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4331-29

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[BLM_HQ_FRN_MO#4500171739]

RIN 1004-AE78

Rights-of-Way, Leasing, and Operations for Renewable Energy

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rule

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend its existing right-of-way (ROW) regulations, issued under authority of the Federal Land Policy and Management Act (FLPMA). The principal purpose of these amendments would be to facilitate responsible solar and wind energy development on public lands managed by the BLM. The rule would adjust acreage rents and capacity fees for solar and wind energy, provide the BLM with more flexibility in how it processes applications for solar and wind energy development inside designated leasing areas, and update agency criteria on prioritizing solar and wind applications. The rule would also make technical changes, corrections, and clarifications to the existing ROW regulations. This rule would implement the authority granted to the Secretary of the Interior (Secretary) in the Energy Act of 2020 to “reduce acreage rental rates and capacity fees” to “promote the greatest use of wind and solar energy resources” and achieve other enumerated policy goals.

DATES: Please submit comments on this proposed rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

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This rule includes a proposed new information collection requirement that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the new information collection requirement in this rule, please note that such comments should be sent directly to the OMB, and that the OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication of this document in the *Federal Register*. Therefore, comments to the OMB on the proposed new information collection are best assured of being given full consideration if the OMB receives them by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Mail, personal, or messenger delivery:* U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St., N.W., Room 5646, Washington, D.C. 20240, Attention: 1004-AE78.

Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004-AE78 and click the "Search" button. Follow the instructions at this website.

FOR COMMENTS ON INFORMATION-COLLECTION ACTIVITIES:

Written comments and suggestions on the information-collection requirements should be submitted by the date specified above in “DATES” to www.reginfo.gov/public/do/PRAMain. Find this specific information-collection by selecting “Currently under Review - Open for Public Comments” or by using the search function.

If you submit comments on the information-collection burdens, you should provide the BLM with a copy at the addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rulemaking. Please indicate “Attention: OMB Control Number 1004–0206 (RIN 1004-AE78)” regardless of the method used to submit comments on the information- collection burdens. Comments not pertaining to the proposed rule’s information-collection burdens should not be submitted to OMB. The BLM is not obligated to

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consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB.

FOR FURTHER INFORMATION CONTACT: Jayme Lopez, Interagency Coordination Liaison, by phone at (520) 235-4581 and by email at energy@blm.gov, or Jeremy Bluma, Renewable Energy Advisor, by phone at (208) 789-6014 and by email at energy@blm.gov for information relating to the BLM Renewable Energy program and information relating to the substance of the rule with a subject line of “RIN 1004-AE78”.

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

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
 - A. Introduction
 - B. Need for the Rule
 - C. Statutory Authority
- III. Discussion of the Rule
- IV. Procedural Matters

I. PUBLIC COMMENT PROCEDURES

If you wish to comment on this rule, you may submit your comments to the BLM by mail, personal or messenger delivery during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, or through <https://www.regulations.gov> (see the “**ADDRESSES**” section).

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Please make your comments on the rule as specific as possible, confine them to issues pertinent to the rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the rule comments that we receive after the close of the comment period (see “**DATES**” section) or comments delivered to an address other than those listed above (see “**ADDRESSES**” section). Comments, including names and street addresses of respondents, will be available for public review at the address listed under “**ADDRESSES**” section. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. As explained later, this proposed rule would include revisions to information collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the revised information collection requirements in this proposed rule, please note that such comments must be sent directly to the OMB in the manner described in the “**DATES**” and “**ADDRESSES**” sections above. Please note that due to COVID-19, electronic submission of comments is recommended.

II. BACKGROUND

A. Introduction

This proposed rule sets forth changes to the BLM’s Renewable Energy and ROW programs related to two main topics. The first topic is solar and wind energy rents and fees, implementing new authority from the Energy Act of 2020 (43 U.S.C. 3003) to “reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations” if the Secretary makes

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certain findings. The second topic is making public lands available to solar and wind energy application inside of a designated leasing area without first holding a competitive offer.

Solar and Wind Energy Rents and Fees

FLPMA generally requires ROW holders to “pay in advance the fair market value” for use of the public lands, subject to certain exceptions. The Energy Act of 2020, 43 U.S.C. 3003, introduced a new exception to FLPMA’s fair market value requirement, allowing the BLM, on behalf of the Secretary, to “reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations” if the agency makes certain findings, which can include that the existing rates “impose economic hardships” or “limit commercial interest in a competitive lease sale or right-of-way grant,” or “that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.”

Through this proposed rule, the BLM proposes changes to acreage rents and capacity fees for solar and wind energy ROW authorizations in order to “promote the greatest use of wind and solar energy resources,” maximize “commercial interest” in lease sales and ROW grants, and avoid “economic hardship” to ROW holders. By implementing these proposed changes, the BLM would promote solar and wind energy use on public lands and underpin an increase to the share of clean energy that is part of the United States’ domestic power infrastructure.

For example, the BLM expects that the proposed reductions in solar and wind energy acreage rent and capacity fees will facilitate solar and wind energy development by increasing commercial interest and encouraging additional investment in the use of public lands. These proposed reductions should particularly benefit smaller scale projects or projects that are on the margins of being economically profitable, increasing interest among renewable energy developers.

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Through the rent and fee adjustments contemplated in this rule, the BLM also expects that lower acreage rental rates and capacity fees for solar and wind energy generating facilities would translate into lower costs for energy deployment, increasing renewable energy market penetration in domestic energy production. By reducing costs to producers, these reduced rates may also reduce electricity costs to rate payers. Additionally, the BLM proposes reductions to capacity fees tied to a holder's use of American made parts and materials consistent with direction in the Energy Act of 2020. The BLM anticipates that the proposed Buy American capacity fee reductions would increase economic certainty for renewable energy projects on BLM-managed public lands. By incentivizing the use of American made parts and materials in exchange for a reduced capacity fee, the BLM expects to reduce costs for developers, which in turn will stimulate increased demand for domestic production of renewable energy parts and materials. These intended outcomes would serve to promote the greatest use of wind and solar energy resources on public lands. Currently, wind and solar energy developers face a choice between relying on foreign-sourced parts and materials or paying higher prices for domestically sourced parts and materials, if available. (See for example the Department of Energy's Solar Photovoltaics – Supply Chain Deep Dive Assessment.¹) Uncertainty in global supply chain dynamics, as seen in recent years, has the potential to delay deployment of solar and wind energy development projects on public lands. Using incentives to create demand for American-made renewable energy parts and materials will help develop domestic supply chains and reduce impacts on renewable energy deployment on public lands from potential supply-chain delays. Similar to the proposed rental fee and capacity fee reductions described in the previous paragraphs, the BLM believes that incentivizing the use of parts and materials that qualify for the

¹ <https://www.energy.gov/sites/default/files/2022-02/Solar%20Energy%20Supply%20Chain%20Report%20-%20Final.pdf>

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Buy American reduction will increase the responsible deployment of renewable energy and will increase commercial interest in the use of public lands, promoting the development of solar and wind energy resources on public lands.

Consistent with the BLM's authority under FLPMA, the BLM would require ROW holders to pay in advance either an acreage rent or a capacity fee for solar and wind energy generation installations. The proposed rule's methodology for calculating a capacity fee is based on actual energy production, which is a change from the BLM's 2016 rule, *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections* (81 FR 92122). The 2016 rule discusses the capacity fee in detail at 81 FR 92122, page 92134. The 2016 rule bases the MW capacity fee on a technology's (i.e., photovoltaic or concentrating solar-thermal) nameplate capacity as an estimate of the energy that could be generated at each facility. This rule proposes, instead, to base the capacity fee for solar and wind energy generation facilities on actual energy generation at each facility. The BLM believes this change would more accurately reflect the actual capacity for energy production of an individual project based on a developer's selection of technology, project design and the solar or wind resource available at particular sites. This change to the capacity fee indexes the required payment to the developments' energy generation, being greater when the capacity generates more energy and less when generating less. In the context of this rule, the term "capacity fee" is defined as "the fee charged to right-of-way holders once energy production commences that is based on the production of energy on public lands from solar and wind energy generating facilities."

The BLM would also calculate an acreage rent for wind and solar ROWs based on per acre values for pastureland from the National Agricultural Statistics Service (NASS) Cash Rents Survey. The acreage rent would be the minimum rent paid to the BLM for solar and wind energy

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generating facilities once a grant or lease is issued, whether or not energy is generated on the ROW in a given year. The capacity fee would be collected in place of the acreage rent if the capacity fee exceeds the acreage rent. The capacity fee would reflect the value of solar or wind energy resources used to generate electricity on the public lands. One component of the capacity fee, the MWh rate, which is based on wholesale prices for the major trading hubs serving 11 western States or on prices received by the ROW holder under a power purchase agreement, would be reduced by 80 percent until 2036 under this rule based on authority provided by the Energy Act of 2020 (codified at 43 U.S.C 3003) and would only be adjusted by a fixed annual adjustment factor once set at the beginning of the grant or lease period. If the BLM collects the capacity fee, no acreage rent would be required that year. This fee calculation relies on BLM's direction under sections 504(g) and 102(a)(9) of FLPMA to collect "the fair market value" for the use of the public lands and its resources, which Congress further clarified in the Energy Act of 2020 to confirm that the BLM could "consider acreage rental rates, capacity fees, and other recurring annual fees in total." Starting in 2036, under § 2806.52(b)(1)(ii), the MWh rate reduction would decrease from 80 percent to 20 percent of the wholesale price per Megawatt hour (MWh). This change in the MWh rate reduction in 2036 would not affect existing ROWs and would only apply to new or renewed ROWs for which the MWh rate is set at the beginning of their authorization using the current rate of the MWh rate schedule applicable in 2036.

This rule aims to improve payment predictability for grant and lease holders by fixing the key data used for determining the acreage rent and the capacity fee—the state-wide pastureland rent values and the wholesale price of electricity—at the time the ROW is issued. In doing so, these rates would be set for the term of the ROW and only adjusted by the annual adjustment factor and, in the case of the capacity fee, by the holder's actual annual production.

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See preamble § 2806.50 for a more detailed discussion of the BLM's proposed methodology for determining the acreage rent and capacity fee.

Lands Available for Solar and Wind Energy Applications

Under this rule, the BLM would have the option to make public lands inside designated leasing areas available for non-competitive leasing by application, while retaining discretion to conduct competitive offers, either within or outside of designated leasing areas. This is a change from the BLM's 2016 rule, *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections*, which required authorizations within designated leasing areas to be offered competitively before the agency could proceed with a non-competitive application process.

The BLM designated solar energy zones through the 2012 Western Solar Plan (<https://blmsolar.anl.gov/documents/solar-peis/>), which identified approximately 285,000 acres of agency preferred development locations for solar with high potential for solar energy production and low conflicts with other resources and uses. Subsequently, the BLM designated approximately 388,000 acres of preferred development locations for solar in California through the 2016 Desert Renewable Energy Conservation Plan (<https://blmsolar.anl.gov/documents/drecp/>) and over 192,000 acres of preferred development locations for solar energy in Arizona through the 2017 Restoration Design Energy Project. After the 2016 rule went into effect, the BLM initially observed that solar and wind energy developers generally did not submit nominations or expressions of interest on their own accord for lands within agency preferred locations and instead continued to actively submit non-competitive applications outside of such locations. In the past two years, however, the BLM has offered designated leasing areas competitively and identified greater levels of competitive interest inside and outside of designated leasing areas. Nonetheless, the BLM believes that by revising the

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regulations to allow the agency greater flexibility to use competitive processes in circumstances where competitive interest exists and to issue leases without a competitive process where no competitive interest exists across all BLM-managed public lands, the BLM can maximize interest in renewable energy leasing and accelerate the deployment of solar and wind energy on the public lands. Therefore, the BLM proposes to revise its rules to allow applications to be filed within designated areas without first holding a competitive offer, while preserving for the BLM the discretion to hold a competitive offer in response to competing applications, nominations, or expressions of interest, or on its own initiative. See § 2804.23 for cost recovery considerations related to competing applications and subpart 2809 for the competitive process for solar and wind energy applications or leases.

Need for the Rule

FLPMA provides the BLM with 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’” unless otherwise provided by law (43 U.S.C. 1732(a)). Further, FLPMA authorizes the BLM to issue rights-of-way on the public lands for electric generation systems, including solar and wind energy generation systems, and 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. 1764(g)). On December 27, 2020, the Energy Act of 2020 was enacted, establishing a minimum goal of “‘authoriz(ing) production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025.” To date, the BLM has authorized projects on public land that are estimated to support more than 13 gigawatts of electricity from renewable energy sources. Current information regarding the

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BLM's approved energy developments and number of gigawatts is available on its website². The Energy Act of 2020 also provided the BLM with new authority to reduce rates below fair market value based on specific findings, including "that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources" 43 U.S.C. 3003(b)(2). The BLM proposes to implement the direction in the Energy Act of 2020 through this rulemaking process. On January 27, 2021, President Biden issued Executive Order (E.O.) 14008, "Tackling the Climate Crisis at Home and Abroad." Section 207 of E.O. 14008, titled "Renewable Energy on Public Lands and in Offshore Waters," instructs the Department of the Interior "to increase renewable energy production on (public) lands."

The changes in this rulemaking would provide clearer direction for the BLM in processing proposed renewable energy right-of-way applications on public lands while also supporting the goals of the Energy Act of 2020 and E.O. 14008.

Statutory Authority

Section 310 of FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate regulations to carry out the purposes of FLPMA and other laws applicable to public lands. Section 302 of FLPMA (43 U.S.C. 1732) also provides comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed "under principles of multiple use and sustained yield," unless otherwise provided by law (43 U.S.C. 1732(a)). Sections 501, 504, and 505 of FLPMA authorize the Secretary to grant ROWs on public lands; to issue regulations governing such ROWs and charge rent for such ROWs; and to impose terms and conditions on ROW grants, respectively (43 U.S.C. 1761, 1764, and 1765). Sections 304 and 504 of FLPMA (43 U.S.C. 1734(b) and 1764(g)) also authorize the BLM to

² <https://www.blm.gov/programs/energy-and-minerals/renewable-energy/active-renewable-projects>

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collect funds from ROW applicants or holders to reimburse the agency for its costs incurred while working on a proposed or authorized ROW. 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)). See Title V of FLPMA (43 U.S.C. 1761–1772).

The Energy Act of 2020 authorizes the Secretary to reduce acreage rental rates and capacity fees if the Secretary makes certain findings, which can include that the existing rates “impose economic hardships” or “limit commercial interest in a competitive lease sale or right-of-way grant,” or “that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources” (43 U.S.C. 3003).

III. Discussion of the Rule

43 CFR Part 2800 Rights-of-Way Authorized Under FLPMA

Part 2800 of the CFR describes requirements for ROWs issued under FLPMA. This rule would revise the rent and fee schedules for solar and wind energy development ROWs. This rule would also modify the application process for public lands inside of solar and wind designated leasing areas available to allow for either competitive or non-competitive leasing processes. Other changes, including updated solar and wind prioritization provisions and establishing criteria for a “complete application,” would correct or clarify existing regulations.

Section 2801.5 What Acronyms and terms are used in the regulations in this part?

This section contains the acronyms and defines the terms used in this rule.

Paragraph (a) provides for the acronyms used in this part. The acronym “FLPMA,” meaning the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), would replace the term “Act” from these rules. This change provides clarity to which act the BLM is referencing.

Paragraph (b) provides for the terms used in this part. The proposed rule would:

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Remove the term “Act” which means the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 et. seq.). This revision is consistent with the addition of the acronym “FLPMA” under paragraph (a) of this section;

Remove definitions of “Megawatt (MW) capacity fee,” “Net capacity factor,” “Megawatt hour (MWh) price,” “Rate of return,” and “Hours per year” from this rule. Because under this proposed rule the BLM would no longer charge a megawatt capacity fee based on solar and wind energy generation facility nameplate capacity, definitions related to the nameplate capacity fee are no longer necessary and would be removed from this rule;

Revise the definition of the term “Megawatt hour (MWh) rate” to mean the 5 calendar-year average of the annual weighted average wholesale prices per MWh for major trading hubs serving 11 western States of the continental United States. This revision is consistent with the BLM’s proposed change to implement a capacity fee;

Add the term “Buy American” to mean an item or product that qualifies for the Buy American preference under Section 52.225-1(b) of the Federal Acquisition Regulations (FAR) (48 CFR 52.225-1(b)) or a successor regulation. Section 52.225-1(b) of the FAR identifies certain categories of items or products that qualify for the Buy American preference in federal acquisition. Generally, under section 52.225-1(b), the preference applies to “domestic end products” and “commercially available off-the-shelf” (or “COTS”) items, with an additional provision specifying qualification rules for an “end product that consists wholly or predominantly of iron or steel or a combination of both.” Each of the terms quoted above, in turn, is defined in section 52.225-1(a). The BLM proposes to use the term “Buy American” as a catch-all term to refer to items for which the Buy American preference is available under section 52.225-1(b) of the FAR;

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Revise the term “Grant” to reflect that solar or wind energy leases are not covered under the definition. The change is consistent throughout the proposed rule and provides reader clarity where the BLM will issue a solar or wind energy grant and where a solar or wind energy lease will be issued;

Add the term “Capacity fee” to mean the fee based on the amount of electricity produced from solar or wind energy resources on the public lands. This proposed change is consistent with the BLM’s proposed change to implement a capacity fee that is based on production;

Revise the term “Reasonable costs” to be consistent with the rule change replacing the words “the Act” with the acronym “FLPMA.” This change is intended to improve readability and consistency with the rules in this part. See changes to acronyms under paragraph (a) of this section for further discussion on the use of acronyms;

Add the term “Renewable Energy Coordination Office (RECO)” to mean one of the National, State, district, or field offices established by the Secretary under 43 U.S.C. 3002(a) that is responsible for implementing a program to improve Federal permitting coordination with respect to eligible projects on covered land and such other activities as the Secretary determines necessary;

Add the term “Solar and wind energy lease” to mean any right-of-way issued under Title V of FLPMA within an area identified in a BLM land use plan as a designated leasing area. Any right-of-way not issued within an area identified as a designated leasing area would be a grant. This term is introduced for readability; and

Add the term “solar or wind energy development” to mean the use of public lands to generate electricity from solar or wind energy resources on public lands. This definition is intended to clarify that the term “energy development” refers specifically to uses of public lands that directly involve the generation of electricity on public lands, and not to other uses of public lands that

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might indirectly support energy production. The addition of this definition clarifies which ROW grants and leases are subject to the conditions in Section 50265(b)(1) of the Inflation Reduction Act, which apply to “a right-of-way for wind or solar energy development on Federal land.”

Section 2801.6 Scope

The scope in 43 CFR part 2800 would clarify that the regulations in this part apply to leases as well as grants. Paragraph (a)(1) includes the additional language “or leases” when describing the authorization types, clarifying that the scope includes both instrument types.

Section 2801.9 When do I need a grant or lease?

Section 2801.9 explains when a grant or lease is required for systems or facilities located on public lands. Section 2801.9(d) would be revised to extend the thirty-year maximum term to 50 years for ROWs for solar or wind energy development and for other uses that support solar or wind energy development, and to make other technical changes. Paragraphs (d)(3) and (4) are consolidated into new paragraph (d)(3), removing differences between grants and leases inside and outside designated leasing areas.

New paragraph (d)(4) would add storage facilities that are separate from energy generation facilities to the list of systems, facilities, and related activities for energy generation, storage, or transmission projects for which a grant or lease is required. Similarly, paragraph (d)(6) would add electric transmission lines with a capacity of 100kV or more. The BLM proposes to add these paragraphs to specifically describe the additional types of authorizations required for various components of solar and wind energy developments, or their related infrastructure that may be operated, and thus processed, separately.

FLPMA requires the BLM to limit each ROW granted under FLPMA “to a reasonable term in light of all circumstances concerning the project,” including among other factors, “the cost of the facility, its useful life, and any public purpose it serves” (43 U.S.C. 1764(b)). The BLM

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considered different alternatives for the maximum term of a grant or lease for solar or wind energy development and for other uses that support solar or wind energy development, such as freestanding energy storage and electric transmission. Among other alternatives, the BLM considered providing for 5- or 10-year extensions to the initial term length with continued operations. However, the BLM believes, based on its experience administering such ROWs, that the reasonable term of a grant or lease is best limited to a 50-year term for large infrastructure ROWs, considering the cost of the facility, its useful life, and the public purpose it serves. Considering the cost of the facility may include the financing terms and the payback period a prospective grant or lease holder may enter into under a loan or grant program. When evaluating the useful life of a project, the BLM may consider the time it takes before a facility is no longer economically feasible to operate or the projected time until repowering (i.e., updating components of a facility to increase useful life or energy production). The economic life of technology has been increasing and is expected to continue doing so with the advent of new materials in solar or wind energy facilities. The method for financing or repowering may also change over time with further advances with the maturation and advancement of the renewable energy market. Additionally, a facility may also be part of a Federal, Tribal, state or local government energy plan or infrastructure project which may also indicate the need for a longer ROW term. In providing for ROW terms that may be up to 50 years, the BLM would be able to take into consideration the cost of the facility, its useful life and public purposes it serves up to a 50-year term as these considerations may change over time or with specific projects.

