

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Parts 2800, 2860, 2880, and 2920****[BLM\_HQ\_FRN\_MO4500175819]****RIN 1004-AE60****Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

**SUMMARY:** The Department of the Interior (DOI or Department), through the Bureau of Land Management (BLM), is issuing this final rule to streamline the BLM's communications uses program, update its cost recovery fee schedules, and add provisions for operations, maintenance, and fire prevention plans for powerline rights-of-way (ROWs) consistent with section 512 of the Federal Land Policy and Management Act of 1976, as amended (FLPMA).

**DATES:** The final rule is effective on May 13, 2024.

**FOR FURTHER INFORMATION CONTACT:** Stephen Fusilier, Branch Chief, Rights-of-Way, telephone: 202-309-3209, email: [sfuslie@blm.gov](mailto:sfuslie@blm.gov), or by mail 1849 C St. NW, Washington, DC 20240, for information regarding the substance of this final rule.

Individuals in the United States who are deaf, blind, 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. For a summary of the final rule, please see the final rule summary document in docket BLM-2022-0002 on [www.regulations.gov](http://www.regulations.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Executive Summary
- II. Background
- III. Section-by-Section Discussion
- IV. Procedural Matters

**I. Executive Summary**

This final rule addresses three distinct areas: communications uses; cost recovery; and operations, maintenance, and fire prevention plans for powerline ROWs. The final rule revises certain regulatory provisions related to communications use ROWs authorized

under FLPMA. The BLM administers approximately 1,500 communications sites on BLM lands. By making it easier for industry to collocate in and on existing communications facilities or build out new communications infrastructure on public lands, the BLM can play a strong role in increasing connectivity throughout the United States. The communication uses portion of the final rule:

- Requires the BLM to grant or deny communications uses ROW, easement, or lease applications within 270 days;
- Provides for electronic filing of communications uses ROW applications; and
- Requires Standard Form-299 (SF-299) as the common form for communications uses grant applications.

The final rule changes the cost recovery fee schedule for ROWs authorized under Title V of FLPMA or the Mineral Leasing Act of 1920, as amended (MLA), as well as for land use authorizations under Title III of FLPMA. Though FLPMA and the MLA authorize cost recovery for costs associated with processing, monitoring, and terminating ROWs, the current cost recovery fees for minor ROWs requiring less than 50 hours of work do not cover the BLM's actual costs. The cost recovery portion of the final rule:

- Increases the cost recovery fees for minor ROWs; and
- Expands the definition of minor ROWs to those requiring less than 64 hours of work.

The final rule also adds provisions consistent with section 512 of FLPMA, including section 512(b)(1), which directs the BLM “[t]o enhance the reliability of the electric grid and reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution ROWs . . . including hazard trees.” The portion of the final rule implementing section 512 of FLPMA:

- Includes provisions governing operations, maintenance, and fire prevention plans and agreements for vegetation and facility management on public lands within powerline ROWs;
- Adds a definition of hazard tree consistent with the United States Forest Service's definition; and
- Includes emergency access provisions.

**II. Background**

The subject matter of this rule is the BLM's ROW program under 43 CFR parts 2800 and 2880, land use authorizations under part 2920, and

communications uses under newly established part 2860.

For the reader to better understand the following discussion, a “grant,” as defined in 43 CFR 2801.5, is any authorization or instrument (*e.g.*, easement, lease, license, or permit) the BLM issues under Title V of FLPMA. A “right-of-way” refers to the public lands that the BLM authorizes a holder to use or occupy under a particular grant.

This final rule covers three distinct topics. The first topic is communications uses. The second topic, cost recovery for the ROW program, addresses the reimbursement of costs, as authorized by FLPMA (43 U.S.C. 1701 *et seq.*) and the MLA (30 U.S.C. 185 *et seq.*), for the Federal Government's expenses in undertaking ROW work. The third topic is implementation of Section 512 of FLPMA (43 U.S.C. 1772) and addresses the risk of fires from powerline ROWs on public lands.

**A. Communications Uses**

In the 21st century, broadband is just as vital to the public as roads and bridges, electric lines, and sewer systems. At the community level, an advanced telecommunications network is critical for supporting growth, allowing small businesses to flourish, creating jobs, strengthening the first-responder network in remote areas, and making it possible to remain competitive in the information-age economy. At the individual level, access to broadband—and the expertise to use it—opens the door to employment opportunities, educational resources, health care information, government services, and social networks.

Although there have been great strides in expanding broadband services in the United States over the past several years, rural and Tribal areas lag behind in broadband deployment. Successive Presidential administrations and Congress have made it a priority to bring affordable, reliable, high-speed broadband to every American, including the more than 35 percent of rural Americans who lack access to broadband at minimally acceptable speeds. E.O. 13821, issued on January 8, 2018, promotes better access to broadband internet service in rural America. It states that “Americans need access to reliable, affordable broadband internet service to succeed in today's information-driven, global economy” and establishes a policy “to use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity in rural America, including rural homes, farms, small businesses, manufacturing, and production sites,

tribal communities, transportation systems, and healthcare and education facilities.”

On January 8, 2018, in association with the release of E.O. 13821, a Presidential Memorandum (Memorandum) entitled “Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed by the Department of the Interior” stated an executive branch policy to make Federal assets more available for rural broadband deployment, with due consideration for national security concerns. The Memorandum directed the Secretary of the Interior to “develop a plan to support rural broadband development and adoption by increasing access to tower facilities and other infrastructure assets managed by the Department of the Interior” and “identify[ ] the assets that can be used to support rural broadband deployment and adoption.”

As the land management agency with the responsibility to manage the largest inventory of public land in the Federal Government, the BLM is promulgating this rule to amend regulatory provisions for the processing and monitoring of ROWs for communications uses. Communications companies, cooperatives, other private entities, and government agencies ultimately make decisions on locations to construct and/or upgrade broadband infrastructure, from communications towers to linear ROWs for fixed terrestrial broadband access. However, the Department administers a significant amount of land as well as existing permitted infrastructure that can be leveraged for increased connectivity in rural America. Currently, there are approximately 1,500 communications sites on BLM lands. By making it easier to collocate in and on existing communications facilities or build out new communications infrastructure on public lands, this rule will help to increase connectivity throughout the United States. Communications uses, including fiber optic and telephone, may be collocated within the 6,000 miles of energy corridors administered by the BLM and the U.S. Forest Service (USFS).

Newly established Part 2860 of this rule consolidates and revises the existing regulations pertaining to communications uses to streamline processes and establish new customer service standards. The rule also proposes several technical changes to clarify the communications regulations.

This rule incorporates the new timing requirements established by the MOBILE NOW Act into the BLM’s regulations. As amended by the MOBILE NOW Act, 47 U.S.C.

1455(b)(3)(A) states: “Not later than 270 days after the date on which an executive agency receives a duly filed application for an easement, right-of-way, or lease under this subsection, the executive agency shall—(i) grant or deny, on behalf of the Federal Government, the application; and (ii) notify the applicant of the grant or denial.” E.O. 13821 states, “Federal property managing agencies shall use the GSA [General Services Administration] Common Form Application for wireless service antenna structure siting developed by the [GSA] Administrator for requests to locate broadband facilities on Federal property.” The MOBILE NOW Act also requires the use of a common form for all applications for communications facilities. The BLM provides Standard Form (SF)-299 for applicants seeking authorization for such purposes on public lands. The GSA, through collaboration with other agencies, decided the SF-299 would be the common form for Federal authorization of communications uses. This rule requires use of the SF-299 for all communications uses grants, thereby making the regulations consistent with the MOBILE NOW Act. By updating these regulations, the BLM will improve response times and address the current lack of certainty in the communications uses grant process that impacts industry construction schedules and may increase construction costs.

#### *B. Cost Recovery*

Typically, unless exempt, an applicant must reimburse the BLM for its reasonable costs incurred in processing and monitoring a FLPMA ROW activity. Both FLPMA and the MLA authorize the Federal Government to collect fees, called cost recovery, for the reimbursement of costs that it expends in processing a ROW application, taking administrative actions, or monitoring the construction, operation, and termination of a facility authorized by a grant. The Federal Government collects cost recovery before the BLM begins tasks related to a ROW application or other ROW-related activity.

In 2005, the BLM completed regulations, found in 43 CFR parts 2800 and 2880, that established a cost recovery processing and monitoring fee schedule for ROW applications and grants and an annual process whereby the BLM updates the schedule to account for changes in the Implicit Price Deflator Gross Domestic Product (IPD-GDP). The IPD-GDP measures annual changes in the prices of goods and services produced in the United States.

The existing regulations also require the BLM to reevaluate its cost recovery fees for each cost recovery category, and the categories themselves, within 5 years after their effective date and at 10-year intervals thereafter (43 CFR 2804.15 and 2884.15). The BLM completed its initial cost recovery reevaluation in December 2010 and has continued to evaluate data received through the end of FY 2020. These data show that the former cost recovery fee collections do not adequately cover the costs incurred by the BLM for processing and monitoring ROW applications and grants under both FLPMA and the MLA.

The final rule revises the existing cost recovery fee categories to better reflect updates in technology, the procedures for processing applications and monitoring grants, and statutes and regulations relating to the ROW program.

This rule also increases the cost recovery fees to better reflect the current costs of processing and monitoring minor category ROWs and updates the scope of the minor categories. Under the former rule, ROWs that took 50 hours or less for a BLM realty specialist to process were considered minor. Under the final rule, that processing time is increased to 64 hours. This will allow more applications to qualify for a minor category, thus eliminating the labor to establish, monitor, and maintain appropriate accounting of major category cost recovery accounts on those applications. The BLM believes this change will increase operational efficiency.

This rule also makes several technical changes to 43 CFR parts 2800 and 2880 that clarify and expedite other ROW tasks. It updates cost recovery processes for FLPMA ROW grants, MLA grants and temporary use permits (TUPs), and leases, permits, and easements issued under Title III of FLPMA. Finally, the existing ROW cost recovery fee structure is also applicable to leases, permits, and easements issued under Section 302(b) of FLPMA (43 U.S.C. 1732(b)) and 43 CFR part 2920. This rule revises the regulations for these authorizations, found in section 2920.8(b), to provide consistency with the revisions made to the cost recovery provisions in part 2800.

#### *C. Section 512 of FLPMA*

The BLM’s mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The BLM administers approximately 245 million surface acres. According to the National Interagency Fire Center (NIFC), approximately 109 million acres across

the United States (including both Federal and non-Federal lands) burned in wildfires between 2006 and 2020. Wildfire is a known risk to and from powerlines and may be caused by a variety of factors, including vegetation contacting live powerlines or structural failures of powerline infrastructure.

On March 23, 2018, Congress amended FLPMA by adding Section 512, entitled, “Vegetation Management, Facility Inspection, and Operation and Maintenance Relating to Electrical Transmission and Distribution Facility Rights of Way” (43 U.S.C. 1772). FLPMA Section 512 establishes requirements for the BLM and the USFS to develop and implement regulations to govern review and approval of operations, maintenance, and fire prevention plans and agreements for vegetation and facility management on public lands within powerline ROWs and on abutting Federal lands. To implement Section 512 of FLPMA on land managed by the USFS, the USFS published a final rule on July 10, 2020 (85 FR 41387), an amendment to the final rule on August 11, 2020 (85 FR 48475), draft policy on December 10, 2020 (85 FR 79463), and a final directive on February 10, 2022 (Forest Service Manual (FSM) 2700—Special Uses Management 2740—Vegetation Management Pilot Projects).

This final rule includes provisions to implement Section 512 on BLM-managed land, including provisions related to emergency conditions. This rule is consistent with the direction in Section 512(b)(1) of FLPMA that the BLM “enhance the reliability of the electric grid and reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution ROWs and abutting Federal land, including hazard trees.” To enhance electric reliability, promote public safety, and avoid fire hazards, this rule adds definitions for the terms “hazard tree” and “operating plan or agreement.” It also includes provisions pertaining to ROW administration to address fire risks on public lands, such as ensuring that operating plans and agreements provide for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of a ROW and on abutting Federal lands, including management of hazard trees. The final rule defines “hazard tree” consistent with the USFS’s definition.

