other applications for rights-of-way. For example, the rule (at section 2804.12(c)(2)) now requires an application filing fee for solar and wind energy applications. As revised, new

paragraph (c) also provides that the BLM will not approve any assignment until the assignor makes any outstanding payments that are due. This paragraph is revised from the proposed to final rule by adding a provision stating that preliminary application review meetings are not required for an assignment.

*Comments:* Some comments stated that the pre-application requirements for would be burdensome for an assignments, name changes or even renewals and suggested excluding those requirements for assignments, name changes and renewals.

*Response:* Section 2807.21(c) and (h)(1) are revised to make clear that the pre-application (now known as preliminary application review) meetings are not required for assignments and name changes. No other revisions have been made to these paragraphs in response to this comment.

Existing paragraph (c) of this section is redesignated, unchanged, as paragraph (d) and is included in the final rule. Existing paragraph (d) of this section is revised and redesignated as paragraph (e). As revised, new paragraph (e) will except leases issued under revised 43 CFR subpart 2809 (i.e., right-of-way authorizations inside a DLA) from the BLM's authority to modify terms and conditions when it recognizes an assignment. This provision provides incentives for potential right-of-way lessee to develop lands inside DLAs.

The BLM revised the first sentence in paragraph (e) of this section from the proposed to final rule to clarify how an assignment is recognized. The BLM will approve an assignment in writing.

*Comment:* A comment requested clarification of the BLM's right to modify terms of a lease issued under subpart 2809. As written, the proposed rule would have prohibited the BLM from modifying a lease issued under subpart 2809 when approving an assignment. In addition, the comment requested clarification of the relationship between section 2805.15(e) and sections 2807.21 and 2887.11.

*Response:* The BLM agrees with this suggestion and in the final rule further clarification has been provided to show the relationship between section 2805.15(e) and this provision for leases issued under subpart 2809. Revised section 2807.21(e) now includes an additional statement to make clear that a lease will not be modified to include additional terms and conditions when approving an assignment, unless a modification is required under section 2805.15(e).

The BLM may, however, “require that you obtain, or certify that you have obtained, a performance and reclamation bond or other acceptable bond instrument” (see section 2805.20(a)) when approving an assignment. A bond is required for a right-of-way at the BLM's discretion and is always required for a solar or wind energy grant or lease. If a bond is required, the BLM must be certain that a bond is in place to ensure the protection of the public lands before approving an assignment.

In addition, section 2809.18(f) has been modified to be consistent with this provision. The statement that a lease will not be modified to include additional terms and conditions is specific to when the BLM completes an assignment. Under a separate action which may occur at the same time an assignment is completed, the terms and conditions may be modified if requested by a lessee pursuant to section 2805.12(e).

No revision has been made under section 2887.11 on this matter since leases issued under subpart 2809 cannot be assigned under section 2887.11.

Redesignated section 2807.21(f) provides that the BLM will process assignment applications according to the same time and conditions as in section 2804.25(d). This provision was formerly identified in the regulations as paragraph (e) of this same section. This provision applies the BLM's customer service standard to processing assignment applications. This paragraph has been revised to update the referenced citation, consistent with the revisions made to the final rule under section 2804.25.

Section 2807.21(g) explains that only interests in right-of-way grants or leases are assignable. A pending right-of-way application cannot be assigned. A revision is made to the second sentence of this paragraph, to be consistent with changes made under section 2804.30(g), that clarifies that competitively gained applications held by a preferred applicant do provide a right and interest in the public lands. This revision is made here to be consistent with similar changes made under section 2804.30(g).

Section 2807.21(h) addresses how a holder informs 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 can send rent bills or other correspondence to the appropriate party. This new provision addresses several specific circumstances. For example, it requires 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 it is incorporated; and (3) A copy of the appropriate resolution(s), order(s), or other documentation that shows 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 section 2805.15(e), or as otherwise described in the regulations. Such modifications under section 2805.15(e) 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.

Section 2807.21(h)(1) was modified from the proposed to final rule to improve readability. The first and second sentences were combined and “preliminary application review and public meetings” were added to the list of exempted requirements during a name change only. This change was made to remain consistent with revisions made under section 2807.21(b), which excludes applications for assignments from preliminary application review meetings and public meetings for solar or wind energy development projects and transmission lines with a capacity of 100 kV or more.

The BLM revised paragraph (h)(2) of this section from the proposed to final rule in order to clarify the differences in how a grant and lease may be modified during a name change. The BLM added new paragraphs (h)(2)(i) and (ii) in order to more clearly separate these situations. Paragraph (h)(2)(i) of this section explains that the BLM may modify a grant to add bonding and other requirements when processing a name change only. However, under paragraph (h)(2)(ii) of this section, the BLM may modify a lease issued under subpart 2809 in accordance with section 2805.15(e). This is not a change from the requirements proposed rule, but it may not have been clear from the way it was phrased. The final rule is intended to prevent any possible confusion.

Generally, the BLM intends to make changes to a grant or lease during a name change only to reflect relevant changes consistent with section 2805.15(e). This existing section explains the BLM’s right to “[c]hange the terms and conditions of your grant as a result of changes in legislation, regulation, or as otherwise necessary to protect public

health or safety or the environment.” The BLM will not make any other changes to lease issued under subpart 2809 as part of a name change only.

However, the BLM may take this opportunity to update other aspects of a grant, as appropriate. For example, under section 2805.20(a), the BLM will periodically review your bond for adequacy and may require a new bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant or lease. The BLM may determine that additional actions are necessary, such as updates to the bond (see section 2805.20(a)) or the 10-year updates to the payment provisions (see sections 2806.54 or 2806.64). If the BLM determines that these actions are necessary, they will be taken separate from the name change only as appropriate.

Paragraph (h)(3) of this section is revised in this final rule to read: “Your name change is not recognized until the BLM approves it in writing.” As proposed, the rule was not clear whether a name change would be recognized if submitted in writing to the BLM, or if approved in writing by the BLM. This revision makes it clear to readers of the final rule that it must be the BLM’s approval in writing to recognize a name change.

*Comments:* Some comments recommend that the financial information of the original owner or its subsidiary may be used to meet financial qualification requirements of the grantee when assigning or changing the name on a grant or lease.

*Response:* The BLM will only accept the financial or technical information of the holder of the authorization. The holder is the legally responsible party for the right-of-way and will be held as such under the regulations and any subsequent authorization. However, substitution of one entity’s financial and technical capabilities may be acceptable, provided that documentation showing the two entities are linked, such as in the case of a subsidiary company where the parent company asserts the technical or financial responsibilities of the subsidiary. No revision to the rule was made in response to this comment. No other comments were received or changes made to the final rule.

Section 2807.22 How do I renew my grant or lease?

The title for section 2807.22 is revised by adding “or lease” to the end of the sentence so that leases issued under subpart 2809 are covered by this section. Likewise, paragraphs (a), (b),

and (d) of this section are revised to include leases. Paragraphs (c) and (e) remain unchanged. A new paragraph (f) is also added to this section.

Paragraph (f) of this section explains how the BLM would ensure continued operations of a right-of-way during the renewal process. If a holder makes a timely and sufficient application for renewal, the grant or lease does not expire until the BLM acts upon the application for renewal.

The second part of this paragraph describes the circumstances in which the BLM would “reissue” a grant or lease instead of “renew” it. Most of the authorizations managed by the BLM are issued under FLPMA’s authority, but some remaining authorizations were issued before FLPMA was enacted. In this situation, the BLM would reissue the grant under FLPMA’s authority. Minor revisions are made to paragraph (f) to improve readability of this new paragraph.

This paragraph protects the interests of holders of rights-of-way who have timely and sufficiently made an application for the continued use of an authorization (see 5 U.S.C. 558(c)(1)), and is consistent with policy. In this situation, the authorized activity will not expire until the BLM evaluates the application and issues a decision. No comments were received and no other changes are made to the final rule.

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

Existing subpart 2809, which formerly consisted of a single regulation (section 2809.10) pertaining to Federal agency right-of-way grants, is revised and redesignated as new paragraph (d) of section 2807.17. Existing section 2809.10(b) explains that Federal agencies are generally not required to pay rent for a grant. This paragraph is removed, not redesignated, since existing section 2806.14(a)(2) already addresses rental exemptions for Federal agencies and, therefore, section 2809.10(b) is no longer necessary.

Revised subpart 2809 is now dedicated to the competitive process for leasing public lands for solar and wind energy development.

*Comment:* Several comments raised concerns that the priority for handling solar or wind energy leases was unclear when compared to solar and wind grant applications under part 2804.

*Response:* Application prioritization is discussed under section 2804.35 of this rule, which specifically states that leases issued under this subpart having priority over grant applications. A new

section 2809.10(d) is added to the final rule, consistent with comments received and revisions made in section 2804.35, that clearly identifies the handling of leases issued under subpart 2809 have the highest priority with respect to solar and wind energy on the public lands.

*Comment:* Several comments suggest that regional mitigation strategies should be used for every designated leasing area and should be part of the land use planning process.

*Response:* BLM development of a regional mitigation strategy is not necessary prior to holding a competitive auction inside a DLA or otherwise authorizing solar or wind energy development. However, regional mitigation strategies further increase certainty to developers and stakeholders when considering a solar or wind energy development. The BLM believes that the regional mitigation strategies are a good tool to use when making decisions that would affect resources in certain areas, such as a DLA. Regional mitigation strategies provide a durable basis to evaluate mitigation for the impacted lands and the BLM may use such strategies when making land use planning decisions. The BLM is in the process of developing regional mitigation strategies for many SEZs, which qualify as DLAs under this final rule.

The BLM is currently in the process of establishing its mitigation policies and guidance, which include guidance for regional mitigation strategies. Consistent with this guidance, the BLM generally intends to prepare regional mitigation strategies, with opportunities for public review and engagement, before authorizing wind or solar energy development in DLAs, potentially including when the BLM designates DLAs in the future through land use planning.

*Comment:* One comment suggested that the BLM incorporate the FWS's Wind Energy Guidelines (WEG), which can be found on the Internet at [http://www.fws.gov/ecological-services/es-library/pdfs/WEG\\_final.pdf](http://www.fws.gov/ecological-services/es-library/pdfs/WEG_final.pdf), into the rule for pre-construction due diligence.

*Response:* The BLM did not revise the rule as a result of this comment. The BLM has a different scope of authority and responsibility in administering the public lands than the FWS and must take into account biological resources, cultural resources, and land uses consistent with FLPMA's mandate that public lands be used for multiple use and sustained yield for current and future generations. This is different than the FWS's authority and objectives which do not have a multiple use mandate and generally require limited

review for cultural resources. However, the BLM uses processes similar to the WEGs in the review and analysis of resources on the public lands. For wind energy site testing actions similar to steps 2 and 3 of the WEGs are completed prior to a BLM decision. Actions similar to steps 1 through 3 are incorporated into the BLM's processing of a development grant, as well as monitoring protocols that address similar issues as those in the steps of the WEGs.

*Comments:* Some comments suggest that all final granted right-of-way instrument terms and conditions, regardless of location, should be substantially the same, unless sufficiently justified.

*Response:* The BLM believes that it has adequate reason for differences in terms and conditions of the energy development projects issued as leases under subpart 2809, as compared to those issued as grants under subpart 2804. There are limited differences in leases and grants, which have been explained in great detail in this preamble. These differences are intended to incentivize development in DLAs, which the BLM has identified as preferred areas for solar or wind energy development, based on a high potential for energy development and lesser resource impacts. Consistent with SO 3285, which describes the need for strategic planning and a balanced approach to domestic resource development, the BLM believes that focusing solar and wind energy development in preferred areas would provide a benefit to the public by reducing potential resource conflicts.

The BLM identifies DLAs through its land use planning process, which requires the BLM to consider the effects of solar or wind energy developments in the area. Due to this prior planning process, the BLM is able to issue a lease almost immediately after holding an auction, because that type of use has already been approved for the area. Subsequent tiered NEPA analysis will generally be necessary for the BLM to evaluate the lease-holder's POD to ensure that it fits within the BLM's decisions before allowing development of the land.

Additionally, the rent and fee payment for leases issued under subpart 2809 are phased in over a longer period of time or updated less frequently than those issued under subpart 2804. The rent and fee payment structure is explained in more detail in sections 2806.50 through 2806.68 of this preamble. This difference in payment of the rent and fee allows the BLM to collect the determined fair market value

of the public lands while incentivizing solar and wind energy development in DLAs over other public lands.

No other comments were received or changes made to the final rule for this section.

#### Section 2809.10 General

Under section 2809.10, only lands inside DLAs will be available for solar and wind competitive leasing using the procedures under this subpart. Lands outside of DLAs may be offered competitively using the procedures under section 2804.35 of this rule. Under section 2809.10, the BLM may either include lands in a competitive offer on its own initiative or solicit nominations through a call for nominations (see section 2809.11).

A new paragraph (d) is added to this section in the final rule in response to comments on the proposed rule. Paragraph (d) states that the processing of leases awarded under this part will generally be prioritized ahead of grant applications, consistent with revisions made to section 2804.35, clarifying that leases generally have priority over grant applications. This revision is to show how the BLM will prioritize its handling of solar and wind energy development on the public lands. The BLM will generally prioritize leases because they are issued inside DLAs, which are the BLM's preferred areas for solar and wind energy development. The BLM recognizes that only a few wind energy DLAs have been identified to date, and therefore there are only limited opportunities for project proponents to obtain wind energy leases as opposed to grants. The BLM intends to consider this when prioritizing wind energy applications during this transition period, as the BLM develops additional wind energy DLAs. No other changes are made to the final rule for this section and no other comments were received.

#### Section 2809.11 How will BLM solicit nominations?

This section explains the process by which the BLM will request nominations for parcels of lands inside DLAs to be offered competitively for solar or wind energy development.

Under paragraph (a) of this section, "Call for nominations," the BLM requests expressions of interest and nominations for parcels of land located in a DLA. The BLM will publish a notice in the **Federal Register** for solar and wind energy development and may use other notification methods, such as a newspaper of general circulation in the area affected by a potential offer or the Internet. This final rule is revised to make notice in a newspaper an optional

form of public notice. This section's public notice requirements are consistent with revisions to other sections of this final rule and are described more fully in section 2804.23(c) of this preamble.

Paragraph (b) of this section, "Nomination submission," outlines the requirements for nominating a parcel of land for a competitive offer.

Paragraph (b)(1) of this section requires a payment of \$5 per acre for the parcel(s) nominated. This payment is nonrefundable, except when submitted by an individual or company that does not meet the qualifications identified in section 2809.11(d). 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 will be adjusted for inflation once every 10 years, using the change in the IPD-GDP for the preceding 10-year period. 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 annual change in the IPD-GDP from 2004-2013 is about 2.1 percent, which will be applied through 2025. The fee will be required only with a nomination and not on a yearly basis and this is noted under section 2809.11(b)(1). The nomination fee is lower than an application filing fee for grants issued under subpart 2804 in order to increase interest and encourage nominators to propose efficient use of the public lands inside DLAs. Payment of fair market value will 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 final rule.

Nomination fees are collected under Sections 304(b) and 504(g) of FLPMA as cost recovery fees. The nomination fees will reimburse the BLM for the expense of preparing and holding the competitive process for lands inside a DLA. Furthermore, the nomination allows the BLM to see specifically what parcel of land is of interest to a developer and would inform the BLM of parcel configurations for a competitive process. A variable offset may be offered for qualified bidders who submitted

nominations. Variable offsets are discussed further in section 2809.16.

The BLM revised paragraph (b) of this section from the proposed to final rule to prevent confusion over how the BLM uses the IPD-GDP to adjust the nomination fees. This revision is consistent with the revision to section 2804.12(c)(2), which describes application filing fees. Both application filing fees and nomination fees may be adjusted once every 10 years. See the preamble discussion for section 2804.12(c)(2) for more information on this revision.

Paragraph (b)(2) of this section requires the nomination to include the nominator's name and address of record. This information is necessary for the BLM to communicate with the nominator about future leasing issues.

Paragraph (b)(3) of this section requires that a nomination be accompanied by a legal land description and map of the parcel of land in a DLA. This information will help the BLM in identifying parcels in the competitive offer.

Under paragraph (c) of this section, the BLM may consider informal expressions of interest. An expression of interest is an informal submission to the BLM, suggesting that a parcel inside a designated leasing area be considered for a competitive offer. An expression of interest only provides a tentative bidder's interest in a parcel(s) of land located inside a DLA. 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 does not qualify a potential bidder for a variable offset, as would formal nominations.

Under paragraph (d) of this section, you must qualify to hold a grant or lease under section 2803.10 in order to submit a nomination.

Under paragraph (e) of this section, a nomination cannot be withdrawn, except by the BLM for cause, in which case nomination monies would be refunded. This clause parallels language in the BLM's other competitive process regulations and encourages serious nominations for parcels on public lands.

*Comments:* Some comments stated that nomination fees, as discussed under section 2809.11(b)(1), should reflect the cost for the BLM to plan and conduct a competitive lease process. In addition, one comment recommended that the nomination fee be set at \$5 per acre and be adjusted downward to a minimum of \$2 per acre for large parcels. In the event the entity that

nominates the parcel is not the successful bidder, then the nomination should be refunded to that party and assessed to the successful bidder.

*Response:* The BLM will maintain a flat rate fee for nominations. A tiered or sliding scale approach to such fees would create an unnecessarily complicated system. A flat fee ensures that such costs are consistent for each action and the expectation to meet the requirements are clear. In addition, nomination fees are kept as a non-refundable fee because they are a cost recovery payment to the BLM for expenses the agency incurs. These fees would be used by the BLM to prepare and hold a competitive offer. Submission of a nomination demonstrates a developer's seriousness for use of an area. No other comments were received and nor changes are made from the proposed rule to the final rule.

**Section 2809.12 How will BLM select and prepare parcels?**

This section provides that the BLM will identify parcels suitable for leasing based on either nominations, expressions of interest, or its own initiative. Before offering the selected lands competitively, the BLM and as appropriate, other Federal or State entities, will conduct studies, comply with NEPA and other applicable 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 plan(s) for the area.