The BLM is interested to hear from commenters whether other alternatives for maximum terms of grants and leases would be more appropriate, including, potentially, the existing 30-year maximum term; a maximum term longer than 50 years; no regulatory limitation to a ROW term;

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extending the initial term by 10-year intervals with updated power purchase agreements; or reducing the initial term based on the factors listed in 43 U.S.C. 1764(b).

Subpart 2802 – Lands available for FLPMA Grants or Leases

Subpart 2802 would be revised to add “or leases” to the title to clarify for readers that public lands are available for both grants and leases, consistent with other revisions in this rule regarding leases.

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

Section 2802.11 explains how the BLM designates ROW corridors and designated leasing areas. Section 2802.11 would be revised to explain how the BLM designates areas through its land use planning process, including the non-exhaustive list of factors it considers. The rule would add a new factor for access to electric transmission. § 2802.11(b) would be revised to improve readability and consistency between the BLM’s regulatory authority under part 2800 and its statutory authority under the FLPMA.

Paragraph (b)(1) is revised to be consistent with section 202(c)(9) of FLPMA (43 USC 1712(c)(9)), to include Tribal land use plans.

Paragraphs (b)(10) and (b)(11) would be added to provide more detail for what the BLM considers when designating new leasing areas for solar and wind energy. In the BLM’s experience with its energy programs, it has considered multiple criteria that are either specific to a particular region or State, as well as many common considerations all such types of development must consider. The proposed rule would identify two such factors that the BLM typically considers.

The BLM proposes to add “access to electric transmission” in (b)(10) as a factor to be considered. This factor is intended to ensure that planning efforts for prioritizing solar and wind

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energy development take into consideration access to electric transmission. In the BLM's experience, accessibility to transmission is a key component for successful developments on public lands. The BLM also proposes to add a factor in (b)(11) derived from its 2012 Western Solar Plan³. Section A.2.6 of Appendix A of the Plan explained that areas designated for solar development (termed solar energy zones in the Plan) would be relatively large areas where energy development is feasible and there is a low potential for conflict due to environmental, cultural, and other relevant criteria. The Western Solar Plan sets forth a four-step process for identifying new or expanded solar energy zones. The four steps are as follows:

- (1) Assess the demand for new or expanded areas;
- (2) Establish technical and economic suitability criteria;
- (3) Apply environmental, cultural, and other screening criteria; and
- (4) Analyze proposed areas through the land use planning process described in part 1600 of this chapter.

In the rule, the BLM proposes to carry forward three of these four steps, excluding the establishment of technical and economic suitability criteria because technical and economic criteria have and will change rapidly for utility-scale solar energy development and in the BLM's experience it has not been feasible or appropriate to utilize those criteria for the establishment of designated leasing areas. The BLM proposes to include steps (1), (3), and (4) above to the factors listed in § 2802.11(b)(11).

Section 2803.10 Who may hold a grant or lease?

Section 2803.10 provides the criteria for who may hold a grant or lease. Some BLM ROWs may cross more than one State. Therefore, the BLM proposes to revise existing provisions to clarify

³ <https://eplanning.blm.gov/eplanning-ui/project/2017069/510>

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that a holder who is of legal age and authorized to do business in one State must also meet this requirement in each other State in which the ROW grant they seek is located.

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

Section 2803.12 explains how the BLM administers a ROW or an application for a ROW in the event of the holder's or applicant's death. Paragraph (a) would be added to this section to address a situation in which an applicant dies before the ROW is granted and clarifies that an application does not hold any transferable rights. If an applicant dies before the grant or lease is issued as described in 43 CFR 2805.10, the application cannot be transferred to another person and is deemed denied. Existing paragraphs (a) and (b) would be renumbered as (b) and (c) and revised. Paragraph (b) would be revised to include leases, clarifying that any inheritable interest in the grant or lease would be distributed under state law. Paragraph (c) would be revised to include the additional provision that if the BLM distributes a grant to an unqualified holder, the receiver must comply with all the terms, conditions, and stipulations of the grant. The BLM also replaces the word "distributee" to "receiver" to improve clarity to readers that when the BLM distributes a grant or lease, the instrument would be received by the holder.

Section 2804.12 What must I do when submitting my application?

Section 2804.12 explains what an applicant must do when submitting a ROW application. Section 2804.12 would be revised to remove a provision that limits solar and wind energy development applications to public lands outside of designated leasing areas, revise the application fee requirements for solar and wind rights-of-way, and specify when an application becomes "complete."

The BLM proposes to remove existing paragraph (c)(1), which limits solar and wind energy development applications to public lands outside of designated leasing areas, to allow applications to be submitted on public lands inside or outside of designated leasing areas without

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the BLM first holding a competitive offer under subpart 2809. As discussed previously in the summary and background sections of this notice, this change will make designated leasing areas available to noncompetitive applications.

Paragraph (c) would be revised to update the requirements for payment of an application filing fee for solar or wind energy development ROWs and for short-term ROWs, which include project-area testing applications. The paragraph would also address the relationship between application filing fees and reasonable costs. Application filing fees are an existing per-acre fee collected by the BLM as a cost recovery payment and are intended to discourage applicants from applying for more land than is necessary for a proposed project and also to provide an early cost recovery payment. This rule would clarify that application filing fees are applied towards payment of reasonable costs to the government for processing applications as required under FLPMA. New provisions would be added to clarify that a cost recovery agreement may be required under §§ 2804.14 through 2804.22 of this part for processing an application if the application filing fees are insufficient to cover the government's costs in processing such an application. Any cost recovery overpayment under an agreement, including application filing fees, may either be refunded to the applicant or applied to the monitoring costs of the ROW grant or lease consistent with this part if the project is approved.

This rule would remove periodic (at least once every 10-year) updates to the application filing fee amounts using the IPD-GDP. The BLM is proposing to remove these periodic updates because they are not necessary in light of the BLM's ability to establish a cost recovery agreement with an applicant. Alternatively, the BLM considered but did not propose in this rule that it may continue updating the rate every 5 years through policy. Cost recovery agreements may include consideration for changes from inflation or government indirect costs that are not captured by the application filing fee.

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The BLM is interested in comments regarding its proposed removal of the periodic update to the application filing fee.

Section 2804.12(f) would be revised to clarify that the BLM will use a deficiency notice pursuant to existing § 2804.25(c) to inform applicants of additional information that the BLM requires in order to process their application. This could include, for example, an updated plan of development (POD). Paragraph (f) would also be revised to remove a reference to part 2880, which applies to oil and gas pipeline ROWs under the Mineral Leasing Act (MLA) rather than to FLPMA ROWs, to avoid confusion to readers.

The BLM proposes to add paragraph (j), describing what constitutes a complete application. Under this rule, a complete application would be one that meets or addresses the requirements of § 2804.12, as appropriate for the application submitted. Identifying when an application is complete will support consistency in agency actions that require completed applications, such as when the BLM would prioritize solar and wind energy development applications under §2804.35. The proposed revision would clarify that the BLM will notify an applicant in writing when their application is complete. Additional information may be necessary for the BLM to continue processing a complete application if necessary, resource data is not submitted earlier. If the BLM determines that additional information is necessary after an application becomes complete, it may issue a deficiency notice under § 2804.25(c). Additional sections in this rule that refer to complete applications are § 2804.25, *How will the BLM process my application?*, and § 2804.35, *Application prioritization principles for solar and wind energy facilities*. In addition, complete applications are discussed in this preamble in the context of § 2084.30, which this rulemaking proposes to remove and reserve.

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

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This section provides for collection of a fee to reimburse the Federal Government for its costs in processing an application for use of public lands.

Paragraph (c) would be revised to update the BLM's address to read as U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, N.W., Room 5645, Attention: Lands, Realty, and Cadastral Survey, Washington, DC 20240. This revision would be made so that the public is aware of where to obtain a copy of the current cost recovery schedule. The BLM also posts the cost recovery schedule online at <http://www.blm.gov>.

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

Section 2804.22 provides that if the BLM has insufficient funds to process your application, the bureau will not process your application until funds become available or you elect to pay full actual costs under § 2804.14(f). Current text of § 2804.22 would become paragraph (a). The BLM proposes to add “continue to” to this provision to clarify that if the BLM is processing an application, the BLM will not continue to process the application until funds become available or the applicant elects to pay full actual costs under § 2804.14(f).

Section 2804.22 would be revised to improve readability and add new provisions under paragraphs (b) and (c). New paragraph (b) would allow the BLM to deny an application after 90 days if requested reasonable costs for processing an application have not been received. Cost recovery agreements can provide for a portion of the funds to be used for the BLM to hire additional staff or contractors.

New paragraph (c) would provide that the BLM may enter into a cost recovery agreement with an applicant in which a portion of the funds may be used to hire additional staff or contractors to aid in application processing. If such cost recovery payments are provided to the BLM, the funds

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paid must be non-severable (non-refundable) once committed to the hiring of an employee.

Payment of such funds would allow the BLM to increase its application-processing capacity.

Section 2804.23 What costs am I responsible for when the BLM decides to use a competitive process for my application?

Existing § 2804.23 describes when the BLM will use a competitive process and how such a process is initiated. Portions of the existing section that address when the BLM would use a competitive process have been relocated to subpart 2809, along with portions of the existing § 2804.30, or have been removed for reasons explained below. Therefore, revised § 2804.23 is limited to addressing issues related to cost recovery in competitive processes.

The section title would be revised, changing “if” to “when.” In this paragraph, the applicant would be required to pay the application costs when the BLM decides to use a competitive process.

Existing paragraph (a) would become introductory text, and existing paragraphs (a)(1) and (2) would be renumbered as paragraphs (a) and (b). The introductory text has been revised to remove the term “competing applications for the same facility or system,” which is a term that is not used elsewhere in the regulations and is not clearly defined, and instead refer to situations in which “the BLM decides to use a competitive process,” which matches the title of this section as well as the language used in subpart 2809. Apart from this change, the substance of the retained text has not changed.

Provisions found under existing paragraph (b) would be removed, but the substance of these provisions—that the discretion to decide whether to conduct a competitive process resides with the BLM—is addressed in proposed §§ 2809.10(a) and 2809.12. The provisions of existing paragraph (c) can be found in existing § 2809.13(b) (which addresses the notice requirements for notices of competitive offerings), and in proposed §§ 2809.10(a) and (e) (which address the

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BLM's discretion and the circumstances under which the BLM will not conduct a competitive offer). Changes to the substance of these provisions are addressed below in the context of those sections. Existing paragraphs (d) and (e) would be removed from the regulations to be consistent with this rule which would allow for applications to be submitted inside designated leasing areas without first holding a competitive offer.

Section 2804.25 How will the BLM process my application?

Section 2804.25 explains how the BLM would process your application. Revisions in this section would eliminate the provision for a mandatory pre-processing public meeting under existing paragraph (e)(2)(i); clarify that Tribal governments are accorded equal treatment with state and local governments during application reviews; and make technical changes.

Existing provisions in paragraph (e) describe how the BLM processes solar and wind ROW applications. This paragraph is not intended to enumerate all the steps that the BLM may be required to take under other authorities, including its obligations under NEPA (which are incorporated in paragraph (e)(4)) or its obligations to engage in Tribal consultation (which are similarly referenced in paragraph (e)(7)), and any changes to this paragraph would not affect those obligations or the steps that the BLM takes to comply with them. Rather, the purpose of this paragraph is to describe how the BLM carries out certain steps that are distinctive to the ROW application review process, such as prioritizing applications (existing paragraph (e)(2)(ii)) and reviewing a proposed POD (paragraph (e)(3)).

The proposed rule would remove a provision in this paragraph requiring a pre-processing public meeting in the affected area of a potential ROW (existing paragraph (e)(2)(i)), while leaving in place a provision that allows for such a meeting to occur at the BLM's discretion (paragraph (e)(1)). Such pre-processing public meetings are in addition to the opportunities for public participation that exist during the environmental review process, and from coordination and

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consultation sessions that the BLM holds with state, Tribal, and local governments, and are a unique feature of the solar and wind ROW application process. The BLM's experience, since its last rulemaking for solar and wind energy in 2016, demonstrates that this unique procedural step is redundant and not necessary to ensure adequate public participation and coordination with Tribal, and local governments. Participation and interest in these pre-processing meetings are not as strong as it was when solar and wind energy development was a relatively unfamiliar use of public lands, and these meetings are often confused with public meetings that are held later during the environmental review process. Removing this provision would reduce costs, shorten processing times, and remove redundant or unnecessary process requirements for these proposals. However, should the BLM decide that a public meeting is advisable (for example, in response to a request for such a meeting), it will give notice, under existing provisions in paragraph (e)(1) of this section, in the *Federal Register*, or may use other notification methods such as a local newspaper or the internet to announce a public meeting.

Other changes within this section would clarify that Tribal governments are accorded equal treatment with state and local governments under paragraph (e)(2)(ii) (formerly paragraph (e)(2)(iii)); remove references to the prohibition on filing non-competitive applications within designated leasing areas, which would no longer exist under the proposed regulations; and simplify language related to application prioritization under § 2804.35 in paragraph (e)(2)(i) (formerly paragraph (e)(2)(ii)).

Additionally, the BLM would revise paragraph (e)(5), which currently reads, "The BLM will determine whether your proposed use complies with Federal and State laws," by removing "and State." This revision provides clarity on the BLM's role regarding State laws. The BLM is not responsible for enforcing State law or ensuring that an applicant complies with State law, and removing this provision from the regulations would remove potential reader confusion as to the

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Federal Government's responsibility under State law. To the extent that State law is applicable to development on Federal lands, consistency with State law may be relevant to an application's prioritization under § 2804.35(a)(4).

Paragraph (f) addresses the segregation of lands within a ROW application. Segregation removes the lands covered by a ROW application from appropriation under the public land and mining laws. The BLM would revise this paragraph to clarify that a segregation would not be extended unless the application is complete (as defined in § 2804.12(j)) and a cost recovery payment has been received that includes the application filing fee. For further information on these segregations, please see the BLM's *Segregation of Lands-Renewable Energy* final rule published on April 30, 2013 (78 FR 25204).

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

Section 2804.26 explains the circumstances under which the BLM may deny an application.

Paragraph (a)(4) would be revised to be consistent with the proposed revisions for acronyms and terms found in § 2801.5, where the BLM replaces the term "the Act" with "FLPMA." For further discussion on this proposed revision, see this preamble for a discussion of revisions under § 2801.5.

New paragraphs (a)(9) and (10) would incorporate into this section requirements that are discussed elsewhere in the rule. Paragraph (a)(9) provides for denying an application if the applicant fails to comply with a deficiency notice within the time specified by the BLM under § 2804.25(c). Paragraph (a)(10) provides that an application may be denied for failing to pay costs, as noted in proposed § 2804.22(b).

Paragraph (c) would be removed, since the placement of this provision (which references requests for alternative requirements under § 2804.40) in section 2804.26 may be read incorrectly to suggest that an applicant may request alternative means of complying after the

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BLM denies the application. Section 2804.40 provides that applicants must request alternative requirements in a timely manner (see § 2804.40(c)). A request that is received after an application has been denied is not timely. Removing this provision in this section improves clarity regarding when such requests may be made.

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

Section 2804.30 would be removed and reserved. Some portions of the existing section are duplicative of provisions in existing §§ 2809.13, 2809.14, and 2809.17, which address competitive leasing inside of designated leasing areas; because the BLM proposes to use the same process for competitive leasing inside and outside of designated leasing areas, there is no need to describe this process twice. Other portions of the existing section are proposed for inclusion in revised sections of subpart 2809, while others would be removed for the reasons explained below.

Existing paragraph (a) would be removed, because the BLM would no longer distinguish between lands inside or outside of designated leasing areas for purposes of competitive leasing. Criteria and procedures for selecting parcels for competitive leasing are discussed in revised § 2809.12.

Existing paragraph (b) is duplicative of existing § 2809.13(a), which the BLM does not propose to revise.

Existing paragraph (c) is substantially similar to proposed § 2809.10(a).

Existing paragraph (d) is duplicative of existing § 2809.13(b), which the BLM does not propose to revise, except that the sentence in existing section (d) that reads, “The notice would explain that the successful bidder would become the preferred applicant (see paragraph (g) of this

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section) and may then apply for a grant,” corresponds to proposed new section 2809.13(b)(7), as discussed below.

Existing paragraph (e) is duplicative of existing § 2809.14, which the BLM does not propose to revise.

Existing paragraphs (f) and (g) correspond to § 2809.15, which the BLM proposes to revise as discussed below.

Existing paragraphs (h)(1) through (3) correspond to § 2809.17(a) through (c), which the BLM proposes to revise as discussed below.

Existing paragraph (h)(4) is duplicative of existing § 2809.17(d) and would be removed for the reasons discussed below in connection with that section.

Section 2804.31 Reserved

Section 2804.31, title, “How will the BLM call for site testing for solar and wind energy?” would be removed and reserved. The BLM has not had competitive interest in a site testing right-of-way since the regulations were finalized in 2016, and thus has not held a competitive process to authorize a site testing ROW during that period. The BLM has received input that the use of a competitive process for a site testing ROW prohibitively increases the time and cost for processing an application. This change does not eliminate rights-of-way for site testing, which may still be issued upon BLM approval of an application for site testing under §2801.9(d)(1) and (d)(2); nor does it eliminate the use of competitive processes for solar and wind energy development rights-of-way, which can be found in §§ 2809.11 and 2809.13.

The BLM is interested in comments on the BLM proposing to remove the rules for a call for a competitive process for site testing ROWs for solar and wind energy and whether there is any value in keeping this rule for the future.

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

Section 2804.35 would be retitled from “How will the BLM prioritize my solar or wind energy application?” to “Application prioritization principles for solar and wind energy development rights-of-way” to more clearly identify the content of this section. Revisions to this section are based on the BLM’s experience with the existing prioritization criteria and their potential for causing confusion and misunderstanding of the criteria’s use. The existing § 2804.35 prescribes screening criteria under which an application is evaluated and then assigned high, medium, or low priority. However, in practice, a single application may meet criteria that are associated with more than one priority level. Furthermore, the relative importance of different criteria may vary from location to location due to resource considerations. Likewise, not all prioritization criteria are equally relevant for every application. These practical concerns create confusion within the existing regulations. Additionally, evaluation using the existing criteria removes some discretion from the BLM to best determine an application’s priority because use of the criteria to prescribe the priority level fails to recognize and give weight to local resource issues and circumstances. Revisions in this section therefore would not assign specific criteria to specific priority levels. Instead, the revised section would clarify that relevant factors including those set forth in the regulation are to be used holistically to prioritize applications in a manner that would facilitate environmentally responsible developments and ensure that agency workloads are directed appropriately. The revised section would also explicitly recognize that the BLM may identify additional criteria in step-down guidance, which may be national in scope or specific to an area. Paragraph (a) clarifies that the purpose of prioritizing applications is to allocate agency resources to processing applications that have the greatest potential for approval and implementation.

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Paragraph (b) identifies factors that the BLM may consider when prioritizing applications. The proposed factors are similar to the existing criteria inasmuch as they focus on the extent to which an application avoids known resource, use, or policy conflicts and complies with relevant plans and policies, but they are less prescriptive than the existing criteria. This rule proposes factors that are inclusive of the existing rule's criteria found in this section. The rule would provide discretion to the BLM as to how best to apply the factors to prioritizing processing of solar or wind energy generation applications, taking into account the multiple considerations that are relevant to each area and office managing public lands.

The first factor would consider whether the proposed project is located within an area preferred for such development, such as a designated leasing area. These areas have previously been identified as posing less severe resource conflicts through the land use planning process, and the BLM may reasonably presume that developments proposed within these areas are more likely to proceed to approval.