#### D. Legal Authority

Section 310 of FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate regulations to implement

the statute. FLPMA also provides comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed “under principles of multiple use and sustained yield,” unless otherwise provided by law (43 U.S.C. 1732(a)). A similar authority for promulgating regulations to implement the MLA’s pipeline ROW provisions is found at 30 U.S.C. 185(f).

Both FLPMA (43 U.S.C. 1734(b) and 1764(g)) and the MLA (30 U.S.C. 185(l)) authorize the BLM and other Federal agencies to require ROW applicants or holders to reimburse an agency for costs incurred processing a ROW application and inspecting and monitoring an authorized ROW.

The 2018 Consolidated Appropriations Act amended FLPMA by adding a new Section 512 (43 U.S.C. 1772), which directs the Secretary to promulgate regulations to implement the new section. The 2018 Act also included a provision titled the “Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act” or “MOBILE NOW Act,” which amended section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455). The MOBILE NOW Act imposes limits on the time to process ROW applications and requires the use of a common form for all applications to install, construct, modify, or maintain communications facilities (including broadband infrastructure) on federally owned lands.

#### E. Public Notice and Comments

The 60-day public comment period for the proposed rule, published November 7, 2022, at 87 FR 67306, ended on January 6, 2023. The comment period was re-opened and ended on January 23, 2023. During the comment period and government-to-government consultation with Tribes and Alaska Native Corporations, the BLM received 28 submissions, 18 of which were unique. Comments included submittals from the following entities: 1 Tribe, 1 Alaska Native Corporation, 7 companies and industry organizations, 3 governmental organizations, and 16 individual (including anonymous) submitters. In total, those submissions included 136 unique comments. Approximately half of the comment submissions were neutral in tone or expressed overarching support for the proposed rule, with the remaining comments expressing opposition to it. However, duplicate letters submitted as part of a form campaign accounted for approximately 60 percent of the

submittals expressing general opposition.

All relevant comments are posted at the Federal eRulemaking portal: <http://www.regulations.gov>. To access the comments at that website, enter 1004-AE60 in the Search box. A few commenters provided comments that were outside the scope of the proposed rule, and the BLM is not addressing them in this final rule.

Comments regarding particular provisions of the final rule are addressed in the Section-by-Section Discussion below. Several comments regarding the rulemaking process are addressed in the Procedural Matters discussion below.

One commenter encouraged us to weigh comments more heavily from local communities. The BLM considers all comments and does not give more weight based on the identity of the commenter.

Two commenters requested the BLM work collaboratively with the USFS and industry to develop guidance and training programs that ensure consistent application and implementation of the rule. The BLM agrees that both agencies should continue to work together and with input from industry in these areas.

### III. Section-by-Section Discussion

#### Part 2800—Rights-of-Way Under the Federal Land Policy and Management Act

Part 2800 of title 43 of the Code of Federal Regulations describes requirements for ROWs issued under FLPMA. This rule revises the cost recovery fee schedule and its categories. The communications uses provisions found in this part have been either moved to new part 2860 or removed. Other minor modifications correct or clarify existing regulations.

#### Subpart 2801—General Information

Section 2801.2 What is the objective of the BLM’s right-of-way program?

The rule adds the words “wherever practical” to the objective described in § 2801.2(c). This revision aligns the objective of promoting ROWs in common with the requirement described in Section 503 (43 U.S.C. 1763) of FLPMA.

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

The rule moves several terms associated with communications uses from § 2801.5 to the definitions section for a new part 2860, which specifically addresses communications uses. The rule also adds new definitions to

§ 2801.5. BLM is revising and republishing paragraph (b) of § 2801.5 (1) to decrease the likelihood of introducing errors, (2) improve efficiency during the publication process, and (3) meet Office of the Federal Register drafting and formatting requirements for publication. Unless explained elsewhere in this preamble as a change between the proposed and final rules, the individual (piecemeal) changes to the affected CFR units are detailed in the proposed rule, published on November 7, 2022, at 87 FR 67306.

The BLM received comments expressing confusion about the term “ancillary” as that term is used in various sections of the proposed rule. In response, the BLM added the term to this definition section of the final rule and, consistent with its usage of the term in the proposed rule, defined “ancillary” as a secondary use entirely within the scope of a primary authorization that solely supports the operations allowed by that primary authorization and that the holder does not make available to third parties through commercial sales.

As proposed, the term and a definition of “complete application” are also added to clarify that an application is only complete when it contains all necessary information found under § 2804.12 and when the BLM notifies the applicant that it is complete. This is an important clarification, because the BLM’s customer service standards for processing applications apply only when an application is complete. This is consistent with existing BLM practice, and this rule clarifies this requirement. The final rule includes only minor, nonsubstantive changes to the definition that appeared in the proposed rule.

One commenter recommended that the BLM change the definition of “complete application” to provide for notification to the applicant if the application is not complete, as well as to reference section 2804.25(c). However, the BLM will maintain its existing definition of “complete application” and associated workflow. The BLM reviews the application casefile upon serialization and sends a deficiency letter to the applicant if initial deficiencies are identified. After interdisciplinary review, the BLM sends a deficiency letter if the interdisciplinary team determines additional pertinent information is missing. The BLM may send a deficiency letter at any point during the process if more information is needed per 43 CFR 2804.25(c). The BLM’s current customer service standards and application processing workflow appear

to address the commenter’s requests so that no substantive revision of the rule is necessary.

The rule adds the term and a definition of “cost recovery” to clarify that it is a fee for the processing and monitoring associated with any proposed or authorized ROW. The final rule makes no changes to the definition that appeared in the proposed rule.

The rule adds the term and a definition of “exempt from rent” to clarify when an authorization is automatically exempt from rental. This definition is consistent with existing § 2806.14 and new § 2866.14. The final rule makes no changes to the definition that appeared in the proposed rule.

The rule revises the definition of the term “facility” by removing the last sentence. This part of the definition applied only to communications uses and was moved into new § 2861.5, which is the definitions section for the new part 2860 that has been added by this rule to consolidate provisions that address communications uses ROWs. The final rule makes no changes to the definition that appeared in the proposed rule.

Several commenters suggested that the BLM change the definition of hazard tree to conform with the USFS’s definition so that the definition would: (1) explicitly refer to the different types of vegetation that create hazardous situations, consistent with the USFS’s definition; and (2) apply to vegetation likely to come within the minimum vegetation clearance distance, in addition to vegetation likely to come within 10 feet of a powerline facility. Another comment requested modification of the rule to acknowledge that all vegetation with the capability of growing into a standardized clearance area at maximum growth potential will be removed, regardless of whether dead or likely to die. And another requested the BLM clarify how it interprets the hazard tree definition with respect to who can identify these trees and set occupational standards for their staff. Related to the definition of “hazard tree” and removal of vegetation from the ROW, the BLM received a comment requesting clarification of what constitutes routine maintenance of the ROW and whether routine maintenance requires prior BLM approval. Another comment stated that grant holders, not the BLM, should have discretion to determine what vegetation poses an imminent danger and should be treated as an emergency not requiring BLM approval prior to removal.

In response to these comments, the final rule revises the definition of “hazard tree” that appeared in the

proposed rule by adopting the existing USFS definition and adds definitions of other terms used and defined in the USFS definition of “hazard tree” including “minimum vegetation clearance distance (MVCD),” “maximum operating sag,” “operating plan or agreement,” and “powerline facility.” These definitions apply in the limited context of powerline ROWs subject to § 2805.22 and will help holders of such ROWs understand what is required of them and what authorization their ROW provides. (See § 2805.22(b)(3)).

As commenters pointed out, the USFS’s definition of “hazard tree” includes trees and non-tree vegetation that is “[l]ikely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the [MVCD] as determined in accordance with applicable reliability and safety standards, and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.” (36 CFR 251.51).

The “MVCD” is the calculated distance (stated in feet or meters) that is used to prevent flashover between conductors and vegetation for various altitudes and operating voltages. The MVCD is measured from a conductor’s maximum operating sag to vegetation within and adjacent to the linear powerline ROW for purposes of felling or pruning hazard trees. The ROW holder uses this calculation to determine whether vegetation poses a system reliability hazard to the powerline facility. Although the proposed rule dealt with vegetation management generally, the term did not appear, and so was not defined, in the proposed rule. It appears in the final rule as a term used in the final rule’s definition of “hazard tree.”

“Maximum Operating Sag” is the theoretical position of a conductor when operating at 100 degrees Celsius and must be accounted for when determining MVCD. Although the proposed rule dealt with vegetation management generally, the term did not appear, and so was not defined, in the proposed rule. It appears in the final rule as a term used in the final rule’s definition of “hazard tree.”

In response to the comments about vegetation management, the final rule also adds a definition for the term “maintenance” that applies when that term is used to describe actions taken by holders of powerline ROWs. The term appeared, but was not defined, in the proposed rule. As with the final rule’s

definition of “hazard tree,” the BLM is patterning the definition of “maintenance” after the USFS definition of that term in the same context of powerline ROWs.

“Maintenance,” as it is defined in this final rule, encompasses and distinguishes between routine, non-routine, and emergency maintenance.

The rule replaces the term “monitoring” with “monitoring activities” and revises the definition of that term. “Monitoring activities” means those activities the Federal Government performs to ensure compliance with terms and conditions of a ROW grant. The definition also revises the explanation of the monitoring categories for consistency with the revisions made to § 2804.14(a). The final rule makes no changes to the definition that appeared in the proposed rule.

The rule adds the term and a definition of “operations and maintenance,” which includes activities conducted by a ROW holder to manage facilities and vegetation within and adjacent to the ROW boundary.

The final rule uses the term “operating plan or agreement” in place of “operations, maintenance, and fire prevention plan,” which was used in the proposed rule. “Operating plan or agreement” is a term used by USFS in its definition of “hazard tree.” Since the BLM adopted the USFS definition of “hazard tree” in this final rule, the BLM determined it would be clearer to use the USFS’s term “operating plan or agreement” rather than “operations, maintenance, and fire prevention plan” as the definitions of the two terms were substantively the same. An “operating plan or agreement” is a plan (or agreement) submitted to the BLM by the holder of a ROW that describes how the holder plans to operate, maintain, and inspect the applicable ROW and facilities in a cost-effective, efficient, and timely manner to enhance electric reliability, promote public safety, and avoid fire hazards, including vegetation in or adjacent to the ROW.

The rule adds the term and a definition of “powerline facility.” Although the proposed rule dealt with facilities properly described as “powerline facilities,” the term did not appear and so was not defined in the proposed rule. It appears in the final rule as a term used in the final rule’s definition of “hazard tree.” A “powerline facility” is one or more electric distribution or transmission lines authorized by a ROW grant and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy,

overhead ground wires, and communications equipment that is owned by the ROW holder; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.

The rule adds the term and a definition of “processing activities.” Processing activities are defined as work that the Federal Government undertakes to evaluate an application for a ROW grant. The principal outcome of ROW processing is a determination of whether to approve the application by issuing a grant and identifying appropriate terms and conditions for each grant. The definition also includes preparation of an environmental document, compliance with other legal requirements, and ROW administrative actions, such as assignments, amendments, and renewals, as different processing activities. This is not a change from existing BLM practice but clarifies to the public that the BLM collects cost recovery fees for these ROW-related activities. This definition explains what activities are generally associated with applications found under each cost recovery category. The final rule makes no changes to the definition that appeared in the proposed rule.

In response to comments expressing confusion about the term “subleasing,” the BLM added the term to this section of the final rule, defining it as the ROW holder allowing another party or parties to use facilities for the purposes specified in the ROW authorization, for which use the ROW holder may charge fees.

In response to multiple comments, the BLM revised the definition of “substantial deviation” to strike the best balance of the various considerations that the commenters raised. Two commenters wanted the definition of “substantial deviation” expanded further. One commenter suggested the BLM change the definition of “substantial deviation” to exclude additions of overhead optical ground wire and additions of new structures, as well as replacement of existing structures or conductors. Another commenter asked that the BLM change the definition of “substantial deviation” to clarify that any changes being made in support of an existing authorized use within the boundary of an existing authorized ROW are not to be considered a substantial deviation and require no additional authorization.

In response to these comments, the final rule revises the definition of “substantial deviation” to clarify that

general maintenance activities, including safety-related activities, within an existing ROW are not considered a substantial deviation. Additionally, the definition clarifies that activities to prevent or suppress wildfires on lands within or adjacent to the ROW are not considered a substantial deviation. The final rule explicitly identifies “vegetation management” as an example of such activities.