Paragraph (b) of this section is revised from the proposed to final rule by adding "as applicable" after "other Federal agencies." This revision clarifies that other Federal agencies will be involved, as applicable, but may not be involved on all projects. It may not always be necessary to include other Federal agencies and those agencies may not want to participate.

*Comments:* Some comments recommended that the BLM should include a procedural requirement in the regulation that a regional mitigation strategy must be completed before the initiation of a competitive leasing process. It is also suggested that this approach would benefit the project proponents with enhanced certainty regarding compensatory mitigation costs. One comment specifically recommended the addition of the following text, "(b) work, including applicable environmental reviews and public meetings and publish the

availability of a final regional mitigation strategy, before . . . .”

*Response:* The BLM considered including a requirement to complete a regional mitigation strategy; however, the BLM did not revise the rule as a result of the comment because each competitive offer will vary based upon resource concerns, public, tribal, and developer issues, and government interests. The BLM is currently in the process of establishing its mitigation policies and guidance, which include guidance for regional mitigation strategies. Consistent with this guidance, the BLM intends to prepare regional mitigation strategies, with opportunities for public review and engagement, before authorizing wind or solar energy development in DLAs, potentially including when the BLM designates DLAs in the future through land use planning.

**Section 2809.13** How will the BLM conduct competitive offers?

Under this section, the BLM may use any type of competitive process or procedure to conduct its competitive offer. Several options, such as oral auctions, sealed bidding, a combination of oral and sealed bidding, and others are identified in section 2809.13(a). Oral auctions are planned events where bidders are asked to orally 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 is when sealed bids are first opened and then afterward 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 competitive offer at least 30 days before bidding takes place in the **Federal Register** and through other notification methods, such as a newspaper of general circulation in the area affected by the potential right-of-way or the Internet. This section of the final rule is revised, consistent with revisions to other sections of this final rule, to make notice in a newspaper an optional method for public notice. See section 2804.23(c) of this preamble for further discussion of these revisions. Minor revisions are also made from the proposed to the final rule to paragraph (b)(5) of this section to improve readability. The word “factor” is added throughout paragraph (b)(6) of this section for the final rule. This is intended to help the reader understand that an offset factor is part of the variable offset that may be presented in

the notice of competitive offer. A notice of competitive offer must 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 that will be used in conducting the competitive offer, including any of the applicable competitive procedures identified in section 2809.13(a);
4. The required minimum bid (see section 2809.14(a));
5. The qualification requirements for potential bidders (see section 2809.11(d));
6. If applicable, the variable offset (see section 2809.16), including:
  - i. The percent of each offset factor;
  - ii. How bidders may pre-qualify for each offset factor; and
  - iii. The documentation required to pre-qualify for each offset factor; and
7. The terms and conditions to be contained in the lease, including requirements for the successful bidder to submit a POD for the lands involved in the competitive offer (see section 2809.18) and the lease mitigation requirements.

Section 2809.13(b)(7) is revised in the final rule to include in the terms and conditions of a notice of competitive offer any mitigation requirements, including those for compensatory mitigation to address residual impacts associated with the right-of-way. This revision is made to clarify where the BLM will incorporate mitigation in its administrative processes. Including mitigation requirements in this final rule is discussed in greater detail in the general comment and responses portion of this preamble.

Under paragraph (c) of this section, the BLM will notify you of its decision to conduct a competitive offer at least 30 days in advance of the bidding if you nominated lands and paid the nomination fees required by section 2809.11(b)(1). No comments were received and no other changes are made from the proposed rule to the final rule.

**Section 2809.14** What types of bids are acceptable?

Section 2809.14 explains the requirements for bids submitted under the competitive process outlined in this subpart.

Paragraph (a) of this section provides that your bid submission will 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 demonstrate that you are qualified to hold a right-of-way by

meeting the requirements in section 2803.10. Consistent with comments received and revisions made to the final rule, the words, “or lease” are added to this paragraph of the final rule to help improve its clarity. As proposed, the rule only referenced a grant, which is defined in these regulations to include the term lease. For the final rule, language was added to make it clear that the qualifications to hold a lease are the same as to hold a grant.

Paragraph (b) of this section provides that a minimum bid will consist of three components. The first component is the amount required for reimbursement of administrative costs incurred by the BLM and other Federal agencies in preparing and conducting the competitive offer. Administrative costs include all costs required for the BLM 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, but are used to reimburse the Federal Government for its work in processing a competitive offer and performing other necessary work.

The second component of the minimum bid is an amount determined by the authorized officer for each competitive offer. The BLM will consider known values of the parcel when determining this amount, which include, but are not limited to, the acreage rent and a megawatt capacity fee. The authorized officer will identify these factors and explain how they were used to determine this amount. The third component is a bonus bid submitted by the bidder as part of a bid package. This amount will be determined by the bidder.

Consistent with section 2804.30(e)(2)(ii) for notice of competitive offers outside of DLAs, the BLM has removed the reference to mitigation costs from section 2809.14(b)(2). Please see section 2804.30 of this preamble for further discussion on this topic.

In other BLM 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 a minimum bid for the right-of-way renewable energy program. The acreage rent is based on the value of the land and the MW capacity fee is based on the value of the commercial use of the land. The BLM plans to base this minimum bid on factors such as these that are known values of the parcel. The minimum bid amount, how it was determined, and the factors used in this determination will be clearly

articulated in the notice of competitive offer for each parcel.

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

As described in paragraph (c) of this section, a bonus bid consists 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 section 2809.15(a), your bid will be refunded.

*Comments:* Two comments were received pertaining to this section. The first comment states that the proposed rule does not provide an effective mechanism for incentivizing solar development in SEZs by eliminating or significantly reducing developer costs associated with NEPA compliance.

*Response:* There are significant incentives to developers for leases issued under subpart 2809, including the up-front land use planning and other environmental work that the BLM will complete and the certainty that after winning a competitive auction inside a DLA, a successful bidder would be awarded a lease. In addition, the BLM offers variable offsets, longer phase-ins for MW capacity fees, and greater time between acreage rent and MW capacity fees rate updates for leases issued under subpart 2809 that are not available for grants issued under subpart 2804.

*Comment:* The second comment stated that the BLM should not include the potential for lands to be developed for solar energy generation when determining the minimum bid for a competitive offer.

*Response:* Section 2809.14(b)(2) describes how the BLM will consider known and potential land values. While other competitive processes, such as the BLM's coal program, include a statutory requirement for the minimum bid, the BLM has no such requirement for the solar or wind energy programs. Therefore, the BLM determined that it would be appropriate to tie the minimum bid to the known values of the parcel being auctioned. These known values, such as the acreage rent, would reflect the potential for lands to be developed for solar energy. This

minimum bid component will be explained in each notice of competitive offer.

**Section 2809.15** How will the BLM select the successful bidder?

This section explains how the successful bidder is determined and what requirements they must meet in order to be offered a lease. The bidder with the highest total bid, prior to any variable offset, will be declared the successful bidder and may be offered a lease in accordance with section 2805.10. In paragraph (a) of this section, "will" is changed to "may." The BLM will not offer a lease if the successful bidder does not meet the requirements described in paragraph (d) of this section. As written, paragraphs (a) and (d) of this section were inconsistent with each other and this revision is intended to resolve this inconsistency.

The BLM will determine the appropriate variable offset percentage by applying the appropriate factors identified in section 2809.16, before issuing final payment terms. The specific factors will be identified in the competitive offer. 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 must be made by personal check, cashier's check, certified check, bank draft, or money order, or by any other means the BLM deemed acceptable. 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 application of the variable offset described in section 2809.16, and the total amount of the minimum bid specified in section 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 section 2809.16) and the acreage rent for the first full year of the solar or wind energy lease as provided for in sections 2806.54(a) or 2806.64(a), respectively. Submit these payments to the BLM office conducting the offer or as otherwise directed by the BLM in the offer notice.

In section 2809.15(d) of this final rule, the BLM revised "will approve your right-of-way lease" to "will offer you a right-of-way-lease." This change is for consistency in terminology with paragraphs (a) and (e) of this section, which refer to the offering of a lease and not its approval. Under paragraph (e) of this section, the BLM will not offer a lease if the requirements of section (d)

are not met. The BLM does not intend for this revision to change how it offers a lease to successful bidders.

Under section 2809.15(e), the BLM will not offer the successful bidder a lease, and will keep all money submitted, if the requirements of section 2809.15(d) are not met. In this circumstance, the BLM may offer the lease to the next highest bidder under section 2809.17(b) or re-offer the lands under section 2809.17(d). No comments were received and no changes are made from the proposed rule to the final rule.

**Section 2809.16** When do variable offsets apply?

Section 2809.16 provides that a successful bidder inside a DLA may be eligible for a variable offset of the bonus bid (in essence, a bidding credit), based on the factors identified in the notice of competitive offer. Variable offsets are not available outside of DLAs.

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 will increase the likelihood that a project is developed, expedite the development of that project, and encourage development that will result in lesser resource impacts from the right-of-way. Overall, the BLM believes the structure of these offsets will help encourage the production of clean renewable energy on public lands, which is a benefit to the general public.

Pre-qualified bidders may 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 and may include offsets for bidders with an approved PPA or Interconnect Agreement, among other factors.

For example, the BLM may apply a 5 percent offset factor to a bidder that has a PPA. This offset factor 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 it is appropriate to award an offset to a bidder with an agreement in place to sell power, because that bidder will be more likely to develop a project on the right-of-way. This could prevent the unnecessary encumbrance of a right-of-way being issued to a holder who never develops the intended project.

The BLM may also identify as an offset factor the submission of a plan showing a reasonable development scenario. For example, the BLM may apply a 5 percent offset factor to a bidder that would use a particular technology. The BLM may identify a preferred technology type that would reduce impacts to identified environmental or cultural resources on the proposed parcel.

The BLM anticipates selected factors for the offsets to be in increments of 5 percent. These will 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 intends to provide additional guidance on the use of these individual factors to ensure consistency between individual notices of competitive offer.

The BLM may offer a different percentage for each offset factor based on how qualified the bidder is for a specific offset factor. 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 offset percentages to bidders that are working toward such qualifications. These offset factors (and their various increments) will be identified in the notice of competitive offer (see section 2809.13(b)(6)).

The notice of competitive offer will identify each factor for which BLM may grant a variable offset, and the corresponding maximum percentage offset that would be applied to a qualified bidder's bonus bid. The notice will also identify the documentation a bidder must submit to pre-qualify for the offset. The authorized officer will determine the total offset for each competitive offer, based on the parcel(s) to be offered and any associated environmental concerns or technological limitations.

As identified under paragraph (c) of this section, the factors for which the BLM may grant a variable offset in a particular lease sale include:

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 such as water;

4. *Prior site testing and monitoring inside the DLA.* 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 DLA.* This would be a situation where the potential lessee had previously filed for authorization to construct facilities inside the DLA;

6. *Submission of nomination fees.* These are required when submitting a formal nomination (see section 2809.11(b));

7. *Submission of biological opinions, strategies, or plans.* This could include biological opinions, bird and bat conservation strategies, and habitat conservation plans;

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 grant or 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.* These could include support for other Federal Government programs or national security by providing power for defense purposes or meeting government purchase contracts.

The only changes made in the listed variable offset factors between the proposed and final rule is for Factor Number 7, and those made for clarity and consistency in the final rule, are described in greater detail in the response to comments.

*Comment:* One comment requested that the BLM not use the variable offset concept, as it is unworkable and would result in appeals by rejected bidders.

*Response:* Throughout the preambles to the proposed and final rules, the BLM

has explained DLAs and the various aspects of the competitive process for solar and wind energy in these areas. By creating incentives for prospective developers and encouraging various conditions that would lead to environmental and other public benefits, the use of a variable offset is an integral aspect of this process.

The BLM manages the public land under the principles of multiple use and sustained yield, but does not expect all interested stakeholders to agree with all of the BLM's decisions. This is, in part, the reason for the BLM's appeal process, allowing the public to seek an administrative remedy for the BLM's decisions by which they have been adversely affected. The BLM expects that there will be appeals or protests on decisions that are made regarding management of the public lands.

For each notice of competitive offer, the BLM will include the factor(s) of a variable offset, as well as the requirements a bidder must meet to qualify for each incremental percentage. Bidders, as well as the public, will have this information made available to them through the notice of competitive offer and be able to act according to their interests or concerns over the proposed actions. The variable offset is carried forward in the final rule.

*Comment:* A comment expressed confusion over how the BLM would implement the proposed factor Number 7 (*Timeliness of project development, financing and economic factors*), and if the potential for meeting project timelines was even possible as a variable offset factor since the reduction in bid money would precede the demonstration of meeting agreed-upon time frames. Acts of God and other such influences that are outside the bidder's control were noted as possible reasons a bidder that received such a factor offset may not be able to meet it.

*Response:* Proposed factor number 7 for timeliness is removed from the final rule. The BLM agrees with the comment that implementing a timeliness factor would be difficult. There are many reasons outside of a winning bidder's control that may cause a delay to the development of a project. The proposed criteria for timeliness offset factor is a desired objective for an incentive, but was determined too difficult to enforce.

*Comment:* Another comment stated that the BLM must not shortchange taxpayers or other landowners through a discount that unjustly encourages development of public lands rather than comparable private lands. The BLM must ensure fair market value for the use of public lands.



*Response:* The variable offset is not a discount to a developer for the use of public lands. It is an incentive provided to a developer of the public lands, that accounts for certain steps a developer has already taken in a particular designated leasing area. Factors of the variable offset may also address the reduction of resource impacts, such as when a less water intensive technology is used. The variable offsets recognize these early developer steps that could increase the certainty of the successful development of a lease area and assist the BLM in its management of the public lands under the multiple use and sustained yield principles. This increased certainty benefits the public by not having public lands unnecessarily encumbered by a lease that may not be developed and increases the likelihood that solar or wind power generation would occur on public lands.

*Comment:* A third comment believes that incentives for DLAs should be reached exclusively by reducing rents rather than a complicated structure of variable offsets, time limits, bonding provisions, authorization terms, and MW capacity fees, and that the BLM proposed incentives should be removed from the final rule. This comment specifically addressed some of the proposed factors as follows:

*Comment (1):* Factors 1 (Power purchase agreement) and 2 (Large generator interconnect agreement) cannot be attained without demonstrated site control.

*Response (1):* Although securing a PPA or large generator interconnect agreement (LGIA) may not be attainable without site control, the notice may identify interim steps toward meeting the requirements of the offset factor. The final rule allows for interim steps in each of these identified offset factors. The text of the rule cites that the "variable offset may be based on any of the following factors." The notice of competitive offer would include the specific criteria required to qualify for a factor of the variable offset under paragraphs (c)(1) and (2) of this section, including any interim steps toward those factors.

*Comment (2):* Factor 3 (Preferred solar or wind energy technologies) for preferred technologies should be removed as it could discriminate against certain technologies without having the expertise of an energy regulatory body (outside of the BLM's authority and expertise).

*Response (2):* The BLM has expertise in many areas, including the impacts that a certain a technology type may have on the public lands and its resources. This may include

technologies with fewer impacts to wildlife or visual resources, or technologies that consume less water. The BLM may choose to provide a variable offset factor for a preferred technology that reduces impacts to the public lands and resources. However, in some cases, the BLM may choose to consult with one of the national laboratories or State authorities for their expertise for some technologies which may be outside of the BLM's expertise to determine as a preferred technology.

*Comment (3):* The comment asserts that under section 2809.19(a)(1), applications that are filed prior to the publication of the draft land use plan amendment that establishes a DLA should not make a bidder eligible for factors (4) (prior site testing in a DLA) and (5) (pending applications in a DLA). This would only encourage the strategic filing of speculative applications after publication of the draft land use plan amendment in order to qualify for factors (4) and (5).

*Response (3):* Applications that are filed on public lands before the publication of a notice of intent or other form of public notice by the BLM for a land use plan amendment that are later designated as a DLA will continue to be processed by the BLM and not subject to the competitive offer process of subpart 2809. The filing of speculative applications will not prevent the BLM from holding competitive offers in a particular area.

If the BLM elects to hold a competitive offer for the DLA, the applicant may qualify for offset factors (4) or (5) if they chose to participate. The BLM believes that submitting an application after a notice of intent or other public notice, paying the application filing fee, and waiting for the BLM to hold a competitive offer, should qualify an applicant for variable offset factor 4 or 5.

*Comment (4):* Factor 6 (submission of nomination fees) is not an incentive if a bidder can submit an expression of interest, which requires no fee, and increase their bonus bid by the amount of the nomination fee that they would have paid, thereby increasing their chances of being the winning bidder.

*Response (4):* Neither submitting an expression of interest nor submitting a nomination will guarantee that the BLM selects that parcel for a competitive offer. However, if a developer has a particular parcel in mind, the payment of a nomination fee may be preferable so that they may qualify for a variable offset factor. In addition, 5 percent of the bonus bid may result in greater savings to the bidder than the amount submitted for the nomination fees.

*Comment (5):* Factors 8 (environmental benefits) and 10 (public benefits) are open to distortion and variability across field offices.

*Response (5):* The BLM intends that in each notice of competitive offer it will identify each applicable variable offset factor offered and specify how a bidder may qualify for each factor. The criteria listed in the final rule are intended to be broad and varied so that they can be adapted for each competitive offer.

Factor 9 is revised from the proposed to the final rule to include grants. As proposed, the factor could appear to only apply for adjacent leases. In this final rule, the BLM may authorize a grant under subpart 2804 inside a DLA, which may be adjacent to a parcel which is bid on. The parcel may also be adjacent to a grant that is outside the DLA. This revision clarifies that the BLM would consider the site control of adjacent lands, regardless of the instrument.

*Comment:* One comment suggests the following variable offsets be added: (1) A bird and bat conservation strategy for the project site; (2) A commitment to a specific right-of-way lease condition to obtain a bald and golden eagle protection act permit; (3) A plan to employ best available operation minimization strategies; and (4) agreement to: (a) Conduct monitoring and research with land-based WEG and Eagle Conservation Plan Guidance; (b) Provide this monitoring data to the public to facilitate a greater understanding to the wildlife impacts; and (c) implement avoidance measures to avoid impacts.