The second factor would consider whether the proposed development avoids adverse impacts to or conflicts with known resources or uses on or adjacent to public lands, and includes specific measures designed to further mitigate impacts or conflicts. When submitting an application to the BLM, the applicant must address known potential adverse resource conflicts, including those for sensitive resources and values that are the basis for special designations and protections, as well as potential conflicts with existing uses on or adjacent to the proposed energy generation facility. The applicant must also include specific measures to mitigate impacts or conflicts with resources and uses. While subsequent consultation, public comment, and environmental review processes may reveal unknown resource or use conflicts, the BLM may reasonably presume that projects with fewer known conflicts are more likely to proceed to approval and successful implementation.

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The third factor would consider whether the proposed project is in conformance with the governing BLM land use plans. Applications should identify whether the proposed project is in conformance with the governing land use plan or would require an amendment or revision to the plan. The BLM may, in its discretion, consider applications for solar or wind energy generation facilities that would require an amendment or a revision to the governing land use plan under part 1600 of these regulations. However, such application could require greater resources to process and could present resource conflicts, which would result in a lower priority.

The fourth factor would consider whether the proposed project is consistent with relevant State, local, and Tribal government laws, plans, or priorities. The purpose of this determination is not to enforce these State, local, or Tribal but rather to ensure comity and identify projects that are more likely to be successfully approved. In addition, applying this principle helps to ensure that the BLM takes into account the existing resource knowledge and expertise that may be available through State, local, and Tribal plans and priorities. To carry out this prioritization, the BLM may enter into agreements with State, local, or Tribal governments or rely on existing agreements.

The fifth factor would consider whether the proposed project incorporates the best management practices set forth in the applicable BLM land use plans and other BLM plans and policies. Like the first four principles, this principle ensures that the BLM takes into account the knowledge and expertise that has gone into formulating these existing policies and also recognizes that an application that would require an amendment to existing plans or policies is likely to require more time and effort to process.

Under the sixth factor, the BLM would consider any other circumstances or prioritization criteria identified by the BLM in subsequent policy guidance or land use planning. Such guidance or

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planning could describe new criteria in addition to the proposed principles or may describe regional or local criteria that may be used when prioritizing solar and wind energy applications. Under paragraph (c), once applications are complete (as defined in § 2804.12(j) of this part), the BLM would go through a process to prioritize those complete applications (as defined in § 2804.12(j) of this part), based on all available information. Available information may include information provided in the application or its plan of development, applicant responses to deficiency notices, and information provided to the BLM in public meetings or consultations, including consultations with other Federal agencies and with State, local, or Tribal governments. Paragraph (d) would allow the BLM to re-prioritize an application based on new information that the BLM has received or on changes the applicant has made to the application. Changes to an application may include changes that clarify an applicant's proposal or the related plans, studies, and inventories. Once the BLM begins processing an application, the BLM will generally continue processing that application to completion and decision, to the extent possible. Nonetheless, the BLM reserves the right to re-prioritize an application, and adjust its workload accordingly, if circumstances warrant such re-prioritization.

The BLM is interested in comments regarding its proposed prioritization principles for solar or wind energy developments. Are the factors appropriate? Should the BLM consider additional factors, such as co-location with energy storage, or other proposed or existing energy facilities, or proximity to transmission infrastructure facilities as a consideration?

Section 2804.40 Alternative requirements.

Section 2804.40 provides for situations when a requestor is not able to meet the requirements of this subpart and wants to request alternative requirements from the BLM. The introductory paragraph would be revised to clarify that requests for alternative requirements apply only to the application requirements set forth in this subpart, and not to other requirements related to ROWs,

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such as the requirement to pay rent as set forth in subpart 2806. This revision would improve clarity and avoid potential misunderstandings.

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?

Section 2805.10 provides for how the BLM communicates to an applicant that their application or bid is successful. This section would be revised to improve consistency and clarity within the BLM's regulations and to avoid confusion over the timing of appeals. Existing paragraphs (a) and (d), which the BLM does not propose to revise, specify that the agency decision occurs when the BLM transmits an unsigned grant or lease to the successful applicant or when the BLM notifies an unsuccessful bidder or applicant that their bid or application has not been successful (see also the discussion below of § 2809.15, which clarifies the process through which a successful bidder may proceed to become a presumptive lease holder, and eventually a lease holder). Existing paragraph (b), which the BLM similarly does not propose to revise, clarifies that the unsigned grant or lease document will specify the terms and conditions of the grant or lease. These paragraphs identify the point at which the BLM has made its decision to approve, approve with modifications, or deny the application, which typically marks the endpoint of the BLM's decision-making process. This decision marks the appropriate time for appeal of the BLM's decision.

Existing paragraph (c) injects potential confusion into this scheme by stating that after the applicant signs and returns the grant, "BLM will sign the grant and return it to you with a final decision issuing the grant," and that the applicant "may appeal this decision under § 2801.10 of this part." This language suggests that an appealable decision occurs any time the BLM issues a

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grant or lease by returning a signed ROW instrument to the applicant, even though the step of issuing the ROW often does not require the BLM to exercise discretion.

Under the proposed rulemaking, paragraph (c) would be revised to replace the text “BLM will sign the grant and return it to you with a final decision” with the text “The BLM will issue the right-of-way by signing the grant or lease and transmitting it to you,” and by removing the sentence “You may appeal this decision under § 2801.10 of this part.” The purpose of this revision is to remove the confusing reference to a “decision” in paragraph (c), to recognize that the act of issuing the grant is not an appealable decision. The BLM also proposes the technical change of replacing “grant” with “grant or lease.”

While the proposed revision would clarify that the act of issuing a grant or lease by returning a signed ROW instrument to the applicant is not typically an appealable decision, the revised text retains the critical language clarifying that it is the BLM’s act of returning the signed instrument to the holder that constitutes the “issuance” of the ROW. Identifying the point in time at which the ROW is “issued” is important for calculating when the term of a ROW begins to run (see § 2805.11) and when the holder’s obligation to pay rent begins (see § 2806.12). Identifying the point at which the ROW is “issued” is also important for clarifying which actions are subject to the conditions in Section 50265(b)(1) of the Inflation Reduction Act, which imposes conditions on when the Secretary may “issue a right-of-way for wind or solar energy development on Federal land.” Under both the current and the proposed text of § 2805.10(c), the ROW is issued when the BLM transmits the signed instrument to the holder.

Section 2805.11 What does a grant or lease contain?

Section 2805.11(b) addresses the duration of ROWs. Section 2805.11(b)(2) provides specific terms for solar and wind energy grants and leases. Paragraphs (b)(2)(iv), (b)(2)(v), and (b)(4) would be revised to update the maximum terms for solar and wind energy generation facilities,

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energy storage facilities that are separate from energy generation facilities, and electric transmission lines with a capacity of 100 kV or more. The term for a grant or lease for these types of authorizations may be up to 50 years. Revisions under this section are consistent with those made under § 2801.9(d).

Paragraph (b)(2)(iv) would be revised to include updating the maximum term for both grants and leases, consistent with changes under this rule that allow for applications to be filed within designated leasing areas without first holding a competitive offer.

Paragraph (b)(2)(v) would be revised to set the maximum term for ROWs for energy storage facilities that are separate from energy generation facilities. Although these ROWs are generally treated as linear ROWs, rather than solar or wind energy development ROWs, for purposes such as rent calculation, the BLM believes that allowing a longer maximum term, commensurate with the maximum term for solar or wind energy development ROWs, will facilitate the transition to cleaner sources of energy in the United States.

Paragraph (b)(4) would be added to update the term for electric transmission lines with a capacity of 100 kV or more.

Section 2805.12 What terms and conditions must I comply with?

Section 2805.12 provides terms and conditions that apply to ROWs. The BLM proposes to revise paragraph (e)(2) to clarify that the option of requesting alternative stipulations, terms, or conditions does not apply to terms or conditions related to rents or fees. As with requests for alternative application requirements under § 2804.40, requests for alternative stipulations, terms, or conditions under §2805.12 are limited to technical obligations of the applicant or holder and not to the holder's obligation to compensate the United States for the use of the public lands and their resources. Requests for exemptions or deviations from the general rent provisions of subpart 2806 should be made under provisions of that subpart that specifically address such

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exemptions or deviations, such as existing § 2806.15(c) (which the BLM does not propose to revise), which sets forth a procedure for asking the BLM State Director to waive or reduce a holder's rent payment, or proposed § 2806.52(b)(1)(i), which describes certain circumstances under which the BLM may calculate rent based on an alternative MWh rate. The applicability of those provisions would not be affected by this proposed revision to §2805.12.

Section 2805.13 When is a grant or lease effective?

Section 2805.13 title and section is revised to add “or lease” to clarify that this section applies to both grants and leases.

Section 2805.14 What rights does a right-of-way grant or lease convey?

The title would be revised from “What rights does a grant convey?” to “What rights does a right-of-way grant or lease convey?” The title would be revised to clarify that this section applies to both grants and leases.

Paragraph (g) would be revised to remove the text “solar or wind energy development” and add “right-of-way” to read as “right-of-way grant or lease” to capture every instrument or type of ROW authorization that the BLM may issue. This revision would clarify for readers that an applicant may apply to renew any ROW grant or lease, including those for solar or wind. This revision would clarify that holders of all ROW grants and leases may apply for a renewal under § 2807.22. ROW grants or leases would include those issued for solar or wind energy developments, communication sites, or other types of uses authorized by a ROW grant or lease.

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

This section provides for a monitoring fee to reimburse the Federal Government for its costs in inspecting and monitoring the public lands subject to a ROW and for its ongoing costs administering the ROW.

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Proposed paragraph (b) would update the BLM's headquarters address to read as U.S.

Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Room 5645, Attention: Lands, Realty, and Cadastral Survey, Washington, DC 20240. This revision is made so that the public is aware of where to obtain a copy of the current cost recovery schedule. The BLM also posts the cost recovery schedule online at <http://www.blm.gov>.

Subpart 2806 Annual Rents and Payments

In subpart 2806, the BLM sets forth the rent calculation methodologies for solar and wind energy development ROWs. Section 504(g) of FLPMA, 43 U.S.C. 1764(g), requires ROW holders, subject to several narrow exceptions, "to pay in advance the fair market value" for the use of the public lands. Section 102(a) of FLPMA, 43 U.S.C. 1701(a), clarifies that "it is the policy of the United States that . . . the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute." The BLM has consistently taken the position that this statutory mandate includes the authority to charge acreage rent and capacity fees that reflect the fair market value of the public lands and their resources. For example, the preamble to the 2016 rule explained that "(t)he BLM has determined that the most appropriate way to obtain fair market value is through the collection of multicomponent fee (sic) that comprises an acreage rent, a MW capacity fee, and, where applicable, a minimum and a bonus bid for lands offered competitively . . . (T)he collection of this multicomponent 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" (81 FR 92122, page 92134). As the BLM explained in 2016, the use of a multicomponent rent and fee structure that comprises an acreage rent, a MW capacity fee, and in some cases also a minimum and a bonus bid, assists the BLM in achieving important objectives, including identifying the fair market value for the use of public land. The multicomponent fee proposed in this proposed rule would continue to achieve

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important BLM objectives, including allowing the BLM to capture fair market value for use of the land (subject to reductions pursuant to Energy Act of 2020 authority).

For solar and wind energy development ROWs, the fair market value requirement of Section 504(g) of FLPMA has been supplemented since the 2016 rulemaking by the Energy Act of 2020, 43 U.S.C. 3003, which reaffirms that the “Secretary may consider acreage rental rates, capacity fees, and other recurring annual fees in total when evaluating existing rates paid for the use of Federal land by eligible projects,” and confers on the Secretary new authority to reduce acreage rental rates and capacity fees if the Secretary makes certain findings.

Consistent with FLPMA and the Energy Act of 2020, the BLM proposes to continue to determine rent for solar and wind energy ROWs based on acreage rent rates and capacity fees, although under a revised methodology that provides the BLM with more flexibility to ensure rental fees and rates are adjusted to appropriately respond to changes in the renewable energy market. The revised methodology would also reflect the direction in the Energy Act of 2020, including to propose rules for certain rate reductions and to meet the Congressional goal of permitting 25 GW by 2025. The BLM also proposes to introduce through this rulemaking certain rate reductions, implementing the authority of the Energy Act of 2020.

Acreage rent rates for solar and wind energy ROWs would be determined under the proposed rule using the NASS Cash Rents Survey, which reflects the value of the land at the time the ROW is issued. This per-acre land rental value would be multiplied by an encumbrance factor (which differentiates between solar and wind energy facilities) and an annual adjustment factor that accounts for changes in the value of the land over the lifetime of the ROW due to inflation and similar factors. Because the NASS Cash Rents Survey used for solar and wind acreage rents reflects a valuation of annual rent, no rate of return is applied when determining solar and wind energy acreage rents.

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Once a solar or wind energy generation facility is producing electricity, the BLM would charge the higher of the acreage rent, described in the previous paragraph, or the capacity fee for the ROW. The capacity fee is determined using the annual production multiplied by either wholesale power pricing information or pricing figures specific to a project's power purchase agreement, to determine the market value of the energy generated from the project. The wholesale power pricing information or other pricing figures, like the pastureland rental value used for calculating acreage rents, would be fixed at the time the ROW is issued and would be updated using a fixed annual adjustment factor. This market value of the energy generated would then be multiplied by a rate of return based on a percentage of wholesale pricing, and by certain policy-based fee reduction factors tied to the Energy Act of 2020, to arrive at a capacity fee.

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

Section 2806.10 provides rent requirements that apply to all grants and leases, requiring payment in advance, consistent with Section 504(g) of FLPMA, as amended.

New § 2806.10(c) would clarify to a reader that the per acre rent schedule for linear ROW grants must be used unless a separate rent schedule is established for your use, such as with communication sites under § 2806.30 or solar and wind energy development facilities per § 2806.50, or the BLM determines that none of these schedules applies pursuant to § 2806.70.

Section 2806.12 When and where do I pay rent?

Paragraphs 2806.12(a) and (b) describe the proration of rent for the first year of a grant and the schedule for payment of rents. Paragraphs 2806.12(a) and (b) would be revised by deleting the term "non-linear," which is not defined in the regulations, to clarify that these provisions apply to all ROW grants or leases.

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

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Section 2806.20(c) addresses how to obtain a current rent schedule for linear ROWs. This paragraph would be revised to update the BLM's mailing address of record by reference to § 2804.14(c) that would also be updated.

Solar and Wind Energy Development Rights-of-Way

The existing regulations contain two undesignated center headings to organize and differentiate sections pertaining to solar (see existing 2806.50 through 58) and wind (see existing §§ 2806.60-68) energy rights-of-way. This proposed rule would revise those sections and undesignated headings to provide a single set of provisions for all solar and wind energy development ROWs. Existing regulations have solar and wind rights-of-way separated into different sections, even though rents, fees, and the required payments for solar and wind rights-of-way are similar. The rent, fee, and payment requirements under the proposed rule are discussed in the following sections and would be the same for both solar and wind except for the difference in the encumbrance factor used in calculating the acreage rent that is discussed under § 2806.52(a). Sections 2806.60 through 2806.68, which address wind energy rents and fees, would be removed and consolidated with solar energy rents and fees under 2806.50 through 2806.58.

The BLM has considered several alternative methods for valuing solar and wind energy facilities on public lands. In May 2022, the BLM issued its interim solar and wind energy rent policy in an update to the BLM Right-of-Way Manual (Manual), Section 2806.60 – *Rent: Solar and Wind Rights-of-Way Rents, Fees, and Reductions*, which incorporated the Secretary's authority under the Energy Act of 2020 to implement changes to the solar and wind energy rents and fees, including reductions. The Manual provides for updates to the rent adjustment methodology under regulation or law. The BLM issued this interim policy after first releasing a draft update to Section 2800.60 of the Manual for public review and comment, see <https://www.blm.gov/press-release/blm-seeks-public-input-proposed-guidance-renewable-energy-blm-public-lands>

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(December 3, 2021). In the BLM's release of the draft update to the manual, it solicited comments on alternatives for reduced rent payments and offered two rent adjustment options that would rely on the Secretary's authority under the Energy Act of 2020, 43 U.S.C. 3003, to reduce acreage rental rates and capacity fees if, among other things, the Secretary determines "that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources." The two primary options would have generally sought to either adjust the baseline acreage and capacity fees or provide for a nominal acreage rent and a capacity fee. After reviewing the comments received on the draft update, the BLM amended Section 2806.60⁴ of the Manual with its update to renewable energy rent that provides for adjustments to baseline acreage rents and capacity fees that result in a reduction in total payments for solar and wind energy facilities. Manual 2806.60 does not provide for a nominal acreage rent and a capacity fee. The BLM determined that the most expeditious way to implement rent changes was by an interim adjustment to the 2016 methodology as reflected in the Manual and subsequently to use this rulemaking to further address its proposed rate setting methodology based on an acreage rent and a capacity fee. In this rulemaking, the BLM considered as an alternative the rates released in Manual Section 2806.60 – *Rent: Solar and Wind Rights-of-Way Rents, Fees, and Reductions*, which implements a state-wide per acre value based on non-irrigated land values and a reduced capacity fee that is the same for both solar and wind energy. Please see the BLM's release of its updated Right-of-Way Manual Section 2806.60 for further information. Under this proposed rule, the rates would generally be lower for solar and wind energy ROWs and allow existing holders to choose to keep the updated rate methodology set by the Manual.

⁴ <https://www.blm.gov/sites/default/files/docs/2022-05/MS-2806%20rel%2022-307%20Chapter%206.pdf>

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The BLM understands, based on comments received for the draft Manual and other engagement with industry representatives and grant and lease holders, that predictability of project costs is critical to the success of an energy generation facility. This includes the costs of energy development through its life, including those for construction, operations, and maintenance.

Although land use expenses, such as annual payments for rents and fees, are a small portion of an energy generating facility's operating expenses (generally 1-3 percent of costs), these amounts are important to a developer as they contribute to determining if a certain facility may be successful or not. Under existing regulations the BLM adjusts the rates based on changes in land values and power pricing, among other considerations. More recently, the rates for solar and wind energy development acreage rents have increased by more than 300 percent in some locations while capacity fees have decreased by about 50 percent. These unanticipated rate changes affect existing holder payments, raising concerns over project viability in future years for projects that are typically associated with 30-year ROWs.

Under the current regulatory method, established in 2016, the rates for acreage rent and wholesale power pricing would likely increase again when the next adjustments are made starting in 2026. These increases to the BLM's rates would be based primarily on recent NASS per-acre land survey data and western power trading pricing in wholesale markets which are both trending upwards in recent years. Changes or variability in rates present an uncertainty to potential ROW holders. The BLM aims through this rulemaking to improve the predictability of public land rental rates for solar and wind energy development, while continuing to adhere to FLPMA's fair market value requirement, except where rates would be reduced to promote the greatest use of the public lands consistent with the Energy Act of 2020.

The 2016 rule did not require the BLM to use a particular source for electricity market wholesale trading data when determining the value for wholesale market pricing, in order to provide the

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agency with flexibility to use the best available data. Such flexibility is maintained in this proposed rule. Currently, the BLM uses the SNL Energy dataset from S&P Global. Under the proposed rule, however, the BLM would elect to use the wholesale market pricing data from the Energy Information Administration at this time because it is free and open to the public, which would provide additional transparency into the BLM's rate schedule. The BLM would still retain flexibility to utilize different data sources in the future. Wholesale market pricing data from the Energy Information Administration may be found on the Administration's website:

<https://www.eia.gov/electricity/wholesale/>.

The BLM is interested in receiving comments and information discussing the BLM's proposed changes to the solar and wind energy acreage rent and capacity fees and whether the rule reasonably implements changes to BLM regulations under Title V of FLPMA and the Energy Act of 2020. Is the BLM proposing a reasonable methodology for valuing solar and wind energy development ROWs, including any preference for alternatives to the BLM's proposal in this rule. Is the BLM's proposal to use free and publicly available wholesale market pricing information appropriate when setting its rates? Are there other options that are more appropriate for use in the BLM's rate setting methodology?

Under this rule, the BLM proposes changes to the acreage rent and capacity fees that would greatly improve payment certainty. Payment certainty would be improved through the BLM establishing an acreage rate and capacity fee rate at the beginning of a grant or lease term and then adjusting it annually by a fixed percentage of the rate established in the first year of the grant or lease term, and by the annual energy production. This is different than current methodology which updates rates periodically based on changes in land values derived from the NASS Census of Agriculture, conducted every five years, and estimated energy generation capacity of solar and wind facilities.

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The BLM's proposed acreage rent would use an average of the state-wide pastureland rent from the NASS Cash Rent Survey instead of adjusted non-irrigated land values to determine the acreage rent. The acreage rent would be the minimum payment made to the BLM each year, regardless of energy generation on public lands, and would compensate the United States for the privilege obtained by the developer in securing the right to use and build improvements on the public lands. See § 2806.52(a) for further information on the acreage rent.