Another commenter suggested the BLM change the definition of “substantial deviation” to include criteria the BLM will use to determine whether activities that occur when a ROW holder adds overhead or underground lines, pipelines, structures, or other facilities not expressly included in the current grant represent a substantial deviation. Though the BLM did not revise the rule to include specific criteria that will be used to determine whether an activity is a substantial deviation, the BLM plans to issue implementation guidance to help the BLM office processing or monitoring the ROW make this determination.

The rule revises the definition of “transportation and utility corridor” to clarify the process for establishing transportation and utility corridors. Furthermore, the amended definition clarifies the need for compatible uses. The final rule makes no changes to the definition that appeared in the proposed rule.

The BLM received multiple, contradictory comments about “vegetation management” and in response has added the term and a definition to the rule. The rule defines “vegetation management” in terms of both “emergency vegetation management” and “nonemergency vegetation management.” “Emergency vegetation management” is unplanned felling and pruning of vegetation on public lands within the linear right-of-way for a powerline facility and unplanned felling and pruning of hazard trees on abutting public lands that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard. “Nonemergency vegetation management” is planned actions as described in an operating plan or agreement periodically taken to fell or prune vegetation on public lands within the linear right-of-way for a powerline facility and on abutting public lands to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance

with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

Several commenters suggested changes to § 2805.14(d), the provision that gives holders the right to perform certain vegetation management, with some commenters proposing that the BLM broaden the provision while others proposed that the BLM make it narrower. One commenter suggested that the BLM amend § 2805.14(d) so that ROW holders could trim, prune, and remove vegetation and conduct other activities consistent with maintenance and operation of the ROW and protection of public health and safety. Another commenter supported the provision as proposed so long as the vegetation management activities were defined in the project's operating plan or agreement. A third commenter requested revision of § 2805.14(d) to clarify that vegetation management to maintain the ROW includes the right to cut or trim off-ROW vegetation when the utility determines it is necessary as part of its vegetation management program. Similarly, another commenter requested the BLM modify the rule to acknowledge that all vegetation with the capability of growing into a standardized clearance area at maximum growth potential will be removed, regardless of whether it is dead or likely to die. A final commenter requested that the BLM clarify how the BLM interprets the hazard tree definition with respect to who can identify hazard trees and set occupational standards for its staff.

In response to the comments, the BLM determined it will retain the language in § 2805.14(d) but, as discussed above, revised the definition of hazard tree to be consistent with the USFS's definition, which addresses some of the comments regarding when vegetation management is allowed on and adjacent to the ROW.

The rule adds the term and a definition of "waived from rent" to clarify the differences between being "waived from rent" and "exempt from rent." While a holder may be exempted from rent by statute or regulation, the BLM may also waive a part, or all, of a holder's rent (see §§ 2806.15 and 2866.15). The final rule makes no changes to the definition that appeared in the proposed rule.

The rule revises the definition of "zone" by removing the number "eight" from the description of the number of zones. The current linear rent schedule for ROWs has 15 zones, so the former definition is no longer accurate. Removing the number of zones does not affect the definition. The final rule

makes no substantive changes to the definition that appeared in the proposed rule.

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

##### Section 2802.10 What lands are available for grants?

This rule revises § 2802.10(c) by removing the specific requirement to notify the BLM office nearest the lands you seek to use. The rule instructs you to contact the BLM to determine the appropriate office with which you should coordinate. The appropriate office is the BLM office with jurisdiction over the lands you seek to use, which may not be the same as the BLM office nearest those lands.

One commenter suggested that the BLM modify § 2802.10(c) to provide for the identification of a single administrative office to be the lead for coordination in processing a ROW application when multiple offices may be involved, as well as to provide guidance on how to determine the appropriate BLM office or contact.

The BLM elected not to make the recommended change because the BLM has procedures to identify a lead office, or in the case where a project crosses several states, to identify a lead state to coordinate the processing of a ROW application. See BLM ROW Manual 2804 for further guidance on this process.

#### Subpart 2803—Qualifications for Holding FLPMA Grants

##### Section 2803.11 Can another person act on my behalf?

Section 2803.11 adds new provisions to govern the process a holder must follow to notify the BLM when another person or entity is authorized to act on the holder's behalf. This standardizes what documents the BLM requires prior to allowing another person or entity to act on behalf of the holder.

Paragraph (a) requires the holder to follow several steps before designating another individual or entity to act on their behalf. These requirements are necessary for the BLM to understand the legal relationship between the holder and the third party acting on their behalf.

Paragraph (a)(1) explains which BLM office must be notified. The office with jurisdiction over a grant retains the official case file and therefore needs the official documentation. This paragraph also requires the holder to provide a copy of a relevant power of attorney if one exists. This is often the instrument used to authorize another party to act on the holder's behalf. This requirement

should not create any additional burden because the requested information is simply a copy of documents already possessed by the holder.

Paragraph (a)(2) requires the holder to provide and maintain current contact information for their intended agent. This requirement is important if the BLM needs to contact the agent. Without updated and current contact information, processing times can be delayed. This requirement is anticipated to streamline interactions between the BLM and holders or their agents.

Paragraph (b) informs the ROW holder how the BLM will administer the grant. The BLM is simplifying the formal communication process by establishing expectations of responsibility for any actions taken by an authorized agent. As a result of this change, the BLM anticipates a reduction in processing times for requests related to a ROW application.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

##### Section 2803.12 What happens to my grant if I die?

Because an application is not an inheritable interest, the BLM changed the title of this section from "What happens to my application or grant if I die?" to "What happens to my grant if I die?" Paragraph (a) was also revised to remove the reference to applications.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Subpart 2804—Applying for FLPMA Grants

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

In § 2804.12, the BLM has changed § 2804.12(a) by adding a sentence following the first sentence to read: "The application must include the applicant's original signature or meet the BLM standards for electronic commerce." This addition clarifies that when an application for a ROW is filed electronically, a manual signature may not be required. One commenter expressed support for the proposed rule's allowance that an application for a ROW that is filed electronically may not require a physical signature. The BLM has established the electronic filing process for communication uses ROWs by providing an online SF-299 for this type of ROW application. The BLM may expand the online filing process to other types of ROWs in the future.

Revisions to § 2804.12(a)(4) require an applicant to submit the project map for

the project as Geographic Information Systems (GIS) shapefiles, or in an equivalent format, when requested to do so by the BLM. When a BLM office is conducting an analysis under the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA), it is not uncommon for the various resource specialists to request that the applicant provide project data electronically in a GIS format to ensure that the correct area for the proposed project is analyzed. It is likely the individual or entity responsible for the application already has the proposed project data in a GIS format, and therefore, the BLM is not adding a significant burden upon the applicant. This new requirement is expected to reduce application processing times by allowing the BLM to integrate project locations into existing resource datasets and analyze the potential resource impacts more quickly. See the preamble discussion of § 2864.12(a)(3) for comments related to the rule's GIS requirements.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Section 2804.14 What are the fee categories for cost recovery?

The rule revises the title of this section to read: "What are the fee categories for cost recovery?" The cost recovery categories in this section apply to both processing and monitoring activities, whereas the former title of § 2804.14 refers only to processing fees for grant applications. The BLM amended § 2804.14(a) to clarify that cost recovery fees include both processing and monitoring activities and to maintain consistency with the changes in § 2804.16 which, as amended, provides for the waiver of, rather than exemption from, processing and monitoring fees.

A commenter asked that the BLM explain how monitoring costs for the duration of the grant can be determined at the time of the grant application, given the long-term nature of authorizations. Often, monitoring is a one-time event to ensure that terms and conditions contained in a ROW grant are met during construction. However, for more complex authorizations, monitoring must occur throughout both construction and maintenance of the ROW. The expense for continuous monitoring during construction and afterward is considered when making category determinations. At times, periodic billing will be required to cover additional monitoring costs. This is especially true for Category 5 and 6 ROW project monitoring. Therefore, the

BLM may collect additional payments from the land use authorization holder for anticipated monitoring expenses. The final rule amends the existing regulations to acknowledge that some ROWs that fall into the minor categories may nevertheless require monitoring for lengthy construction or maintenance periods. The BLM suggests long-term monitoring provisions be included in operating plans or agreements.

The BLM received multiple comments on the cost recovery portion of the proposed rule, largely focused on the increased cost recovery fee schedule for processing Category 1–4 ROW applications. One commenter stated that the BLM should eliminate revisions to the Category 1 processing fee that include processing fees for work estimated to take 1 hour or less. This commenter contested the BLM's justification that the time spent on ROW work activities generally is not less than 1 hour and expressed concern that this revision would create a financial burden to industry through the additional processing fees.

Processing one ROW application generally requires more than 1 hour. To process a ROW application, one or more BLM staff specialists need to examine the ROW site including traveling to and from the site. They need to prepare one or more reports (*e.g.*, cultural site evaluation, environmental evaluation), identify appropriate terms and conditions to be applied, prepare a grant for the applicant to sign, and collect rents and cost recovery payments. Master Agreements are a way for applicants to address concerns related to Category 1 applications that may take less than 1 hour to process.

Three commenters expressed concern about the amount the cost recovery fee is increasing and/or the validity of the calculations used to determine the new cost recovery fee schedule. The first commenter stated that cost recovery fees should not be revised to reflect an average hourly wage of \$67.83. The commenter expressed concern that the economic analysis used to determine the average wage does not provide sufficient information to assess the validity of this wage. Similarly, this commenter stated that the rule did not properly consider required reasonableness factors in calculating \$67.83 as the base average hourly wage for its cost recovery fees. More specifically, the commenter stated that the economic analysis was incorrect in its determination that all non-major projects: (1) are local in nature with small public benefits; (2) provide little opportunity to meet public service needs; and (3) would have an

insignificant number of ROW applications where paying full actual costs could generate undue hardship. The second commenter stated that the average hourly wage of \$67.83 upon which the cost recovery fees of sections 2804.14(b), 2805.16(a), 2884.12(b), and 2885.24(a) are based is not reasonably supported by the rule. The commenter stated the BLM had not provided adequate information for the public to consider its proposed new average hourly wage of \$67.83, and the BLM had not considered adequately the consequences of its proposed rule. The third commenter expressed a general concern that cost recovery fees were increasing too much.

The BLM recognizes that the cost recovery calculations are complex but will not revise the hourly wage. FLPMA Section 304(b) identifies the factors which the BLM takes into account when determining whether fees are reasonable. Please see the 1986 BLM proposed rule (51 FR 26836–26844) for the first cost recovery determinations applying these factors. The economic analysis has been updated to provide more detail in response to the comments. Further discussion of how the hourly rate was calculated and how the amount of the increase satisfies the reasonableness factors is provided in the below paragraphs. Master Agreements, also discussed below, are a way for applicants to address cost concerns.

Three commenters expressed interest in the overhead cost calculations used in calculating the new cost recovery fee schedule. One commenter asked why only 3 years were used in calculating "overhead costs." Another commenter asked how the specific percentages for the 3 years used were calculated. A third commenter questioned how the asserted "overhead costs" were calculated, whether only "vehicle usage, building utility cost, and property maintenance" went into the calculation, or if other items were included.

The indirect cost rate or "overhead costs" include expenses such as building maintenance, utilities, general administrative costs (time keeping, vehicle expenses, local travel costs), and similar items. The indirect rate is calculated by taking the total of the BLM's expenditures for a fiscal year (FY), subtracting salary costs, and dividing the remainder by the total expense figure. The annual indirect rate for any 1 year is derived from the average of the 5 previous fiscal years' costs. The indirect cost rates for FY 2018, 2019, and 2020 were 21.8 percent, 21.6 percent, and 21.5 percent, respectively. Tables showing the calculation can be found in the

economic analysis for this rulemaking. “Economic and Threshold Analysis for Revisions to 43 CFR 2800,” U.S. Bureau of Land Management, October 2023, available at [www.regulations.gov](http://www.regulations.gov).