*Response:* A variable offset factor has been added in the final rule to account for biological opinions, strategies and plans. This factor has been added in the place of offset factor 7 which, as noted in an earlier response to comment, has been removed from this rule. New variable offset factor 7 reads as "Submission of biological opinions, strategies, or plans." This will encourage the early and thoughtful development of the public lands. To have such a plan or opinion completed at this point could lead to fewer biological resource impacts and quicker NEPA review of the project POD. The BLM does not expect many projects to complete a biological opinion at this point in the process, but interim steps toward such a plan would demonstrate the developer's commitment to protecting resources on public lands. Such interim steps could qualify a developer for this factor of a variable offset, which would be described in the notice of competitive offer.

No other comments were received and no other changes are made to this section.

**Section 2809.17** Will the BLM ever reject bids or re-conduct a competitive offer?

This section identifies situations where the BLM may reject a bid, offer a lease to another bidder, re-offer a parcel, and take other appropriate actions when no bids are received. Under section 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 adequately be mitigated through stipulations (*e.g.*, the only known site of a rare or endangered plant or for security purposes). If this occurs, the bidder will be notified and the notice will 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 section 2801.10. Minor revisions are made from the proposed to the final rule to improve readability of this section's title by adding the word "the" before BLM.

The BLM could 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 (see section 2809.17(b)).

Under paragraph (c) of this section, the BLM could re-offer a parcel if it cannot determine a successful bidder. This may happen in the case of a tie or if a successful bidder is later determined to be unqualified to hold a lease.

Under paragraph (d) of this section, if public lands offered competitively under this subpart receive no bids, the BLM could either 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 offered on a noncompetitive basis, the successful applicant would receive a right-of-way grant issued under subpart 2804, rather than a lease issued under subpart 2809, and the offsets described in section 2809.16 would not apply.

*Comment:* A comment stated that the right to appeal a rejected bid must be qualified (*i.e.*, not be a spurious appeal). The comment goes on to say that this may be remedied by the BLM: (1) Prohibiting the issuance of a stay against a lease award while there is a pending appeal filed under section 2801.10; and (2) Specifying that a successful appeal would not rescind a lease award, but instead result in an automatic 20 percent offset for the next DLA

competitive process in which the successful appellant participates.

*Response:* The BLM agrees that appeals should not be spurious or intended to disrupt the BLM's administration of the public lands. However, the BLM does not agree that it should prohibit the issuance of a stay in its regulations. The right to appeal a BLM decision, including the issuance of a stay, is an important part of the BLM's orderly administration of the public lands.

Should an appeal be successful in the IBLA, the BLM would not award a 20 percent variable offset to the appellant. A successful appeal may be grounds for a re-offer of the parcels or other similar action that would be consistent with the administrative status of the BLM decision that was appealed. Also, should a variable offset be awarded to successful appellants, it would likely incite further appeals from other unsuccessful bidders in the hopes to secure such a future credit. Therefore, the BLM will not provide for such variable offset awards in the rule for successful appellants. No other comments were received or changes made to the final rule for this section.

**Section 2809.18** What terms and conditions apply to leases?

Section 2809.18 lists the terms and conditions of solar and wind energy leases issued inside DLAs.

Under paragraph (a) of this section, the term of a lease issued under subpart 2809 will be 30 years and the lessee may apply for renewal under section 2805.14(g). While the BLM will issue grants under subpart 2804 for a term up to 30 years (see section 2805.11), leases issued under subpart 2809 are guaranteed a lease term of 30 years.

Under paragraph (b) of this section, a lessee must pay rent and MW capacity fees as specified in section 2806.54, if the lease is for solar energy development or as specified in section 2806.64, if the lease is for wind energy development. Rent and MW capacity fees are discussed in greater detail in sections 2806.50 through 2806.68 of the section-by-section analysis. Minor revisions are made from the proposed to the final rule to improve readability, but any significant changes are discussed in detail in this preamble.

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 Web site [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 section 2804.25(c) of this final rule and is currently required for all renewable energy projects through policy. Due to their complexity, solar and wind energy development projects will always require a POD. The POD must provide site-specific information that will be reviewed by the BLM and other Federal agencies in accordance with NEPA and other relevant laws.

Under paragraph (d) of this section, 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 Sections 304(b) and 504(g) of FLPMA that authorize reimbursement to the United States of all reasonable and administrative costs associated with processing right-of-way applications and other documents relating to the public lands, and in the inspection and monitoring of construction, operation, and termination of right-of-way facilities. Such costs may be determined based on 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 must provide a performance and reclamation bond for a solar or wind energy project. Bond amounts for leases issued under subpart 2809 will 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. As previously discussed, these bond amounts were determined based on a review of recently bonded solar and wind energy projects.

*Comments:* Several comments were received on paragraph (e) of this section. One comment suggested that the BLM should require bonds that are tied to the actual cost of reclamation and mitigation of the project, rather than an arbitrary per acre or per project figure.

*Response:* It is the intent that these standard bond amounts would incentivize solar and wind energy

development in DLAs. Reclamation of the lands in these DLAs is anticipated to be less than other locations outside of DLAs as the resource impacts are not expected to be as great, and the land could, in turn, be used for solar or wind development again if a developer failed to complete their lease obligation in developing the land. Additionally, consistent with its interim policy guidance for offsite mitigation (IM 2013-142) consistent with the recently issued mitigation manual and handbook guidance, the BLM intends to prepare regional mitigation strategies before authorizing wind or solar energy development in DLAs. These plans may identify additional costs for mitigating residual impacts of the right-of-way.

As noted in the preamble for section 2805.20, the minimum and standard bond amounts are the same. The BLM recently completed a review of existing bonded solar and wind energy projects and based the standard bond amounts provided in this final rule on the information found 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, and the mitigation and reclamation of the project site. The BLM used this review to determine an appropriate standard bond amount to cover the potential liabilities associated with solar and wind energy projects.

*Comment:* Another comment stated that both DLA and non-DLA bonding requirements should be the same. The BLM should use differences in rent to encourage development of DLAs.

*Response:* Bonding requirements for both grants issued under subpart 2804 and leases issued under subpart 2809 are established to protect the public lands. The requirements for leases are established using the same methodology as those minimum amounts established outside of a DLA. However, the standard bond amount recognizes that the impacts to resources and uses are likely to be less inside of a DLA than outside of a DLA, due to the BLM's effort to establish DLAs in areas where resource conflicts are expected to be lower. Furthermore, standard bond amounts increase the certainty for developers of costs when planning for and developing their project.

*Comment:* A comment recommended that the BLM reevaluate the standard bond amounts and identify a range commensurate with actual costs of decommissioning. The comment noted that the preamble to the proposed rule stated the range of solar bonding costs of \$10,000 to \$20,000 and wind bonding

costs of \$22,000 to \$60,000. This comment asked if the minimum and standard bond amounts chosen at the bottom or below the stated ranges were adequate.

*Response:* The BLM has considered the recommendation to identify a range of standard bond amounts, but intends to keep these amounts as proposed. In order to accommodate the wind turbines that pose lesser risk to resources, and consistent with revisions made in section 2805.20, the BLM is including in the final rule a \$10,000 standard bond amount for projects utilizing smaller turbines. Turbines with a nameplate capacity of one MW or greater will have a standard bond amount of \$20,000, consistent with the proposed rule. This is because these amounts represent bond figures that are representative of the impacts to the resources of the public lands and the intended management decisions of DLAs for solar or wind energy development. Should a developer default or fail to fulfill the lease terms, the BLM may pursue a competitive offer to lease those lands again. The full amount of the bond may not be used in this situation. The balance will be returned to the previous leaseholder upon the completion of reclamation activities. See section 2805.20(d) comment responses of this preamble for further discussion on the added \$10,000 bond amount.

BLM has determined that establishing the proposed standard bond amounts as proposed is appropriate. Using the proposed bond amounts reduces the potential for the BLM to secure bonds in amounts beyond what is necessary for the project. If a higher bond amount were selected, the BLM might over-bond the project, especially considering that the BLM has already identified these areas as having lower potential for resource impacts. Grant holders are still liable for damage done during the term of the grant or lease even if the bond amount does not cover the cost of reclamation.

The bonds collected for a project issued under subpart 2809 consider hazardous material liabilities, reclamation, and project site restoration. In addition to the required bond, BLM may require a mitigation fee to address adverse impacts resulting from the right-of-way authorization. Between securing the bond and collection of mitigation fees, the BLM believes that the impacts to the public lands are adequately protected.

A new provision (section 2809.18(e)(3)) has been added to this final rule to explain that lease holders for the testing sites that will be authorized under a lease in a DLA will

provide a standard bond amount of \$2,000 per site. This addition to the final rule is to make this section consistent with revisions to section 2801.9(d), which open up the site-specific and project-area testing authorizations to solar and wind energy. The standard bond amount for a lease issued under subpart 2809 is the same as a minimum bond amount in the proposed rule. Grants issued in a DLA for testing purposes will have a minimum bond amount as determined under section 2805.20. Testing and monitoring facilities include meteorological towers and instrumentation facilities.

For a solar energy development project, a lessee must provide a bond in the amount of \$10,000 per acre at the time the BLM approves the POD. See the discussion at section 2805.20(b) for additional information. For a wind energy development project, a lessee must provide a bond in the amount of \$10,000 or \$20,000 per authorized turbine before the BLM issues a Notice to Proceed or otherwise gives permission to begin construction on of the development. See section 2805.20(c) and (d) of this preamble for additional information.

The BLM will 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 the bond amount to the nearest \$100. This adjustment would be made at the same time that the Per Acre Rent Schedule for linear rights-of-way is adjusted under section 2806.22.

The BLM revised paragraph (e)(4) of this section from the proposed to final rule for consistency with other sections of this final rule where the BLM uses the IPD-GDP to adjust an amount every 10 years. See the preamble discussion of section 2804.12(c)(2) for further information about this revision.

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 section 2807.21(e). See section 2807.21(e) of this preamble for further discussion of this topic, in response to a comment asking that we clarify the BLM's right to modify the terms of a lease issued under subpart 2809. We added language in paragraph (e) of this section to be consistent with section 2807.21(e) to state that changes made to a lease issued under this subpart will be made only when there is a danger to the public health and safety, environment, or a change to the statutory authority and other

responsibilities of the BLM. These changes would only be made in coordination with the lessee.

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 will outline the specific development requirements for the project, but all PODs require a lessee to start generating electricity within 7 years. The 5 years to start construction and 7 years to begin generating electricity contained in the rule should allow leaseholders 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 BLM approval. If a leaseholder is unable to meet this timeframe, and does not obtain an extension, the BLM may terminate the lease. No other comments were received or changes made to the final rule for this section.

#### Section 2809.19 Applications in DLAs or on Lands That Later Become DLAs

Section 2809.19 explains how the BLM processes applications for lands located inside DLAs or on lands that later become DLAs. Under the rule, lands inside DLAs will 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 offered for competitive bid.

Section 2809.19 is revised from proposed to the final rule by adding a paragraph (a)(3) and redesignating proposed paragraphs (b) and (c) as paragraphs (c) and (d), respectively. The BLM also moved some provisions of proposed paragraph (a)(2) to a new paragraph (b). These changes are made to clarify how the BLM handles applications in areas that later become designated leasing areas. There is no change from the proposed requirements in the final rule.

Paragraph (a) of this section explains how the BLM will process applications filed for solar or wind energy development on lands outside of DLAs that subsequently become DLAs.

Under paragraph (a)(1) of this section, if an application is filed before the BLM publishes a notice of intent or other public announcement of intent for a land use plan amendment that considers designating an area for solar or wind energy, the BLM would continue to

process the application, which would not be subject to the competitive leasing offer process found in this subpart. After publication of this notice, the public will have been notified of the BLM's intent to create a DLA.

Under paragraph (a)(2) of this section, if an application is filed after the notice of the proposed land use plan amendment, the application will remain in a pending status, unless it is withdrawn by the applicant or the BLM denies it or issues a grant. The BLM made a minor revision to this section from the proposed rule by adding "or issues a grant." This revision gives the BLM the option to approve a grant in pending status, if it chooses. This revision is made because the proposed rule inadvertently omitted the possibility that a pending application could be approved, instead of only being withdrawn or denied.

New paragraph (a)(3) of this section is added in this final rule to explain that applications may resume being processed by the BLM if lands in a DLA later become available for application. Under paragraph 2809.17(d)(2), the BLM may make the lands in a DLA available for application in some circumstances. For example, the BLM may hold a competitive offer and receive no bids. In this situation, the BLM may make these lands available for application and would resume processing any applications that are pending on these lands. This is consistent with the proposed rule but is added to the final rule to clarify how the BLM will handle such applications in these circumstances.

Some provisions of proposed paragraph (a)(2) of this section are moved into new paragraph (b) in this final rule. These provisions remain mostly unchanged and are discussed as follows.

Under new paragraph (b) of this section, if the subject lands become available for leasing under this subpart, an applicant could submit a bid for the lands. Under new paragraph (b)(1) of this section, 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.

Under paragraph (b)(2) of this section, the applicant may receive a refund for any unused application fees or processing costs if the lands described in the application are later leased to another entity under section 2809.15. This provision is revised consistent with changes made for application filing fees in this final rule, which are now a cost recovery payment. The BLM may use some of these fees in processing an

application and will refund any unused fees to the applicant.

Proposed paragraph (b) of this section is redesignated as paragraph (c) in this final rule. Under paragraph (c) of this section, the BLM will not accept a new application for solar or wind energy development inside DLAs after the effective date of this rule (see sections 2804.12(b)(1) and 2804.23(e), except as provided for by section 2809.17(d)(2).

Proposed paragraph (c) of this section is redesignated as paragraph (d) in this final rule. Under paragraph (d) of this section, the BLM can authorize short term (3-year) grants for testing and monitoring purposes inside DLAs. These would be processed in accordance with sections 2805.11(b)(2)(i) or 2805.11(b)(2)(ii). These testing grants may qualify an entity for a variable offset under section 2809.16(b)(4).

*Comment:* One comment was received pertaining to paragraph (a)(1) of this section. The comment stated that the pending application exception in the paragraph requires clarification. A pending project exemption should be tied to a notice of intent rather than a notice of availability (NOA) to avoid a number of filings made immediately after publication of a notice of intent. Also, a pending project exemption should apply to the potential competitive leasing of non-DLA lands under section 2804.30. In addition, the BLM should clarify that the rule would not apply to applications accepted and serialized or a grant issued before the rule takes effect.

*Response:* The BLM agrees in part with these suggestions. In this final rule, this section has been modified so that a notice of intent or other public notice will be the point at which the BLM determines that your application qualifies as a pending application. The notice of intent is specific to land use plan amendments that use an EIS for the analysis. Because a plan amendment may also be using an environmental assessment, which does not require a notice of intent, the BLM added the language, "other public announcement" into this section. The BLM believes that it is appropriate to continue processing applications that were submitted before the BLM provided public notice (e.g., through a notice of intent).

The final rule will apply to applications that are accepted and serialized as well as grants that are issued before this rule is effective. There may be exceptions to whether the rule will fully apply to an application or right-of-way grant. For example, application filing fees and preliminary application review meetings may not be

required for some pending applications. Applications do not confer land use rights to an applicant, and other provisions of the rule such as rent and fees may be determined at the time a right-of-way is authorized, not at the time an application is submitted. Therefore, under the provisions of new sections 2804.40 and 2805.12(e), you may request alternative requirements, stipulations, terms, and conditions from the BLM with a showing of good cause, and an explanation or reason for an alternative requirements, stipulations, terms, and conditions.

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

In addition to the revisions to its regulations governing rights-of-way for solar and wind energy development, the BLM is also revising several subparts of part 2880. These revisions are necessary to make rights-of-way administered under part 2880 consistent, where possible, with the policies, processes, and procedures for those administered under part 2800. Specific areas where we are making 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. The BLM has removed the provision found in the proposed rule regarding pre application requirements and fees for any pipeline 10 inches or more in diameter from this final rule. This is because, based on further analysis and comments received, the use of a 10-inch diameter pipeline was found not to be an appropriate measure that could readily provide a basis for additional requirements.

This final rule adds Section 310 of FLPMA to the authority citation for this part to clarify that FLPMA authority may be used in processing a pipeline right-of-way. The MLA authorizes the Secretary to approve MLA pipeline rights-of-way that cross Federal lands when those pipeline rights-of-way are administered by the Secretary or by two or more Federal agencies. Where the Secretary authorizes a pipeline right-of-way across lands managed by the Secretary, including any bureaus or offices of the Department, other authorities applicable to the management of those lands would generally apply to the authorization. We have cited FLPMA specifically because that authority, governing the management of the public lands generally, is the authority most commonly relied upon in such authorizations.

#### Subpart 2884—Applying for MLA Grants or TUPs

Section 2884.10 What should I do before I file my application?

In the proposed rule, this section included requirements for pre-application meetings when applying for a right-of-way for an oil or gas pipeline having a diameter exceeding 10 inches. Many comments were received concerning this proposal, including many comments stating that it was not a reasonable criterion to use in determining the need for pre-application meetings. After considering these comments and upon further evaluation of the proposal the BLM decided to not require these pre-application meetings. As a result, the proposed changes were not made to the regulations in this section.

Section 2884.11 What information must I submit with my application?

Section 2884.11 includes requirements for submitting applications. This section has been retitled from “What information must I submit in my application?” to read as shown above. This revision is consistent with the title revision of section 2804.12. Proposed requirements for pipelines with a diameter of 10 inches or more have been removed from this section in the final rule.

Section 2884.11(c)(5) is amended by adding a second sentence that further explains that your POD must be consistent with the development schedule and other requirements that are noted on the POD template for oil or gas pipelines at <http://www.blm.gov>.

*Comment:* One comment suggested that paragraph (c)(5) of this section be revised to read as follows: “The estimated schedule for constructing, operating, maintaining, and terminating the project (a POD). Your POD must address the elements specified on the POD template for oil and gas pipelines at <http://www.blm.gov>.” This suggestion would remove the requirement for the POD to be consistent with the development schedule in the POD template.