The BLM also proposes a capacity fee based on wholesale power prices to compensate the United States for the value of the solar and wind energy resources used by the developer on public lands. The capacity fee would be collected annually, but only when the fee exceeds the acreage rent for the year. See § 2806.52(b) for further information on the capacity fee.

This rule also proposes certain reductions to the capacity fee under the authority granted to the Secretary in the Energy Act of 2020, which provides that annual acreage rent and capacity fees may be reduced if the Secretary determines that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources, among other reasons. Reductions to the capacity fee are discussed in greater detail under § 2806.52(b)(1)(ii) and (iii) for the MWh rate reduction and Buy American reduction. The BLM considered but did not pursue several reductions for siting developments in designated areas, use of energy storage, efficiency of technology used, payment of compensatory mitigation fees, and project sizing. These reductions would be applied to solar or wind energy developments depending on the specifics of the project and whether it would qualify for one or multiple reductions. The BLM did not propose multiple reductions because it made for a more complex rate structure that may help individual projects that qualify for the reduction(s) but did not seem to promote the deployment of solar or wind energy on public lands collectively.

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This rule proposes a single reduction, to apply to all developments, to the annual weighted average wholesale power price, referred to as the MWh rate reduction, as well as a Buy American reduction that is project-specific. For the reasons explained below and in the introduction to this notice, the BLM believes that these proposed rate reductions would reduce economic hardships on developers, maximize commercial interest in lease sales, and promote the greatest use of wind and solar energy resources.

The BLM is interested to hear comments from readers on its proposed capacity fee rate reductions and use of the Energy Act to promote the greatest use of solar and wind energy resources on public lands. How might the BLM utilize its authority under the Energy Act of 2020 differently to provide a reduction to the capacity fee? How might the BLM utilize this authority differently to promote the greatest use? Additionally, the BLM would like to receive comments on whether the BLM should use multiple project specific reductions or whether other reductions may be more appropriate toward meeting the goals of the Energy Act of 2020.

Section 2806.50 Rents and fees for solar and wind energy development.

Existing § 2806.50 requires a holder of a solar ROW to pay both an annual rent and a phased-in capacity fee in advance each year. Under the proposed rule, this section would be modified to require the holder of a solar or wind energy development ROW to pay the greater of either an annual rent or a capacity fee in advance each year, consistent with Section 504(g) of FLPMA (43 U.S.C. 1764(g)). Because this proposed rule uses a fee based on production, it would remove the phased-in MW capacity fee. The phased-in MW capacity fee in the current regulations is based on the nameplate capacity, an estimation of energy generation potential of a technology, and apart from the phase-in factor, is paid regardless of the amount of energy that is actually produced.

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The acreage rent or capacity fee, as applicable, calculated consistently with the requirements found in §§ 2806.11 and 2806.12. The acreage rent would be calculated according to the formula set forth in § 2806.52(a), while the capacity fee would be calculated according to the formula set forth in § 2806.52(b).

Section 2806.50 would be retitled adding “and wind” consistent with changes under this rule to consolidate both solar and wind energy rent, fee, and payment provisions. Revisions also include the addition of “wind” and “grant or lease,” clarifying that this section applies both to grants and leases issued under this part.

The BLM is also interested in public comments regarding its proposal to move from a fee based on the nameplate capacity of a project to a fee based on the energy produced at a solar or wind energy generation facility sited on public lands. Additionally, the BLM would like input on whether it should implement minimum efficiency criteria for developments to support the greatest use of solar and wind energy resources on public land. If so, what criteria should the BLM follow and what penalties, if any should the BLM include for facilities that would not meet these criteria?

As proposed, and as noted in the draft economic and threshold analysis, the BLM believes that this rule would not have a significant economic impact on a substantial number of small entities, and further, that any potential impacts on small entities are unlikely, and would only occur in a limited set of circumstances. The BLM is not aware of developers and operators of solar or wind energy facilities on public lands⁵ that would typically qualify as a small business under the Small Business Administration regulations at 13 CFR Part 121, which define what constitutes a small business for the relevant industries. Additionally, entities that develop solar or wind projects on

⁵Wind: https://www.blm.gov/sites/default/files/docs/2021-11/PROJECT%20LIST%20WIND_October%202021.pdf
Solar: https://www.blm.gov/sites/default/files/docs/2023-03/PROJECT_LIST_SOLAR_FY2022.pdf

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public land are often an affiliate of a larger company or a financial investment company that does not qualify as a small business, and therefore the affiliate company would also not qualify as a small business. The BLM provides further information on small business and the number of potentially affected establishments in its draft economic and threshold analysis (Table 8).

The BLM is interested on comments whether small business may be impacted and whether that impact would be negative or positive. How is this rule negatively or positively affecting small business, and how might the BLM more fairly include small business if it is negatively impacted?

Section 2806.51 New and Existing Grant and Lease Rate Adjustments.

Section 2806.51 would be retitled from “Schedule Rate Adjustment” to “New and Existing Grant and Lease Rate Adjustments,” clarifying to readers that this section applies to both new and existing grants and leases.

Paragraph (a) directs readers to the appropriate section setting forth the different rental schedules for different types of ROWs.

Paragraph (b) explains the process for selecting a rate adjustment method for a new grant or lease.

Paragraph (c) informs holders of existing solar or wind energy development ROWs that they may request that the new rate methodology set forth in this proposed rule be applied to their existing grant or lease. Existing holders would have 2 years from the date this rule becomes effective to request a change to the new rate adjustment method. The BLM would continue to apply the grant or lease holder’s current rate methodology if a timely request is not received. A request to change the rate adjustment method would require the holder’s agreement to the BLM re-issuing the grant or lease with updated Terms and Conditions found under this part, pursuant to § 2806.70.

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

Section 2806.52 currently provides the methodology that the BLM uses to determine the acreage rent and the MW capacity fee for solar and wind energy development ROWs. The current regulation provides for payment of both the acreage rent and the MW capacity fee (based on the MW capacity of the solar or wind energy generation facility).

The BLM proposes to require payment of the greater of either an acreage rent, which is calculated in advance of authorization, or a capacity fee, which is calculated once energy generation begins (§ 2806.50). Section 2806.52 would be revised to provide the methodology for the BLM to determine the acreage rent (§ 2806.52(a)) and capacity fee (§ 2806.52(b)).

Paragraph (a) would provide that acreage rent would be determined by multiplying the authorized number of acres (rounded up to the nearest tenth) by the state-specific per-acre rate from the solar and wind energy acreage rent schedule in effect at the time a grant or lease is issued. The acreage rent would be the minimum yearly payment for a grant or lease and would not be required if the capacity fee under paragraph (b) of this section exceeds the acreage rent.

Paragraph (a)(1) explains that the per acre rate is calculated by multiplying the state-specific per-acre value by the encumbrance factor and a factor that reflects the compound annual adjustment since the start of the grant or lease term, according to the formula $A \times B \times ((1 + C)^D)$.

Paragraph (a)(1)(i) would clarify that “A” would be the per-acre rate, using the state-specific per-acre value from the solar or wind energy acreage rent schedule for the states where a project is located for the year when the grant or lease is issued. The per-acre rate for a grant or lease would not change once issued, even with updates to the acreage rent schedule; instead, the acreage rent would be adjusted by the annual adjustment factor, “C” in the formula above, under 2806.52(a)(1)(iii). To calculate the current acreage rent schedule for a state, the BLM would use the most recent 5-year period average of NASS pastureland rent values. The average per acre

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value would be determined by using only the years with reported NASS pastureland rents within the 5-year period. Updates to the per acre rate would occur every 5 years in the acreage rent schedule consistent with the timing of rent adjustments under § 2806.22 for the linear rents schedule. The current 5-year average ranges from \$2.10 per acre in Arizona to \$12.60 per acre in California with a median value of \$6.62 per acre in the Western States, based upon the pastureland rent value in the NASS Cash Rents Survey through 2021.

Using Nevada as an example for how the BLM would average NASS pastureland rents, assume that values of \$10.00, \$13.00, and \$10.00 per acre were reported respectively for 2019, 2020, and 2021. NASS reported values during the 5-year period only for those 3 years and did not report values for 2017 and 2018. Therefore, the BLM would average the reported values using three years for that 5-year period. Thus, the 5-year average would be \$11.00 per acre.

Paragraph (a)(1)(ii) would clarify that “B” in the formula above, would be the encumbrance factor. For solar energy development facilities, a 100 percent encumbrance factor would be set in this rule, and for wind energy a 5 percent encumbrance factor would be set. A 100 percent encumbrance factor reflects a virtual exclusion of all other uses on the ROW. A lesser encumbrance factor recognizes that an authorized use or development only partially encumbers the land, allowing other uses to co-exist. This proposed rule would maintain the existing 100 percent encumbrance factor for solar energy developments. This rule proposes to reduce the encumbrance factor for wind energy from 10 percent to 5 percent to account for changes in technology over the years and the comparative reduction in land occupied by wind energy generation facilities which use fewer wind turbines and generally meet or exceed older wind energy facility nameplate capacities. For wind, this rule proposes a 5 percent encumbrance factor, reflecting that relatively little exclusion of other uses would occur. This is also consistent with changes in lands where the National Renewable Energy Laboratory (NREL) has noted that

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wind projects now typically occupy one to four percent of the land within the project area. You may read further in NREL's news release and analysis, NREL Explores the Dynamic Nature of Wind Deployment and Land Use.⁶

Paragraph (a)(1)(iii) clarifies that "C," in the formula above, would be the annual adjustment factor, which is 3 percent, and Paragraph (a)(1)(iv) clarifies that "D" would be the year of the grant or lease term, where the first year (whether partial or a full year) would be 1 and the final year for a grant or lease authorized for a 50-year term would be 51 (assuming a partial first year). Currently, the BLM sets and adjusts the annual adjustment factor based on the average annual change to the Implicit Price Deflator – Gross Domestic Product (IPD-GDP) for the ten-year period immediately preceding the year that the NASS Census data become available, to reflect the loss in value due to inflation. Under the proposed rule, the annual adjustment factor would be fixed at 3 percent. In reviewing the IPD-GDP, average annual change for the last five-year period (2017-2022) was 3.27 percent, while for the ten-year period before that the average annual change was 2.39 percent. This difference highlights the fact that inflation in 2017-22 has been significantly greater than for years in the preceding 10-year period. Under the proposed rule, the annual adjustment factor would be fixed at 3 percent, derived by rounding the average annual change from the past 15 years to the nearest full percent. Setting this factor would improve future rate predictability.

Paragraph (a)(2) would describe where you may obtain a copy of the current per acre rates for solar and wind energy rent schedule.

⁶ <https://www.nrel.gov/news/program/2022/nrel-explores-the-dynamic-nature-of-wind-deployment-and-land-use.html#:~:text=Through%20comprehensive%20spatial%20analysis%20of%20U.S.%20wind%20power,and%20planning%20design%20are%20changing%20land%20use%20requirements.>

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Paragraph (b) would provide that the capacity fee is calculated by multiplying the MWh rate or the alternative MWh rate (which is described below), the MWh rate reduction, the Buy American reduction, the rate of return, and the annual power generated on public lands for the grant or lease in question (measured in MWh) by a factor that reflects the compound annual adjustment. The capacity fee is paid annually beginning in the first year that generation begins for the energy generation facility. There would be no capacity fee levied for the first year or any other year if the acreage rent exceeds the capacity fee. The proposed formula for calculating the annual capacity fee is $A \times F \times G \times B \times C \times (1 + D)^E$.

Paragraph (b)(1)(i) would clarify that “A” is either the MWh rate, an amount determined based on 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, or the alternative MWh rate. The MWh rate is calculated based on the wholesale prices from the full five calendar-year period preceding the most recent MWh rate adjustment before the ROW was issued, rounded to the nearest dollar increment. There is no MWh rate phase-in for energy generation facilities except for existing holders that elect to continue paying under their current rate adjustment method per § 2806.51(c).

The BLM may use an alternative MWh rate when a grant or lease holder enters into a power purchase agreement with a utility for a price per MWh that is lower than the average of the annual weighted average wholesale price. In those instances, the BLM would determine if the rate in the power purchase agreement is appropriate to use instead of the MWh rate. For example, an alternative MWh rate may not be appropriate if the utility issues itself a power purchase agreement for its solar or wind energy development. If the rate in the agreement is appropriate, then the BLM would set an alternative MWh rate for the grant or lease at the rate shown in the agreement.

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In paragraph (b)(1)(ii), “B” is the *MWh rate reduction*. The BLM proposes to set the capacity fee based on 20 percent of the wholesale price per MWh or alternative MWh rate until 2036. This reduction is consistent with the authority provided in the Energy Act of 2020 allowing the Secretary to reduce acreage rental rates and capacity fees if, among other things, the Secretary determines “that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.” Further, this reduction would help BLM meet the minimum goal under the Energy Act of 2020 for “authoriz(ing) production of not less than 25 gigawatts of electricity from wind, solar, and geothermal projects by not later than 2025.” Implementing this reduction is necessary to promote the greatest use of wind and solar energy resources and maximize commercial interest in lease sales by lowering the entry cost of prospective energy generating facilities and further supporting existing facilities that may have capacity fee rates that exceed market value, impose economic hardship, or limit future commercial interests. Starting in 2036, the MWh rate reduction factor would increase to 80 percent of the wholesale price per MWh – that is, the capacity fee would now be based on 80 percent of the wholesale price per MWh or alternative MWh rate. This continuing 20 percent reduction would be consistent with the Energy Act of 2020 authority to reduce acreage rental rates and megawatt capacity fees when the Secretary determines that reducing the rate would ensure that the BLM’s rates are “competitively priced compared to other available land.”

The BLM is interested to hear from commenters whether the reduction to the wholesale price per MWh should be limited to a specific period of time or conditioned on national or regional (i.e., renewable portfolio standard) priorities. The BLM has also considered whether a shorter period of time to set its rates would be appropriate instead of using a 5-year average of wholesale market pricing. Should a different period of time be provided in the final rule, or should the BLM allow for the reduction to continue until further rulemaking or a change in the statutory

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framework? Additionally, the BLM considered conditioning this reduction on renewable portfolio standards, in which a State may set a specific objective for additional energy from renewable energy resources. If such a provision were added to the final rule, the BLM would lower its MWh rate for projects that help a State to meet its renewable portfolio standard. Finally, the BLM has considered, but not proposed in this rule, tiering the wholesale power pricing to the potential energy of the solar or wind energy resource in a given location based on solar energy insolation values or wind energy by meter per second, in which case, the BLM would lower the power pricing for locations that are of lower energy resource potential to promote renewable energy development that may have a lower overall production capacity. In addition to the proposed expiration of an 80 percent reduction to the price per MWh rate used in determining a capacity fee, the BLM is interested to hear from commenters whether a different reduction may be more appropriate, if at all.

In paragraph (b)(1)(iii), “C” is the *Buy American reduction*. As explained above, the BLM proposes to promote the development of wind and solar energy resources on public lands by helping to offset some of the costs of using American-made items in solar and wind energy development facilities. The Federal Acquisition Regulations (FAR), 48 CFR 52.225-1(b), describe certain categories of items or products that are eligible for the Buy American preference in Federal acquisition. As noted above, in the discussion of proposed Section 2801.5, the BLM proposes to adopt the term “Buy American” to refer to any item that is eligible for the Buy American preference in Federal acquisition under section 52.225-1(b) of the FAR. Paragraph (b)(1)(iii) of Section 2806.52 of the BLM’s proposed regulation would reduce the capacity fee for solar or wind energy generation facilities according to the percentage of the total cost of the facilities on the ROW attributable to Treasury items. The reduction to the capacity fee would be as follows:

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(A) 25 percent or more of the total facility cost attributable to items qualifying for Buy American preference = 5 percent reduction

(B) 35 percent or more qualifying for Buy American preference = 10 percent reduction

(C) 45 percent or more qualifying for Buy American preference = 15 percent reduction

(D) 55 percent or more qualifying for Buy American preference = 20 percent reduction

To qualify for this capacity fee reduction, the percent of the energy generation facility's total cost that consists of items qualifying for the Buy American preference would have to meet or exceed the percentages set forth in this section. The holder would have to identify the items qualifying for the Buy American preference in the energy generation facility and provide sufficient documentation (e.g., purchase orders for end products, materials and supplies of the facility; as-built or construction plans) to demonstrate that these items, in the aggregate, represent the specified percentage of the facility's total cost.

Once an energy generation facility qualifies for a Buy American reduction, the facility would have that same reduction for the term of the grant or lease. The BLM would only revisit the reduction at the time of an assignment, amendment or renewal of an energy generation facility grant or lease to determine what reduction, if any, it may qualify for. The BLM would apply the version of the FAR in effect at the time the ROW is issued. If the FAR is amended in the future in such a way that section 52-225-1(b) of the FAR no longer provides a clear meaning for the term "Buy American," as defined in these proposed regulations, the BLM would continue to apply the most recent version of the FAR that provides such a workable definition until such time as the BLM is able to amend these regulations.

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Also, the proposed Buy American reduction increases incrementally based on the percentage of the total facility cost attributable to items qualifying for Buy American preference. The BLM recognizes that, in other contexts, such as direct federal procurement, qualification for a domestic content preference is based on reaching a set percentage and is not altered by reaching a higher percentage. The BLM seeks comment on whether it should establish a fixed reduction based upon a set percentage rather than the escalating approach proposed in this rule.

The Buy American reduction to the capacity fee is proposed in this rule under the authority of the Energy Act of 2020, 43 U.S.C. 3003, to “promote the greatest use of wind and solar energy resources,” avoid “economic hardships” to ROW holders, and maximize “commercial interest” in lease sales and ROW grants. Providing this reduction would defray some costs in sourcing from domestic supply chains, which would support continued deployment of solar and wind projects on public lands if foreign supply chains are disrupted.

Deployment of renewable energy technology on public lands has been impeded, particularly in recent years, by unreliable foreign supply chains as a result of international developments, a worldwide pandemic, and manufacturing limitations. There have been several instances of international developments, such as the Russia-Ukraine war, that resulted in disruptions to supplies and limited investment in solar and wind energy resources on public lands, created economic hardships for ROW holders, or limited commercial interest in lease sales and ROW grants. Such recent developments include the enactment of the Uyghur Forced Labor Prevention Act, Pub. L. 117-78 (“UFLPA”), which aims to prevent the importation of goods produced using forced labor in China. The UFLPA imposes a rebuttable presumption that “any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China” are made with forced labor, and are therefore prohibited from importation into the United States. A significant portion of the

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global supply chain for photovoltaic panels and their components involves the Xinjiang region, and although panels imported into the United States no longer incorporate components from Xinjiang, the United States' efforts to combat the use of forced labor has impacted the import of solar energy components and precursor materials.

At the same time, the United States has reduced importation of Russian mineral resources and imposed sanctions against the Russian Federation as the Russia-Ukraine war has progressed, resulting in increased demand for domestic minerals (e.g., steel, aluminum, iron, copper, and silicon). As of November 2022, the United States had reduced US goods trade with Russia to about \$500 million worth of goods from its peak of about \$2.65 billion in March 2022 (the month after the Russian-Ukraine war started) per the US Census Bureau.⁷ Trade in goods between the United States and the Russian Federation continues to decline with the implementation of US tariffs against Russian imports. These imports of necessary minerals have nearly stopped in the past year, having a significant effect on the available resources used in manufacture and development of solar and battery storage facilities.

In addition, the worldwide COVID-19 pandemic that started in 2020 revealed vulnerabilities in the United States' supply chains for materials, supplies, and other goods used in its carbon-free clean energy markets, such as in solar and wind energy developments, among other things.

Vulnerabilities in supply chains include international shipping, where shipping vessels and containers waited for months during labor shortages and quarantine periods before becoming available to the American public. Uncertainty in global supply chain dynamics have significant potential to cause delays and higher prices for solar and wind energy development projects on public lands. Potential tariffs to foreign-sourced items and components result in dramatic decline

⁷ <https://www.census.gov/foreign-trade/balance/c4621.html>

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in project deployment. According to the Solar Energy Industries Association's U.S. Solar Market Insight Q2 2021 report, supply chain constraints for critical solar components, such as polysilicon, steel, aluminum, and semiconductor chips, lead to higher prices. In response to the U.S. Department of Commerce's anti-circumvention tariffs on solar products from Southeast Asia countries, the President made an emergency declaration on a temporary duty-free importation of solar cells and modules to curb disruption to solar projects.