The BLM received several comments asking how cost recovery amounts were determined for Category 1–4 ROW applications. The cost recovery amounts for Category 1–4 applications were determined in a multi-step process. First, the BLM reviewed data in the DOI’s Financial and Business Management System for FYs 2018, 2019, and 2020. The purpose of this review was to determine the BLM’s costs associated with conducting ROW processing and monitoring activities. From this information, the BLM determined an approximate average wage (\$/hour) being used to conduct cost recovery-eligible work and applied that wage to the number of hours representing the midpoint for each minor category. The BLM reviewed data that included these three functional areas (or sub-activities): “1430” (lands and realty work); “1492” (communication site work); and “5102” (ROW-cost recovery work). The program elements included: “ER” (ROW processing); “FP” (ROW work other than processing); and “NH” (ROW compliance).

The BLM used the following formulas to determine the approximate average wage for the cost recovery work:

Average Wage = total pay + indirect costs/number of hours worked  
 Total Pay = pay amount + pay additive + leave surcharge + leave surcharge additive  
 Indirect Costs = total pay \* indirect rate

“Pay amount” is the portion of employee gross pay charged to each program. “Pay additive” is the government share of taxes (e.g., OASDI and Medicare) and any employee benefits (such as health insurance premiums, retirement contributions, etc.). “Leave surcharge” is a percentage of the employee gross pay assessed to each program to fund employee leave taken. “Leave surcharge additive” is a percentage of the government share of taxes and any benefits assessed to each program to fund employee leave taken. The “indirect rate,” as discussed above, is a percentage applied to the total pay to account for overhead costs, such as for vehicle use, building utility costs, and property maintenance.

The average wages that the BLM calculated using the cost data were relatively stable across the 3-year period with a slight increase in FY 2020: \$66.47, \$66.69, and \$70.50 in FY 2018, FY 2019, and FY 2020, respectively.

When the data are combined over the 3-year period, the calculated average wage is \$67.83.

This wage is the value that the BLM used to determine the revised fee schedule. Specifically, the BLM multiplied \$67.83 by the number of hours representing the midpoint for each minor category to get the revised base year fee for each category. During previous rulemakings on this subject, the BLM received comments that most users supported use of a midpoint, as opposed to another statistical method or evaluation of the data. With this rule, the BLM maintains the use of the midpoints for calculating the fees for the minor categories. The result of this formulation is revised fees of \$271, \$1,085, \$2,171, and \$3,527 for minor categories 1, 2, 3, and 4, respectively. These are the fees to be applied in the base year and adjusted annually for changes in the GDP–IPD, per current practice.

For more specific information on the calculation of the cost recovery amounts, please see “Economic and Threshold Analysis for Revisions to 43 CFR 2800,” U.S. Bureau of Land Management, October 2023, available at [www.regulations.gov](http://www.regulations.gov).

With the increase in cost recovery fees, one commenter requested additional clarification as to how the BLM intends to use the increased revenue from Category 1–4 cost recovery. The BLM will use the increased revenue from the cost recovery fee increase to offset the costs the BLM incurs processing and monitoring minor category ROWs. Currently, the cost recovery funds received from applicants or ROW holders do not cover the Federal Government’s expenses in processing and monitoring ROWs, which is the principal reason for adjusting the cost recovery fee schedule.

Two commenters stated that cost recovery fees should be solely covered by applicants and not impact taxpayers. The BLM agrees with these commenters. That is one of the reasons why the final rule includes the fee schedule increase. The BLM has elected not to revise the final rule to further explain the BLM’s use of the revenue from the cost recovery fees. The statutory authority and the definition of “cost recovery” at § 2801.5 and text of the rule at § 2804.14 explain that cost recovery fees are for both processing and monitoring expenses.

A commenter also encouraged the BLM to provide detail regarding the cost recovery fees as well as other recovered costs to ensure that double cost recovery does not occur. The BLM charges cost

recovery fees for processing and monitoring ROWs, and the BLM receives rents for the use of public lands for ROW purposes. Cost recovery is charged only once, while the ROW rental is charged every year. In suggesting that double cost recovery could occur, the commenter likely is confusing the one-time cost recovery with annual rent.

Two commenters requested that the BLM apply cost recovery fees to cover road inspection by BLM staff. For roads that are part of a ROW project subject to cost recovery, such fees are already used to pay for these inspections. Although the BLM is not changing this final rule to directly accommodate this comment, the BLM believes that it is a worthwhile suggestion, and the BLM will strive to ensure that cost recovery receipts are used for the proposed purpose.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2804.15** When does the BLM reevaluate the cost recovery fees?

This rule revises the title of this section to change “processing and monitoring” to “cost recovery.” This change is necessary for consistency with the changes made to § 2804.14.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2804.16** When will the BLM waive cost recovery fees?

The rule amends § 2804.16 by revising the title to read “When will the BLM waive cost recovery fees?” rather than “Who is exempt from paying processing and monitoring fees?” Paragraph (a) of this section contains the undesignated introductory text of existing § 2804.16. This language was revised to refer to cost recovery fees, instead of processing and monitoring fees, and change the existing provision for an absolute exemption from fees to a potential waiver of fees that the BLM has discretion to apply or not apply.

Paragraph (a)(1) of this section contains the text of existing § 2804.16(a) and states that ROW cost recovery fees may be waived if an applicant is a State or local government and the application is for governmental purposes that benefit the general public. Under this paragraph, the waiver does not apply if charges levied on customers are similar to those of a profit-making entity. This is different from the former exception which applied only when such charges were the “principal source of revenue.”



The waiver for governmental entities is intended to provide financial relief to governmental entities seeking to provide a benefit to the public. However, some of these entities charge rent to use their facility beyond the operating costs. This change makes the waiver unavailable to applicants who would otherwise receive an authorization at no charge and then collect fees from other users.

Paragraph (a)(2) of this section contains the text, without revision, from existing paragraph (b).

Paragraph (a)(3) allows the BLM to waive cost recovery fees for Federal agencies for applications belonging to cost recovery Categories 1 through 4. The former regulations required Federal agencies to pay cost recovery fees on all ROW applications. Under an earlier version of the regulations, Federal agencies were exempt from all cost recovery. This rule strikes a middle path by allowing the BLM to waive fees for Federal agencies in some but not all circumstances. Transferring funds between agencies is costly and administratively slow. Costs associated with processing the transfer often exceed the fees being transferred. Therefore, it is not cost effective for the BLM to collect cost recovery fees from other Federal agencies for Categories 1 through 4. However, if a Federal agency's application would take the BLM more than 64 hours to process, the BLM would collect cost recovery fees under Category 5 or 6.

This rule adds a new paragraph (b) to this section stating that the BLM will not waive your fees if you are in trespass. This paragraph makes existing BLM policy explicit in the regulations.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

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

This rule modifies § 2804.17(a) to change the cross-reference from § 2805.16 (currently the table for monitoring fees) to § 2804.14, which contains the combined cost recovery table for all ROW activities.

One commenter suggested the BLM clarify whether Master Agreements are initiated by the BLM or the applicant. A Master Agreement may be initiated by either party, but in the end, it is a mutual undertaking. The same commenter encouraged the BLM to: (1) allow master cost recovery agreements that lay out the terms and conditions for cost recovery but do not require funding commitments; (2) allow agreements to be developed at a region-wide level; and

(3) clarify that only one Master Agreement is necessary in situations where the defined geographic area for a transmission line would be in more than one BLM administrative unit.

In response to the commenter's suggestions, the BLM revised paragraph (a) to clarify that monitoring may be done under Master Agreements but elected not to revise the final rule further. See the discussion of section 2804.18 for further responses to these comments.

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

Section 2804.18 describes how Master Agreements function. Paragraph 2804.18(a)(2) provides that a Master Agreement describes work to be done by the applicant and the BLM to complete ROW permitting and monitoring activities. A commenter suggested the BLM clarify whether Master Agreements are initiated by the BLM or the applicant. The BLM elects not to revise the rule in response to this comment, because the rule appropriately provides for cooperative development of Master Agreements and initiation by either the BLM or the applicant.

The revisions to paragraph 2804.18(a)(2) allow Master Agreements to be used for any type of ROW activity, not just ROW processing. The rule revises language in paragraph (a)(5) to align the language with other updates in the rule. The BLM believes the expanded use of Master Agreements will streamline processing and monitoring activities. Master Agreements are designed to consolidate some of the processing and monitoring steps associated with ROWs, including combining budgeting processes into one project work breakdown structure. Also, many Master Agreements fund or partially fund staffing of Realty Specialists and other key members of interdisciplinary teams, which can help expedite processing when funds are not otherwise available (§ 2804.22).

Section 2804.18(c) is amended to refer to "cost recovery fees," instead of "processing and monitoring fees." These changes are consistent with the expanded definition of a Master Agreement.

The final rule includes a new paragraph (a)(9) and redesignates the existing paragraph (a)(9) as paragraph (a)(10). This revision is made in response to several comments that suggested Master Agreements should be written so that they also include previously granted ROWs. This addition

will clarify that Master Agreements may cover previously authorized ROWs.

The BLM also received a comment requesting the BLM allow master cost recovery agreements that lay out the terms and conditions for cost recovery but do not require funding commitments. The commenter's intent is not clear from this comment. However, the BLM notes that the primary purpose of a master cost recovery agreement is to agree upon the required cost recovery funding commitments.

The BLM also received a comment suggesting that the agency allow region-wide Master Agreements and Master Agreements that cover more than one BLM administrative unit. The current regulations allow Master Agreements to cover more than one administrative unit, and the BLM is piloting regional-level master ROW's that include master operating plans or agreements as well as master cost recovery plans. The BLM anticipates providing further guidance on regional-level master ROWs in the future.

**Section 2804.19** How will the BLM manage my Category 6 project?

Section 2804.19 is amended by revising the title from "How will BLM process my Processing Category 6 application?" to read "How will the BLM manage my Category 6 project?" This section is revised to explain that cost recovery for Category 6 projects will include monitoring the grant in addition to processing the application. This rule also makes editorial changes for clarity and consistency with the other rule changes.

Paragraph 2804.19(a) eliminates the requirement for a work and financial plan for some Category 6 applications at the discretion of the authorized officer and provides only that the BLM "may require" such plans. Preparing a work and financial plan takes an average of 6 months to complete. The preparation of a work and financial plan may not be necessary if both the applicant and the BLM authorized officer can agree, in writing, on the cost to process the action. This change will reduce the time associated with establishing a cost recovery account and improve the Category 6 cost recovery process, particularly for those actions requiring close to 64 hours.

In this section, the rule adds a new paragraph (b)(4) and redesignates existing paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6), respectively. New paragraph (b)(4) states that the BLM may collect a deposit before beginning work on a Category 6 project. Previously, when an application

fell under Category 6, it took an average of 6 months to complete the details of the agreement, which includes a work and financial plan. The communications industry has indicated that when they are charged a Category 6 cost recovery fee, the deposit is usually between \$11,000 and \$15,000. The advanced collection of a deposit will shorten the time for processing an application by allowing the BLM to begin processing the application during the 6 months it usually takes to complete a cost recovery agreement. If the BLM determines the deposit is not adequate, the applicant can prepare a work and financial plan to provide additional funds under a cost recovery agreement.

One commenter expressed support for the proposed rule's provisions for collecting a deposit prior to initiating work to process Category 6 applications and giving discretion to the authorized officer to eliminate the requirement for a work and financial plan. The commenter further recommended the BLM consider removal of work and financial plan requirements entirely for Category 6 applications.

As in the proposed rule, the final rule modifies this section to make work and financial plans discretionary. In many instances such plans will no longer be required; however, some more complex ROW authorization situations may still require plans, which will benefit both the applicant and the BLM. Otherwise, the final rule makes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

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

Section 2804.20 is amended by revising the title from "How does BLM determine reasonable costs for Processing Category 6 or Monitoring Category 6 applications?" to read, "How does the BLM determine reasonable costs for Category 6 right-of-way activities?"

The rule revises the last sentence in the introductory text of this section, which stated, "While the BLM considers your written analysis, the BLM will not process your Category 6 application." Under this final rule, if the BLM requests additional information, the BLM will continue to work on your application while you are responding to our request if a deposit has been received by the BLM as provided in § 2804.19(b)(4). The BLM finds that this approach will lead to more efficient ROW processing and monitoring.