*Response:* The BLM did not make the suggested changes. The suggested revision to the rule would require that the applicant address each element of a POD, but would not require consistency with the POD template. This could allow a developer to acknowledge the development timeline, but not provide it to the BLM. It is important that applicants provide the necessary information to the BLM for the orderly administration of public lands, including the development schedule for

the POD. No other comments were received and no changes are made from the proposed to the final rule.

Section 2884.12 What is the processing fee for a grant or TUP application?

Section 2884.12 explains the fees associated with an application, including those that involve Federal agencies other than the BLM. The applicant may either pay the BLM for work done by those Federal agencies or pay those Federal agencies directly for their work. This authority was recently delegated to the BLM by the Secretary by Secretarial Order 3327.

Paragraph (b) of this section revises the processing fee schedule to remove the 2005 category fees. Paragraph (c) of this section provides 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. No comments were received and no changes are made from the proposed rule to the final rule.

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

Section 2884.16 is revised to require that Master Agreements describe existing agreements with other Federal agencies for cost reimbursement associated with the application. This change parallels changes made in section 2804.18, which describes Master Agreements for all other rights-of-way. With the authority recently 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 regarding cost reimbursement. No comments were received and no changes are made from the proposed rule to the final rule.

Section 2884.17 How will BLM process my Processing Category 6 Application?

Section 2884.17 explains how the BLM processes Category 6 applications and these changes parallel changes in section 2804.19. Under paragraph (e) of this section, the BLM may collect reimbursement for the United States for actual costs with respect to right-of-way applications and other document processing relating to Federal lands. No comments were received and no changes are made from the proposed rule to the final rule.

Section 2884.18 What if there are two or more competing applications for the same pipeline?

Section 2884.18 parallels section 2804.23. Under paragraph (a)(1) of this section, the requirement to reimburse the BLM is 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. Language is added to this paragraph to include “other notification methods, such as a newspaper of general circulation in the area affected by the potential right-of-way or the Internet.” This revision is consistent with other public notice sections of this rule. See section 2804.23(c) of this preamble for further discussion. No comments were received and no other changes are made from the proposed rule to the final rule.

Section 2884.20 What are the public notification requirements for my application?

Under section 2884.20, the phrase “and may use other notification methods, such as a newspaper of general circulation in the vicinity of the lands involved or the Internet” is added to paragraphs (a) and (d) to provide for additional methods to notify the public of a pending application or to announce any public hearings or meetings. This final rule is revised, consistent with changes made to other notification language throughout this rule, to make notice in a newspaper an optional method of notice. See section 2804.23(c) of this preamble for further discussion. No comments were received and no changes are made from the proposed rule to the final rule.

Section 2884.21 How will BLM process my application?

Under section 2884.21, the BLM will 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 will process to resolve the trespass is 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 all outstanding debts are paid. This provision is added to provide incentives for the applicant to resolve outstanding debts or other infractions involving the Federal Government and parallels section 2804.25.

New language is added to paragraph (b) of this section stating that

outstanding debts are those currently unpaid debts owed to the Federal Government after all administrative collection actions have occurred, including administrative appeal proceedings under applicable Federal regulations and review under the APA. This language is added to be consistent with section 2804.25(d). No comments were received for section 2884.21, but comments were received and addressed under section 2804.25. The notification language contained in paragraph (d)(4) of this section is amended by adding the phrase “and may use other notification methods, such as a newspaper of general circulation in the vicinity of the lands involved or the Internet.” This section is revised, consistent with changes made to other notification language throughout this rule, to make notice in a newspaper an optional method of notice. See section 2804.23(c) of this preamble for further discussion.

Section 2884.22 Can BLM ask me for additional information?

Section 2884.22 describes what information the BLM may require in processing an application. This section was revised by changing the reference found in paragraph (a) from section 2804.25(b) to section 2804.25(c). This change was not proposed, but is made to be consistent with other changes made in this final rule. No other changes were made to this section.

Section 2884.23 Under what circumstances may BLM deny my application?

Section 2884.23 describes the circumstances when the BLM may deny an application. In the proposed rule, section 2884.23(a)(6), stated that the BLM may deny an application if the required POD fails to meet the development schedule and other requirements for oil and gas pipelines.

*Comment:* Several comments suggested that the BLM remove the 10-inch pipeline threshold requirement in the proposed rule.

*Response:* As noted previously in the preamble, the BLM removed the proposed requirements for pipelines “10 inch or larger in diameter” from the final rule. This includes requirements such as the pre-application meetings, the POD timeline, and other such requirements that are specific to pipelines 10 inches in diameter or larger. The timeliness requirement, among others associated with the large-scale pipeline projects description has been removed from the final rule.

*Comment:* One comment stated that the BLM should account for instances when a developer does not meet the

timeframe due to reasons outside of their control.

*Response:* The final rule adds a new section 2884.30 that parallels section 2804.40, both of which address situations in which a developer misses a timeframe or is unable to meet a requirement because of circumstances beyond its control. The preamble for section 2804.40 explains in greater detail the circumstances when an applicant may be unable to meet a requirement.

No other comments were received and no other changes made from the proposed rule to the final rule.

Section 2884.24 What fees do I owe if BLM denies my application or if I withdraw my application?

In the proposed rule, this section was consistent with section 2804.27. The proposed section would have required an applicant to pay any pre-application costs submitted under section 2884.10(b)(4). The BLM removed the “10 inches or larger in diameter” criteria used for determining large-scale pipeline projects from the final rule and as a result, requirements that are specific to large-scale pipeline projects are not carried forward in the final rule. This includes requirements such as the pre-application meetings, application submission, POD and other such requirements.

Section 2884.30 Showing of Good Cause

This section was not in the proposed rule. It is added here to clarify that if you cannot meet one or more of the right-of-way process requirements for a MLA application, then you may: (a) Show good cause as to why you cannot meet a requirement; and (b) Suggest an alternative requirement and explain why that requirement is appropriate. This request must be in writing and received by the BLM before your deadline to meet a requirement(s) has passed. This section is added to respond to comments requesting a way to meet the intent of the regulation if an applicant believes that a requirement(s) cannot be met. Additional discussion can be found in section 2804.40 of this preamble.

*Subpart 2885—Terms and Conditions of MLA Grants and TUPs*

Section 2885.11 What terms and conditions must I comply with?

Section 2885.11 explains the terms and conditions of a grant. Paragraph (a) of this section is revised by adding the phrase “with the initial year of the grant considered to be the first year of the

term.” This revision clarifies what BLM considers to be the first year of a grant. For example, a 30-year grant issued on September 1, 2015, will expire on December 31, 2044, and have an effective term of 29 years and 4 months. This is consistent with law, policy, and procedures. For all grants issued under parts 2800 and 2880 with terms greater than 3 years, the actual term will include the number of full years, including any partial year. The term for a MLA grant differs from the 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 will count as additional time of the grant (see discussion of section 2805.11 earlier in this preamble section).

A new sentence is added to the end of section 2885.11(b)(7) referencing new section 2805.20 that explains the bonding requirements for all rights-of-way. The introduction of this paragraph is revised consistent with the introduction made to paragraph 2805.20(a) that has the similar provision by which the BLM may require a bond. The introduction of this paragraph now reads: “The BLM may require that you obtain,” instead of “If we require it. . . .” This revision is for consistency within the final rule and its regulations.

*Comments:* Several concerns were raised about bonding requirements. One comment suggested that bonding should focus only on large scale operations (e.g., use a 60 acre or greater criterion), that right-of-way holders should be able to use liability insurance to satisfy bonding requirements, and asked that the rule make it clear that the new requirements would not affect existing operations.

*Response:* This final rule does not require bonding for any rights-of-way, except for solar and wind energy developments. As previously noted, the BLM has removed the criteria for large scale projects from this final rule. The BLM will continue to determine whether a bond is necessary and what the bond amount will be on a case-by-case basis.

In this final rule, the BLM accepts many bond instruments, including insurance policies. Insurance policies would include those that are issued for general liabilities of a company, individual, or organization.

The bonding provisions in the final rule apply to the grants that were issued before the effective date of this rule. The existing regulations require that a holder

obtain or certify that they have obtained a bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property incurred in connection with the use and occupancy of the right-of-way or TUP area. The current regulations allow the BLM to adjust the bond requirements for any right-of-way grant or lease when a situation warrants it. These requirements in the existing rule are incorporated in this final rule and will continue to apply to existing and future grant holders.

*Comments:* Another comment suggested copying the bonding requirements from part 2800 into part 2880, instead of referring to the relevant requirements.

*Response:* The BLM intends to maintain the continuity of the regulations, as they currently exist. Section 2885.11(b)(7) refers to the terms and conditions in section 2805.12. This creates a consistent use of the regulations for the public as well as the BLM in its administration of the public lands. It is not necessary to duplicate the subpart 2805 regulations in part 2880. No other comments were received and no other changes made from the proposed rule to the final rule.

**Section 2885.15** How will BLM charge me rent?

Section 2885.15 discusses how the BLM will prorate and charge rent for rights-of-way. Revisions to section 2885.15 clarify that there are no reductions of rents for grants or TUPs, except as provided under section 2885.20(b). Section 2885.20(b) is an existing provision under which a grant holder can qualify for phased-in rent. This section is revised to clarify existing requirements and add a cross-reference to another section of these regulations. No comments were received and no changes are made from the proposed rule to the final rule.

**Section 2885.16** When do I pay rent?

Revisions to section 2885.16 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 beginning partial year plus the next full year. For example, the initial rent payment required for a 10-year 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 parallels section

2806.24(c) and creates consistency in how all rights-of-way are prorated. No comments were received and no changes are made from the proposed rule to the final rule.

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

Section 2885.17(e) parallels 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 will collect such rents 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.

*Comment:* One comment pointed out that the titles of sections 2806.13(e) and 2885.17(e) were not consistent and also questioned the location of the new subject matter within these paragraphs.

*Response:* The BLM agrees with the comment that the titles of the two paragraphs identified are not consistent, therefore we revised the section heading to read as above. However, we did not revise the placement of the subject matter within the final regulations. After revisions to this section heading, the provisions for retroactive billing and unpaid or under collected rents are appropriately placed in this section. No other comments were received and no other changes made from the proposed rule to the final rule.

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

Section 2885.19 is revised by updating the addresses in paragraph (b). No comments were received and no changes are made from the proposed rule to the final rule.

**Section 2885.20** How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

Section 2885.20 is amended by removing paragraph (b)(1) that discussed the phase-in of the Per Acre Rent Schedule and the 2009 per acre rent, because this provision is no longer applicable. Paragraph (b) now consists of the language formerly found at paragraph (b)(2). No comments were received and no changes are made from the proposed rule to the final rule.

**Section 2885.24** If I hold a grant or TUP what monitoring fees must I pay?

The changes in section 2885.24 parallel the changes made to other sections of this rule that contained tables with outdated numbers. Specific numbers are removed from the table.



However, the monitoring fee amounts are available to the public either from BLM offices or on the BLM Web site. The rule adds 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 has been removed from paragraph (b) of this section.

Consistent with revisions made under section 2805.16, the BLM is adding the words “inspecting and” to section 2885.24. This additional language codifies current practice or policy. It will allow the BLM to inspect and monitor the right-of-way to ensure a project’s compliance with the terms and conditions of an authorization. Under this provision, if a project is out of compliance, the BLM could inspect the project to ensure that the required actions are completed to the satisfaction of the BLM, such as continued maintenance of the required activity. No comments were received and no other changes are made from the proposed rule to the final rule.

#### *Subpart 2886—Operations on MLA Grants and TUPs*

**Section 2886.12** When must I contact BLM during operations?

Section 2886.12 describes when a right-of-way grant holder must contact the BLM during operations. The changes in this section parallel the changes made to section 2807.11. A grant holder is 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 the changes are not substantial deviations in location or use. These types of changes are considered to be grant or TUP modification requests. Paragraph (e) is added to conform to similar provisions found at section 2807.11(e), which requires you to contact the BLM if your authorization requires submission of a certificate of construction. See section 2807.11 for further discussion of these topics.

*Comment:* One comment stated that requiring grant holders to contact the BLM prior to making non-substantial deviations in location or use, including operational changes, project materials, and mitigation measures, is overly burdensome.

*Response:* Unless a grant provides for non-substantial deviations, a grant holder must contact the BLM and request approval of non-substantial deviations for an authorization. Should a holder not receive approval from the

BLM, they could be found to be in noncompliance with the terms and conditions of the grant. The requirements of this section are required in order for the BLM to review and approve a non-substantial deviation and to ensure that the BLM is meeting its responsibilities under the MLA and any other applicable authorities, including FLPMA. It is the BLM’s responsibility to determine if a deviation is substantial, not a grant holder’s. No other comments were received and no changes are made from the proposed rule to the final rule.

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

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

The final rule revises section 2887.11 to parallel the revisions made to section 2807.21, which describes assigning or making other changes to a FLPMA grant or lease. We received comments to sections 2807.21 and 2887.11 that apply to both sections. Sections 2807.21 and 2887.11 are consistent with each other in formatting and content, except where cross-references are made to their respective regulatory provisions.

The section heading for section 2887.11 is changed to be consistent with the section heading for section 2807.21 and the text in the final section. The existing regulations do not cover all instances when an assignment is necessary and also do not address situations when assignments are not required. The revisions to this section are necessary to: (1) Add and describe additional changes to a grant other than assignments; (2) Clarify what changes require an assignment; and (3) Make right-of-way grants or TUPs subject to the regulations in this section.

Paragraph (a) is revised to include two events that may require the filing of an assignment: (1) The 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 transactions involving the right-of-way grantee. See section 2807.21 of this preamble for further discussion.

Revised paragraph (b) clarifies that a change in the holder’s name only does not require an assignment. It also clarifies that changes in a holder’s articles of incorporation do not trigger an assignment.

Revised paragraph (c) pertains to payments for assignments and adds a requirement to pay application fees in addition to processing fees. Also, the BLM may now condition a grant assignment on payment of outstanding cost recovery fees to the BLM.

Added paragraph (g) clarifies that only interests in right-of-way grants or TUPs are assignable. A pending right-of-way application is not a property right or other interest that can be assigned. No comments were received and no other changes made from the proposed rule to the final rule.

**Section 2887.12** How do I renew my grant?

Section 2887.12 adds paragraph (d), to be consistent with the revisions made 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 BLM issues a decision on the application for renewal. This provision is derived from the APA (5 U.S.C. 558(c)(1)), and it protects the 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 reiterates and clarifies existing policy and procedures.

Under section 2887.12(e), you may appeal the BLM’s decision to deny your application under section 2881.10. This paragraph parallels the language under proposed section 2807.22(f), which is redesignated as section 2807.22(g). No comments were received and no changes are made from the proposed rule to the final rule.

## **VI. 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. OIRA has determined that this 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. This 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 rule in a manner consistent with these requirements.

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

1. Promote the use of preferred areas for solar and wind energy development (*i.e.*, DLAs); 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 DLAs.

These provisions also will assist the BLM in: (a) Meeting goals established in Section 211 of the EAct of 2005, Secretarial Order 3285A1, and the President's Climate Action Plan; and (b) Implementing recommendations from the GAO and OIG regarding renewable energy development.

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

#### *Economic Impacts*

The rule does 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 this rule will reduce total costs to all applicants, lessees, and operators by up to approximately 17.9 million per year. The change in rents and fees from those 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 rule.

#### *Other Agencies*

This rule does 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 rule does not materially alter the budgetary effects of entitlements, grants,

user fees, loan programs, or the rights or obligations of their recipients.

#### *Novel Legal or Policy Issues*

This rule may raise novel legal or policy issues. It codifies existing BLM policies and provides additional detail about submitting applications for solar or wind energy development grants, and for transmission lines with a capacity of 100 kV or more. In addition, the rule provides for a competitive process for those entities seeking solar and wind energy development leases inside of DLAs.

#### *National Environmental Policy Act (NEPA)*

These regulatory amendments are of an administrative or procedural nature and thus are eligible to be 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 prepared an EA and Finding of No Significant Impact (FONSI) analyzing the final rule to inform agency decision-makers and the public. The EA/FONSI 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). The EA concludes that this rule does not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). A detailed statement under NEPA is not required. To obtain single copies of the Programmatic EISs or the EA/FONSI, 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 grant holders, lessees, and applicants for rights-of-way for solar or wind energy projects, pipelines, or transmission lines with a capacity of 100 kV or more) that may be affected by this rule are small entities, even though that is not actually the case.

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

The rule does affect new applicants or bidders for authorizations of solar or wind energy development and transmission lines with a capacity of 100 kV or more. 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 this rule will impact these small entities, we took two approaches. First, we attempted to measure the direct costs of the 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 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 0.08 percent to a cost of 1.45 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 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 rule does not impose an unfunded mandate on State, local, or tribal governments, or on 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. This rule amends portions of the regulations found at 43 CFR parts 2800 and 2880, redesignates existing 43 CFR part 2809 in its entirety to a new paragraph found at 2801.6(a)(2), adds new 43 CFR part 2809, and modifies the MLA pipeline regulations in 43 CFR part 2880, but does 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 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 rule is not a government action that interferes with constitutionally protected property rights. This rule sets out competitive processes for solar and wind energy development and revises some requirements for pipelines and electric transmission facilities on BLM-managed public lands. It establishes rent and fee schedules for various components of the development of such facilities inside DLAs 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. Because any land use authorizations and resulting development of facilities under this rule are subject to valid existing rights, it does not interfere with constitutionally protected property rights. Therefore, the Department determined that this 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 determined that this rule does 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 does not

apply to State or local governments or State or local government entities. Therefore, in accordance with Executive Order 13132, the BLM determined that this 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 determined that this rule does 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 this 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, promote simplification, and avoid unnecessary burdens.

### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, the BLM found that this rule does not have significant tribal implications. Additionally, because the rulemaking itself is administrative in nature and does not establish any DLAs or approve any specific projects, the BLM has determined that it does not require tribal consultation.