These developments highlight the importance of secure, reliable domestic supply chains to the development of solar and wind energy resources on public lands and demonstrate how the proposed Buy American reduction, by supporting those domestic supply chains, would promote the greatest use of those resources, while also reducing economic hardships for developers. By offsetting some of the costs of domestically sourced parts and materials, the Buy American reduction would reduce the economic dependence of developers on unreliable global supply chains and support the efforts of domestic suppliers. In this way, the proposed Buy American reduction supports the transition to more-reliable domestic supply chains which would, in turn, increase commercial interest in the use of public lands and promote the development of solar and wind energy resources on public lands.

Recent Presidential determinations and legislation are similarly intended to strengthen domestic supply chains for renewable energy components, highlighting the importance of such domestic supply chains to the development of domestic energy generation. On March 31, 2022, and most recently on June 6, 2022, the President signed determinations permitting use of the Defense Production Act Title III authorities for domestic clean energy technologies (including solar photovoltaic components; transformers and electric grid components; heat pumps; insulation; and electrolyzers, fuel cells, and platinum group metals), reiterating the Administration's commitment to a carbon pollution-free electricity sector. In addition, the *Creating Helpful*

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Incentives to Produce Semiconductors for America Act, aka, the “CHIPS Act,” was signed on August 9, 2022, providing for improvements to manufacturing of important components for clean energy, among other things, furthering the objective to improve domestic supply chains. The Infrastructure Investment and Jobs Act, Pub. L. 117-58, signed on Nov. 15, 2021, also provides funding for electric vehicles and clean energy technologies, including manufacturing of energy storage and its components, increasing domestic supply chains. We anticipate that there will be significant increases in domestic manufacturing over the next five years that will benefit the solar and wind energy generation industries. The BLM would encourage a more rapid deployment of domestically made items by providing a reduction to solar and wind energy development facilities using qualifying items for the Buy American preference, thereby increasing further commercial interest in public lands and expediting deployment of solar and wind energy developments and maximizing the greatest use of solar and wind energy resources on public lands.

The BLM is aware that other Federal agencies (e.g., Office of Management and Budget) may currently be developing policy relevant to domestic content requirements, including those authorized by the Inflation Reduction Act. The BLM may consider using a definition from one of those policies as an alternative to the domestic content definition under Buy American and would welcome comments to that effect.

The BLM is interested in receiving comments regarding the addition of the domestic content reduction to the capacity fee and to other parts of this rule where domestic content provisions are proposed. Is there a more appropriate way than determining percentage of total cost of qualifying items for the domestic content preference? Are there other methods to promote the greatest use of solar and wind energy generation on the public lands while strengthening the resiliency of domestic energy supply chains that may be more appropriate or preferred? Do the proposed

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reductions up to 20 percent fairly encourage developers to qualify for using American-made products in their solar or wind energy generation facilities, and support increasing demand for clean energy technologies on public lands? What forms of documentation would be appropriate to provide to the BLM in order to qualify for this reduction when applying for a grant or lease, and when demonstrating at time of renewal or reauthorization?

The BLM also is interested in receiving comments on the possibility of adding a reduction to the capacity fee of up to 20 percent based on the use of union labor in project construction. Like the Buy American preference, such a provision would offset some developer costs, thus promoting the use of solar and wind energy resources on public lands, while reducing economic hardships for developers who may also qualify for certain tax incentives. Should the BLM incorporate a capacity fee reduction in this rule for the use of union labor? Should the reduction be contingent on a developer's commitment to enter into a project labor agreement? What documentation should be required to qualify for this reduction? What percentage reduction would be appropriate?

Paragraph (b)(1)(iv) explains how the BLM would apply the alternative MWh rate and the Buy American reduction from paragraphs (b)(1)(ii) and (iii) of this section. By default, the BLM would apply the ordinary MWh rate under paragraph (b)(1)(i) and the MWh rate reduction under paragraph (b)(1)(ii). A developer who wished to benefit from the alternative MWh rate and the Buy American reduction would need to submit a request for conditional approval prior to the issuance of a grant or lease, along with sufficient documentation to demonstrate that the development qualifies or may later qualify for these rate reductions. In some cases, the BLM would not be able to determine definitively in advance whether the proponent qualifies for these reductions. The BLM could then conditionally approve the requested reductions, but the reductions would not go into effect until the proponent qualifies for the reduction. If energy

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generation begins before the holder has demonstrated that the facility qualifies, the BLM would charge the holder the full capacity fee. The capacity fee could be updated for subsequent calendar years after the holder demonstrates that the facility qualifies, but the BLM would not refund past payments made before the rate reductions went into effect.

For example, an applicant or presumptive lease holder (see §§ 2809.13 and 2809.15, below) might request conditional approval of an alternative MWh rate. In that situation, a request for conditional approval for an energy generation facility may be granted if the presumptive lease holder has entered into or intends to enter into a power purchase agreement (see (b)(1)(i) of this section) that has a lower rate than the MWh rate. Documentation submitted to the BLM when requesting conditional approval may include draft or interim power purchase agreements or confirmation in writing from the purchasing party that negotiations have been entered into.

While the BLM may then conditionally approve the request for an alternative MWh rate, the alternative rate would not go into effect and be used to calculate the rental obligations until the power purchase agreement is finalized and the BLM determines, in writing, that the facility actually qualifies for the alternative rate. The holder's MWh rate would then be updated for the next year's billing, but payments for past years would not be reduced retroactively.

In another example of a request for conditional approval, an applicant or presumptive lease holder might request conditional approval of a Buy American reduction. In that example, a request for conditional approval may be granted if the proponent demonstrates that it has firm plans to use items qualifying for the preference. Documentation submitted to the BLM when requesting conditional approval may include procurement contracts or design documents showing that the facility would meet sufficient levels to qualify for this reduction. While the BLM may then conditionally approve the request for a Buy American reduction, the reduction would not go into effect and be used to calculate the proponent's rental obligations until the

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proponent submits documentation of actual value incorporated into the facility, such as fulfilled purchase orders and as-built design documents demonstrating installation of the qualifying Buy American items in that facility and the BLM determines, in writing, that the facility actually qualifies for the reduction. The holder's MWh rate then would be updated for the next year's billing, but payments for past years would not be reduced retroactively.

Paragraph (b)(2) would clarify that "D" is the annual adjustment factor, which is the same adjustment factor used for the annual acreage rent under § 2806.52(a)(1)(iii). See §§ 2806.52(a) and 2806.22(a) of this preamble for further discussion on the annual adjustment factor. The BLM understands that generally when a solar or wind energy operator begins generating power, they are in an agreement with a utility or other party to sell their power. It is customary that such agreements include an escalation clause that increases the purchase price of power each year of the agreement. These annual escalations vary by agreement. Annual escalation rates generally range between one and three percent each year of the agreement. There may be some higher annual escalation rates; however, higher rates are not common. The BLM believes, based on its experience with power purchase agreements, that three percent annual adjustment factor is a fair and reasonable escalation for the MWh rate.

Paragraph (b)(3) would clarify that "E" is the year of the grant or lease term, which is the same number used for the annual acreage rent under § 2806.52(a)(1)(iv). See § 2806.52(a) of this preamble for further discussion on the year of the grant or lease term.

Paragraph (b)(4) would clarify that "F" is the rate of return, which is proposed at 7 percent, an increase from the 2 percent currently used in the BLM's recent Manual 2806.60 update for solar and wind energy rents. In this rule, the rate of return is the relationship of income to the total value for a granted use of the public land resource. The rate of return accounts for the value of the authorization each year for use of the resource on public lands which is provided to the BLM

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through an annual payment. The BLM has previously used a 10-year average of the yields on 20- and 30-year U.S. Treasury bonds to “build up” a return for use in calculating the rate of return, as described in its October 31, 2008, rulemaking, *Update of Linear Right-of-Way Rent Schedule*.

The rate of return minimum under the existing regulations is 4 percent, but the BLM used the Energy Act authority to lower the rate of return to 2 percent in its Manual update. It is the BLM’s experience that periodically “building up,” or calculating, the rate of return creates uncertainty for grant holders as the Treasury bond rates are affected by changes to interest rates, inflation, and economic growth. The BLM’s proposal to set its rate of return in this rule introduces a level of rate predictability, including for future rate changes.

The BLM considered several options for determining a rate of return. These options included retaining the current ten-year average of the 20- and 30-year Treasury bond yields and the prime rates used by banks for lending. Market capitalization rates and Gross Domestic Product (GDP) by industry were also considered for determining a reasonable rate of return for ROWs but were ultimately not proposed in this rule. Treasury bond yields reflect the Federal Government’s cost of borrowing or equivalently the returns earned by investors in Federal debt. A similar logic applies to prime rates, which reflect the interest earned by private banks on their loans or assets and which were also considered but not proposed in this rule.

The BLM notes that the 50-year simple (i.e., arithmetic) average of the real annual return on 10-year Treasury Bonds is approximately 7 percent. This 50 years includes times when the United States went through periods of stagflation, high inflation, economic boom, and relatively calm market conditions. The average of the 10-year Treasury Bond rates is a reasonable reflection of the return to government. As proposed in this rule, solar and wind energy development terms would be up to 50 years and use a 7 percent rate of return supported by the 50-year average of the 10-year Treasury Bond rates. The proposed 7 percent rate of return is also supported by the

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Council of Economic Advisors, which estimates a real return to U.S. capital of around 7 percent from 1960 to 2014 using data from the National Income Product Accounts and other sources.⁸

By setting the rate of return in this rule, it would not be adjusted in the future, except by further rulemaking.

The BLM is interested in comments on the proposed codification of the encumbrance factor and rate of return, and the acreage rent calculations more generally. What alternative factors might the BLM consider in setting rate of return? Does the BLM's proposed rate of return improve predictability for holders? Does the proposed rate of return accurately capture the fair market value of solar and wind energy developments on public lands? Should the BLM consider allowing for adjustment in the future or setting the rate based on inflation parameters at the time of grant issuance, and if so, explain what reasoning you believe supports future changes and what that might look like? Please provide your comments and supporting references or materials for that recommendation.

Paragraph (b)(5) would clarify that "G" is the estimated annual power generated on public lands for the grant or lease in question. The estimated annual power generated on public lands would be provided to the BLM ahead of the first year of energy generation in a certified statement from the grant or lease holder, and every year thereafter. The BLM would bill annually to coincide with the calendar year, consistent with the timing for acreage rent payments. Beginning in the year following the first full year of production, the certified annual statement provided to the BLM would also include the most recent year's actual energy generation. The actual energy generation would be used to calculate a corrected capacity fee, and any under- or over-payments for the difference between estimated and actual energy generation would be administered under

⁸ Council of Economic Advisers Issue Brief, "Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate" (January 2017).

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§§ 2806.13 and 2806.16, respectively. A holder that underestimates energy generation by more than 10 percent of the actual energy generation would be subject to a late payment fee and other administrative fees, consistent with § 2806.13.

For example, the BLM would require an annual certified statement from the grant or lease holder by October of the second year of energy generation that includes an estimate of energy generation for the third year of energy generation, as well as actual production information for the first year of energy generation. The following year, the BLM would require an annual certified statement that includes the estimate for the fourth year of energy generation and the actual energy generation from the second year.

The BLM is interested in comments regarding the under estimation of energy generation. Is a different percent of underestimation appropriate or should the BLM implement such a provision after repeated occurrences of under estimating power?

In instances where an energy generation facility crosses multiple land ownerships, the reported estimate and actual energy generation would be apportioned based on the energy generated on the public lands. The reported energy generated on public lands would be determined by prorating the project area's footprint on public lands with the total project area footprint. This would include infrastructure that is necessary for the energy generating facility, including any roadways, fence lines, safety setbacks, and other infrastructure. However, this would not include electric power lines or offsite substations unless they are within the footprint of the project area or necessary to generating energy. Under this provision, the BLM would not carve out land from the footprint of the facility when apportioning energy generation on public lands.

Paragraph (b)(6) would describe where you may obtain a copy of the current MWh rate schedule for solar and wind energy generation.

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Paragraph (b)(7) would provide for periodic adjustments to the MWh rate. This paragraph applies unless you are an existing holder and elect to continue paying under your current rate adjustment method per § 2806.51(c).

Paragraph (b)(7)(i) would clarify that the rate from the MWh rate schedule for the first year of energy generation would not change once your grant or lease is authorized. The annual adjustment factor under § 2806.52(b)(1)(i) would be applied to the MWh rate during the term of the grant or lease. Any subsequent MWh rate schedule updates would apply to new grants and leases.

Paragraphs (b)(7)(ii) and (iii) would provide that the MWh rate schedule would be updated once every five years consistent with the timing of acreage rent adjustments. The MWh rate schedule would include the annual adjustment factor when setting the rate for the five-year period.

Paragraph (b)(8) would provide that the general payment provisions for rents under § 2806.14(a)(4) also apply to the capacity fee.

Paragraph (c) would apply unless you are an existing grant or lease holder and elect to continue with your current MW capacity fee adjustment method. The fee would be set at the time of authorization or re-issuance and not adjusted further except by the annual adjustment factor from § 2806.52(b)(2).

Section 2806.54 Energy storage facilities that are not part of a solar or wind energy development.

Provisions of existing § 2806.54 would be incorporated into § 2806.52 (see discussion relating to § 2806.52). Existing § 2806.54 would be retitled from “Rents and fees for solar energy development leases” to “Rent for energy storage facilities that are not part of a solar or wind energy development facility.” Under this rule, the BLM is removing differences in payment

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requirements for grants and leases; therefore, the existing § 2806.54 title and its provisions are no longer necessary and would be misleading to a reader.

Revised § 2806.54 would clarify that the rent the BLM determines for an energy storage facility that is not part of a solar or wind energy development facility would be based on the linear rent schedule. Energy storage facilities may be authorized separately from a solar or wind energy development facility. In these instances, the BLM would apply the linear rent schedule unless the BLM determines that the linear rent schedule does not apply per § 2806.70, such as when the BLM determines that a small site rent schedule applies to the energy storage facility.

The BLM would not charge the rent or fee of a solar or wind energy development ROW for an energy storage facility that is separate from the energy generation facility, the purpose of which is simply to store generated energy, and then deploy the stored energy as needed. Charging a capacity fee would be inappropriate as there is no energy generation from the facility. Using the pastureland rents for energy storage would also be inappropriate, as use of those acreage rates are intended to be coupled with the capacity fee to determine solar and wind energy generation payments for use of public lands. Thus, the BLM proposes that for energy storage facilities separate from an energy generation facility, it would apply the linear rent schedule unless it determines that the linear rent schedule does not apply per § 2806.

Sections 2806.60 through 2806.68 would be removed for the reasons discussed above.

Information formerly contained in these sections are now found under §§ 2806.50 through 2806.58. Sections 2806.56 and 2806.58 are inclusive of all testing authorization types and do not require revision to include wind energy testing. The BLM is interested in reader comments regarding its valuation of energy storage that is not part of a solar or wind energy generation facility. Is a different method for collecting a rent warranted or appropriate for such facilities on

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public lands? Should the BLM consider valuing battery storage differently, such as based on how many hours of storage capacity per MWh of energy may be deployed?

Subpart 2807 - Grant Administration and Operation

Section 2807.20 When must I amend my application, seek an amendment of my grant or lease, or obtain a new grant or lease?

Section 2807.20 describes when you must seek to amend your application, grant, or lease.

Paragraph (b) would be revised to clarify that the requirements for amending an application or grant are the same as processing a new application, including payment of processing and monitoring cost recovery fees. This paragraph would be revised to include “except for qualifying energy development grants and leases per § 2806.51(c).” That section describes rights-of-way in effect before the effective date of this rule. See § 2806.51(c) of this preamble for further discussion on qualifying projects.

Paragraph (f) is a new paragraph that would describe how the BLM would administer an existing grant or lease if the holder requests to change the rent adjustment methodology. Any request would have to be received within 2 years of the date this rule becomes effective and would be processed as an amendment by which the BLM would re-issue the grant or lease, without further environmental review, and update the terms and conditions under § 2805.12 and rent provisions under §§ 2806.50 through 2806.52. The BLM would be able to collect or use processing and monitoring costs under §§ 2804.14 and 2805.16 for handling the request. See section 2806.51(c) for further discussion regarding requests to use the rent adjustment methodology of this rule.

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

Section 2807.21 provides the requirements for when a holder may seek to assign or make other changes to a grant or lease.

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Paragraph (e) would be revised to clarify that the BLM may issue solar or wind energy development leases non-competitively inside a designated leasing area, consistent with other changes proposed in this rule. Additionally, the BLM could modify a grant or lease, such as adding additional terms and conditions, except for solar and wind energy leases unless required pursuant to §2805.15(e), which provides for changes to terms and conditions as a result of changes in legislation, regulation, or as otherwise necessary to protect the public health or safety or the environment.

Subpart 2809 – Competitive Process for Solar and Wind Energy Development Applications or Leases

Subpart 2809 would be retitled from “Competitive Process for Leasing Lands for Solar and Wind Energy Development Inside Designated Leasing Areas.” Existing subpart 2809 is dedicated to competitive solar and wind energy leasing specifically in designated leasing areas. Revisions to subpart 2809 generally apply the same competitive process both within and outside designated leasing areas. This change is consistent with other revisions in this rule that would provide the BLM with discretion to accept applications within designated leasing areas and authorizing leases using a competitive offer or non-competitive process based on whether competitive interest exists for the area. Revisions generally include incorporating provisions describing competitive processes outside of designated leasing areas, currently found under §§2804.30 and 2804.31, into subpart 2809 as appropriate.

Section 2809.10 Competitive process for energy development grants and leases.

Section 2809.10 would be retitled from “General” and revised to provide the same standard for the use of competitive processes on public lands located both inside and outside of designated leasing areas. As revised, paragraphs (a) through (d) explain that the BLM may conduct a competitive process to consider solar or wind energy development applications or leases: (1) on

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its own initiative; (2) based on responses to a call for nominations; (3) based on a request submitted by a member of the public in writing; or (4) when it receives two or more competing applications. These provisions incorporate

the BLM's broad discretion under FLPMA to determine under what circumstances it may utilize a competitive process to offer leases for lands outside of designated leasing areas, as noted in the existing text of §§ 2804.23(b) and (c) and 2804.30(c). These provisions standardize the BLM's discretion to utilize a competitive process for lands within and outside designated leasing areas.

Existing paragraph (d) is proposed to be removed consistent with changes made under § 2804.35(b) and subpart 2809. Under existing paragraph (d) the BLM generally prioritizes the processing of competitive leases over non-competitive grants. Under subparts 2804 and 2809, the BLM proposes to provide greater flexibility and discretion to process applications inside designated leasing areas by removing the requirement in the current rule that the BLM can only accept applications processed first through a competitive process. Additionally, § 2804.35(b) of this preamble provides additional information on the BLM's proposed factors to prioritize applications.

The BLM has found that the requirement of the current rule to only accept applications processed competitively extends the timeline and increases costs, creating a barrier for authorizing projects in certain DLAs where there was no competitive interest. The proposed changes incorporate the BLM's broad discretion under FLPMA to determine under what circumstances it may utilize a competitive process for lands both inside and outside of designated leasing areas and standardize the BLM's discretion to utilize a competitive process where competitive interest exists for lands. The BLM anticipates that these changes would lead to more deployment in these areas because accepting applications within DLAs without the prerequisite of holding a competitive process will likely generate more applications in the most desirable

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locations. This in turn would provide BLM with the flexibility to utilize a competitive process where there are multiple competing applications. At the same time, applicants can also proactively submit applications in DLAs that may not have competitive interest, and the BLM can process the leases non-competitively. The purpose of these changes is to ensure that the BLM is able to use the most appropriate process given the circumstances of a particular location, which the BLM believes will spur more competition for the most desirable areas, while continuing to increase solar and wind energy deployment consistent with the statutory direction in the Energy Act of 2020.

Paragraph (e) would largely incorporate language currently found in § 2804.23(c), to establish the timing within which the BLM would not initiate a competitive process for those lands where the BLM has accepted an application, received a plan of development, and entered into a cost recovery agreement. These provisions are intended to improve certainty with applicants that the BLM would not hold a competitive offer after an application has progressed substantively.