Paragraph (a) of this section describes how the BLM applies the factors that

inform whether costs are reasonable as articulated in Section 304(b) of FLPMA to determine the actual costs owed to the BLM. The rule removes the reference to the BLM State Director, and instead the provision refers only to the BLM. This does not change how the BLM applies the "reasonableness" cost factors, and the decision is still appealable under § 2801.10. This change improves the cost recovery process by enabling the BLM to make the determination regarding reasonable costs for a Category 6 cost recovery at the appropriate management level based on the BLM's internal delegations of authority on a case-by-case basis. The final rule makes no changes to the version of this section that appeared in the proposed rule.

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

The rule amends this section by revising the title and paragraphs (a), (a)(2), and (a)(7) by removing references to "processing and monitoring" and replacing those references with more general references to all ROW activities to which cost recovery applies. This change is consistent with the changes described in § 2804.14.

Paragraph (b) of this section describes how the BLM reviews your analysis of the factors for your project to determine the fees owed to the BLM. The rule removes the reference to the BLM State Director and instead refers only to the BLM.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

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

The proposed rule would have amended paragraph (a)(1) of this section to add "unless your fees are exempt." The final rule adds "unless you are exempt from paying fees," which is a slight and nonsubstantive change relative to the proposed rule. This clarifying edit is necessary because the BLM is not required to identify your cost recovery fee if you are exempt from fees.

The rule redesignates paragraph (c)(2) of this section as paragraph (c)(3) and adds a new paragraph (c)(2). Paragraph (c)(2) of this section requires an operating plan or agreement for all powerline ROWs. Section 512 of FLPMA calls on the BLM to provide "owners and operators of electric transmission or distribution facilities located on public lands . . . with the option to develop and submit a plan" (43 U.S.C. 1772(c)(1)). Under existing

§ 2804.25(c), the BLM may require applicants to submit a plan of development (POD) for a ROW, as necessary. The operating plan or agreement may be included in the POD. The BLM generally requires PODs for large projects but believes the risk of wildfire associated with powerline ROWs merits an explicit requirement. One commenter suggested the BLM revise the proposed rule language in § 2804.25(c)(2) to allow applicants to provide a draft operating plan or agreement with their application to initiate application processing and allow applicants to finalize the plan collaboratively with BLM prior to grant issuance. The final rule incorporates this suggestion. See § 2805.21(a)(2).

Paragraph (c)(2) requires all powerline ROW holders to submit an operating plan or agreement unless the ROW holder has an approved plan that meets the requirements of § 2805.21 or unless the ROW holder can show good cause as to why it cannot meet this requirement. Under this rule, the BLM relies on its general authority to condition ROW grants (43 U.S.C. 1761(b)(1)) upon an applicant's submission of an operating plan or agreement for all new powerline ROWs. Applications to amend and renew ROWs must follow the same procedures as applications for new ROWs and, therefore, would also be subject to a requirement for an operating plan or agreement. However, if an applicant already has an approved plan that meets the requirements of § 2805.21(c) ("What is an operating plan or agreement for electric transmission and distribution rights-of-way?"), the applicant will not be required to submit a separate plan.

The rule revises paragraph (d) of this section by changing "completed application" to "complete application." This revision is consistent with the addition of that term as a defined term in § 2801.5. The rule also revises the table in paragraph (d) of this section by adding the word "Master" in front of the word "Agreement."

One commenter expressed support for the proposed rule's requirement that the BLM notify the applicant in writing if processing a Category 1–4 application is expected to take longer than 60 days. This is an existing BLM requirement that has now been codified in regulation by the final rule. See § 2804.25(d). The BLM intends to complete as many ROW applications as possible during the 60-day period.

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

The rule adds a new paragraph (a)(9) which provides that the BLM can deny a ROW application when an applicant does not comply with a deficiency notice (see § 2804.25(c) of this subpart) within the time specified in the notice or with a BLM request for additional information needed to process the application.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

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

This rule amends § 2804.27 by revising the title to read “What fees must I pay if the BLM denies my application or if I withdraw my application or I relinquish my grant?” This title acknowledges that you may have to pay fees following a relinquishment of a grant.

The rule makes minor revisions to paragraphs (a) and (b) to make the language more consistent with language elsewhere in the existing regulations and this rule. Paragraph (c) explains how cost recovery fees are applied under Category 5 or 6 if a holder relinquishes their grant. The holder will be liable for all costs the United States has incurred in connection with the grant, including relinquishment of the grant. Any outstanding fees will be due to the BLM within 30 days after the holder receives the bill. The holder will be refunded the amount of fees paid that the BLM does not use to process the holder's grant. This new paragraph is consistent with existing BLM practice, but it is necessary to clarify and make explicit in regulation the process for relinquishing a grant and explain to holders what is required of them.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2805—Terms and Conditions of Grants

Section 2805.11 What does a grant contain?

The rule adds a new paragraph (b) to § 2805.11 to provide that grants will include access (ingress and egress) rights to a ROW. The rule redesignates existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively. Many ROWs need access to and from the ROW from outside the boundaries of the ROW for operations and maintenance. The rule adds an explicit

requirement for the authorized officer to include rights of ingress and egress in the grant. Prior to 2005, the regulations had included similar provisions for ingress and egress.

The BLM has re-introduced these provisions to address the need for grants to include explicit provisions for continued access throughout the term of the grant. While most projects include authorization for temporary access for initial construction, if those temporary access rights expire, then access for future operations and maintenance requires an additional authorization. The requirement to include these rights of ingress and egress in the grant will ensure that the holder can engage in timely and efficient operation and maintenance of the grant.

The BLM may charge rent appropriate to the nature of these access routes outside the ROW boundary. For instance, where ROW access is facilitated by existing routes that are open to public use, rent likely would not be appropriate. By contrast, the BLM may charge rent for newly constructed roads or overland travel to authorized ROWs on public lands. See the preamble discussion of the revisions to § 2806.15(b)(3) for more information.

Three commenters expressed support for the proposed rule's requirement that grants include both ingress and egress access to ROWs, but these commenters asked for additional language to: (1) clarify that the provision regarding ingress and egress will not result in double cost recovery where access rights are already covered by the authorization; (2) allow for a broad range of access rights, including overland travel; and (3) recognize secondary rights of ingress and egress and limit ingress and egress to routes that cross BLM parcels.

Another commenter recommended the BLM modify the proposed rule language to allow alternate routes and emergency overland travel when primary routes are impassible or closed to avoid resource damage.

With respect to the first three commenters' suggestions, the final rule does not make any changes to the regulatory text. Under that the final rule: (1) for minor category cost recovery calculations, the BLM will ensure that there is not double counting of costs if there is already existing access to a ROW; (2) alternative access rights may be provided; however, unlimited overland travel must be approved by the BLM local office because of potential damage to resource values; and (3) the BLM will recognize valid secondary rights; however, the BLM can only authorize access over public lands, as

the BLM has no authority to authorize access over private lands for ROW purposes. It will be the responsibility of the potential ROW holder to secure any necessary access across private land. The last commenter's recommendation to allow alternate routes and emergency overland travel when primary routes are impassible or closed to avoid resource damage may also be covered by terms and conditions developed for a ROW grant. However, there may be limitations on determining alternate routes due to potential damages to resource values if some alternative routes were to be allowed.

Another commenter requested that the BLM revise the proposed rule language to streamline the notice for access road maintenance outside of the ROW. The BLM elected not to revise the rule in response to this comment as authorization of access outside the ROW is subject to NEPA and NHPA, so it must be reviewed on a case-by-case basis to determine if the proposed access outside the ROW would impact other resource values. One option to address the commenter's concern would be for the BLM and the applicant to develop terms and conditions in the ROW to identify maintenance requirements and procedures outside the ROW.

A commenter also requested the BLM assist utilities with coordinating road maintenance plans in an equitable manner for roads with multiple users, including the BLM. The BLM elected not to revise the final rule to address the commenter's request to coordinate road maintenance agreements between multiple users. The BLM requires ROW holders to enter into road maintenance agreements with other ROW holders using the same roads. The road maintenance agreements are contracts between private entities that determine among themselves the best way to allocate costs and responsibilities for shared-road maintenance. The BLM is not involved in the contract negotiations between the private parties but does provide information to ROW applicants regarding other road users with whom the applicant will need to work to establish the required road maintenance agreement.

Having considered these and other comments, the final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2805.12 With what terms and conditions must I comply?

Former paragraph (a)(4) of this section required holders to do everything reasonable to prevent and suppress wildfires on or within the immediate

vicinity of the ROW. The language has been changed from “immediate vicinity of the ROW” to “adjacent to the ROW” to be consistent with the rule’s revision of the definition of “substantial deviation.”

Paragraph 2805.12(a)(8)(vi) requires holders to ensure that they construct, operate, maintain, and terminate facilities in accordance with the authorization, including the approved POD. This rule expands that provision to extend to any operating plan or agreement developed under the new section 512 of FLPMA and these regulations.

Paragraphs 2805.12(c)(5) and (d)(3) are revised to provide that conditions associated with damaged and abandoned facilities that threaten human health or safety are not subject to the existing requirement that the BLM wait 3 months before requiring the holder to act. The BLM has experienced situations where grant holders create human health and safety hazards by abandoning facilities and equipment within their authorized ROW. If a holder’s use is posing a health or safety hazard to the public, per the rule, the BLM is empowered to address it immediately.

One commenter recommended the BLM revise § 2805.12(a)(4) to clarify that utilities retain discretion to determine what fire prevention actions they will carry out in, or adjacent to, the ROW. Another commenter stated that the BLM should eliminate language in the proposed rule that would tie fire suppression actions to ROW grants.

A utility’s fire prevention actions will be provided in the operating plan or agreement, as approved by the BLM. This final rule does not eliminate language that ties fire suppression actions to the ROW because they are important terms and conditions with which a utility must comply to protect other public land resource values and human health and safety.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

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

The rule revises the title from “What rights does a grant convey?” to “What rights does a grant provide?” to eliminate any implication that a grant gives ownership rights.

The final rule revises § 2805.14(b) for clarity. Paragraph (b) already requires BLM authorization before a grant holder may “allow other parties” to use a facility. As revised, the regulation will refer to this practice explicitly as

“subleasing.” The revision will also align with the language in this section with that in new § 2865.14(b) providing consistency between the regulations governing communications uses and those governing all other uses. This change was not included in the proposed rule.

The rule revises § 2805.14(d) by removing the word “minor” from the description of permissible trimming, pruning, and removal of vegetation and by adding an allowance to undertake those activities to “protect public health and safety.” The term “minor” has caused confusion for the holders and is imprecise. These revisions provide the necessary detail for the ROW holder to determine what vegetation management they can and must do to operate and maintain their ROW or facility, including what does and does not constitute a substantial deviation.

Several commenters suggested changes to § 2805.14(d) to make it broader or to make it narrower. One commenter suggested the BLM amend § 2805.14(d) to allow, in addition, for “operations and maintenance activities.” One commenter stated that the BLM should revise the proposed rule language to clarify that vegetation management to maintain the ROW includes the right to cut or trim off-ROW vegetation when the utility determines it is necessary as part of its vegetation management program. One commenter expressed concern that proposed revisions to § 2805.14(d) could result in adverse impacts to other land users and the environment and recommended the BLM modify § 2805.14(d) to add a caveat that permissible action would be undertaken as defined in the projects’ operating plans or agreements.

See the preamble discussion of § 2801.5 for additional discussion of comments regarding the appropriate scope of “vegetation management” under these regulations. This final rule retains the language in § 2805.14(d) but revises the definition of hazard tree to be consistent with the USFS definition. The USFS definition provides more context for the type of vegetation and defines a hazard tree as: [l]ikely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement (36 CFR 251.51). This definition

explains what work can be done outside of the holder’s ROW to maintain it. The final rule makes no changes to the version of paragraph (d) that appeared in the proposed rule.

Section 2805.14(e) is revised to allow the holder to use vegetation removed during maintenance of the ROW. The use of existing vegetation will reduce non-native species intrusion and expedite maintenance by the holder. The paragraph is also revised to align with FLPMA’s statutory provision that stone, soil, or vegetation may be used only if any necessary authorization to remove or use such materials has been obtained pursuant to applicable laws (43 U.S.C. 1764(f)). The final rule makes no changes to the version of paragraph (e) that appeared in the proposed rule.

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

This rule rephrases paragraph (a) of this section to address the nature of the BLM’s need for access to the lands and facilities covered by an authorization. Some authorizations may be for the use of a facility, while others would be for use of an area on the public lands. The rule retains the requirement to provide the BLM access to and within the lands or facilities.