Moreover, in the future when additional DLAs are established or projects are approved, the rule calls for further tribal consultation by the BLM and right-of-way applicants. Specifically, DLAs will be identified through the BLM's land use planning process. Tribal consultation is an important component of that process and will be undertaken when DLAs are identified. In addition to the preliminary review covered in the planning process, existing BLM regulations require site-specific analysis for specific projects. As part of that site-specific analysis, right-of-way applicants must consult with affected tribes to discuss the proposed action and other aspects of the proposed project. For example, site-specific requirements for applications for a grant issued under subpart 2804 include application review, public meetings, and tribal consultation. The BLM would be able to deny an application after these meetings based on a variety of criteria, including tribal concerns.

### *Data Quality Act*

In promulgating this 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 Web site 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 rule could raise novel legal or policy issues within the meaning of Executive Order 12866 or any successor order. However, the BLM believes this rule is unlikely to have a significant adverse effect on the supply, distribution, or use of energy, and may in fact have a positive impact on energy supply, distribution, or use. In fact, its intent is to facilitate such development. The rule codifies BLM policies and provides additional detail about the process for submitting applications for solar or wind energy development grants issued under subpart 2804, or for solar or wind energy development leases issued under subpart 2809.

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

In accordance with Executive Order 13352, the BLM determined that this rule will 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 rule contains information collection activities that require approval by the OMB under the Paperwork Reduction Act. The BLM included an information collection request in the proposed rule. OMB has approved the information collection for the final rule under control number 1004-0206.

Some of the information collection activities in the final rule require the use of Standard Form 299 (SF-299), Application for Transportation and Utility Systems and Facilities on Federal Lands. SF-299 is approved for use by the BLM and other Federal agencies under control number 0596-0082. The U.S. Forest Service administers control number 0596-0082. The OMB has approved the information collection activities in this final rule under control number 1004-0206.

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

The following features of the final rule pertain to more than one information collection activity.

**Designated leasing areas:** As defined in an amendment to 43 CFR 2801.5, a designated leasing area is a parcel of land identified in a BLM land use plan as a preferred location for solar or wind energy development. Regulations at 43 CFR subpart 2809 provide for the issuance of solar or wind right-of-way development “leases” inside a designated leasing area. Regulations at subpart 2804 provide for right-of-way development “grants” for solar or wind energy projects outside of any designated leasing area. Regulations at subpart 2804 also provide for testing grants for solar or wind energy inside or outside designated leasing areas.

**Competitive process for solar or wind energy outside any designated leasing area:** Section 2804.30 provides that the BLM may invite bids for land outside any designated leasing area for solar or wind energy testing and development. Section 2804.30(g) allows only one applicant (*i.e.*, a “preferred applicant”) to apply for a right-of-way grant for solar or wind energy testing or development outside any designated leasing area. The preferred applicant is the successful

bidder in the competitive process outlined in subpart 2804.

**Competitive process for solar or wind energy inside a designated leasing area:** Subpart 2809 outlines a competitive process for land inside a designated leasing area, which provides for a parcel nomination and competitive offer instead of an application process.

**Application filing fees:** Section 2804.12(c)(2) requires an “application filing fee” as follows:

(1) \$15 per acre for applications for solar or wind energy development outside any designated leasing area; and

(2) \$2 per acre for applications for energy project-area testing inside or outside designated leasing areas.

As defined in an amendment to section 2801.5, an application filing fee is specific to solar and wind energy right-of-way applications. Section 2804.30(e)(4) provides that the BLM will refund the fee, except for the reasonable costs incurred on behalf of the applicant, if the applicant is not a successful bidder under subpart 2804 or subpart 2809. The proposed rule would have required an application filing fee for energy site-specific testing grants. On consideration of comments questioning whether site-specific testing should be subject to an application filing fee, the BLM has removed that requirement from the final rule. The \$2 per acre filing fee applies to applications for energy project-area testing, but not to energy site-specific testing.

**Applications:** Section 2804.12(b) refers to applications in the context of large-scale projects. In the BLM’s experience, most applications and plans of development for large-scale projects evolve from several iterations of the first application that is submitted. Some requirements in the final rule (for example, application filing fees) apply to the first time an application is submitted but not to subsequent submissions of an application for the same project.

The information collection activities in the final rule are discussed below.

Application for a Solar or Wind Energy Development Project Outside Any Designated Leasing Area (43 CFR 2804.12 and 2804.30(g)); and

Application for an Electric Transmission Line with a Capacity of 100 kV or More (43 CFR 2804.12)

New requirements at section 2804.12(b) apply to the following types of applications:

- Solar and wind energy development grants outside any designated leasing area; and

- Electric transmission lines with a capacity of 100 kV or more.

In addition to these categories of applications, the proposed rule would have made these new requirements applicable to applications for pipelines 10 inches or greater. The rationale was that these applications, as well as the other 2 types of applications, were for large-scale operations that warrant their own procedures. Some comments questioned the BLM’s description of pipelines 10 inches or greater in diameter as a measure for large-scale pipeline projects, and suggested that the scale of pipeline projects is better measured by acreage than pipeline diameter. The BLM agrees. Rights-of-way for pipelines 10 inches or greater in diameter are not subject to section 2804.12 of the final rule.

Section 2804.12(b) includes the following requirements for applications for a solar or wind energy development project outside a designated leasing area, and to applications for a transmission line project with a capacity of 100 kV or more:

- A discussion of all known potential resource conflicts with sensitive resources and values, including special designations or protections; and
- Applicant-proposed measures to avoid, minimize, and compensate for such resource conflicts, if any.

Section 2804.12(b) also requires applicants to initiate early discussions with any grazing permittees that may be affected by the proposed project. This requirement stems from FLPMA Section 402(g) (43 U.S.C. 1752(g)) and a BLM grazing regulation (43 CFR 4110.4-2(b)) that require 2 years’ prior notice to grazing permittees and lessees before cancellation of their grazing privileges.

In addition to the information listed at 43 CFR 2804.12(b), an application for a solar or wind project, or for a transmission line of at least 100 kV, must include the information listed at 43 CFR 2804.12(a)(1) through (7). These provisions are not amended in the final rule. The requirements at section 2804.12(e) (formerly section 2804.12(b)) apply to applicants that are business entities. These requirements are not amended substantively in the final rule. The burdens for all of these regulations are already included in the burdens associated with the BLM for SF-299 and control number 0596-0082, and therefore are not included in the burdens for the final rule.

Applications for solar or wind energy development outside any designated leasing area, but not applications for large-scale transmission lines, are subject to a requirement (at 43 CFR 2804.12(c)(2)) to submit an “application

filing fee” of \$15 per acre. As defined in an amendment to section 2801.5, an application filing fee is specific to solar and wind energy right-of-way applications. Section 2804.30(e)(4) provides that the BLM will refund the fee, except for the reasonable costs incurred on behalf of the applicant, if the applicant is not a successful bidder in the competitive process outlined in subpart 2804.

#### General Description of a Proposed Project and Schedule for Submittal of a POD (2804.12(b)(1) and (2))

Paragraph 2804.12(b)(1) and (2) require applicants for a solar or wind development project outside a designated leasing area to submit the following information, using Form SF-299:

- A general description of the proposed project and a schedule for the submission of a POD conforming to the POD template at <http://www.blm.gov>;
- A discussion of all known potential resource conflicts with sensitive resources and values, including special designations or protections; and
- Proposals to avoid, minimize, and compensate for such resource conflicts, if any.

#### Preliminary Application Review Meetings for a Large-Scale Right-of-Way (43 CFR 2804.12 (b)(4))

The proposed rule would have required pre-application meetings for each large-scale project (defined in the proposed rule as an application for a solar or wind energy development project outside a designated leasing area, a transmission line project with a capacity of 100 kV or more, or a pipeline 10 inches or more in diameter). Several comments suggested that the BLM lacks authority to impose requirements on a developer before submission of an application without an application being submitted to the BLM.

The BLM agrees with these comments and has revised the proposed rule. Instead of pre-application meetings, the final rule requires “preliminary application review meetings” that will be held after an application for a large-scale right-of-way has been filed with the BLM. As discussed above, the BLM also has decided to remove 10-inch pipelines from the final rule, in response to comments questioning the characterization of pipelines 10 inches or greater in diameter as large-scale projects.

Within 6 months from the time the BLM receives the cost recovery fee for an application for a large-scale project (*i.e.*, for solar or wind energy development outside a designated

leasing area or for a transmission line with a capacity of 100 kV or more), the applicant must schedule and hold at least two preliminary application review meetings.

In the first meeting, the BLM will collect information from the applicant to supplement the application on subjects such as the general project proposal. The BLM will also discuss with the applicant subjects such as 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.

In the second meeting, the applicant and the BLM will meet with appropriate Federal and State agencies and tribal and local governments to facilitate coordination of potential environmental and siting issues and concerns.

The applicant and the BLM may agree to hold additional preliminary application review meetings.

Application for an Energy Site-Specific Testing Grant (43 CFR 2804.30, 2805.11(b)(2)(i), and 2809.19(c));

Application for an Energy Project-Area Testing Grant (43 CFR 2804.30, 2805.11(b)(2)(ii), and 2809.19(c)); and

Application for a Short-Term Grant (43 CFR 2805.11(b)(2)(iii))

Section 2804.30(g) authorizes only one applicant (*i.e.*, a “preferred applicant”) to apply for an energy project-area testing grant or an energy site-specific testing grant for land outside any designated leasing area. Section 2809.19(c) authorizes only one applicant (*i.e.*, the successful bidder in the competitive process outlined at 43 CFR subpart 2809) to apply for an energy project-area testing grant or an energy site-specific testing grant for land inside a designated leasing area. Section 2805.11(b) authorizes applications for short-term grants for other purposes (such as geotechnical testing and temporary land-disturbing activities) either inside or outside a designated leasing area.

Each of these grants is for 3 years or less. All of these applications must be submitted on an SF-299. Applications for project-area grants (but not site-specific grants) are subject to a \$2 per-acre application filing fee in accordance with section 2804.12(c)(2). Applicants for short-term grants for other purposes (such as geotechnical testing and temporary land-disturbing activities) are subject to a processing fee in accordance with section 2804.14.

The proposed rule would have limited testing grants to wind energy.

Some comments suggested that these authorizations should be made available for solar energy. The BLM has adopted this suggestion in the final rule.

#### Showing of Good Cause (43 CFR 2805.12(c)(6))

Any authorization for a solar and wind energy right-of-way requires due diligence in development. In accordance with section 2805.12(c)(6), the BLM will notify the holder before suspending or terminating a right-of-way for lack of due diligence. This notice will 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 will be required in response. That showing must include:

- Reasonable justification for any delays in construction (for example, delays in equipment delivery, legal challenges, and acts of God);
- The anticipated date for the 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 will use the information to determine whether or not to suspend or terminate the right-of-way for failure to comply with due diligence requirements.

#### Reclamation Cost Estimate for Lands Outside Any Designated Leasing Area (43 CFR 2805.20(a)(3) and (5))

New section 2805.20(a)(3) provides that the bond amount for projects other than a solar or wind energy lease under subpart 2809 (*i.e.*, inside a designated leasing area) will be determined based on the preparation of a reclamation cost estimate that includes the cost to the BLM to administer a reclamation contract and review it periodically for adequacy.

New section 2805.20(a)(5) provides that reclamation cost estimate must include at minimum:

- Remediation of 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;
- The decommissioning, removal, and proper disposal, as appropriate, of any improvements and facilities; and
- Interim and final reclamation, revegetation, 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.

**Request To Assign a Solar or Wind Energy Development Right-of-Way (43 CFR 2807.21)**

Section 2807.21, as amended, provides for assignment, in whole or in part, of any right or interest in a grant or lease for a solar or wind development right-of-way. Actions that may require an assignment include the transfer by the holder (assignor) of any right or interest in the grant or lease to a third party (assignee) or any change in control transaction involving the grant holder or lease holder, including corporate mergers or acquisitions.

The proposed assignee must file an assignment application, using SF-299, and pay application and processing fees. No preliminary application review meetings and or public meetings are required.

The assignment application must include:

- Documentation that the assignor agrees to the assignment; and
- A signed statement that the proposed assignee agrees to comply with and be bound by the terms and conditions of the grant that is being assigned and all applicable laws and regulations.

**Application for Renewal of an Energy Project-Area Testing Grant or Short-Term Grant (43 CFR 2805.11(b)(2), 2805.14(h), and 2807.22)**

Section 2805.11(b)(2), as amended, provides that holders of some types of grants may seek renewal of those grants. For an energy site-specific testing grant, the term is 3 years or less, without the option of renewal. However, for an energy project-area testing grant, the initial term is 3 years or less, with the option to renew for one additional 3-year period when the renewal application is also accompanied by a solar or wind energy development application and a POD. For short-term grants, such as for geotechnical testing and temporary land-disturbing activities, the term is 3 years or less with an option for renewal.

Applications for renewal of testing grants (except site-specific testing grants) may be filed, using SF-299, under sections 2805.14(h) and 2807.22. Processing fees in accordance with section 2804.14, as amended, apply to these renewal applications.

Section 2807.22 provides that an application for renewal of any right-of-way grant or lease must be submitted at least 120 calendar days before the grant or lease expires. The application must show that the grantee or lessee is in compliance with the renewal terms and conditions (if any), with the other terms,

conditions, and stipulations of the grant or lease, and with other applicable laws and regulations. The application also must explain why a renewal of the grant or lease is necessary.

**Environmental, Technical, and Financial Records, Reports, and Other Information (43 CFR 2805.12(a)(15))**

Section 2805.12(a)(15) authorizes 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 use of SF-299 is required. The BLM will use the information for monitoring and inspection activities.

**Application for Renewal of a Solar or Wind Energy Development Grant or Lease (43 CFR 2805.14(g) and 2807.22)**

Amendments to sections 2805.14 and 2807.22 authorize holders of leases and grants to apply for renewal of their rights-of-way. A renewal requires submission of the same information, on SF-299, that is necessary for a new application. Processing fees, in accordance with 43 CFR 2804.14, as amended, will apply to these renewal applications. The BLM will use the information submitted by the applicant to decide whether or not to renew the right-of-way.

**Request for an Amendment or Name Change, Amendment, or Assignment (FLPMA) (43 CFR 2807.11(b) and (d)) and 2807.21)**

New section 2807.11(b) requires a holder of any type of right-of-way grant to contact the BLM, seek an amendment to the grant under section 2807.20 (a regulation that is not amended in this final rule), and obtain the BLM's approval before beginning any activity that is a "substantial deviation" from what is authorized.

New section 2807.11(d) requires contact with the BLM, a request for an amendment to the pertinent right-of-way grant or lease, and prior approval whenever site-specific circumstances or conditions result in the need for changes to an approved right-of-way grant or lease, plan of development, site plan, mitigation measures, or construction, operation, or termination procedures that are not "substantial deviations."

New section 2807.21 authorizes assignment of a grant or leased with the BLM's approval. It also authorizes the BLM to require a grant or lease holder to file new or revised information in circumstances that include, but are not limited to:

- Transactions within the same corporate family;
- Changes in the holder's name only; and
- Changes in the holder's articles of incorporation.

A request for an amendment of a right-of-way, using SF-299, is 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, must 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 will 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 is 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 will use the information to monitor and inspect rights-of-way, and to maintain current data.

**Nomination of a Parcel of Land Inside a Designated Leasing Area (43 CFR 2809.10 and 2809.11)**

Sections 2809.10 and 2809.11 authorize the BLM to offer land competitively inside a designated leasing area for solar or wind energy development on its own initiative. These regulations also authorize the BLM to solicit nominations for such development. In order to nominate a parcel under this process, the nominator must 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 may submit a nomination for a specific parcel of land to be developed for solar or wind energy. There is a fee of \$5 per acre for

each nomination. The following information is required:

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

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

#### Expression of Interest in Parcel of Land Inside a Designated Leasing Area (43 CFR 2809.11(c))

Section 2809.11(c) authorizes the BLM to consider informal expressions of interest suggesting specific lands inside a designated leasing area to be included in a competitive offer. The expression of interest must include a description of the suggested lands and a rationale for their inclusion in a competitive offer. The information will assist the BLM in determining whether or not to proceed with a competitive offer.

#### Plan of Development for a Solar or Wind Energy Development Lease Inside a Designated Leasing Area (43 CFR 2809.18)

Section 2809.18(c) requires the holder of a solar or wind energy development lease for land inside a designated leasing area to submit a plan of development, using SF-299, within 2 years of the lease issuance date. The plan must address all pre-development and development activities. This collection activity is necessary to ensure diligent development.

This new provision will 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 control number 0596-0082. In addition, section 2809.18(c) provides that the minimum requirements for either 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:

- *Financial 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 POD, will assist the BLM in reviewing possible alternative designs and mitigation measures for a final POD.

Section 2809.18(d) requires the holder of a solar or wind energy development lease for land inside a designated leasing area to pay reasonable costs for the BLM or other Federal agencies to review and approve the plan of development and to monitor the lease. To expedite review and monitoring, the holder may notify BLM in writing of an intention to pay the full actual costs incurred by the BLM.

#### Request for an Amendment, Assignment, or Name Change (MLA) (43 CFR 2886.12(b) and (d) and 2887.11)

Sections 2886.12 and 2887.11 pertain to holders of rights-of-way and temporary use permits authorized under the Mineral Leasing Act (MLA). A temporary use permit authorizes a holder of a 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 regulations 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;
- Before any change in control transaction involving the grant- or leaseholder; 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 is required in cases of a substantial deviation (e.g., 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, are 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 will 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 is 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.

The use of SF-299 is required. In all these cases, the BLM will use the information for monitoring and inspection purposes, and to maintain current data on rights-of-way.

#### Certification of Construction (43 CFR 2886.12(f))

A certification of construction is a document a holder of an MLA right-of-way must submit, using SF-299, 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.