Consistent with the BLM's statutory authority, and to preserve its discretion to utilize a competitive process where appropriate, § 2809.10(e) proposes that the BLM would decline to use a competitive process after it receives a complete application and plan of development, enters into a cost recovery agreement, and publishes an Environmental Assessment or a Draft Environmental Impact Statement. The BLM considered other possible criteria for identifying the point in time at which it will decline to hold a competitive offer, including some criteria that would cut off potential competition earlier in time (such as 30-days after receiving a complete application, as defined in § 2804.12(j)), and other criteria, such as the initiation of scoping, including through the publication of a notice of intent to prepare an Environmental Impact Statement. The BLM also considered establishing a notice process, whereby the BLM solicits expressions of interest in an area after receiving a first application, to determine if there is any

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competitive interest. The BLM is interested in receiving comments about (a) the benefits of a process by which the agency would provide notice and how a public notice process can create an efficient use of leases on BLM land, (b) how notice could be communicated and what information could be included, (c) the cutoff point for expressions of interest incorporated into this proposed rule, (d) what information could be required for expressions of interest, (e) whether expressions of interest should also be noticed, and (f) other potential features of a notice process. The BLM is also interested in receiving comments about other potential cutoff points or associated public notice processes.

Section 2809.11 How will the BLM call for nominations?

Section 2809.11 would be retitled from “How will the BLM solicit nominations?” to improve consistency with the revised section.

Proposed paragraph (a) provides that the BLM would publish a notice in the *Federal Register* calling for nominations of lands to be offered through a competitive process for solar and wind energy development, and may use other notification methods, such as a newspaper of general circulation in the affected area, or the Internet. The first sentence of this paragraph would be revised from “The BLM will publish a notice...” to “The BLM may publish a notice...” to reflect the proposed discretionary use of a competitive process discussed in § 2809.10.

Paragraph (a) would also be revised to remove language specifying that a call for nominations may only be issued for public lands inside of designated leasing areas. The paragraph would also specify information that will be included in a call for nominations as follows:

- (1) The date, time, and location by which nominations must be submitted;
- (2) The date by which nominators will be notified of the BLM's decision on timely submissions;
- (3) The area or areas nominations are being requested; and

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

Paragraph (b) would provide the requirements for nominating a parcel of land for a competitive offer. Paragraph (b)(1) would require a payment of \$5 per acre for nominated parcels. The nomination fee is collected by the BLM under its cost recovery authority under Sections 304(b) and 504(g) of FLPMA, and the portion not spent in processing the nomination and preparing for a competitive offer may be refunded to the nominator if not successful in the competitive offer. These fees would reimburse the BLM for the expense of preparing and holding a competitive offer. The proposed revision would remove language that adjusts the nomination fee for inflation. In the BLM's experience, this inflation adjustment adds unnecessary complexity.

Paragraph (b)(2) would require 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 a future competitive offer for the parcel. The proposed revision changes "leasing" to "submissions", consistent with changes in this rule allowing for applications for development to be submitted without first requiring a competitive process to be held.

Paragraph (b)(3) would require that a nomination be accompanied by a legal land description and a map of the parcel of land. This information would help the BLM in identifying parcels in the competitive offer. The BLM proposes adding language stating that nominated lands may be the entire area or part of the area made available in the call for nominations.

Paragraph (c) would provide that the BLM would not accept nomination submissions that do not comply with this section, or from submitters who are not qualified per § 2803.10 to hold a grant or lease. The requirement that a nominator must be qualified to hold a grant is carried over and relocated from existing paragraph (d). Existing paragraph (c) allowed interested parties to submit "informal expressions of interest." In the BLM's experience, the information required by

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proposed paragraph (b) is the minimum information that the BLM needs in order to efficiently process and consider a nomination; an “informal expression of interest” that does not comply with these requirements imposes an undue burden on the agency and would not be considered under the proposed regulation. At the same time, under the proposed regulation, the BLM would consider nominations that do comply with the requirements of paragraph (b) even if they are not submitted in response to a published call for nominations, as set forth in proposed § 2809.10(c). Paragraph (d) would state that a nomination cannot be withdrawn, except by the BLM for cause, in which case the nomination fee would be refunded. This provision is carried over and relocated from existing paragraph (e). Existing paragraph (d) is removed consistent with the addition of paragraph (a)(4) of this section which provides how to qualify as a nominator.

Paragraph (e) would provide that the decision whether to hold a competitive offer in response to a nomination lies in the BLM’s discretion.

Section 2809.12 How will the BLM select and prepare parcels?

Section 2809.12 describes how the BLM identifies parcels suitable for competitive offer.

Paragraph (a) would be revised to note that the BLM may rely on any information it deems relevant in identifying parcels for competitive offers, but also describe more accurately the most common sources of information, which include nominations and existing land use designations. In particular, the BLM may continue to consider existing designated leasing areas, which are an example of land use designations, although it will not be constrained to conduct competitive offers in such areas.

Paragraph (b) would be revised to clarify that the BLM may conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, either before or after offering lands competitively. The existing regulations state that the BLM “will” conduct such studies and site evaluation work before holding a competitive offer. In practice, however,

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the BLM has sometimes found that the necessary studies and site evaluation work cannot be completed until the competitive offer is held and the successful bidder has submitted an application or plan of development. Accordingly, the BLM proposes to revise this regulation to clarify that the timing of these studies and site evaluation work relative to the competitive offer may vary depending on the circumstances. As noted below, the proposed regulations also introduce the term “presumptive lease holder” to clarify that the necessary environmental reviews must be completed before the BLM irretrievably commits to allowing a facility to be developed (see §§ 2809.13 and 2809.15).

Paragraph (c) would be added to clarify that the BLM’s decision to conduct a competitive offer, or not conduct a competitive offer, is not a decision to approve or deny a grant or lease and is not subject to appeal.

Section 2809.13 How will the BLM conduct competitive offers?

Section 2809.13 describes how the BLM conducts competitive offers. Paragraph (b) provides that the BLM publishes a notice of competitive offer in the *Federal Register* and through other notification methods, such as a newspaper of general circulation in the area affected or the Internet. Paragraph (b)(7) would be revised consistent with other revisions in this rule that would allow the BLM to accept applications within designated leasing areas without prior competitive offer. This paragraph clarifies that the notice of competitive offer would state whether a successful bidder would become a preferred applicant or a presumptive lease holder. Preferred applicants would be required to meet application submission requirements under § 2804.12, and presumptive lease holders would be required to submit a Plan of Development per § 2809.18. The difference between preferred applicants and presumptive lease holders is discussed further in connection with § 2809.15.

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Under paragraph (c), the BLM would notify nominators of its decision to conduct a competitive offer at least 30 days in advance of the bidding for the lands that were nominated if the nominator has paid the nomination fees and demonstrated qualifications to hold a grant or lease.

Section 2809.15 How will the BLM select the successful bidder?

Section 2809.15 explains how the successful bidder is selected. This proposed rule introduces a new distinction between the term “preferred applicant” (used in the existing regulations and carried forward into this rule) and the term “presumptive lease holder” (a new term in this rule).

The distinction between preferred applicants and presumptive lease holders reflects the fact that the proposed regulations allow the BLM to conduct competitive offers in a wider range of circumstances than the existing regulations. The distinction is intended to ensure that the BLM can properly balance the need to expedite approval of proposed projects in areas where the environmental impacts of solar and wind energy development are already well understood with the need to ensure that the BLM does not commit public land resources before completing the necessary analyses.

The term “presumptive lease holder” would describe those situations in which at least one round of environmental review for solar or wind energy development has been conducted before the competitive offer is held, so that the environmental impacts of potential development are relatively well understood before the competitive offer is held, and the successful bidder has a high likelihood of being able to obtain an authorization to develop its proposed project. As set forth in paragraph (b)(1)(i), a successful bidder would only be designated as a presumptive lease holder if the lands for which the competitive offer is held are located within a designated leasing area and the BLM has indicated in advance that the successful bidder would become a presumptive lease holder (see also § 2809.13(b)(7)). These requirements would limit the use of the term “presumptive lease holder” to situations in which the BLM has previously completed an

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environmental analysis for solar or wind energy development in the area through the land use planning process and has specified in advance (through the notice of competitive offer) many of the terms, conditions, and mitigation measures that would need to be incorporated into an approved authorization. A presumptive lease holder would therefore avoid the initial application review stage, which is designed to ensure that the site is generally appropriate for solar or wind energy development. A presumptive lease holder would have site control for a solar or wind energy development, precluding other competing solar or wind energy developments from siting on that land.

At the same time, the proposed regulations also recognize that even in these cases, an additional site-specific environmental analysis may be required before the BLM irretrievably commits to allowing a facility to be developed. The BLM retains its full discretion in considering whether to approve a presumptive lease holder's proposal based on site-specific environmental analysis, which would typically be tiered to the area-wide environmental analysis accompanying the identification of the area as a designated leasing area. This proposed change would resolve an ambiguity in the current rule regarding the appropriate timing of an environmental analysis tiered to an area-wide environmental analysis for a site-specific proposal. Paragraph (b)(1)(ii) therefore notes that the presumptive lease holder's right to develop a project on the site would remain contingent upon the BLM's approval of the presumptive lease holder's proposed plan of development. Once the BLM approves the proposed plan of development, following site-specific environmental analysis, a lease could be awarded, conferring a right to develop a project on the site, and the presumptive lease holder would become a lease holder.

In contrast, in other cases under the proposed rule, the BLM could conduct a competitive offer outside of a designated leasing area in response to receiving two or more competing applications or under any of the other circumstances set forth in § 2809.10, without having completed an

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initial environmental analysis for solar or wind energy development in the area. In such cases, as set forth in paragraph (b)(2), the successful bidder would be designated a “preferred applicant,” and would merely obtain the exclusive right to submit an application for solar or wind energy development on the site, without competition from other applicants for solar or wind energy development. Such an application would be processed under Part 2804 in the same manner as an application for a non-competitive authorization, and a full environmental analysis would be conducted before the preferred applicant can obtain the right to develop a project on the site. A preferred applicant that fails to meet the requirements of Part 2804 may lose status as the preferred applicant and their application may be denied consistent with § 2804.26.

Accordingly, paragraph (a) would add “preferred applicant or the presumptive lease holder” consistent with other revisions in this part that clarify what the BLM may offer in a notice of competitive offer. Reference to paragraph (b) of this section is updated consistent with the addition of new paragraph 2809.15(b).

New paragraph (b) would provide that a successful bidder becomes a presumptive lease holder or preferred applicant only after making payments required in paragraph (d) of this section and satisfying requirements for holding a grant or lease under § 2803.10. The BLM could move on to the next highest bidder or re-offer the lands under § 2809.17 if the successful bidder does not satisfy these requirements.

Paragraph (b)(1) would describe the requirements to become a presumptive lease holder, which are that the public lands successfully bid upon are located within a designated lease area and that the notice of competitive offer indicated successful bidders would become presumptive lease holders. This paragraph also provides that a presumptive lease holder would only be awarded a lease if the BLM approves the plan of development that is submitted in accordance with § 2804.25(c).

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Paragraph (b)(2) would describe the requirements for a preferred applicant. A successful bidder who does not become a presumptive leaseholder in accordance with paragraph (b)(1) would become a preferred applicant. Applications for a grant or lease would be processed for the parcel identified in the submission under § 2809.12(b). As with presumptive lease holders, approval of a preferred applicant's application is not guaranteed. However, the BLM would not process other applications for solar and wind energy development on lands where a preferred applicant has been identified, unless that application is allowed by the preferred applicant. The BLM may consider issuing authorizations for other uses, such as roadways, testing facilities, recreation permits, or even ROWs under MLA authority on the lands for which there is a preferred applicant. Processing authorizations for other uses under Title V of FLPMA would be performed under the subpart 2804 of this part. Recreation permits and ROWs under MLA authority would be processed under part 2920 and 2880, respectively. In some instances, such as when other applicants have submitted applications for incompatible uses, the BLM may determine that processing other applications must wait until it issues a decision on a first-in-line solar or wind energy development facility.

Existing paragraphs (b) and (c) would be redesignated as (c) and (d) respectively. Redesignated paragraph (c) is not revised, while redesignated paragraph (d) is revised to make several technical changes. Paragraph (d)(1) (currently paragraph (c)(1)) is added back into this section without revision. Paragraphs (d)(2), (3), and (4) (currently paragraphs (c)(2), (3), and (4)) are revised to replace the words "the day of the offer" with the words "the day on which the BLM conducts the competitive offer." This proposal is made to prevent confusion that sometimes arises under the existing regulations. The intent of paragraph (d) is to specify that the successful bidder must make certain payments on, or within fifteen days of, the day that the BLM conducts the competitive offer and the bidder is identified as the successful bidder. However, some readers

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have misunderstood “the offer” in this paragraph to refer to the day on which the BLM offers the lease to the successful bidder, as described in paragraphs (a), (d), and (e) of the existing regulation. This reading creates an internal contradiction: the successful bidder must make the specified payments within a specified time after the BLM offers the lease to the bidder, but the BLM cannot make the offer until it has received the payments (see existing paragraph (d)). The proposed revisions would avoid this internal contradiction by clarifying that the payments must be made on or after the day on which the competitive offer is held, but before the lease can be offered to the successful bidder.

Paragraphs (d)(3) and (4) would also be revised to update reference to redesignated paragraph (c) for payment of the balance of bonus bids after variable offsets, and to reflect the different payment requirements for successful bidders who would become preferred applicants and those who would become presumptive lease holders.

Paragraph (d)(5) would be added to clarify that successful bidders may be required to pay reasonable costs in addition to payment of the application filing fee when processing an application. Additional reasonable costs may include a Category 6 cost recovery for the BLM to complete processing the application. If a Category 6 cost recovery fee is required, it would be reduced by the amount of the application filing fee already paid. See § 2804.19 of the existing regulations for further information on Category 6 cost recovery.

Existing paragraph (d) would be removed from this rule as its provisions are duplicative and no longer necessary for grants or leases. The requirements of existing paragraphs (d)(1) and (d)(2) are addressed in proposed paragraph (b) and in revised paragraph (e), while existing paragraph (d)(3) merely cross-references § 2808.12, which would remain in effect without changes under the proposed rule, and repeats a requirement of existing § 2804.25(b)(1), which would similarly remain in effect.

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Paragraph (e) would be revised to explain that the successful bidder would not become a preferred applicant or a presumptive lease holder, and the BLM would keep all money that has been submitted with the competitive offer, if the successful bidder does not satisfy the payment terms under paragraph (d) of this section. In such a case, the BLM could proceed to the next highest bidder or re-offer the lands competitively under § 2809.17.

Section 2809.16 When do variable offsets apply?

Section 2809.16 provides that a successful bidder may be eligible for a variable offset of bonus bids.

Paragraph (c) would be revised by adding “including progressive steps towards.” The BLM proposes this additional text to clarify to readers that the offsets are not limited explicitly to what is listed and that the BLM may use other factors, including progressive steps towards the listed factors. Consistent with existing paragraph (b) of this section, the BLM would identify further information on the variable offset in its notice, including what progressive steps may include.

Paragraph (c)(11) would be added to allow the BLM to provide an incentive for use of items that qualify for the Buy American preference in solar and wind energy generation facilities on public lands, to complement the fee reduction described in § 2806.52(b)(1)(iii). In order to qualify for the Buy American variable offset, if offered, prospective bidders must demonstrate how they meet the thresholds identified within the Notice of Competitive Offer. A prospective bidder would be required to provide sufficient documentation to the BLM prior to the competitive offer to show that the bidder qualifies for this variable offset. This may be documentation in an initial Plan of Development provided to the BLM or other methods discussed in § 2806.52(b)(1)(iii) of this preamble. As discussed below, the BLM may hold in suspense the amounts corresponding to the variable offset until the facility construction is substantially complete or the successful bidder

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can otherwise demonstrate to the BLM that the required Buy American items have been used in the facility.

The BLM is interested in receiving comments regarding the addition of the Buy American variable offset. Responses to this section may also be applied to other parts of this rule where Buy American incentives are proposed. Are there other methods to implement a proposed variable offset that may better provide the greatest economic benefit to the American public or support increasing demand for clean energy technologies on public lands? Is there an alternative method to provide acceptable documentation to the BLM for qualifying items for the Buy American preference in an energy generation facility? What are reasonable levels to qualify for Buy American items within an energy generation facility that could be met by a developer today and in the future, such as when domestic production levels have increased further?

This paragraph would be further revised by renumbering existing paragraph (c)(11) to (c)(12) and by revising it to read as “other factors” by removing the word “similar.” This revision is also made to emphasize that the BLM may use other factors, including progressive steps towards those factors, when determining a variable offset for a competitive offer.

The BLM is also interested in receiving comments on the possibility of adding “use of union labor” to the list of variable offset factors in § 2809.16(c). That addition would parallel the proposed Buy American variable offset and complement the proposed union-labor reduction in the capacity fee discussed above in reference to § 2806.52.

New paragraph (e) would provide for bidders to qualify for a variable offset after a competitive offer is held. Some variable offset qualifications may not be able to be demonstrated to the satisfaction of the BLM until after the competitive offer is held, such as with new provision 2809.16(c)(11) for energy development facilities that would contain items qualifying for the Buy American preference. A bidder may conditionally qualify for a variable offset before the

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competitive offer and then later demonstrate their qualification to the BLM and perfect their qualification. The way a bidder may conditionally qualify for the variable offset would be described in the Notice of Competitive Offer and could include methods such as a written statement to the BLM that they intend to qualify for the variable offset and at what percentage. The bidder, if successful, must later demonstrate to the BLM that they have qualified for the variable offset at that percentage. The BLM could set a deadline in the notice for bidders to demonstrate that the proposed facility qualifies for the variable offset. If the variable offset is not qualified for in the time provided, or the bidder is not able to adequately demonstrate they qualify for the variable offset, the bid money would be retained by the U.S. Government as the balance of the bonus bid.

Section 2809.17 Will the BLM ever reject bids or re-conduct a competitive offer?

Section 2809.17 identifies situations when the BLM may reject a bid, offer a lease to another bidder, or re-offer a parcel.

Paragraph (b) would be revised to refer to the preferred applicant or presumptive lease holder, consistent with other revisions in this part for competitive processes, and to include the requirement that the successful bidder satisfy the requirements of § 2809.15. This paragraph would provide that the BLM may make the next highest bidder the successful bidder if the named successful bidder does not satisfy the successful bidder requirements identified under § 2809.15.

Paragraph (d) would be removed from this section as it is unnecessary with other revisions made under this rule to make public lands inside of designated leasing areas available to application without a competitive offer. Paragraph (d) currently states that if no bids are received for a notice of competitive offer inside a designated leasing area, the BLM may make the lands available to application. This provision would no longer be necessary, as this rule would make all designated

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leasing areas available to application without first requiring a competitive offer to be held. The existing provision also states that lands can be re-offered; this provision is duplicative of § 2809.15(e).

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

Section 2809.18 lists the terms and conditions of solar and wind energy leases, which are only issued inside of areas classified or allocated for solar or wind energy (e.g., designated leasing areas). The title would be revised from “What terms and conditions apply to leases?” to clarify to readers that this section applies to all leases for solar and wind energy development.

The introductory paragraph would be revised to clarify to a reader, consistent with other changes in this rule, that a lease may be awarded on a competitive offer or through an application. Any lease issued would be subject to the terms and conditions of this section.

Paragraph (a) would be revised to clarify that a lease awarded from a competitive offer provides site control to a lessee, but the lease holder may not construct any facilities on the right-of-way until the BLM issues a subsequent notice to proceed. As noted above in the context of paragraph 2809.15(b)(1)(ii), the competitively awarded lease, which is issued after the BLM reviews the plan of development, confers on the lease holder the right to develop a facility. Before the lease holder can begin actual construction, however, the BLM must issue a notice to proceed or other form of approval to begin surface disturbing activities.

Existing provisions in paragraph (a) referring to the term of a lease would be revised to be consistent with the new provisions added under § 2805.11(b) which provide for a reasonable term for ROWs of up to 50 years, considering the cost of the facility, its useful life, and the public purpose it serves.

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Paragraph (b) provides for rent terms for solar and wind energy leases. This paragraph would be revised to require that rent must be paid as specified in § 2806.52. This change is consistent with revisions under §§ 2806.50 through 2806.58 that consolidate solar and wind energy rents into the same sections.

Paragraph (f) provides for lease assignments under § 2807.21. The BLM would not make any changes to the lease terms or conditions, as provided in § 2807.21(e). Changes to ROW terms or conditions would involve an amendment action by the BLM in addition to the assignment action. This paragraph would be revised to add “apply to” so that it is clear that the lease holder must apply to the BLM for an assignment. An assignment is not complete until the BLM has approved it.

Section 2809.19 Applications in designated leasing areas or on lands that later become designated leasing areas.

Under § 2809.19, the BLM explains how it would evaluate applications for public lands that later become a designated leasing area. This section is proposed to be removed in its entirety as it is not consistent with the changes in this rule that allow for applications in designated leasing areas without first holding a competitive offer. Because designation of a designated leasing area does not preclude non-competitive leasing, there is no need for the BLM to automatically suspend a non-competitive leasing application because the lands at issue are being considered for designation. At the same time, the BLM may in its discretion deny an application, or assign the application a low priority under § 2804.35, if the BLM believes that the proposed use would be incompatible with land use designations that are being considered by the BLM through an ongoing land use planning process.