Section 2805.15(e) adds language to clarify that after a grant is executed, any modification of its terms and conditions generally requires the BLM to issue a new or amended ROW grant. The BLM conducts analyses, including under NEPA, before issuing a grant, and any changes to the terms or conditions of a grant will require the BLM to undergo a new decision-making process. Any such new decision must comply with applicable laws, including NEPA, and may require the BLM to complete a new environmental analysis, use an existing environmental analysis, or rely on a categorical exclusion.

Under paragraph (f) of this section, the BLM can terminate an authorization for non-compliance. Section 2805.12 describes the terms and conditions that a grant holder must comply with and provides that the BLM can terminate a grant for non-compliance. This paragraph reinforces this potential outcome.

Under paragraph (g) of this section, the BLM can require a holder to submit financial documents related to a holder’s authorization. This addition is consistent with the requirements of existing § 2805.12(a)(15).

The final rule makes no changes to the version of this section that appeared in the proposed rule.

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

The rule amends § 2805.16 by changing the word “monitoring” in the title to “cost recovery” such that the title reads, “If I hold a grant, what cost recovery fees must I pay?” The section is also amended by revising paragraph (a), adding a new paragraph (b), revising current paragraph (b), and redesignating it as paragraph (c).

As previously discussed, the rule removes the monitoring cost recovery fee table formerly located under § 2805.16(a). The rule also adds a sentence referring the reader to § 2804.14(b), where they can find the cost recovery table.

Under new § 2805.16(b), the cost recovery fee schedule for Categories 1 through 4 will be updated on an annual basis based on the previous year’s change in the IPD–GDP, and the fees for Category 5 will be updated according to a given project’s Master Agreement.

Section 2805.16(c), which contains the provisions of former § 2805.16(b), explains where to obtain a copy of the current year’s cost recovery fee schedule. The rule provides updated contact information for the holder to request the schedule from the BLM’s Division of Lands, Realty and Cadastral Survey.

One commenter stated that proposed revisions to the Category 1 processing fee that includes monitoring fees for work estimated to take 1 hour or less should be eliminated because the change is contrary to both FLPMA and the MLA and would create a financial burden to industry. This comment is similar to a comment on § 2804.14. Please see the response above in the discussion of § 2804.14.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

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

Section 2805.21 codifies many of the provisions of Section 512 of FLPMA into the BLM’s regulations. Section 512(c) of FLPMA describes the requirements for facility inspection, operations and maintenance, and vegetation management plans. Section 2805.21 describes the requirements for operating plans or agreements, which are consistent with the requirements of the plans described in Section 512 of FLPMA.

Under § 2804.25(c)(2) of the rule, and as reflected in paragraph (a)(1),

operating plans or agreements are required for all new, renewed, or amended electric transmission and distribution ROWs. In addition, under paragraph (a)(2), such plans may be submitted to the BLM on a voluntary basis by holders of existing electric transmission and distribution ROWs. Operating plans or agreements may be advantageous to both the BLM and the ROW holder by better defining authorized activities, schedules for maintenance, and wildfire risk reduction measures, and by introducing limits on a ROW holder’s liability under the specific circumstances described in this section.

Paragraph (b) of this section refers to the Electric Reliability Organization (ERO) standards and provides that those standards may be incorporated into operating plans or agreements developed under this section. The Energy Policy Act of 2005 created the ERO: an independent, self-regulating entity that enforces mandatory electric reliability rules on all users, owners, and operators of the nation’s transmission system. The North American Electric Reliability Corporation (NERC) develops and enforces reliability standards for North America and is the ERO. NERC reliability standards define the reliability requirements for planning and operating the North American bulk power system. These standards apply only to holders who are part of a bulk power system, and holders subject to these standards may incorporate them into their operating plan or agreement. The ERO reliability standards developed by NERC are requirements the holder must meet for operating and maintaining the ROW and facility, such as frequency of inspections and minimum distance of vegetation clearances from powerlines. Incorporating these industry-wide standards into the operating plan or agreement will help to provide consistency between NERC standards and the plans submitted to the BLM and USFS.

Two commenters requested that the BLM revise § 2805.21(b) to recognize that: (1) utilities do not manage to the NERC-defined minimum vegetation clearance distance; instead, their goal is to avoid any possibility of encroachment; and (2) vegetation management strategies must respond to all operating conditions. They recommended that, when referring to reliability standards, the rule should indicate that the statutory term “disruption” can include things such as arcing potential and that compliance with the reliability standards requires

vegetation be cleared to a MVCD plus X feet safety zone (with X being defined by the utility). Similarly, one commenter suggested the BLM revise the proposed rule language to clarify that the utility, not the BLM, is responsible for choosing the vegetation clearance distances and the management strategies it will employ to assure vegetation will not encroach on MVCD or violate reliability standards under any operating conditions.

This final rule retains the proposed language in § 2805.21(b) but revises the definition of a hazard tree to be consistent with the USFS’s definition. The USFS definition extends to vegetation that is dead or likely to die or fail and “come[s] within the MVCD as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.” The BLM further incorporated the USFS definition of MVCD which addresses the prevention of flashover. Approved operating plans or agreements will address any safety zones needed by the ROW holder.

Paragraph (c) of this section describes the requirements for operating plans or agreements, consistent with Section 512(c) of FLPMA and with the USFS final rule implementing Section 512. Under paragraph (c)(1) of this section, operating plans or agreements must identify the applicable facilities to be maintained.

Two commenters requested the BLM integrate NERC standards and definitions into BLM operating plans and agreements and powerline authorizations and avoid implementing any standards or requirements that could cause conflict with the NERC standards. One commenter further requested the BLM provide regulatory guidance to assist agency staff in understanding these reliability standards.

The BLM does not believe these changes are necessary. Operating plans or agreements will be developed collaboratively with the ROW applicant, which will allow the applicant to submit provisions that are NERC compliant. Also, the BLM intends to incorporate reliability standards and regulatory guidance into staff training, which is a more appropriate venue for communicating industry standards.

Paragraph (c)(2) of this section requires an operating plan or agreement to account for the holder’s own operations and maintenance plans for the applicable facilities. Many ROW holders have existing, internal plans for

their operations and maintenance that they have not previously been required to submit to the BLM for approval, including those who must comply with ERO standards. The holder may be able to submit these existing internal plans to satisfy the BLM's requirements for operating plans or agreements. A holder would not need to submit a new operating plan or agreement if their existing plan or agreement meets the requirements of this section.

Paragraph (c)(3) of this section requires that a plan describe how a holder will operate and maintain a ROW and facility, including for vegetation management. These operations, maintenance, and fire prevention methods may be those required to comply with applicable law, including fire prevention measures, safety requirements, and reliability standards established by the ERO. While the ERO describes the standards that must be met, the holder must describe in the operating plan or agreement how they plan to meet those standards.

Under paragraph (c)(4) of this section, an operating plan or agreement must include schedules for a holder to notify the BLM about non-emergency maintenance, including when they must seek approval from the BLM and when the BLM must respond to that request. Non-emergency maintenance is further discussed in the preamble discussion of § 2805.22.

Four commenters requested the BLM revise § 2805.21(c)(4)(ii) to clarify that routine maintenance activities do not require approval by the BLM if they are part of an approved plan.

The scope of routine maintenance that will require subsequent approval will be determined on a case-by-case basis and will be described in each individual operating plan or agreement. The final rule was not changed in response to these comments as the rule already contains provisions to this effect.

Paragraph (c)(5) of this section requires that an operating plan or agreement describe processes for identifying changes in conditions and modifying the approved operating plan or agreement, if necessary. Either the BLM or holder can determine that the conditions in the ROW, which may include environmental or accessibility conditions, have changed. The operating plan or agreement must describe how the BLM and the ROW holder will communicate and initiate any necessary plan modifications. Communications between BLM and the ROW holder are discussed further in paragraph (e) of this section.

Paragraph (c)(6) of this section requires that the operating plan or

agreement provide for removal and disposal of cut trees and branches, including plans for sale of forest products. One commenter requested that the BLM modify § 2805.21(c)(6) to replace the phrase "removal and disposal" with the word "disposition" to describe what a holder must do with cut trees and branches. The BLM agrees with this comment and the final rule includes the suggested change.

Several commenters stated that the BLM should further modify the proposed rule language to clarify the requirements for operating plans or agreements. In response, the BLM revised § 2805.21(c)(3) to clarify that an operating plan or agreement must include vegetation management, inspection, operation and maintenance, and fire prevention plans. Further revision of this section was not necessary as other provisions provide sufficient clarity.

Under paragraph (d) of this section and consistent with Section 512(c)(4)(A) of FLPMA, the BLM will, to the extent practicable, review and approve an operating plan or agreement within 120 days of receiving the plan or agreement. Two commenters suggested that the BLM modify proposed rule language to clarify: (1) that the 120-day review period for an operating plan or agreement begins when the applicant submits a completed application as defined in the Proposed Rule; (2) that requests for additional information during the review process (including response time from the applicant and the incorporation of additional applicant responses) would not pause the 120-day review timeframe; and (3) how compliance and consultation requirements under applicable environmental laws, including the NEPA, Endangered Species Act, and NHPA, will be handled, either within the 120-day review timeframe or after plan approval but prior to commencement of on-the-ground activities.

For a renewal application, the 120-day period will start upon receipt and acknowledgement of a complete application with a compliant operating plan or agreement. For a new application or amendment to an existing ROW, the 120-day period will start upon granting the ROW. Compliance and consultation requirements under applicable environmental laws, including the NEPA, Endangered Species Act, and NHPA, will be addressed prior to the BLM granting a new or amended ROW. For an existing ROW with no Federal action needed, the 120-day period will start upon the receipt of a compliant operating plan or

agreement. Any operating plan or agreement will be approved, to the maximum extent practicable, within the statutory 120-day period with the understanding that factors such as the time it takes an applicant to respond to a request for additional information, the number of proposed operating plans and agreements under review by an authorized officer, and the number of powerline facilities covered under a single operating plan or agreement may affect the practicability of approving a proposed operating plan or agreement within 120 days.

Paragraph (e) of this section provides that, when an operating plan or agreement requires modifications, the BLM will provide advance reasonable notice to a holder that a modification is necessary, following which the holder must submit the proposed modification to the BLM. The BLM will, to the maximum extent practicable, review and approve the proposed operating plan or agreement modification in the same 120-day timeframe that applies to approval of new plans. This timeframe is consistent with the requirements of Section 512 of FLPMA.

Under paragraph (e)(4) of this section, a holder may, while a proposed plan modification is pending approval, continue to operate and maintain the ROW or facility in accordance with the approved operating plan or agreement, as long as the activity does not adversely affect the identified condition that necessitates the plan modification. Although a plan modification may be required, the BLM does not intend for operations and maintenance to be unnecessarily delayed in other areas of the ROW that are not impacted.

Paragraph (f) of this section provides that certain holders may enter into an agreement with the BLM in lieu of an operating plan. An agreement must contain the same general requirements described in this section. Agreements need to include schedules, as described in paragraph (c)(4) of this section and are subject to the same modification requirements of paragraph (e) of this section.

Paragraph (g) of this section describes the criteria that a holder must meet to be eligible to enter into an agreement. A holder may enter into an agreement with the BLM if they are not subject to the ERO reliability standards or if they sold less than 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years prior to enactment of Section 512 of FLPMA. These eligibility requirements are established by Section 512(d)(1) of FLPMA and generally apply to rural electric cooperatives and other

small entities. Section 512(d)(2)(A) of FLPMA requires the Secretary to ensure that the minimum requirements of these agreements “reflect the relative financial resources of the applicable owner or operator compared to other owners or operators of an electric transmission or distribution facility.”

One commenter stated that the BLM should cite Title XII, Section 215 of the Energy Policy Act as a related law in this section. The BLM does not believe this change is necessary since § 2801.9(b) refers to the Federal Power Act of 1935, which would include any subsequent amendments to the 1935 Act, such as Title XII of the Energy Policy Act.

Several commenters requested that the BLM establish a standardized notice and approval process for ROW processing as the USFS has. The BLM worked closely with the USFS as the USFS developed its policy surrounding FLPMA Section 512. The BLM intends to provide further clarification to ROW applicants through policy and to develop new templates and review existing templates that can be used to expedite processing of ROWs.