#### Estimated Hour Burdens

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



INFORMATION COLLECTION REQUIREMENTS: ESTIMATED ANNUAL HOUR BURDENS

Type of response A.	Number of responses B.	Hours per response C.	Total hours (column B × column C) D.
Application for a Solar or Wind Energy Development Project Outside Any Designated Leasing Area 43 CFR 2804.12 and 2804.30(g) Form SF-299	10	8	80
Application for an Electric Transmission Line with a Capacity of 100 kV or More 43 CFR 2804.12 Form SF-299	10	8	80
General Description of a Proposed Project and Schedule for Submittal of a Plan of Development 43 CFR 2804.12(b)(1) and (2) Form SF-299	20	2	40
Preliminary Application Review Meetings for a Large-Scale Right-of-Way 43 CFR 2804.12(b)(4)	20	2	40
Application for an Energy Site-Specific Testing Grant 43 CFR 2804.30, 2805.11(b)(2)(i), and 2809.19(c) Form SF-299	20	8	160
Application for an Energy Project-Area Testing Grant 43 CFR 2804.30, 2805.11(b)(2)(ii), and 2809.19(c) Form SF-299	20	8	160
Application for a Short-Term Grant 43 CFR 2805.11(b)(2)(iii) Form SF-299	1	8	8
Showing of good cause 43 CFR 2805.12(c)(6)	1	2	2
Reclamation Cost Estimate for Lands Outside Any Designated Leasing Area 43 CFR 2805.20(a)(3) and (a)(5)	1	10	10
Request to Assign a Solar or Wind Energy Development Right-of-Way 43 CFR 2807.21 Form SF-299	11	8	88
Application for Renewal of an Energy Project-Area Testing Grant or Short-Term Grant 43 CFR 2805.11(b)(2), 2805.14(h), and 2807.22 Form SF-299	6	6	36
Environmental, Technical, and Financial Records, Reports, and Other Information 43 CFR 2805.12(a)(15) Form SF-299	20	4	80
Application for Renewal of a Solar or Wind Energy Development Grant or Lease 43 CFR 2805.14(g) and 2807.22 Form SF-299	1	12	12
Request for an Amendment or Name Change (FLPMA) 43 CFR 2807.11(b) and (d) and 2807.21 Form SF-299	30	16	480
Nomination of a Parcel of Land Inside a Designated Leasing Area 43 CFR 2809.10 and 2809.11	1	4	4
Expression of Interest in a Parcel of Land Inside a Designated Leasing Area 43 CFR 2809.11(c)	1	4	4
Plan of Development for a Solar or Wind Energy Development Lease Inside a Designated Leasing Area 43 CFR 2809.18(c) Form SF-299	2	8	16
Request for an Amendment, Assignment, or Name Change (MLA) 43 CFR 2886.12(b) and (d) and 2887.11 Form SF-299	2,862	16	45,792
Certification of Construction 43 CFR 2886.12(f) Form SF-299	5	4	20
<b>Totals</b>	<b>3,042</b>	<b>130</b>	<b>47,112</b>

Estimated Non-Hour Burdens

The non-hour burdens of this final rule consist of fees authorized by Sections 304 and 504(g) of FLPMA (43 U.S.C. 1734 and 1764(g)). Section 1734 authorizes the Secretary of the Interior to establish reasonable filing and service

fees and reasonable charges with respect to applications and other documents relating to the public lands. Section 504(g) authorizes the Secretary to promulgate regulations that require, as a condition of a right-of-way, that an applicant for or holder of a right-of-way

reimburse the United States for all reasonable administrative and other costs incurred with respect to right-of-way applications and with respect to inspection and monitoring of construction, operation, and termination

of a facility pursuant to such right-of-way.

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

INFORMATION COLLECTION REQUIREMENTS—ESTIMATED ANNUAL NON-HOUR BURDENS

Type of response A.	Regulatory authority for fee B.	Number of responses C.	Amount of fee per response D.	Total amount of fees (column C × column D) E.
Application for a Solar or Wind Energy Development Project Outside Any Designated Leasing Area.	43 CFR 2804.12(c)(2)	10	\$15 per acre × average of 6,000 acres per application = \$90,000.	\$900,000
43 CFR 2804.12 and 2804.30(g) ..... Form SF-299 .....	43 CFR 2804.14 .....	10	\$1,156 <sup>1</sup> .....	11,560
Application for an Electric Transmission Line with a Capacity of 100 kV or More.	43 CFR 2804.12(c)(2)	20	\$2 per acre × average of 6,000 acres per application = \$12,000.	240,000
43 CFR 2804.12 ..... Form SF-299 .....	43 CFR 2804.14 .....	1	\$1,156 <sup>2</sup> .....	1,156
Application for an Energy Project-Area Testing Grant.	43 CFR 2804.14 .....	11	\$15 per acre × average of 6,000 acres per application = \$90,000.	990,000
43 CFR 2804.30, 2805.11(b)(2)(ii), and 2809.19(c).	43 CFR 2804.14 .....	6	\$1,156 <sup>3</sup> .....	6,936
Form SF-299 ..... Application for a Short-Term Grant .....	43 CFR 2804.14 .....	1	\$1,156 <sup>4</sup> .....	1,156
43 CFR 2805.11(b)(2)(iii) ..... Form SF-299 .....	43 CFR 2809.11(b)(1)	1	\$5 per acre × average of 6,000 acres per nomination = \$30,000.	30,000
Request to Assign a Solar or Wind Energy Development Right-of-Way.	43 CFR 2807.21 .....	1		
43 CFR 2807.21 ..... Form SF-299 .....	43 CFR 2804.14 .....	1		
Application for Renewal of an Energy Project-Area Testing Grant or Short-Term Grant.	43 CFR 2804.14 .....	1		
43 CFR 2805.11(b)(2), 2805.14(h), and 2807.22 .. Form SF-299 .....	43 CFR 2804.14 .....	1		
Application for Renewal of a Solar or Wind Energy Development Grant or Lease.	43 CFR 2804.14 .....	1		
43 CFR 2805.14(g) and 2807.22 ..... Form SF-299 .....	43 CFR 2809.11(b)(1)	1		
Nomination of a Parcel of Land Inside a Designated Leasing Area.	43 CFR 2809.10 and 2809.11 .....			
43 CFR 2809.10 and 2809.11 .....				
Total .....				2,180,808

Authors

The principal author of this rule is Jayme Lopez, Program Lead, National

<sup>1</sup> In the BLM's experience, this collection activity usually falls under Category Four of the Processing Fee Schedule at 43 CFR 2804.14. The amount shown is for Processing Category Four for calendar year 2016, at IM 2016-025 (Dec. 1, 2015) ("Rights-of-Way Management and Land Use Authorization Management").

<sup>2</sup> In the BLM's experience, this collection activity usually falls under Category Four of the Processing Fee Schedule at 43 CFR 2804.14. The amount shown is for Processing Category Four for calendar year 2016, at IM 2016-025 (Dec. 1, 2015) ("Rights-of-Way Management and Land Use Authorization Management").

<sup>3</sup> In the BLM's experience, this collection activity usually falls under Category Four of the Processing Fee Schedule at 43 CFR 2804.14. The amount shown is for Processing Category Four for calendar year 2016, at IM 2016-025 (Dec. 1, 2015) ("Rights-of-Way Management and Land Use Authorization Management").

<sup>4</sup> In the BLM's experience, this collection activity usually falls under Category Four of the Processing Fee Schedule at 43 CFR 2804.14. The amount shown is for Processing Category Four for calendar

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List of Subjects

43 CFR Part 2800

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

year 2016, at IM 2016-025 (Dec. 1, 2015) ("Rights-of-Way Management and Land Use Authorization Management").

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 amends 43 CFR parts 2800 and 2880 as set forth below:

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

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

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

2. Revise the heading of part 2800 to read as set forth above.

**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 (RCE),” “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?**

(b) \* \* \*

*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. This fee is an initial payment for the reasonable costs for processing, inspecting, and monitoring a right-of-way.

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

\* \* \* \* \*

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

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

\* \* \* \* \*

*Management overhead costs* means Federal expenditures associated with a

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

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

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

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

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

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

(3) *Rate of return* means the relationship of income (to the property owner) to revenue generated from authorized solar and wind energy development facilities based on the 10-

year average of the 20-year U.S. Treasury bond yield rounded to the nearest one-tenth percent; and

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

*Right-of-way* means the public lands that the BLM authorizes a holder to use

or occupy under a particular grant or lease.

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

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

\* \* \* \* \*

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

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

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

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

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

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

■ 6. In § 2802.11, revise the section heading and paragraphs (a), (b) introductory text, (b)(3), (4), (6), and (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 revising paragraph (a)(2) to read as follows:

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

(a) \* \* \*

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

\* \* \* \* \*

■ 8. Revise § 2804.12 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The BLM may require you to submit additional information at any

time while processing your application. See § 2884.11(c) of this chapter for the type of information we may require.

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

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

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

■ 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**

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

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

■ 10. Amend § 2804.18 by redesignating paragraphs (a)(6) through (8) as paragraphs (a)(7) through (9) and adding new paragraph (a)(6) to read 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 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 for reasonable costs to the United States for processing applications and other documents under this part relating to the public lands.

■ 12. Amend § 2804.20 by revising paragraphs (a)(1) and (5), redesignating paragraph (a)(6) as paragraph (a)(7), and

adding new paragraph (a)(6) to 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; and

\* \* \* \* \*

■ 13. Amend § 2804.23 by revising the section heading and paragraphs (a)(1) and (c) and adding 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 the **Federal Register**. We may also provide notice by other methods, such as a newspaper of general circulation in the area affected by the potential right-of-way, or the Internet. We may offer lands through a

competitive process on our own initiative. The BLM will not competitively offer lands for which the BLM has accepted an application and received a plan of development and cost recovery agreement.

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

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

■ 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. Revise § 2804.25 to read as follows:

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

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

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

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

(b) The BLM will not process your application if you have any:  
 (1) Outstanding unpaid debts owed to the Federal Government. Outstanding debts are those currently unpaid debts owed to the Federal Government after all administrative collection actions have occurred, including any appeal proceedings under applicable Federal regulations and the Administrative Procedure Act; or  
 (2) Trespass action pending against you for any activity on BLM-administered lands (see § 2808.12), except those to resolve the trespass with a right-of-way as authorized in this part, or a lease or permit under the

regulations found at 43 CFR part 2920, but only after outstanding unpaid debts are paid.  
 (c) The BLM may require you to submit additional information necessary to process the application. This information may include a detailed construction, operation, rehabilitation, and environmental protection plan (*i.e.*, a POD), and any needed cultural resource surveys or inventories for threatened or endangered species. If the BLM needs more information, the BLM will identify this information in a written deficiency notice asking you to provide the additional information within a specified period of time.

(1) For solar or wind energy development projects, and transmission lines with a capacity of 100 kV or more, you must commence any required resource surveys or inventories within one year of the request date, unless otherwise specified by the BLM; or  
 (2) If you are unable to meet any of the requirements of this section, you must show good cause and submit a request for an alternative under § 2804.40.  
 (d) *Customer service standard.* The BLM will process your completed application as follows:

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

(e) In processing an application, the BLM will:  
 (1) Hold public meetings if sufficient public interest exists to warrant their time and expense. The BLM will publish a notice in the **Federal Register** and may use other notification methods, such as a newspaper of general circulation in the vicinity of the lands involved in the area affected by the potential right-of-way or the Internet, to announce in advance any public hearings or meetings;  
 (2) If your application is for solar or wind energy development:  
 (i) Hold a public meeting in the area affected by the potential right-of-way;  
 (ii) Apply screening criteria to prioritize processing applications with lesser resource conflicts over applications with greater resource conflicts and categorize screened applications according to the criteria listed in § 2804.35; and  
 (iii) Evaluate the application based on the information provided by the applicant and input from other parties, such as Federal, State, and local government agencies, and tribes, as well as comments received in preliminary application review meetings held under § 2804.12(b)(4) and the public meeting held under paragraph (e)(2)(i) of this section. The BLM will also evaluate your application based on whether you propose to site the development appropriately (*e.g.* outside of a designated leasing area or exclusion area) and whether you address known resource values discussed in the

preliminary application review meetings. Based on these evaluations, the BLM will either deny your application or continue processing it.  
 (3) Determine whether a POD schedule submitted with your application meets the development schedule or other requirements described by the BLM, such as in § 2804.12(b);  
 (4) Complete appropriate National Environmental Policy Act (NEPA) compliance for the application, as required by 43 CFR part 46 and 40 CFR parts 1500 through 1508;  
 (5) Determine whether your proposed use complies with applicable Federal and State laws;  
 (6) If your application is for a road, determine whether it is in the public interest to require you to grant the United States an equivalent authorization across lands that you own;  
 (7) Consult, as necessary, on a government-to-government basis with tribes and other governmental entities; and  
 (8) Take any other action necessary to fully evaluate and decide whether to approve or deny your application.  
 (f)(1) The BLM may segregate, if it finds it necessary for the orderly administration of the public lands, lands included in a right-of-way application under this subpart for the generation of electrical energy from wind or solar sources. In addition, the BLM may also segregate lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources when initiating a competitive

process for solar or wind development on particular lands. Upon segregation, such lands would not be subject to appropriation under the public land laws, including location under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*), but would remain open under the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The BLM would effect a segregation by publishing a **Federal Register** notice that includes a description of the lands being segregated. The BLM may effect segregation in this way for both pending and new right-of-way applications.  
 (2) The effective date of segregation is the date of publication of the notice in the **Federal Register**. Consistent with 43 CFR 2091–3.2, the segregation terminates and the lands automatically open on the date that is the earliest of the following:  
 (i) When the BLM issues a decision granting, granting with modifications, or denying the application for a right-of-way;  
 (ii) Automatically at the end of the segregation period stated in the **Federal Register** notice initiating the segregation; or  
 (iii) Upon publication of a **Federal Register** notice terminating the segregation and opening the lands.  
 (3) The segregation period may not exceed 2 years from the date of publication in the **Federal Register** of the notice initiating the segregation, unless the State Director determines and documents in writing, prior to the



expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the State Director determines an extension is necessary, the BLM will extend the segregation for up to 2 years by publishing a notice in the **Federal Register**, prior to the expiration of the initial segregation period. Segregations under this part may only be extended once and the total segregation period may not exceed 4 years.

■ 16. Amend § 2804.26 by revising paragraph (a)(5), redesignating paragraph (a)(6) as paragraph (a)(8), revising newly redesignated paragraph (a)(8), and adding new paragraphs (a)(6), (a)(7), and (c) to 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 demonstrate and sustain technical and financial capability is grounds for denying an application or terminating an authorization;

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

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

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

\* \* \* \* \*

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

■ 17. In § 2804.27, revise the section heading and introductory text to read as follows:

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

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

\* \* \* \* \*

■ 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, and any combination thereof.

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

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

**Register** and other notices must also include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

■ 19. Add § 2804.31 to subpart 2804 to read as follows:

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

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

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

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

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

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

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

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

■ 20. 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 generally prioritize the processing of leases awarded under subpart 2809 before applications submitted under subpart 2804. For applications submitted under subpart 2804, the BLM will categorize your application based on the following screening criteria.

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

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

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

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

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

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

(1) BLM special management areas that provide for limited development, including recreation sites and facilities;

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

(3) Right-of-way avoidance areas;

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

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

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

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

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

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

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

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

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

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

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

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

■ 21. Add § 2804.40 to subpart 2804 to read as follows:

**§ 2804.40 Alternative requirements.**

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

(a) Show good cause for your inability to meet a requirement;

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

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

**Subpart 2805—Terms and Conditions of Grants**

■ 22. Amend § 2805.10 as follows:

■ a. Revise the section heading and paragraph (a);

- b. Redesignate paragraph (b) and (c) as paragraphs (c) and (d), respectively; and
- c. Add new paragraph (b).

The revisions and addition 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 may send you an unsigned lease for your review and signature. If your bid is unsuccessful, it will be refunded under § 2804.30(e)(4) or § 2809.14(d) and you will receive written notice from us.

(b) Your unsigned grant or lease document:

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

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

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

\* \* \* \* \*

■ 23. 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 an energy site-specific testing grant, the term is 3 years or less, without the option of renewal;

(ii) For an energy project-area testing grant, the initial term is 3 years or less, with the option to renew for one

additional 3-year period when the renewal application is also accompanied by a solar or wind energy development application and a POD as required by § 2804.25(e)(3);

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

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

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

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

\* \* \* \* \*

■ 24. 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) Provide for compensatory mitigation for residual impacts associated with the right-of-way;

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

(vi) Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way in a manner consistent with the grant or lease, including the approved POD, if one was required;

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

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

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

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

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

(12) Control and remove any release or discharge of hazardous material on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the release or discharge is authorized under the grant. You must also remediate and restore lands and resources affected by the release or discharge to the BLM's satisfaction and to the satisfaction of any other Federal, State, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;

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

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

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

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

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

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

(1) Not begin any ground disturbing activities until the BLM issues a Notice

to Proceed (see § 2807.10) or written approval to proceed with ground disturbing activities;

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

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

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

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

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

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

(5) Repair and place into service, or remove from the site, damaged or abandoned facilities that have been inoperative for any continuous period of 3 months and that present an unnecessary hazard to the public lands. You must take appropriate remedial action within 30 days after receipt of a written noncompliance notice, unless you have been provided an extension of time by the BLM. Alternatively, you must show good cause for any delays in repairs, use, or removal; estimate when corrective action will be completed; provide evidence of diligent operation of the facilities; and submit a written request for an extension of the 30-day deadline. If you do not comply with this provision, the BLM may suspend or terminate the authorization under §§ 2807.17 through 2807.19; and

(6) Comply with the diligent development provisions of the authorization or the BLM may suspend or terminate your grant or lease under §§ 2807.17 through 2807.19. Before suspending or terminating the authorization, the BLM will send you a notice that gives you a reasonable opportunity to correct any noncompliance or to start or resume use of the right-of-way (see § 2807.18). In response to this notice, you must:

(i) Provide reasonable justification for any delays in construction (for example,

delays in equipment delivery, legal challenges, and acts of God);

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

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

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

(d) For energy site or project testing grants:

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

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

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

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

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

(2) You may also request that the BLM consider alternative stipulations, terms, or conditions. Any request for an alternative stipulation, term, or

condition must comply with applicable law in order to be considered. Any proposed alternative to applicable bonding requirements must provide the United States with adequate financial assurance for potential liabilities associated with your right-of-way grant or lease. Any such request is not approved until you receive BLM approval in writing.