Severability

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Existing § 2801.8 provides: “If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.” The proposed revisions should be considered separately. If a court holds any provision of one part of this proposed rule invalid, it should not affect the other parts of the proposed rule. Any decision finding any provisions in this rule to be invalid would not affect the remaining provisions, which would remain in force.

V. PROCEDURAL MATTERS

Regulatory Planning and Review (Executive Orders 12866 and 13563) and Modernizing Regulatory Review (Executive Order 14094)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. E.O. 14094 updates the significance criteria in section 3(f) of E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. 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. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this rule in a manner consistent with these requirements.

OIRA has determined that this proposed rule is a significant regulatory action because it may cause material budgetary impacts.

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Furthermore, the BLM's threshold analysis concluded that the rule may have an effect on the economy of \$200 million or more. The BLM estimated that the rule would have distributional impacts in the form of transfer payments from ROW applicants and holders to the BLM. Transfer payments are monetary payments from one group to another that do not affect total resources available to society. While disclosing the estimated transfers are important for describing the distributional effects of the rule, these payments should not be included in the estimated costs and benefits per OMB Circular A-4.

The BLM is interested in public comment on the potential impacts of this rule on the deployment of wind and solar energy generation on BLM-managed public lands. Would this proposed rule cause increased deployment of renewable energy development on public lands such that the rule may have an annual effect on the economy of \$200 million or more? (See E.O. 14094 § 1(b).)

What data, models, or tools should the BLM review when considering this question? What factors, aside from BLM rents and fees, influence the siting of renewable energy developments on public lands and would form the baseline for that analysis? This rule is one among a suite of actions the Federal government may take to encourage renewable energy development. How can the BLM determine the contribution this rule will make to new renewable energy development? Please provide information and reference citations for comments informing the impacts of this rule.

For more detailed information, see the Economic and Threshold Analysis for Revisions to 43 CFR 2800 (Economic and Threshold Analysis) prepared for this rule. This Economic and Threshold Analysis has been posted in the docket for the rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE78," click the "Search" button, open the Docket Folder, and look under Supporting Documents.

Regulatory Flexibility Act

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This rule will not likely have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the “notice-and-comment” rulemaking requirements found in the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Size standards for the affected industries. We determined that a small share of the entities in the affected industries are small businesses as defined by the Small Business Act (SBA). However, the BLM believes that the impact on the small entities is not significant. Although the rule could potentially affect a substantial number of small entities, the BLM does not believe that these effects would be economically significant.

The rule would benefit small businesses by streamlining the BLM’s processes and reducing annual rent and capacity fee payments. These reductions may motivate investment in additional generation capacity and facilities by freeing up money that would have otherwise been paid to the BLM as rents or fees. The rule does modify provisions in the regulations that allow for an entity to request a waiver or reduction to annual rent and capacity fee payments.

For the purpose of conducting its review pursuant to the RFA, the BLM believes that the rule would not likely have a “significant economic impact on a substantial number of small entities,” as that phrase is used in 5 U.S.C. 605. Therefore, the BLM has not prepared an initial regulatory flexibility analysis.

Congressional Review Act

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This rule is not a major rule under 5 U.S.C. 804(2). This rule:

- a. Does not have an annual effect on the economy of \$100 million or more. The BLM did not estimate the annual benefits that this rule would provide to the economy. Please see the Economic and Threshold Analysis for this rule for a more detailed discussion.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule would benefit small businesses by streamlining the BLM's processes.
- c. Does 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. The rule would not have adverse effects on any of these criteria, it would encourage solar and wind energy development and promote the greatest use of solar and wind energy resources consistent with the Energy Act of 2020.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs, prior to issuing a proposed or final rule that may result in aggregate expenditure by State, local, and Tribal governments, or the private sector, of \$100 million or more in any 1 year.

This rule is not subject to the requirements under the UMRA. The rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any one year. The rule would not

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significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

Governmental Actions and Interference with Constitutionally Protected Property Right - Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The rule would not interfere with private property. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in Section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- a. Meets the criteria of Section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- b. Meets the criteria of Section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation and Coordination with Indian tribes (E.O. 13175 and Departmental policy)

The Department of the Interior (DOI) strives to maintain and strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian

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Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the DOI's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, and that consultation under the DOI's Tribal consultation policy is not required. However, consistent with the DOI's consultation policy (52 Departmental Manual 4) and the criteria in E.O. 13175, the BLM will consult with federally recognized Indian Tribes on any renewable energy project proposals that may have a substantial direct effect on the Tribes.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information, unless it displays a currently valid 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 requirements that are subject to review by OMB under the PRA). Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

OMB has generally approved the existing information-collection requirements contained in 43 CFR Parts 2800 associated with wind and solar rights-of-way grants or leases under OMB control number 1004-0206 (expiration date: June 30, 2026). Additionally, the BLM's regulations at 43 CFR part 2800 require the use of Standard Form 299 (SF-299), "Application for Transportation and Utility Systems and Facilities on Federal Lands," for ROW applications and

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the regulations at 43 CFR part 2800. OMB has approved the requirements associated with SF-299 and has assigned control number 0596-0249.

This rule does not include any proposed or materially substantive changes to the information-collection requirements currently contained in 43 CFR Parts 2800 and 2880 and approved by OMB as noted above. There is a proposed new information-collection requirement contained in 43 CFR 2806.52(i) regarding an annual certified statement. The rule would require that by October of each year wind and solar grant or lease holders must submit to the BLM a certified statement identifying the next year's estimated energy generation on public lands and the prior year's actual energy generation on public lands. The BLM will determine the capacity fee based on the certified statement provided. To prepare the annual certified statement, grant or lease holders will need to compile information based on capacity fee as instructed in 43 CFR 2806. The information-collection requirements contained in 43 CFR 2800 and 2880 and approved under OMB Control Number 1004-0206 and the proposed aforementioned new information-collection pertaining to 43 CFR 2806.52(i) are described below.

Activities That Require SF-299

The following discussion describes the information-collection activities in this control number that require use of SF-299.

Application for a Solar or Wind Energy Development Project Outside Any Designated Leasing Area (43 CFR 2804.12, 2804.25(c), 2804.26(a)(5), and 2804.30(g)); and Application for an Electric Transmission Line with a Capacity of 100 kV or More (43 CFR 2804.12, 2804.25(c), and 2804.26(a)(5)).

Section 2804.12(b) applies to solar and wind energy development grants outside any designated leasing area; and electric transmission lines with a capacity of 100 kV or more.

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Section 2804.12(b) includes the following requirements for applications for a solar or wind energy development project outside a designated leasing area, and for 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 (section 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 § 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 §§ 2804.12(a)(1) through (a)(7).

Section 2804.25 provides that the BLM will notify an applicant upon receipt of an application and may require the applicant to submit additional information necessary to process the application (such as a POD or cultural resource surveys). As amended, § 2804.25(c) provides that, for solar or wind energy development projects, and transmission lines with a capacity of 100 kV or more, the applicant must commence any required resource surveys or inventories within 1 year of the request date, unless otherwise specified by the BLM. The amended regulation also authorizes an applicant to submit a request for an alternative requirement by showing good cause under § 2804.40.

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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 § 2804.12(c)(2)) to submit an “application filing fee” of \$15 per acre. As defined in an amendment to § 2801.5, an application filing fee is specific to solar and wind energy ROW 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.

Section 2804.26(a)(5) provides the authority that allows the BLM to deny an application for a ROW grant if the applicant does not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the ROW. Amendments to that provision list the following ways an applicant may demonstrate their financial and technical capability to construct, operate, maintain, and terminate a project:

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

General Description of a Proposed Project and Schedule for Submittal of a Plan of Development (43 CFR 2804.12(b)(1) and (b)(2)).

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Sections 2804.12(b)(1) and (b)(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 Plan of Development (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.

Application for an Energy Site-Specific Testing Grant (43 CFR 2804.12(a), and 2804.30(g)); Application for an Energy Project-Area Testing Grant (43 CFR 2804.12(a), and 2804.30(g)); and Application for a Short-Term Grant (43 CFR 2804.12(a)).

Section 2804.12(a) addresses the general requirements of an application for a FLPMA ROW grant. 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.

Each of these grants is for 3 years or less, in accordance with § 2805.11(b)(2). All of these applications must be submitted on 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 § 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 § 2804.1.

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 ROW. Actions that may require an assignment include the transfer by the holder (assignor) of any right or interest in the grant or

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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.

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.

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 ROW 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).

Section 2805.14(g) provides that a holder of a ROW grant, which includes solar or wind energy generating facilities, may be applied for renewal in accordance with § 2807.22.

Section 2807.22(c) provides that an application to renew a grant must include the same information, on SF-299, that is necessary for a new application. It also provides that processing fees, in accordance with § 2804.14, as amended, apply to these renewal applications.

Sections 2807.22(a) and (b) provide that an application for renewal of any ROW grant or lease, including a solar or wind energy development 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

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lessee is complying 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.

Request for Amendment, Assignment, or Other Change (FLPMA) (43 CFR 2807.11(b) and (d) and 2807.21).

Section 2807.11(b) requires a holder of any type of ROW grant to contact the BLM to seek an amendment to the grant under § 2807.20 and obtain the BLM's approval before beginning any activity that is a "substantial deviation" from what is authorized.

Section 2807.11(d) requires contacting the BLM, to request an amendment to the pertinent ROW grant or lease, and prior approval whenever site-specific circumstances or conditions result in the need for changes to an approved ROW grant or lease, plan of development, site plan, mitigation measures, or construction, operation, or termination procedures that are not "substantial deviations."

Section 2807.21 authorizes assignment of a grant or lease 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 ROW, using SF-299, is required in cases of a substantial deviation (for example, a change in the boundaries of the ROW, major improvements not previously approved by the BLM, or a change in the use of the ROW). Other changes, such as changes in project materials, or changes in mitigation measures within the existing, approved ROW area, must be submitted to the BLM for review and approval. In order to assign a grant,

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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 ROWs, and to maintain current data.

ACTIVITIES THAT DO NOT REQUIRE ANY FORM

Preliminary Application Review Meetings for a Large-Scale Right-of-Way (43 CFR 2804.12(b)(4)).

“Preliminary application review meetings” are required after submission of an application for a large-scale ROW. A large-scale ROW is for solar or wind energy development outside a designated leasing area, or for a transmission line with a capacity of 100 kV or more.

Within 6 months from the date that the BLM receives the cost recovery fee for an application for a large-scale project, 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

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applicant subjects such as the status of the BLM's land use planning for the lands involved, potential siting issues or concerns, potential environmental issues or concerns, potential alternative site locations, and the ROW 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 Renewal of an Energy Project-Area Testing Grant or Other Short-Term Grant (43 CFR 2805.11(b)(2)(ii), 2805.14(h), and 2807.22).

Section 2805.11(b)(2)(ii) provides that holders of energy project-area testing grants may seek renewal of those grants. The initial term for such a grant is 3 years or less, with the option to renew for one additional 3-year period.

For other short-term grants, such as for geotechnical testing and temporary land-disturbing activities, the initial term is 3 years or less. Short-term grants include an option for renewal.

Section 2805.14(h) provides that applications to renew an energy project-area testing grant must include an energy development application submitted in accordance with § 2801.9(d)(2). Cost recovery fees in accordance with § 2804.14, as amended, apply to these renewal applications.

Section 2807.22 provides that an application for renewal of any ROW grant or lease, including an energy project-area testing grant or a short-term grant, must be submitted at least 120 calendar days before the grant or lease expires. The application must show that the grantee or lessee is complying 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.

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Showing of Good Cause (43 CFR 2804.40 and 2805.12).

Under § 2804.40, an applicant for a FLPMA ROW grant who is unable to meet any of the requirements in subpart 2804 may request approval for an alternative requirement from the BLM. Any such request is not approved until the applicant receives BLM approval in writing.

This type of request to the BLM must:

- (a) Show good cause for the applicant's 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.

The BLM will use the information to determine whether or not to apply an alternative requirement.

Other showings of good cause are authorized or may be required by § 2805.12, which requires due diligence in development of any ROW grant or lease. In accordance with § 2805.12(c)(6), the BLM will notify the holder before suspending or terminating a ROW 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 ROW. 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.

Section 2805.12(e), as amended, applies as soon as a ROW holder anticipates noncompliance with stipulation, term, or condition of the approved ROW grant or lease, or in the event of

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noncompliance with any such stipulation, term, or condition. In these circumstances, the holder must notify the BLM in writing and show good cause for the noncompliance, including an explanation of the reasons for the noncompliance.

In addition, the holder may 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 the ROW grant or lease. Any such request is not approved until the holder receives the BLM's approval in writing.

Bonding Requirements (43 CFR 2805.20).

Section 2805.20 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.

Section 2805.20(a)(5) provides that the reclamation cost estimate must include at a 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, re-vegetation, recontouring, and soil stabilization.

Sections 2805.20(b) and 2805.20(c) identify specific bond requirements for solar and wind energy development respectively outside of designated leasing areas. A holder of a solar or wind energy grant outside of a designated leasing area will be required to submit a reclamation cost

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estimate to help the BLM determine the bond amount. For solar energy development grants outside of designated leasing areas, the bond amount will be no less than \$10,000 per acre. For wind energy development grants outside of designated leasing areas, the bond amount will be no less than \$10,000 per authorized turbine with a nameplate generating capacity of less than one Megawatt (MW), and no less than \$20,000 per authorized turbine with a nameplate generating capacity of one MW or greater.

Section 2805.20(d) separates site- and project-area testing authorization bond requirements from § 2805.20(c). 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 §2809.18(e)(3).

Proposed Annual Certified Statement. (43 CFR 2806.52(b)(5)(i)).

The rule would require that by October of each year, wind and solar grant or lease holders must submit to the BLM a certified statement identifying the next year's estimated energy generation on public lands and the prior year's actual energy generation on public lands. The BLM will determine the capacity fee based on the certified statement provided. To prepare the annual certified statement, grant or lease holders will need to compile information based on the capacity fee as instructed in subpart 2806. This is the only new information-collection requirement contained in this rule.

Nomination of a Parcel of Land Inside a Designated Leasing Area (43 CFR 2809.11).

Sections 2809.10 and 2809.11 authorize the BLM, on its own initiative, to offer land competitively inside a designated leasing area for solar or wind energy development. These regulations also authorize the BLM to solicit nominations for such development by publishing a notice in the *Federal Register*. To nominate a parcel under this process, the nominator must be qualified to hold a ROW under 43 CFR 2803.10. After publication of a notice by the BLM,

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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 lease for solar or wind energy development to submit a plan of development (POD) within 2 years of the lease issuance date. The POD must be consistent with the development schedule and other requirements in the POD template posted at <http://www.blm.gov>; and must address all pre-development and development activities.

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 POD and monitor the lease. To expedite review and monitoring, the

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holder may notify the BLM in writing of an intention to pay the full actual costs incurred by the BLM.

Request for Amendment, Assignment, or Other Change (MLA) (43 CFR 2886.12(b) and (d) and 43 CFR 2887.11).

Sections 2886.12 and 2887.11 pertain to holders of ROWs and temporary use permits authorized under the Mineral Leasing Act (MLA). A temporary use permit authorizes a holder of a MLA ROW to use land temporarily in order to construct, operate, maintain, or terminate a pipeline, or for purposes of environmental protection or public safety. See § 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 lease-holder; 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 ROW).

A request for an amendment of a ROW or temporary use permit is required in cases of a substantial deviation (e.g., a change in the boundaries of the ROW, major improvements not previously approved by the BLM, or a change in the use of the ROW). Other changes, such as changes in project materials, or changes in mitigation measures within the existing, approved ROW area are required to be submitted to the BLM for review and approval. In order to assign a

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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.

In all these cases, the BLM will use the information gathered 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 ROW must submit to the BLM after finishing construction of a facility, but before operations begin. The BLM will use the information to verify that the holder has constructed and tested the facility to ensure that it complies with the terms of the ROW and is in accordance with applicable Federal and State laws and regulations.

The information-collection request for this rule has been submitted to OMB for review under 44 U.S.C. 3507(d). You may view the information-collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>.

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As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information-collection, including:

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

Currently, the information-collection requirements contained in 43 CFR Parts 2800 and 2880 and approved under OMB control number 1004-0206 are estimated as follows: 3,042 annual responses; 47,112, annual burden hours; and \$2,182,302 annual cost burden. We are projecting a burden increase of 75 new annual responses and 150 new annual burden hours as result of this rule. This burden hour increase would result from a proposed new information collection requirement contained in § 2806.52(i) pertaining to the annual certified statement. This change in burden is considered a program change due to agency discretion. This new information collection is needed to help the BLM more accurately determine the capacity fee based on the certified statement provided.

We are also adjusting the burden for two existing and unchanged information collections to reflect more accurately the burden those activities would involve the industry. These adjustments include the following:

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- *Preliminary Application Review Meetings for 2 public meetings for a Large-Scale Right-of-Way (43 CFR 2804.12(b)(4)).* The average response time is adjusted from 2 hours to 4 hours.

This adjustment resulted in a 40-hour burden increase (from 40 hours to 80 hours).

- *Environmental, Technical, and Financial Records, Reports, and Other Information (43 CFR 2805.12(a)(15)).* We have added a 50 percent increase in the hours required to prepare reports (from 4 per response to 6 per response). This resulted in an increasing the estimated annual burden hours for these activities from 80 hours to 120 hours.

There are no projected changes to the non-hour cost burdens as a result of this rule.

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

Title of Collection: Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development (43 CFR Parts 2800 and 2880).

OMB Control Number: 1004-0206.

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

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

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

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

Frequency of Collection: On occasion and annually for the Annual Certified Statement proposed in 43 CFR 2806.52(i).

Number of Respondents: 75.

Annual Responses: 3,117.

Annual Burden Hours: 47,342.

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

If you want to comment on the information-collection requirements of this rule, please send your comments and suggestions on this information-collection by the date indicated in the “**DATES**” and “**ADDRESSES**” sections as previously described.

National Environmental Policy Act

These proposed 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 an Environmental Impact Statement (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.

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

Federal agencies are 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.

The BLM reviewed the proposed rule and determined that it is not likely a significant energy action as defined by E.O. 13211. While the ROWs affected by this rule are for solar and wind energy generation, the proposed rule is limited in scope and would not likely have a significant, adverse effect on the supply, distribution, or use of energy from these sources. The rule would not result in a shortfall in supply, price increases, or increase the use of foreign supplies.

Clarity of this Regulation (Executive Orders 12866, 12988, and 13563)

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section

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3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the “ADDRESSES” section. To better help the BLM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The principal authors of this rule are: Jayme M. Lopez, BLM National Renewable Energy Coordination Office; Jeremy Bluma, BLM National Renewable Energy Coordination Office; Radford Shantz, Division of Lands, Realty and Cadastral Survey; Patrick Lee, DOI, Office of Policy Analysis; Jeff Holdren, BLM Division of Lands, Realty and Cadastral Survey; Darrin King, BLM Division of Regulatory Affairs; Jennifer Noe, BLM Division of Regulatory Affairs, assisted by the DOI Office of the Solicitor.

Laura Daniel-Davis,
Principal Deputy Assistant Secretary
Land and Minerals Management

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The action taken herein is pursuant to an existing delegation of authority.

List Of Subjects in 43 CFR Part 2800

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

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

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

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

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

2. Amend § 2801.5:

a. In paragraph (a) by adding the acronym for “FLPMA” in alphabetical order

b. In paragraph (b) by:

i. Removing the term “Act”;

ii. Adding in alphabetical order the terms “Buy American” and “Capacity fee”;

iii. Revising the term for “Grant”;

iv. Removing the term “Megawatt (mw) capacity fee”;

v. Revising the term for “Megawatt hour (MWh) rate”;

vi. Removing paragraphs (1) and (2) in the term “Megawatt rate” and redesignating paragraphs (3) and (4) as paragraphs (1) and (2);

vii. Revising the term “Reasonable costs”; and

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ix. Adding in alphabetical order the terms “Renewable energy coordination office (RECO)”, “Solar or wind energy development”, and “solar or wind energy lease”.

The additions and revisions to read as follows:

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

(a) * * *

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

* * * * *

(b) * * *

Buy American means an item or product that qualifies for the Buy American preference under Section 52.225-1(b) of the Federal Acquisition Regulations, 48 CFR 52.225-1(b), or a successor regulation.