Two commenters also proposed a new NEPA categorical exclusion for vegetation management as follows:

Approval of operating plan or agreements, and activities conducted in accordance with an approved operating plan under a right-of-way grant for an electric transmission and distribution facility.

Conversely, two commenters expressed concern that operating plans or agreements could have extraordinary circumstances or impacts outside the ROW and should not automatically be subject to a categorical exclusion.

The BLM appreciates the suggestion of new categorical exclusions and may pursue this avenue. The BLM must work with the Council on Environmental Quality and possibly others to establish a new categorical exclusion, and doing so is beyond the scope of this rulemaking. The BLM will consider using a categorical exclusion when appropriate. The BLM must review for the presence of extraordinary circumstances on every project that may be categorically excluded.

One commenter indicated that the proposed rule should cover only “green” energy projects. The BLM has the responsibility to process all applications and manage all grants consistently. For consistent land management, the BLM will not change the rule to cover only “green” projects.

Three commenters requested the BLM modify the proposed rule to include Master Agreement language or templates

to establish a master permit and agreement process for operating plans or agreements at the state office level that can be implemented by operators and BLM field offices.

The BLM did not revise the language in the proposed rule in response to these comments as the agency is addressing these requests through a pilot master operations and maintenance and consolidation program in the BLM California State Office. The BLM hopes to duplicate this program in other states. The BLM anticipates developing policies at the national level that would then be adopted at the BLM state level and adjusted as needed for each state.

In all, the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

#### Section 2805.22 Special Provisions for Vegetation Management for Electric Transmission and Distribution Rights-of-Way

Section 2805.22 provides that ROW holders can conduct vegetation management related activities and distinguishes between emergency and non-emergency conditions. This section implements the requirements of Section 512(c) and (e) of FLPMA.

Paragraph (a) of this section identifies the conditions that are considered Emergency Conditions and what the holder is allowed to do during Emergency Conditions without immediate notification to the BLM. An Emergency Condition exists when one or more hazard trees have contacted, or present an imminent danger of contacting, an electric transmission or distribution line. The rule specifies that this threat can arise from a hazard tree within or adjacent to a transmission line ROW. Under paragraph (a)(1) of this section, holders may prune or remove the hazard tree to avoid the disruption of electric service and to eliminate immediate fire and safety hazards. Paragraph (a)(2) requires the holder to notify the BLM within one calendar day after taking any such action.

One commenter recommended the BLM revise § 2805.22(a) to clarify that the grant holder has discretion as to what vegetation poses an imminent danger of contacting a transmission line or is an immediate fire and safety hazard. This commenter noted that emergencies may involve issues other than just vegetation in imminent threat to contact a line. They also requested that the one-day emergency notification requirement be clarified to mean within 1 business day of the action.

The BLM understands that there are emergencies other than vegetation issues, and this rule does not preclude holders from addressing those emergencies. This rule implements Section 512 of FLPMA, which addresses vegetation management. Therefore, the emergencies anticipated under this rule should only apply to vegetation management. The BLM believes that the grant holder has discretion as to what vegetation must be trimmed or pruned under Section 512 of FLPMA and these implementing regulations. The BLM will maintain a one-day emergency notification requirement, regardless of whether that one day is a business day, because emergencies require immediate resolution.

Paragraph (b) of this section identifies Non-Emergency Conditions for which the holder of a powerline ROW can conduct vegetation management activities. The holder must conduct activities in accordance with the terms and conditions of the ROW grant, §§ 2805.12(a)(4) and 2805.14(d), and any BLM-approved operating plan or agreement.

Paragraph (b)(1) of this section provides when a holder needs to request approval to conduct vegetation management activities. Under paragraph (b)(1)(i), a holder must seek approval from the BLM if the operating plan or agreement specifically requires prior approval. Prior approval for an activity may be required in an operating plan or agreement if the activity could have cultural or environmental impacts.

Prior approval is required under paragraph (b)(1)(ii) of this section if the activity is not described in an approved operating plan or agreement. Paragraph (b)(2) of this section provides that if the BLM does not respond to a request within the timeframe described in an approved operating plan or amendment, and the vegetation management activity is consistent with the holder’s approved operating plan or amendment, a holder may proceed with the vegetation treatment activities. This provision will help ensure that holders can undertake necessary vegetation management activities to further support the goals of reducing fire risk.

Holders who do not have a BLM-approved operating plan or agreement will not be affected by paragraphs (b)(1) or (b)(2) of this section. Holders of ROWs in effect as of the effective date of this final rule will not have an operating plan or agreement until they amend or renew their ROW grant, or until they voluntarily submit an operating plan or agreement for approval.

The terms and conditions of some existing grants do not sufficiently describe the vegetation management activities that a holder may take. In the absence of an operating plan or agreement, holders will be required to comply with the terms and conditions of the grant and §§ 2805.12(a)(4) and 2805.14(d). Even when not required, holders will be encouraged to submit operating plans or agreements for existing ROWs to the BLM to improve coordination regarding vegetation management and wildfire risk reduction.

Paragraph (c) of this section mirrors § 2805.12(a)(4) but adds specific examples of reasonable actions that can be taken by the holder, including pruning or removal of vegetation and cooperating with the BLM to investigate fires.

One commenter asked the BLM to update ePlanning pages to disclose maintenance activities or public land closures associated with vegetation management. The BLM believes that ePlanning is not the appropriate venue for tracking vegetation management requests but is exploring alternative options for consolidation and disclosure of vegetation management requests consistent with FLPMA Section 512(h).

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Subpart 2806—Annual Rents and Payments**

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

In § 2806.13(e), the rule eliminates limiting conditions on the BLM’s ability to collect uncollected or undercollected rent, which under the existing regulation only extends to cases in which there is a clerical error, an adjustment to rental schedules, or an omission or error in complying with terms and conditions. The BLM can

now collect any rents and fees due to the United States.

New § 2806.13(h), explicitly provides that rent is due regardless of whether a courtesy bill has been sent or received. This addition clarifies current BLM practice to the public.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2806.14** Under what circumstances am I exempt from paying rent?

In § 2806.14(a)(4), the provisions governing communications sites are deleted. The exemptions described in § 2866.14(b) encapsulate the language that has been removed from § 2806.14.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2806.15** Under what circumstances may BLM waive or reduce my rent?

The BLM has received feedback from customers about inconsistencies in how BLM approves waivers or reductions in rent. Therefore, § 2806.15(b) clarifies that a BLM State Director is the authorizing official with respect to rental reductions and waivers.

Under former paragraph (b)(3) of this section, the BLM could not reduce or waive rent if a holder has a ROW in connection with the grant at issue for which the United States receives compensation. The final rule rewrites that provision to allow for a reduction or waiver of rent if a holder’s grant describes the use of existing routes outside of the ROW that are used to access the ROW. These revisions are consistent with § 2805.11(b), which requires a grant to include and identify new and/or existing routes that would be used for ingress and egress. The BLM will charge rent appropriate to the nature of these access routes. For instance, where ROW access is facilitated by existing routes that are

open to public use, rent would likely not be appropriate. By contrast, the BLM will charge appropriate rent for roads to ROWs on public lands newly constructed by a holder. See the preamble discussion of § 2805.11 for more information.

Existing § 2806.15(c) has been redesignated as § 2806.15(b)(5) and revised to maintain consistency with the edits made in § 2806.15(b). With the added reference to the BLM State Director in paragraph (b) of this section, it is appropriate to redesignate existing paragraph (c) as paragraph (b)(5). Waiving or reducing rent under paragraphs (b)(1) through (b)(5), as revised by this rule, will be at the discretion of the BLM State Director. This revision is consistent with existing BLM practice.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

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

Paragraph (c) of this section is revised to update the contact address of the BLM and highlight availability of the Per Acre Rent Schedule on the BLM website.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Sections 2806.30 Through 2806.44**

The rule removes §§ 2806.30 through 2806.44, including the header “COMMUNICATION SITE RIGHTS–OF–WAY” that had preceded § 2806.30. Many of the requirements of these sections are now set out in new part 2860, which consolidates all requirements for communications uses. Any substantive changes to those requirements are discussed in the sections of this preamble focused on new part 2860. The following table shows where the requirements of existing §§ 2806.30 through 2806.44 can be found in this rule.

**TABLE 2—FORMER SUBPART 2806 VS. NEW SUBPART 2866**

New section 2866 based on or moved from former section 2806			
Former section	Former title	New section	New title
Subpart 2806	Annual rents and payments	Subpart 2866	Annual rents and payments
Moved from § 2806.30.	What are the rents for communication site rights-of-way?	§ 2866.30	What are the rents for Communications Uses?
Moved from § 2806.31.	How will BLM calculate rent for a right-of-way for communication uses in the schedule?	§ 2866.31	How will the BLM calculate rent for Communications Uses in the schedule?
Moved from § 2806.32.	How does BLM determine the population strata served?	§ 2866.32	How does the BLM determine the population strata served for your facility?



TABLE 2—FORMER SUBPART 2806 VS. NEW SUBPART 2866—Continued

New section 2866 based on or moved from former section 2806			
Former section	Former title	New section	New title
Subpart 2806	Annual rents and payments	Subpart 2866	Annual rents and payments
Moved from § 2806.33.	How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?	§ 2866.33	How will the BLM calculate the rent for a single use communication facility grant?
Moved from § 2806.34.	How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?	§ 2866.34	How will the BLM calculate the rent for a multiple-use communication facility grant?
Moved from § 2806.35.	How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and “other” category users.	§ 2866.35	How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and “other” category uses?
Moved from § 2806.36.	If I am a tenant or customer in a facility, must I have my own grant or lease and if so, how will this affect my rent?	§ 2866.36	If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?
Moved from § 2806.37.	How will BLM calculate rent for a grant or lease involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?	§ 2866.37	How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?
Moved from § 2806.38.	Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?	§ 2866.38	Can I combine multiple grants for facilities located at one site into a single grant?
Moved from § 2806.39.	How will BLM calculate rent for a lease for a facility manager’s use?	§ 2866.39	How will the BLM calculate rent for a grant for a facility manager’s use?
Moved from § 2806.40.	How will BLM calculate rent for a grant or lease for ancillary communication uses associated with communication uses on the rent schedule?	§ 2866.40	How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?
Moved from § 2806.41.	How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?	§ 2866.41	How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?
Moved from § 2806.42.	How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?	§ 2866.42	How will the BLM calculate rent for Communications Uses within a federally owned communications facility?
Moved from § 2806.43, but the terms would be moved to § 2861.5.	How does BLM calculate rent for passive reflectors and local exchange networks?	§ 2866.43	How does the BLM calculate rent for passive reflectors and local exchange networks?
Moved from § 2806.44.	How will BLM calculate rent for a facility owner’s or facility manager’s grant or lease which authorizes communication uses?	§ 2866.44	How will the BLM calculate rent for a facility owner’s or facility manager’s grant which authorizes Communications Uses?

Section 2806.52 Rents and Fees for Solar Energy Development Grants

This section revises paragraphs (a)(6) and (b)(2) to update the contact address of the BLM and highlight availability of the current solar energy acreage rent schedule and the current MW rate schedule for solar energy development on the BLM website.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2806.62 Rents and Fees for Wind Energy Development Grants

The proposed rule proposed revisions to paragraphs (a)(7) and (b)(2) to update the contact address of the BLM and highlight availability of the current wind energy acreage rent schedule and the current MW rate schedule for wind energy development on the BLM

website. However, the BLM intends to address this in a separate rulemaking. Therefore, this portion of the proposed rulemaking is not carried forward in this final rule.

Subpart 2807—Grant Administration and Operation

Section 2807.10 When can I start activities under my grant?

One commenter stated that the BLM should modify § 2807.10 in the rule to clarify when a grantee may start activities under a grant. More specifically, they stated that this provision should be revised to clarify that it only applies to activities requiring a Notice to Proceed in approved operating plans. This discussion is outside the scope of the proposed rule and would require a full rulemaking process to address it.

Therefore, the BLM will not address this comment in this final rule, and the final rule makes no changes to § 2807.10.

Section 2807.12 If I hold a grant, for what am I liable?