■ 25. 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 energy project-area testing grant for one

additional term of 3 years or less when the renewal application also includes an energy development application under § 2801.9(d)(2).

■ 26. 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. \* \* \*

\* \* \* \* \*

■ 27. 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 inspecting and

monitoring the construction, operation, maintenance, and termination of the project and protection and rehabilitation of the public lands your grant covers.

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

**MONITORING CATEGORIES**

Monitoring category	Federal work hours involved
(1) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants .....	Estimated Federal work hours are >1 ≤8.
(2) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants .....	Estimated Federal work hours are >8 ≤24.
(3) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants .....	Estimated Federal work hours are >24 ≤36.
(4) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants .....	Estimated Federal work hours are >36 ≤50.
(5) Master Agreements .....	Varies.
(6) Inspecting and monitoring of new grants, assignments, renewals, and amendments to existing grants .....	Estimated Federal work hours are >50.

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

■ 28. 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, or property in connection with your use and occupancy of the right-of-way, including costs associated with terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you

plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. The BLM will periodically review your bond for adequacy and may require a new bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant or lease.

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

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

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

(2) *Bond acceptance.* The BLM authorized officer must review and approve all bonds, including any State bonds, prior to acceptance, and at the time of any right-of-way assignment, amendment, or renewal.

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

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

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

- (i) Environmental liabilities such as use of hazardous materials waste and hazardous substances, herbicide use, the use of petroleum-based fluids, and dust control or soil stabilization materials;
- (ii) The decommissioning, removal, and proper disposal, as appropriate, of any improvements and facilities; and
- (iii) Interim and final reclamation, re-vegetation, recontouring, and soil stabilization. This component must address the potential for flood events and downstream sedimentation from the site that may result in offsite impacts.

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

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

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

- (i) We release all or part of your bond;
- (ii) The bond amount does not cover the cost of reclamation; or
- (iii) There is no bond in place;

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

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

(d) For short-term right-of-way grants for energy site or project-area testing, the bond amount must be no less than \$2,000 per authorized meteorological tower or instrumentation facility

location and must be provided before the written approval to proceed with ground disturbing activities (see § 2805.12(c)(1)).

■ 29. Revise the heading for subpart 2806 to read as follows:

**Subpart 2806—Annual Rents and Payments**

■ 30. 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 energy site-specific testing, you may request that your initial rent bill be for the full term of the grant instead of the initial rent bill periods provided under paragraph (a)(1)(i) or (ii) of this section.

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

\* \* \* \* \*

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

■ 31. 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 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 we receive any outstanding payments that are due.

■ 32. 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>.

■ 33. 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. \* \* \*

\* \* \* \* \*

**§ 2806.23 [Amended]**

■ 34. Amend § 2806.23 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

■ 35. 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.

■ 36. Amend § 2806.30 by:

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

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

\* \* \* \* \*

■ 37. 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?**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \* This paragraph (b)(4) does not apply to facilities exempt from rent under § 2806.14(a)(4) except when the facility also includes ineligible facilities.

■ 38. 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. \* \* \*

\* \* \* \* \*

■ 39. Amend § 2806.44 by revising the section heading, 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.

\* \* \* \* \*

■ 40. Remove the undesignated centered heading preceding § 2806.50.

**§ 2806.50 [Redesignated as § 2806.70]**

■ 41. Redesignate § 2806.50 as § 2806.70.

■ 42. Add an undesignated centered heading and §§ 2806.50, 2806.51, 2806.52, 2806.54, 2806.56, and 2806.58 to read as follows:

**Solar Energy Rights-of-Way**

Sec.

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

2806.51 Scheduled Rate Adjustment.

2806.52 Rents and fees for solar energy development grants.

2806.54 Rents and fees for solar energy development leases.

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

2806.58 Rent for energy development testing grants.

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

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

**§ 2806.51 Scheduled Rate Adjustment.**

(a) The BLM will adjust your acreage rent and MW capacity fee over the course of your authorization as described in these regulations. For new grants or leases, you may choose either

the standard rate adjustment method (see § 2806.52(a)(5) and (b)(3) for grants; see § 2806.54(a)(4) or (c) for leases) or the scheduled rate adjustment method (see § 2806.52(d) for grants; see § 2806.54(d) for leases). Once you select a rate adjustment method, that method will be fixed until you renew your grant or lease (see § 2807.22).

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

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

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

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

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

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

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

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

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

(iv) D is the annual adjustment factor = the average annual change in the IPD-GDP for the 10-year period immediately preceding the year that the NASS



Census data becomes available (see § 2806.22(a)). The BLM will adjust the per acre zone rates each year based on the average annual change in the IPD-GDP as determined under § 2806.22(a). Adjusted rates are effective each year on January 1; and

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

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

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

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

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

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

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

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

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

(5) *Acreage rent adjustments.* This paragraph (a)(5) applies unless you

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

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

(b) *MW capacity fee.* The MW capacity fee is calculated by multiplying the approved MW capacity by the MW rate (for the applicable type of technology employed by the project) from the MW rate schedule (see paragraph (b)(2) of this section). You must pay the MW capacity fee annually when electricity generation begins or is scheduled to begin in the approved POD, whichever comes first:

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

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

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

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

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

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

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

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

(B) 50 percent for the second year; and

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

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

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

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

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

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

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

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

(2) The per acre zone rate will increase:

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

(ii) Every 5 years, beginning after the first 5 calendar years, plus any initial partial year, following issuance of your grant, by 20 percent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) If the lease is renewed, the MW capacity fee is calculated using the MW rates at the beginning of the renewed lease period and will remain at that rate through the initial 10-year period of the renewal term. The MW capacity fee will be adjusted using the MW rate at the beginning of each subsequent 10-year period of the renewed lease term.

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

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

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

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

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

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

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

#### **§ 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)).

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

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

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

■ 43. Add an undesignated centered heading and §§ 2806.60, 2806.61, 2806.62, 2806.64, 2806.66, and 2806.68 to read as follows:

#### Wind Energy Rights-of-Way

Sec.

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

2806.61 Scheduled Rate Adjustment.

2806.62 Rents and fees for wind energy development grants.

2806.64 Rents and fees for wind energy development leases.

2806.66 Rent for support facilities authorized under separate grant(s).

2806.68 Rent for energy development testing grants.

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

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

#### § 2806.61 Scheduled Rate Adjustment.

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

(b) For new grants or leases, if you select the scheduled rate adjustment method you must notify the BLM of

your decision in writing. Your decision must be received by the BLM before your grant or lease is issued. If you do not select the scheduled rate adjustment method, the standard rate adjustment method will apply.

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

#### § 2806.62 Rents and fees for wind energy development grants.

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

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

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

- (i) A is the per acre zone value = the same per-acre zone values described in the linear rent schedule in § 2806.20(c);
- (ii) B is the encumbrance factor = 10 percent;
- (iii) C is the rate of return = 5.27 percent;
- (iv) D is the annual adjustment factor = the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available (see § 2806.22(a)). The BLM will adjust the per acre rates each year based on the average annual change in the IPD–GDP as determined under § 2806.22(a). Adjusted rates are effective each year on January 1; and
- (v) E is the annual per acre zone rate.

(2) *Assignment of counties.* The BLM will calculate the per acre zone rate in paragraph (a)(1) of this section by using a State-specific factor to assign a county to a zone in the wind energy acreage rent schedule. The BLM will calculate a State-specific factor and apply it to the NASS data (county average per acre land and building value) to determine

the per acre value and assign a county (or other geographical area) to a zone. The State-specific factor represents the percent difference between improved agricultural land and unimproved rangeland values, using NASS data. The calculation per acre for determining the State-specific factor is  $(A/B) - (C/D) = E$  where:

- (i) A = the NASS Census statewide average per acre value of non-irrigated acres;
- (ii) B = the NASS Census statewide average per acre land and building value;
- (iii) C = the NASS Census total statewide acres in farmsteads, homes, buildings, livestock facilities, ponds, roads, wasteland, etc.;
- (iv) D = the total statewide acres in farms; and
- (v) E = the State-specific percent factor or 20 percent, whichever is greater.

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

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

(5) *Acreage rent adjustments.* This paragraph (a)(5) applies unless you selected the scheduled rate adjustment method (see § 2806.61). The BLM will adjust the acreage rent annually to reflect the change in the per acre zone rates as specified in paragraph (a)(1) of this section. The BLM will use the most current per acre zone rates to calculate the acreage rent for each year of the grant term.

(6) The acreage rent must be paid as described in § 2806.62(a) except for the initial implementation of the wind energy acreage rent schedule of section § 2806.62(c).

(7) You may obtain a copy of the current per acre zone rates for wind energy development (wind energy acreage rent schedule) from any BLM State, district, or field office or by writing: U.S. Department of the Interior,

Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Renewable Energy Coordination Office, Washington, DC 20003. The BLM also posts the current wind energy acreage rent schedule for wind energy development at <http://www.blm.gov>.

(b) *MW capacity fee*. The MW capacity fee is calculated by multiplying the approved MW capacity by the MW rate. You must pay the MW capacity fee annually when electricity generation begins or is scheduled to begin in the approved POD, whichever comes first.

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

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

(3) *Periodic adjustments in the MW rate*. This paragraph (b)(3) applies unless you selected the scheduled rate adjustment method (see § 2806.61). We will adjust the MW rate every 5 years, beginning in 2021, by recalculating the following two components of the MW rate formula:

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

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

(4) *MW rate phase-in*. This paragraph (b)(4) applies unless you selected the scheduled rate adjustment method (see § 2806.61). If you hold a wind energy development grant, the MW rate will be phased in as follows:

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

(A) 25 percent for the first year. This rate applies for the first partial calendar year of operations;

(B) 50 percent for the second year; and

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

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

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

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

(iii) The MW rate may be phased in further, as described in paragraph (c) of this section.

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

(c) *Initial implementation of the acreage rent and MW capacity fee*. This paragraph (c) applies unless you selected the scheduled rate adjustment method (see § 2806.61).

(1) If you hold a wind energy grant and made payments for billing year 2016, the BLM will reduce by 50 percent the net increase in annual costs between billing year 2017 and billing year 2016. The net increase will be calculated based on a full calendar year.

(2) If the BLM accepted your application for a wind energy development grant, including a plan of development and cost recovery agreement, prior to September 30, 2014, the BLM will phase in your payment of the acreage rent and MW capacity fee by reducing the:

(i) Acreage rent of the grant by 50 percent for the initial partial year of the grant; and

(ii) MW capacity fee by 75 percent for the first (initial partial) and second years and by 50 percent for the third and fourth years for which the BLM requires payment of the MW capacity fee. This reduction to the MW capacity fee applies to each stage of development.

(d) *Scheduled rate adjustment*. Under the scheduled rate adjustment (see § 2806.61), the BLM will update your per acre zone rate and MW rate as follows:

(1) The BLM will calculate your payments using the per acre zone rate (see § 2806.62(a)(1)) and MW rate (see § 2806.62(b)(1)) in place when your grant is issued, or for existing grants, the per acre zone rate and MW rate in place prior to December 19, 2016, as adjusted under paragraph (d)(6) of this section;

(2) The per acre zone rate will increase:

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

(ii) Every 5 years, beginning after the first 5 years, plus the initial partial year, if any, your grant is in effect, by 20 percent;

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

(4) The BLM will not apply the phase-in to your MW rate under § 2806.62(b)(4) or the reduction under § 2806.62(c); and

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

(6) For grants in place prior to January 18, 2017 that select the scheduled rate adjustment method offered under § 2806.61(c), the per acre zone rate and the MW rate in place prior to December 19, 2016 will be adjusted for the first year's payment using the scheduled rate adjustment method as follows:

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

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

(iii) Subsequent increases will be performed as set forth in paragraphs (d)(2) and (3) of this section from the date of the initial adjustment under paragraph (d)(6) of this section.

#### **§ 2806.64 Rents and fees for wind energy development leases.**

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

(a) *Acreage rent*. The BLM will calculate and bill you an acreage rent that must be paid prior to issuance of your lease as described in § 2806.62(a).

This acreage rent will be based on the following:

(1) *Per acre zone rate*. See

§ 2806.62(a)(1).

(2) *Assignment of counties*. See

§ 2806.62(a)(2) and (3).

(3) *Acreage rent payment*. See

§ 2806.62(a)(4).

(4) *Acreage rent adjustments*. This paragraph (a)(4) applies unless you selected the scheduled rate adjustment method (see § 2806.61). Once the acreage rent is determined under § 2806.62(a), no further adjustments in the annual acreage rent will be made until year 11 of the lease term and each subsequent 10-year period thereafter. We will use the per acre zone rates in effect at the time the acreage rent is due (at the beginning of each 10-year period) to calculate the annual acreage rent for each of the subsequent 10-year periods.

(b) *MW capacity fee*. See § 2806.62(b) introductory text and (b)(1), (2), and (3).

(c) *MW rate phase-in*. This paragraph (c) applies unless you selected the scheduled rate adjustment method (see § 2806.61). If you hold a wind energy development lease, the MW capacity fee will be phased in, starting when electricity begins to be generated. The MW capacity fee for years 1–20 will be calculated using the MW rate in effect when the lease is issued. The MW capacity fee for years 21–30 will be calculated using the MW rate in effect in year 21 of the lease. These rates will be phased-in as follows:

(1) For years 1 through 10 of the lease, plus any initial partial year, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 50 percent of the wind energy technology MW rate, as described in § 2806.62(b)(2);

(2) For years 11 through 20 of the lease, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 100 percent of the wind energy technology MW rate described in § 2806.62(b)(2);

(3) For years 21 through 30 of the lease, the MW capacity fee is calculated by multiplying the project's authorized MW capacity by 100 percent of the wind energy technology MW rate as described in § 2806.62(b)(2);

(4) If the lease is renewed, the MW capacity fee is calculated using the MW rates at the beginning of the renewed lease period and will remain at that rate through the initial 10 year period of the renewal term. The MW capacity fee will continue to adjust at the beginning of each subsequent 10 year period of the renewed lease term to reflect the then currently applicable MW rates; and

(5) If an approved POD provides for staged development, the MW capacity

fee is calculated using the MW capacity approved for that stage plus any previously approved stage, multiplied by the MW rate, as described in this section.

(d) *Scheduled rate adjustment*. Under the scheduled rate adjustment (see § 2806.61), the BLM will update your per acre zone rate and MW rate as follows:

(1) The BLM will calculate your payments using the per acre zone rate (see § 2806.62(a)(1)) and MW rate (see § 2806.62(b)(1)) in place when your lease is issued;

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

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

(4) The BLM will not apply the phase-in to your MW rate under § 2806.62(c). Instead, for years 1 through 5, plus any initial partial year, the BLM will calculate the MW capacity fee by multiplying the project's authorized MW capacity by 50 percent of the applicable solar technology MW rate. This phase-in will not be applied to renewed leases; and

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

#### **§ 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 energy development testing grants.**

(a) *Grant for energy site-specific testing*. You must pay \$100 per year for each meteorological tower or instrumentation facility location. BLM offices with approved small site rental schedules may use those fee structures

if the fees in those schedules charge more than \$100 per meteorological tower per year. In lieu of annual payments, you may instead pay for the entire term of the grant (3 years or less).

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

■ 44. Add an undesignated centered heading immediately preceding newly redesignated § 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 payment for a grant or lease when the linear, communication use, solar energy, or wind energy payment schedules do not apply?**

When we determine that the linear, communication use, solar, or wind energy payment schedules do not apply, we may determine your payment through a process based on comparable commercial practices, appraisals, competitive bids, or other reasonable methods. We will notify you in writing of the payment determination. If you disagree with the payment determination, you may appeal our final determination under § 2801.10.

#### **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 the BLM's 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 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. Revise § 2807.21 to 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. Assignment actions that may require BLM approval include, but are not limited to, the following:

(1) The transfer by the holder (assignor) of any right or interest in the grant or lease to a third party (assignee); and

(2) Changes in ownership or other related change in control transactions involving the BLM right-of-way holder and another business entity (assignee), including corporate mergers or acquisitions, but not transactions within the same corporate family.

(b) The BLM may require a grant or lease holder to file new or revised information in some circumstances that do not constitute an assignment (see subpart 2803 and §§ 2804.12(e) and 2807.11). Circumstances that would not constitute an assignment but may necessitate this filing include, but are not limited to:

(1) Transactions within the same corporate family;

(2) Changes in the holder's name only (see paragraph (h) of this section); and

(3) Changes in the holder's articles of incorporation.

(c) In order to assign a grant or lease, the proposed assignee must file an assignment application and follow the same procedures and standards as for a new grant or lease, including paying application and processing fees, and the grant must be in compliance with the

terms and conditions of § 2805.12. The preliminary application review meetings and public meeting under §§ 2804.12 and 2804.25 are not required for an assignment. We will not approve any assignment until the assignor makes any outstanding payments that are due (see § 2806.13(g)).

(d) The assignment application must also include:

(1) Documentation that the assignor agrees to the assignment; and

(2) A signed statement that the proposed assignee agrees to comply with and be bound by the terms and conditions of the grant that is being assigned and all applicable laws and regulations.

(e) Your assignment is not recognized until the BLM approves it in writing.

We will approve the assignment if doing so is in the public interest. Except for leases issued under subpart 2809 of this part, we may modify the grant or lease or add bonding and other requirements, including additional terms and conditions, to the grant or lease when approving the assignment, unless a modification to a lease issued under subpart 2809 of this part is required under § 2805.15(e). We may decrease rents if the new holder qualifies for an exemption (see § 2806.14) or waiver or reduction (see § 2806.15) and the previous holder did not. Similarly, we may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If we approve the assignment, the benefits and liabilities of the grant or lease apply to the new grant or lease holder.

(f) The processing time and conditions described at § 2804.25(d) of this part apply to assignment applications.