Capacity fee is the fee charged to right-of-way holders once energy production commences that is based on the production of energy on public lands from solar and wind energy generating facilities.

* * * * *

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

* * * * *

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Megawatt hour (MWh) rate means the 5 calendar-year average of the annual average wholesale electricity prices per MWh for the major trading hubs serving the 11 western States of the continental United States.

* * * * *

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

* * * * *

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

* * * * *

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

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

* * * * *

3. Amend § 2801.6 by revising paragraph (a)(1) to read as follows:

§ 2801.6 Scope.

(a) * * *

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

* * * * *

4. Amend § 2801.9 by revising paragraphs (d) introductory text, (d)(3) and (4), and adding paragraph (d)(6) to read as follows:

§ 2801.9 When do I need a grant?

* * * * *

(d) All systems, facilities, and related activities for energy generation, storage, or transmission projects are specifically authorized as follows:

* * * * *

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

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

* * * * *

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

5. Revise the heading for subpart 2802 to read as follows:

Subpart 2802—Lands Available for FLPMA Grants or Leases

6. Amend § 2802.11 by revising paragraphs (b) introductory text and (b)(1) and adding paragraphs (b)(10) and (11) to read as follows:

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

* * * * *

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

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

* * * * *

(10) Access to electric transmission; and

(11) Areas for solar and wind energy development with low potential for conflict with resources or uses due to environmental, cultural, and other relevant criteria, which the BLM will identify by;

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

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

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

* * * * *

7. Amend § 2803.10 by revising paragraph (c) to read as follows:

§ 2803.10 Who may hold a grant or lease?

* * * * *

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

8. Revise § 2803.12 to read as follows:

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

(a) Applications do not hold any transferable interest.

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

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

9. Amend § 2804.12 by revising paragraphs (c) and (f) and adding paragraph (j) to read as follows:

§ 2804.12 What must I do when submitting my application?

* * * * *

(c) You must meet additional requirements when applying for a solar or wind energy development or short-term right-of-way, as follows:

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

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

* * * * *

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(f) The BLM may require you to submit additional information at any time while processing your application. The BLM will identify additional information in a written deficiency notice asking you to provide the information within a specified time pursuant to § 2804.25(c).

* * * * *

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

10. Amend § 2804.14 by revising paragraph (c) to read as follows:

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

* * * * *

(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, 1849 C Street N.W., Room 5645, Washington, DC 20240. The BLM also posts the current processing fee schedule at <https://www.blm.gov>.

* * * * *

11. Revise § 2804.22 to read as follows:

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

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

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

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

12. Revise § 2804.23 read as follows:

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

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

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

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

13. Amend § 2804.25 by revising the section heading, removing paragraph (e)(2)(i), redesignating paragraphs(e)(2)(ii) and (iii) as (e)(2)(i) and (ii), respectively, and revising them, and revising paragraphs (e)(5) and (f)(3) to read as follows:

§ 2804.25 How will the BLM process my application?

* * * * *

(e) * * *

(2) * * *

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

(ii) Evaluate the application based on the information provided by the applicant and input from other parties, such as Federal, State, Tribal, and local government agencies, as well as comments received in preliminary application review meetings held under § 2804.12(b)(4) and any public meeting held under paragraph (e)(1) of this section. Based on these evaluations, the BLM will either deny your application or continue processing it.

* * * * *

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

* * * * *

(f) * * *

(3) The segregation period may not exceed 2 years from the date of publication in the *Federal Register* of the notice initiating the segregation, unless the state director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the state director determines an extension is necessary, the BLM will extend the segregation for up to 2 years by publishing a notice in the *Federal Register*, prior to the expiration of the initial segregation period. A segregation will not be extended unless the application is complete and cost recovery has been received. Segregations under this part may only be extended once and the total segregation period may not exceed 4 years.

14. Amend § 2804.26 by revising the section heading and paragraph (a)(4), adding paragraphs (a)(9) and (10), and removing paragraph (c).

The revisions and additions read as follows:

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

(a) * * *

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

* * * * *

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

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

* * * * *

§ 2804.30 [Removed and Reserved]

15. Remove and reserve § 2804.30:

§ 2804.31 [Removed and Reserved]

16. Remove and reserve § 2804.31:

17. Revise § 2804.35 to read as follows:

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

(a) The BLM will prioritize the processing of applications to ensure that agency resources are allocated to applications with the greatest potential for approval and implementation.

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

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

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

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

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

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

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

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

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

18. Amend § 2804.40 by revising the introductory text to read as follows:

§ 2804.40 Alternative requirements.

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

* * * * *

Subpart 2805—Terms and Conditions of Grants

19. Amend § 2805.10 by revising paragraph (c) to read as follows:

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§ 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?

* * * * *

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

* * * * *

20. Amend § 2805.11 by revising the section heading and paragraphs (b)(2) introductory text and (b)(2)(iv) and (v) and adding paragraph (b)(4) to read as follows:

§ 2805.11 What does a grant or lease contain?

* * * * *

(b) * * *

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

* * * * *

(iv) Energy generation facilities, including solar or wind energy development facilities, are authorized with a grant or lease for up to 50 years (plus initial partial year of issuance); and

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

* * * * *

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

* * * * *

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

* * * * *

§ 2805.12 What terms and conditions must I comply with?

* * * * *

(e)***

(2) You may also request that the BLM consider alternative stipulations, terms, or conditions, other than rents or fees, except for as provided in § 2806.52(b)(1)(i). Any proposed alternative stipulation, term, or condition must comply with applicable law in order to be considered. Any proposed alternative to applicable bonding requirements must provide the United States with adequate financial assurance for potential liabilities associated with your right-of-way grant or lease. Any such request is not approved until you receive BLM approval in writing.

22. Revise § 2805.13 to read as follows:

§ 2805.13 When is a grant or lease effective?

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

23. Amend § 2805.14 by revising the section heading and paragraph (g) to read as follows:

§ 2805.14 What rights does a right-of-way grant or lease convey?

* * * * *

(g) Apply to renew your right-of-way grant or lease under § 2807.22;

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* * * * *

24. Amend § 2805.16 by revising the section heading and paragraph (b) to read as follows:

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

* * * * *

(b) The monitoring cost schedule is available from any BLM state, district, or field office or by writing the address found under § 2804.14(c) of this part. The BLM also posts the current schedule at <http://www.blm.gov>.

Subpart 2806—Annual Rents and Payments

25. Amend § 2806.10 by revising the section heading and adding paragraph (c) to read as follows:

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

* * * * *

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

26. Amend § 2806.12 by revising paragraphs (a)(1) introductory text, (a)(2), and (b) to read as follows:

§ 2806.12 When and where do I pay rent?

(a) * * *

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

* * * * *

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(2) If your grant or lease 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 instead of the initial rent bill periods provided under paragraph (a)(1)(i) or (ii) of this section.

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

* * * * *

27. Amend § 2806.20 by revising 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 the address found under section 2804.14(c) of this part. We also post the current rent schedule at <http://www.blm.gov>.

28. Revise the undesignated center heading that precedes § 2806.50 and § 2806.50 to read as follows:

Solar and Wind Energy Development Rights-of-Way

§ 2806.50 Rents and fees for solar and wind energy development.

If you hold a right-of-way for solar or wind energy development, you must pay an annual rent and fee in accordance with this section and subpart. The annual rent and fee is the greater of the acreage rent or the capacity fee that would be due in a given year, and must be paid in advance each year. The acreage rent will be calculated consistent with § 2806.11 and prorated consistent with § 2806.12(a). The capacity fee will vary depending on the project's annual energy generation on public lands and will be calculated consistent with § 2806.52(b). Any

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underpayment will be billed pursuant to § 2806.13 and any overpayment will be credited pursuant to § 2806.16.

29. Amend § 2806.51 by revising the section heading and paragraph (c) to read as follows:

§ 2806.51 New and existing grant and lease rate adjustments.

* * * * *

(c) If you hold a right-of-way for solar or wind energy development that is in effect prior to [effective date of the final rule], you may either request that the BLM apply the annual rent and fee set forth in § 2806.52 or use the rate methodology applicable to your authorization immediately prior to this rule. If you wish to use the annual rent and fee set forth in § 2806.52, your request must be received by the BLM before [Date 2 years after effective date of the final rule]. The BLM will continue to apply the rate in effect immediately prior to this rule unless it receives your request to use the rate adjustments in this part. A request to change your rate methodology will include your agreement to a re-issuance of the grant or lease with updated Terms and Conditions found under this part, pursuant to § 2807.20(f).

30. Amend § 2806.52 by revising the section heading, the introductory text and paragraphs (a), (b), and (c) to read as follows:

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

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

(a) *Acreage rent.* The BLM will calculate the acreage rent for your grant or lease by multiplying the number of acres of the authorized area (rounded up to the nearest tenth of an acre) by the annual per acre rate for the year in which the payment is due.

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

(i) A is the state per acre value from the solar or wind energy acreage rent schedule published by the BLM for the year on which your right-of-way grant or lease is issued, and is based on the National Agricultural Statistics Service (NASS) Survey of Pastureland Rents. The BLM will prepare the rent schedule by averaging the NASS reported pastureland rents for the most recent 5-year period, using only those years for which rent is reported by NASS. The BLM will update the rent schedule every 5 years consistent with the timing of rent adjustments under § 2806.22.

(ii) B is the encumbrance factor, which is 100 percent for solar energy and 5 percent for wind energy;

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

(iv) D is the year of the grant or lease term, which is the number of years the grant or lease has been authorized. For example, the first year (whether partial or full year) would be 1 and the second year would be 2.

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

(b) *Capacity fee.* (1) The capacity fee is calculated using the MWh rate or the alternative MWh rate, the MWh rate reduction, the Buy American reduction, the rate of return, the year of the grant or lease, the annual adjustment factor, and the annual power generated on the right-of-

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way. You must pay the capacity fee annually, beginning the year in which electricity generation begins or is scheduled to begin in the approved POD, whichever comes first, unless the acreage rent (see paragraph (a) of this section) exceeds the capacity fee in a given year. The calculation for determining the capacity fee is $A \times F \times G \times B \times C \times (1 + D)^E$ where:

(i) A is the *MWh rate* or the *alternative MWh rate*. The MWh rate is 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 year in which your grant or lease was issued, rounded to the nearest dollar increment (see paragraph (7)). An Alternative MWh rate may be approved by the BLM if you have entered into a power purchase agreement, such as with a utility, and that rate is lower than the MWh rate. You must provide proof of the lower rate to the BLM, and if the BLM determines the lower rate is appropriate, the alternative MWh rate will be used in place of the MWh rate.

(ii) B is the *MWh rate reduction*, which is equal to 0.2 for fee payments due before 2036, and 0.8 for fee payments due starting in 2036.

(iii) C is the *Buy American reduction*, which is calculated based on the percentage of the total cost of the facilities on the ROW attributable to Buy American items, as follows:

Table 1 to Paragraph (b)(1)(iii)

<u>Total cost of the facilities on the ROW</u> <u>attributable to Buy American items</u>	<u>Buy American reduction</u>
Less than 25 percent	1.0
25-35 percent	0.95
35-45 percent	0.9
45-55 percent	0.85

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55 percent or more	0.8
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(iv) *Request for conditional approval: Alternative MWh rate and Buy American reduction.* The alternative MWh rate and the Buy American reduction (paragraphs (b)(1)(ii) and (iii) of this section) may only be applied if a request for conditional approval is received by the BLM prior to the issuance of a grant or lease. A request for conditional approval must be submitted with sufficient documentation to demonstrate that the development qualifies or may later qualify for the rate reductions. A request for conditional approval is subject to the holder demonstrating, to the satisfaction of the BLM's Authorized Officer, that the development qualifies. If energy generation begins before the holder has demonstrated that the facility qualifies, the BLM will charge the holder the full capacity fee, without the alternative MWh rate or Buy American reduction. The capacity fee may be updated for subsequent calendar years after the holder demonstrates that the facility qualifies, but the BLM will not refund past payments made before the alternative MWh rate or Buy American reduction went into effect.

(2) D is the annual adjustment factor, which is 3 percent.

(3) E is the year of the grant or lease term, which is the number of years the grant or lease has been authorized. For example, the first year (whether partial or full year) would be 1 and the second year would be 2.

(4) F is the rate of return, which is 7 percent.

(5) G is the annual energy generated on the right-of-way, and will be provided to the BLM by the grant or lease holder in an annual certified statement. The BLM will bill to coincide with the start of the calendar year. Payment in advance will be based on estimated energy generation and the BLM will determine final payment based on actual energy generation.

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(i) By October of each year, the holder must submit to the BLM a certified statement identifying the next year's estimated energy generation on the right-of-way and the prior year's actual energy generation on the right-of-way. The holder must submit the annual certified statement to the BLM before the first year of energy generation begins or is scheduled to begin as approved in the plan of development, whichever comes first.

(ii) The BLM will calculate the capacity fee from the certified statement. For developments that include generation on public and non-public lands, the holder will prorate the total energy generation by the percentage of the right-of-way footprint on public lands relative to the total development area footprint.

(iii) If the actual energy generation exceeds the estimated energy generation in a given calendar year, the holder will be billed for the underpayment pursuant to § 2806.13(e). If the underpayment amount is more than 10 percent of the actual capacity fee, the BLM may charge the holder late payment fees and other administrative fees consistent with § 2806.13. If the actual energy generation is less than the estimated energy generation in a given calendar year, the holder will be credited or refunded consistent with § 2806.16, but in no event will the total rent paid be less than the annual acreage rent.

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

(7) *Periodic adjustments.* (i) The MWh rate applicable to your right-of-way will be the MWh rate in effect the first year for your grant or lease and will not be updated with subsequent MWh rate schedule adjustments. The MWh rate applicable to your right-of-way will only be updated each year by the annual adjustment factor under paragraph (b)(2) of this section.

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(ii) The MWh rate schedule for new grants and leases will be adjusted once every 5 years consistent with the timing of rent adjustments under § 2806.22 of this part and consistent with paragraph (b)(1) of this section.

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

(c) *Implementation of the acreage rent and capacity fee.* The rates for acreage rent and capacity fees apply to all grants and leases issued after the effective date of this rule, and to existing grants and leases if the holder elects to continue paying under the rate setting methodology established at the time of your authorization per § 2806.51(c).

* * * * *

31. Add an undesignated center heading between §§ 2806.52 and 2806.54 and revise § 2806.54 by to read as follows:

Renewable Energy Rights-of-Way

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

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

§§ 2806.60 through 2806.68 [Removed]

32. Remove the undesignated center heading “Wind Energy Rights-of-Way” and §§ 2806.60 through 2806.68.

Subpart 2807—Grant Administration and Operation

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33. Amend § 2807.20 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 2807.20 When must I amend my application, seek an amendment of my grant or lease, or obtain a new grant or lease?

* * * * *

(b) The requirements to amend an application or grant are the same as those for a new application, including paying processing and monitoring fees and rent according to §§ 2804.14, 2805.16, and 2806.10, except for solar and wind energy development grants and leases per § 2806.51(c) requesting a rent adjustment addressed under paragraph (f) of this section.

* * * * *

(f) A request to the BLM per § 2806.51(c) to adjust your solar or wind energy rates must be received before [date 2 years after the effective date of the final rule]. The BLM will re-issue your grant or lease for the remainder of your existing term with the requirements of this part, including processing and monitoring costs under §§ 2804.14 and 2805.16, the terms and conditions under § 2805.12, and rent provision under § 2806.50, without further review.

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

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

* * * * *

(e) Your assignment is not recognized until the BLM approves it in writing. We will approve the assignment if doing so is in the public interest. Except for solar or wind energy leases, 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 solar or wind energy lease 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 §

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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.

* * * * *

35. Revise the heading of subpart 2809 to read as follows:

Subpart 2809—Competitive Process for Solar and Wind Energy Development Applications or Leases

36. Revise § 2809.10 to read as follows:

§ 2809.10 Competitive process for energy development grants and leases.

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

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

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

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

(e) The BLM will not competitively offer lands for which the BLM has accepted a complete application, received a plan of development, entered into a cost recovery agreement, and published an Environmental Assessment or Draft Environmental Impact Statement.

37. Revise § 2809.11 to read as follows:

§ 2809.11 How will the BLM call for nominations?

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

- (1) The date, time, and location by which nominations must be submitted;
- (2) The date by which nominators will be notified of the BLM's decision on timely submissions;
- (3) The area or areas within which nominations are being requested; and
- (4) The qualification for a nominator, which must include, at a minimum, the requirements for an applicant, see § 2803.10.

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

- (1) A refundable nomination fee of \$5 per acre;
- (2) The nominator's name and personal or business address. The name of only one citizen, association, partnership, corporation, or municipality may appear as the nominator. All communications relating to submissions will be sent to that name and address, which constitutes the nominator's name and address of record; and
- (3) The legal land description and a map of the nominated lands. The lands nominated may be the entire area or part of the area made available under the call for nominations.

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

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

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

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38. Revise § 2809.12 to read as follows:

§ 2809.12 How will the BLM select and prepare parcels?

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

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

(c) A decision to conduct a competitive offer, or not to conduct a competitive offer, is not a decision to grant or deny a right-of-way application and is not subject to appeal under 43 CFR part 4.

39. Amend § 2809.13 by revising paragraphs (b)(7) and (c) to read as follows:

§ 2809.13 How will the BLM conduct competitive offers?

* * * * *

(b) * * *

(7) The terms and conditions of the offer, including whether a successful bidder will become a preferred applicant or a presumptive lease holder; the requirements for the successful bidder to submit an application, see § 2804.12, or a POD, see § 2809.18; and any mitigation requirements, including compensatory mitigation.

(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 that are included in the offer, paid the nomination fees, and demonstrated your qualifications to hold a grant or lease as required by § 2809.11.

40. Amend § 2809.15 by:

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- a. Revising paragraph (a);
- b. Removing paragraph (d);
- c. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
- d. Adding a new paragraph (b); and
- e. Revising newly redesignated paragraphs (d)(1) through (4);
- f. Adding paragraph (d)(5); and
- f. Revising paragraph (e).

The revisions and addition read as follows:

§ 2809.15 How will the BLM select the successful bidder?

(a) The bidder with the highest total bid, prior to any variable offset, is the successful bidder, and may become the preferred applicant or the presumptive lease holder in accordance with § 2809.15(b).

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

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

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

(B) The notice of the competitive offer indicated that a successful bidder will become a presumptive lease holder.

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

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

* * * * *

(d) * * *

(1) Make payments by personal check, cashier's check, certified check, bank draft, or money order, or by other means deemed acceptable by the BLM, payable to the Department of the Interior—Bureau of Land Management;

(2) By the close of official business hours on the day on which the BLM conducts the competitive offer or such other time as the BLM may have specified in the offer notices, submit for each parcel:

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

(4) Within 15 calendar days after the day on which the BLM conducts the competitive offer, submit the application filing fee under § 2804.12(c) less the application fee submitted

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under § 2809.11(c)(1) (if you are the preferred applicant), or submit the acreage rent for the first full year of the lease as provided in part 2806 (if you are the presumptive lease holder).

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

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

41. Amend § 2809.16 by revising paragraphs (c) introductory text and (c)(10) and (11) and adding paragraphs (c)(12) and (e) to read as follows:

§ 2809.16 When do variable offsets apply?

* * * * *

(c) The variable offset may be based on the following factors, including progressive steps towards:

* * * * *

(10) Public benefits;

(11) Use of items qualifying for the Buy American preference; and

(12) Other factors.

* * * * *

(e) If the successful bidder's eligibility for a variable offset cannot be verified until a later time, the BLM may require the successful bidder to submit the full bid amount, without taking

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into account the variable offset, and hold the amount of the variable offset in suspense. The amount of the bonus bid corresponding to the variable offset will be refunded or credited to the successful bidder once the successful bidder has demonstrated that it has qualified for the variable offset. The BLM may set a deadline in the notice of competitive offer by which the successful bidder must demonstrate its qualifications.

42. Amend § 2809.17 by revising paragraph (b) and removing paragraph (d).

The revision reads as follows:

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

* * * * *

(b) We may make the next highest bidder the successful bidder if the first successful bidder does not satisfy the requirements of § 2809.15, does not execute the lease, or is for any reason disqualified from holding the lease.

* * * * *

43. Amend § 2809.18 by revising the introductory text and paragraphs (a), (b), and (f) to read as follows:

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

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

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

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

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* * * * *

(f) *Assignments*. You may apply to assign your lease under § 2807.21, and if an assignment is approved, the BLM will not make any changes to the lease terms or conditions, as provided for by § 2807.21(e), except for modifications required under § 2805.15(e).

* * * * *