(g) Only interests in issued right-of-way grants and leases are assignable. Except for applications submitted by a preferred applicant under § 2804.30(g), pending right-of-way applications do not create any property rights or other interest and may not be assigned from one entity to another, except that an entity with a pending application may continue to pursue that application even if that entity becomes a wholly owned subsidiary of a new third party.

(h) To complete a change in name only, (*i.e.*, when the name change in question is not the result of an underlying change in control of the right-of-way grant), the following requirements must be met:

(1) The holder must file an application requesting a name change and follow the same procedures as for a new grant, including paying processing fees. However, the

application fees (see subpart 2804 of this part) and the preliminary application review and public meetings (see §§ 2804.12 and 2804.25) are not required. The name change request must include:

(i) If the name change is for an individual, a copy of the court order or other legal document effectuating the name change; or

(ii) If the name change is for a corporation, a copy of the corporate resolution(s) proposing and approving the name change, a copy of the acceptance of the change in name by the State or Territory in which it is incorporated, and a copy of the appropriate resolution, order or other documentation showing the name change.

(2) When reviewing a proposed name change only, we may determine it is necessary to:

(i) Modify a grant issued under subpart 2804 to add bonding and other requirements, including additional terms and conditions to the grant; or

(ii) Modify a lease issued under subpart 2809 in accordance with § 2805.15(e).

(3) Your name change is not recognized until the BLM approves it in writing.

■ 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 addition 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 a timely and sufficient application for a renewal of your existing grant or lease, or for a new grant or lease, in accordance with this section, the existing grant does not expire until we have issued a decision to approve or deny the application.

\* \* \* \* \*

■ 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 the BLM solicit nominations?

2809.12 How will the BLM select and prepare parcels?

2809.13 How will the BLM conduct competitive offers?

2809.14 What types of bids are acceptable?

2809.15 How will the BLM select the successful bidder?

2809.16 When do variable offsets apply?

2809.17 Will the 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(a).

(d) The BLM will generally prioritize the processing of “leases” awarded under this subpart over the processing of non-competitive “grant” applications under subpart 2804, including those that are “high priority” under § 2804.35.

**§ 2809.11 How will the BLM solicit nominations?**

(a) *Call for nominations.* The BLM will publish a notice in the **Federal**

**Register** and may use other notification methods, such as a newspaper of general circulation in the area affected by the potential offer of public land for solar and wind energy development or the Internet; to solicit nominations and expressions of interest for parcels of land inside designated leasing areas for solar or wind energy development.

(b) *Nomination submission.* A nomination must be in writing and must include the following:

(1) *Nomination fee.* If you nominate a specific parcel of land under paragraph (a) of this section, you must also include a non-refundable nomination fee of \$5 per acre. We will adjust the nomination fee once every 10 years using the change in the IPD–GDP for the preceding 10-year period and round it to the nearest half dollar. This 10 year average will be adjusted at the same time as the per acre rent schedule for linear rights-of-way under § 2806.22;

(2) *Nominator’s name and personal or business address.* The name of only one citizen, association, partnership, corporation, or municipality may appear as the nominator. All communications relating to leasing will be sent to that name and address, which constitutes the nominator’s name and address of record; and

(3) The legal land description and a map of the nominated lands.

(c) We may consider informal expressions of interest suggesting lands to be included in a competitive offer. If you submit a written expression of interest, you must provide a description of the suggested lands and rationale for their inclusion in a competitive offer.

(d) In order to submit a nomination, you must be qualified to hold a grant or lease under

**§ 2803.10.**

(e) *Nomination withdrawals.* A nomination cannot be withdrawn, except by the BLM for cause, in which case all nomination monies will be refunded to the nominator.

**§ 2809.12 How will the BLM select and prepare parcels?**

(a) The BLM will identify parcels for competitive offer based on nominations and expressions of interest or on its own initiative.

(b) The BLM and other Federal agencies, as applicable, will conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, before offering lands competitively.

**§ 2809.13 How will the BLM conduct competitive offers?**

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

(b) *Notice of competitive offer.* We will publish a notice in the **Federal Register** at least 30 days prior to the competitive offer and may use other notification methods, such as a newspaper of general circulation in the area affected by the potential right-of-way or the Internet. The **Federal Register** and other notices will include:

- (1) The date, time, and location, if any, of the competitive offer;
- (2) The legal land description of the parcel to be offered;
- (3) The bidding methodology and procedures to be used in conducting the competitive offer, which may include any of the competitive procedures identified in paragraph (a) of this section;

(4) The minimum bid required (see § 2809.14(a)), including an explanation of how we determined this amount;

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

(6) If a variable offset (see § 2809.16) is offered:

- (i) The percent of each offset factor;
- (ii) How bidders may pre-qualify for each offset factor; and

(iii) The documentation required to pre-qualify for each offset factor; and

(7) The terms and conditions of the lease, including the requirements for the successful bidder to submit a POD for the lands involved in the competitive offer (see § 2809.18) and any lease mitigation requirements, including compensatory mitigation for residual impacts associated with the right-of-way.

(c) We will notify you in writing of our decision to conduct a competitive offer at least 30 days prior to the competitive offer if you nominated lands and paid the nomination fees required by § 2809.11(b)(1).

**§ 2809.14 What types of bids are acceptable?**

(a) *Bid submissions.* The BLM will accept your bid only if:

(1) It includes the minimum bid and at least 20 percent of the bonus bid; and

(2) The BLM determines that you are qualified to hold a grant or lease under



§ 2803.10. You must include documentation of your qualifications with your bid, unless we have previously approved your qualifications under § 2809.10(d) or § 2809.11(d).

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

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

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

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

(d) If you are not the successful bidder, as defined in § 2809.15(a), the BLM will refund your bid.

**§ 2809.15 How will the BLM select the successful bidder?**

(a) The bidder with the highest total bid, prior to any variable offset, is the successful bidder and may be offered a lease in accordance with § 2805.10.

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

(c) *Payment terms.* If you are the successful bidder, you must:

(1) Make payments by personal check, cashier's check, certified check, bank draft, or money order, or by other means deemed acceptable by the BLM, payable to the Department of the Interior—Bureau of Land Management;

(2) By the close of official business hours on the day of the offer or such other time as the BLM may have specified in the offer notices, submit for each parcel:

(i) Twenty percent of the bonus bid (before the offsets are applied under paragraph (b) of this section); and

(ii) The total amount of the minimum bid specified in § 2809.14(b);

(3) Within 15 calendar days after the day of the offer, submit the balance of the bonus bid (after the variable offsets are applied under paragraph (b) of this section) to the BLM office conducting the offer; and

(4) Within 15 calendar days after the day of the offer, submit the acreage rent for the first full year of the solar or wind energy development lease as provided in § 2806.54(a) or § 2806.64(a),

respectively. This amount will be applied toward the first 12 months acreage rent, if the successful bidder becomes the lessee.

(d) The BLM will offer you a right-of-way lease if you are the successful bidder and:

(1) Satisfy the qualifications in § 2803.10;

(2) Make the payments required under paragraph (c) of this section; and

(3) Do not have any trespass action pending against you for any activity on BLM-administered lands (see § 2808.12) or have any unpaid debts owed to the Federal Government.

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

**§ 2809.16 When do variable offsets apply?**

(a) The successful bidder may be eligible for an offset of up to 20 percent of the bonus bid based on the factors identified in the notice of competitive offer.

(b) The BLM may apply a variable offset to the bonus bid of the successful bidder. The notice of competitive offer will identify each factor of the variable offset, the specific percentage for each factor that would be applied to the bonus bid, and the documentation required to be provided to the BLM prior to the day of the offer to qualify for the offset. The total variable offset cannot be greater than 20 percent of the bonus bid.

(c) The variable offset may be based on any of the following factors:

(1) Power purchase agreement;

(2) Large generator interconnect agreement;

(3) Preferred solar or wind energy technologies;

(4) Prior site testing and monitoring inside the designated leasing area;

(5) Pending applications inside the designated leasing area;

(6) Submission of nomination fees;

(7) Submission of biological opinions, strategies, or plans;

(8) Environmental benefits;

(9) Holding a solar or wind energy grant or lease on adjacent or mixed land ownership;

(10) Public benefits; and

(11) Other similar factors.

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

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

(a) The BLM may reject bids regardless of the amount offered. If the BLM rejects your bid under this provision, you will be notified in writing and such notice will include the reason(s) for the rejection and what refunds to which you are entitled. If the BLM rejects a bid, the bidder may appeal that decision under § 2801.10.

(b) We may offer the lease to the next highest qualified bidder if the successful bidder does not execute the lease or is for any reason disqualified from holding the lease.

(c) If we are unable to determine the successful bidder, such as in the case of a tie, we may re-offer the lands competitively (under § 2809.13) to the tied bidders or to all prospective bidders.

(d) If lands offered under § 2809.13 receive no bids, we may:

(1) Re-offer the lands through the competitive process under § 2809.13; or

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

**§ 2809.18 What terms and conditions apply to leases?**

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

(a) *Lease term.* The term of your lease includes the initial partial year in which it is issued, plus 30 additional full years. The lease will terminate on December 31 of the final year of the lease term. You may submit an application for renewal under § 2805.14(g).

(b) *Rent.* You must pay rent as specified in:

(1) Section 2806.54, if your lease is for solar energy development; or

(2) Section 2806.64, if your lease is for wind energy development.

(c) *POD.* You must submit, within 2 years of the lease issuance date, a POD that:

(1) Is consistent with the development schedule and other requirements in the POD template posted at <http://www.blm.gov>; and

(2) Addresses all pre-development and development activities.

(d) *Cost recovery.* You must pay the reasonable costs for the BLM or other Federal agencies to review and approve your POD and to monitor your lease. To expedite review of your POD and monitoring of your lease, you may notify BLM in writing that you are waiving paying reasonable costs and are electing to pay the full actual costs incurred by the BLM.

(e) *Performance and reclamation bond.* (1) For Solar Energy Development, you must provide a bond in the amount of \$10,000 per acre prior to written approval to proceed with ground disturbing activities.

(2) For Wind Energy Development, you must provide a bond in the amount of \$10,000 per authorized turbine less than 1 MW in nameplate capacity or \$20,000 per authorized turbine equal or greater than 1 MW in nameplate capacity prior to written approval to proceed with ground disturbing activities.

(3) For testing and monitoring sites authorized under a development lease, you must provide a bond in the amount of \$2,000 per site prior to receiving written approval to proceed with ground disturbing activities.

(4) The BLM will adjust the solar and wind energy development bond amounts every 10 years using the change in the IPD–GDP for the preceding 10-year period rounded to the nearest \$100. This 10-year average will be adjusted at the same time as the Per Acre Rent Schedule for linear rights-of-way under § 2806.22.

(f) *Assignments.* You may assign your lease under § 2807.21, and if an assignment is approved, the BLM will not make any changes to the lease terms or conditions, as provided for by § 2807.21(e) except for modifications required under § 2805.15(e).

(g) *Due diligence of operations.* You must start construction within 5 years and begin generation of electricity no later than 7 years from the date of lease issuance, as specified in your approved POD. A request for an extension may be granted for up to 3 years with a show of good cause and approval by the BLM.

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

(a) Applications for solar or wind energy development filed on lands outside of designated leasing areas, which subsequently become designated leasing areas will:

(1) Continue to be processed by the BLM and are not subject to the competitive leasing offer process of this subpart, if such applications are filed prior to the publication of the notice of intent or other public announcement from the BLM of the proposed land use plan amendment to designate the solar or wind leasing area; or

(2) Remain in pending status unless withdrawn by the applicant, denied, or issued a grant by the BLM, or the subject lands become available for application or leasing under this part, if such applications are filed on or after the date

of publication of the notice of intent or other public announcement from the BLM of the proposed land use plan amendment to designate the solar or wind leasing area.

(3) Resume being processed by the BLM if your application is pending under paragraph (a)(2) of this section and the lands become available for application under § 2809.17(d)(2).

(b) An applicant that submits a bid on a parcel of land for which an application is pending under paragraph (a)(2) of this section may:

(1) Qualify for a variable offset under § 2809.16; and

(2) Receive a refund for any unused application fees or processing costs if the lands identified in the application are subsequently leased to another entity under § 2809.13.

(c) After the effective date of this regulation, the BLM will not accept a new application for solar or wind energy development inside designated leasing areas (see §§ 2804.12(b)(1) and 2804.23(e)), except as provided by § 2809.17(d)(2).

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

**PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT**

■ 51. Revise the authority citation for part 2880 to read as follows:

**Authority:** 30 U.S.C. 185 and 189, and 43 U.S.C. 1732(b), 1733, and 1740.

**Subpart 2884—Applying for MLA Grants or TUPs**

■ 52. 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>;

\* \* \* \* \*

53. 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**

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

PROCESSING CATEGORIES—Continued

Processing category	Federal work hours involved
(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>.

\* \* \* \* \*

■ 54. Amend § 2884.16 by redesignating paragraphs (a)(6), (7), and (8) as paragraphs (a)(7), (8), and (9), and adding new paragraph (a)(6) to read 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;

\* \* \* \* \*

■ 55. Amend § 2884.17 by revising paragraph (a) and adding 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.

■ 56. In § 2884.18, revise 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 the **Federal Register** and may use other notification methods, such as a newspaper of general circulation or the Internet. We may offer lands through a competitive process on our own initiative.

■ 57. Amend § 2884.20 by revising paragraphs (a) introductory text and (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** and may use other notification methods, such as a newspaper of general circulation in the vicinity of the lands involved or 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** and may use other notification methods, such as a newspaper of general circulation in the vicinity of the lands involved or the Internet, to announce in advance any public hearings or meetings.

■ 58. Amend § 2884.21 by:  
 ■ a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d);  
 ■ b. Adding new paragraph (b); and  
 ■ c. Revising newly redesignated paragraph (d)(4).

The revisions and addition read as follows:

**§ 2884.21 How will BLM process my application?**

\* \* \* \* \*

(b) The BLM will not process your application if you have any trespass action pending against you 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 are those to resolve the trespass with a right-of-way as authorized in this part, or a lease or permit under the regulations found at 43 CFR part 2920, but only after outstanding debts are paid. Outstanding debts are those currently unpaid debts owed to the Federal Government after all administrative collection actions have occurred, including any appeal proceedings under applicable Federal

regulations and the Administrative Procedure Act.

\* \* \* \* \*

(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** and may use other methods, such as a newspaper of general circulation in the vicinity of the lands involved or the Internet, to announce in advance any public hearings or meetings; and

\* \* \* \* \*

■ 59. Amend § 2884.22 by revising paragraph (a) to read as follows:

**§ 2884.22 Can BLM ask me for additional information?**

(a) If we ask for additional information, we will follow the procedures in § 2804.25(c) of this chapter.

\* \* \* \* \*

■ 60. Amend § 2884.23 by revising paragraph (a)(6), redesignating paragraph (b) as paragraph (c), and adding new paragraph (b) to read as follows:

**§ 2884.23 Under what circumstances may BLM deny my application?**

(a) \* \* \*

(6) You do not adequately comply with a deficiency notice (see § 2804.25(c) of this chapter) or with any requests from the BLM for additional information needed to process the application.

(b) If you are unable to meet any of the requirements in this section you may request an alternative from the BLM (see § 2884.30).

\* \* \* \* \*

■ 61. Add § 2884.30 to read as follows:

**§ 2884.30 Showing of good cause.**

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

(a) Show good cause for your inability to meet a requirement;

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

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

**Subpart 2885—Terms and Conditions of MLA Grants and TUPs**

■ 62. Amend § 2885.11 by revising paragraphs (a) introductory text and (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) The BLM may require that you 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 in § 2805.12(b) of this chapter regarding bond requirements for grants and leases issued under FLPMA also apply to grants or TUPs for 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 adding new paragraph (e) to read as follows:

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

\* \* \* \* \*

(e) We will retroactively bill for uncollected or under-collected rent, including late payment and administrative fees, 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?**

\* \* \* \* \*

(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 inspecting and 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**

Monitoring category	Federal work hours involved
(1) Inspecting and monitoring of new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are >1 ≤8.
(2) Inspecting and monitoring of new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are >8 ≤24.
(3) Inspecting and monitoring of new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are >24 ≤36.

MONITORING CATEGORIES—Continued

Monitoring category	Federal work hours involved
(4) Inspecting and monitoring of new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPS.	Estimated Federal work hours are >36 ≤50.
(5) Master Agreements .....	Varies.
(6) Inspecting and monitoring of 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. Assignment actions that may require BLM approval include, but are not limited to, the following:

(1) The transfer by the holder (assignor) of any right or interest in the grant or 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, but not transactions within the same corporate family.

(b) The BLM may require a grant or lease holder to file new or revised information in some circumstances that do not constitute an assignment (see subpart 2883 and §§ 2884.11(c) and 2886.12). Circumstances that would not constitute an assignment but may necessitate this filing include, but are not limited to:

(1) Transactions within the same corporate family;

(2) Changes in the holder’s name only (see paragraph (h) of this section); and

(3) Changes in the holder’s articles of incorporation.

(c) In order to assign a grant or 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).

(d) The assignment application must also include:

(1) Documentation that the assignor agrees to the assignment; and

(2) A signed statement that the proposed assignee agrees to comply with and to be bound by the terms and conditions of the grant or TUP that is being assigned and all applicable laws and regulations.

(e) Your assignment is not recognized until the BLM approves it in writing. We will approve the assignment if doing so is in the public interest. 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.

(f) The processing time and conditions described at § 2884.21 apply to assignment applications.

(g) 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.

(h) *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 it is incorporated, and a copy of the appropriate resolution(s), order(s), or

other documentation showing the name change.

(2) In connection with processing of a name change only, the BLM retains the authority under § 2885.13(e) to modify the grant or TUP, or add bonding and other requirements, including additional terms and conditions, to the grant or TUP.

(3) Your name change is not recognized until the BLM approves it in writing.

■ 71. In § 2887.12, add paragraphs (d) and (e) to read as follows:

**§ 2887.12 How do I renew my grant?**

\* \* \* \* \*

(d) If you make a 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.

Dated: November 10, 2016.

**Amanda C. Leiter,**

*Acting Assistant Secretary for Land and Minerals Management, Department of the Interior.*

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