The rule redesignates existing paragraph (g) of this section as paragraph (h) and adds a new paragraph (g). New paragraph (g) codifies the liability provisions at Section 512(g) of FLPMA and provides that the BLM may not impose strict liability in certain circumstances.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2807.17 Under what conditions may the BLM suspend or terminate my grant?

The rule amends § 2807.17(b)(2) by changing the word “terminate” to “relinquish.” This change aligns with changes made to § 2886.17 and with the nomenclature that the BLM uses when processing ROWs. The rule also adds § 2807.17(b)(3) to allow the BLM to terminate a ROW grant when a court terminates or requires the BLM to terminate the ROW. The rule redesignates paragraph (b)(3) as paragraph (b)(4).

The final rule makes no changes to the version of this section that appeared in the proposed rule.

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

The rule amends paragraph (b) of this section by replacing “processing and monitoring fees” with “cost recovery fees” for consistency with other revisions in this rule.

Section 2807.20(d) explains that pre-FLPMA grants (*i.e.*, those issued before October 21, 1976) cannot be amended, renewed, or reinstated. Section 706 of FLPMA repealed numerous laws to the extent they applied to the issuance of ROWs by the BLM. Once a law has been repealed, the BLM can no longer approve any actions under the repealed law. The rule combines existing language from different parts of paragraph (d), including paragraph (d)(2), as paragraph (d)(1) and revises the text to clarify that, when a holder seeks to amend a pre-FLPMA grant, the BLM will retain the holder’s pre-FLPMA ROW for the portion of the holder’s ROW not affected by the holder’s amendment application unless the holder agrees to accept a wholly new and comprehensive grant of the ROW under FLPMA.

Paragraph (d)(2) of this section requires a new application and grant for expiring authorizations. Paragraph (d)(3) requires a new application and grant if a pre-FLPMA authorization is terminated due to non-compliance. Finally, existing paragraph (d)(1) is redesignated as paragraph (d)(4) and notes that the BLM will issue any new authorization under the authority of FLPMA and explains that the new authorization may have the same terms and conditions and annual rents as the original grant.

One commenter requested the BLM modify § 2807.20 to clarify that when the grant holder is a Federal agency, the decision to terminate the existing grant and issue a new grant must be a mutual

decision pursuant to § 2807.17(d). The BLM has not made the proposed change as it believes that § 2807.17(d) is sufficiently clear on this point. Nor does the final rule make any other changes to the version of this section that appeared in the proposed rule.

Section 2807.22 How do I renew my grant?

The rule establishes new customer service standards for the BLM for renewal applications. The rule modifies paragraph (f) of this section to establish a customer service standard of 60 days for the BLM to review an application for a renewal to determine if that application has been timely submitted and is complete and to notify the applicant in writing of the BLM’s determination. If the BLM determines that a renewal application was timely submitted and is complete, then its written notice will confirm that, until the BLM issues a decision on the renewal application, the holder’s existing grant will remain valid, provided that the holder of the authorization remains in compliance, including with rent and bonding obligations.

The rule adds a new paragraph (h) to this section that establishes when renewal applications will be subject to the BLM’s customer service standards. If grant holders do not comply with the existing requirement to submit their application at least 120 days before their grant expires, the BLM will not be held to the customer service standards for processing the application. This paragraph is not a substantive change from existing practice.

One commenter stated that decisions whether to renew grants should consider the multiple use mission of the BLM and whether closure would be beneficial to wildlife and the public. This commenter also requested that the 60-day time limit in § 2807.22(f) be eliminated to allow for adequate time for public input.

The BLM complies with NEPA on each renewal, as well as the Endangered Species Act and the NHPA. The new § 2807.22(f) allows the holder to continue to pay rent and maintain a valid authorization until the BLM has properly processed the ROW renewal, including completing appropriate NEPA analysis and land use plan consistency review. Upon renewal, the BLM would issue a new grant likely with new, updated stipulations. The 60-day time limit is for determination of timeliness and sufficiency of an application, not completing NEPA analysis, surveys or public comment. This final rule does

not make any changes to this paragraph as it appeared in the proposed rule.

One commenter noted that allowing ROW holders to continue to operate under an existing grant while the BLM and the ROW holder go through the grant renewal process helped ROW holders. The BLM appreciates the support and acknowledgement of the value of maintaining operations during the renewal process.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Subpart 2808—Trespass

Section 2808.10 What is a trespass?

The BLM revised this paragraph in the final rule to make explicit that “subleasing” without BLM authorization is a trespass. The regulations already prohibited this practice, so the addition of the term “subleasing” merely clarifies the scope of the trespass provision. This change also makes the language of this section consistent with the communications uses trespass provision at new § 2868.10. This provision did not appear in the proposed rule.

Subpart 2809—Competitive Process for Leasing Lands for Solar and Wind Energy Development Inside Designated Leasing Areas

Section 2809.19 Applications in Designated Leasing Areas or on Lands That Later Become Designated Leasing Areas

This final rule does not carry forward a proposed revision to this section in the proposed rule because the BLM plans to address the distinction between designated and undesignated leasing areas in a separate rulemaking.

43 CFR Part 2860 Communications Uses

The rule establishes part 2860, Communications Uses. This new part explains the requirements for communications uses grants and consolidates all communications use-specific provisions into one location. The requirements of part 2800 will continue to apply to communications uses grants, unless inconsistent with any provision of this new part. Some sections in part 2860 contain provisions that were removed from part 2800. Some sections in part 2860 have a direct parallel to sections in part 2800 but contain additional requirements that apply specifically to communications uses. This preamble describes how the rule differs from existing requirements. Subparts 2861 through 2865 and 2868

are generally based on the provisions of existing subparts 2801 through 2805 and 2808, respectively, but contain additional communications use requirements. Table 3 shows the relationship between subparts 2861

through 2865 and 2868 and subparts 2801 through 2805 and 2808. Most of the requirements pertaining to communications uses in existing subpart 2806 were moved to subpart 2866. Table 4 shows the relationship

between subpart 2866 and subpart 2806. This preamble describes new or revised provisions. Provisions not discussed are substantially similar to their existing counterpart.

TABLE 3—SECTIONS OF THE FORMER RULE SUPPLEMENTING THE 2860 REGULATIONS FOR COMMUNICATIONS USES

Former section	Former title	New section	New title
Subpart 2801	General information	Subpart 2861	General information
N/A	N/A.	§ 2861.1	What requirements of part 2800 apply to my grant?
§ 2801.2	What is the objective of BLM's right-of-way program?	§ 2861.2	What is the objective of the BLM's Communications Uses program?
§ 2801.5(b)	What acronyms and terms are used in the regulations in this part?	2861.5(b)	What acronyms and terms are used in the regulations in this part?
§ 2801.8	Severability.	§ 2861.8	Severability.
§ 2801.9(a)(5)	When do I need a grant?	§ 2861.9	When do I need a grant?
Subpart 2802	Lands Available for FLPMA Grants	Subpart 2862	Lands Available for Grants
§ 2802.11	How does the BLM designate right-of-way corridors and designated leasing areas?	§ 2862.11	How does the BLM designate communications sites and establish communications site management plans?
Subpart 2804	Applying for FLPMA Grants	Subpart 2864	Applying for Grants
§ 2804.10	Who may hold a grant?	§ 2864.10	What should I do before I file my application?
§ 2804.12	What must I do when submitting my application?	§ 2864.12	What must I do when submitting my application?
§ 2804.24	Do I always have to submit an application for a grant using Standard Form 299?	§ 2864.24	Do I always have to use Standard Form 299 when submitting my application for a Communications Uses authorization?
§ 2804.25	How will BLM process my application?	§ 2864.25	How will the BLM process my Communications Uses application?
§ 2804.26	Under what circumstances may BLM deny my application?	§ 2864.26	Under what circumstances may the BLM deny my application?
§ 2804.35	How will the BLM prioritize my solar or wind energy application?	§ 2864.35	How will the BLM prioritize my Communications Uses application?
Subpart 2805	Terms and Conditions Of Grants	Subpart 2865	Terms and Conditions Of Grants
§ 2805.14	What rights does a grant provide?	§ 2865.14	What rights does a grant provide?
Subpart 2808	Trespass	Subpart 2868	Communications Uses Trespass
§ 2808.10	What is a trespass?	§ 2868.10	What is a Communications Uses trespass?

One commenter expressed support for consolidating all the BLM communications use rules into a new part 2860 to help streamline application development and processing. Two other commenters also expressed general support for the BLM's efforts to streamline regulations and to remove barriers to wireless infrastructure deployment.

The BLM agrees that moving regulations pertaining to communications uses to its own part will help streamline the regulations.

Some commenters expressed concern that this proposed rule could result in undesirable economic growth and development for some local communities. The BLM agrees there may be some growth in rural areas due to additional broadband deployment. The ROW authorization process includes compliance with NEPA, which

would include analysis of the impacts of communication facilities on development and allow for public input.

Commenters argued that use of a categorical exclusion to comply with NEPA would not be appropriate for all decisions to approve communication uses and that streamlining should only be permitted if there are no visual or environmental impacts; the project is not within 5 miles of a residentially zoned neighborhood; tower placement and specifications comply with the United States Fish and Wildlife Service's (USFWS) Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning; and the community meets FCC criteria for being underserved and no other options for achieving high speed (broadband) internet connection are available.

The BLM agrees that it should comply with NEPA for proposed actions, which includes using categorical exclusions when they apply, and the BLM uses the USFWS's Recommended Best Practices.

Subpart 2861—General Information

One commenter requested that the BLM modify the proposed rule to clarify that minor modifications that do not substantially change the physical dimensions of a tower or base station do not trigger the need for a new authorization.

The BLM believes that the final rule adequately addresses the commenter's concern. As written, amended authorizations are required when additional areas are needed for the existing facility such as the addition of a generator or expansion of a building or tower. A new authorization is required when an applicant does not co-

locate within or on an existing authorized facility. Minor actions such as the replacement or addition of antennas and in-kind facility maintenance are considered maintenance actions unless the action deviates from what has already been authorized. (See the definition of *substantial deviation* in § 2801.5(b) and related discussion above in this preamble).

One commenter recommended that the BLM modify the proposed rule to include language specifying that installation and use of fiber for Federal communication purposes is authorized and no amendment to the ROW is necessary.

The BLM did not make changes to the rule in response to this comment. All actions taken on Federal lands require an authorization, supported by appropriate NEPA analysis, including communications uses by Federal agencies. The exception is when a use is ancillary to the primary use and held by the same company (e.g., fiber optic for a powerline used solely by that power company holding the ROW). In such cases, an amendment to the existing ROW may be sufficient.

One commenter encouraged the BLM to clarify that appurtenant uses, such as installation of fiber and related operations, upgrades, and maintenance of the fiber system, may be included in the authorization for a transmission line under part 2800 and addressed in the operations and maintenance plan for the transmission system without requiring a separate communications site authorization. The BLM agrees with this comment as fiber optic directly supporting a powerline or other facility, when not resold as a commercial use, is considered ancillary to the powerline. The BLM recommends, but does not require, a separate authorization for fiber optic uses which are ancillary, with the possibility of rent waiver for ancillary uses so long as the use is solely internal to the holder's needs and the service is not resold. The BLM would not require a separate communications site management plan for an ancillary facility but may incorporate it into an existing communications site management plan.

**Section 2861.1** What requirements of part 2800 apply to my grant?

Grants issued under this part must comply with the requirements of part 2800, except as otherwise described in this part. The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2861.2** What is the objective of the BLM's Communications Uses program?

The BLM's objective in this section is to authorize and administer communications uses under Title V of the Federal Land Policy and Management Act of 1976 and the regulations in this part to qualified individual, business, or governmental entities. The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2861.5** What acronyms and terms are used in the regulations in this part?

Section 2861.5 defines terms that are specific to communications uses. This section includes terms that had been defined in existing § 2801.5. New definitions are added to provide clarity for the public as to how the BLM administers authorizations for communications uses under part 2860.

The definitions for "RMA," "Base Rent," "Customer," "Facility Manager," "Facility Owner," "Site," and "Tenant" have been moved from § 2801.5; the definitions of "Facility" and "Grant" were copied from § 2801.5, and those terms are now defined in both sections, with the definitions here revised slightly to reflect their specific application in the context of communications uses.

The rule adds the term and a definition of "Annual inventory certification" to clarify the nature of the document that a holder must provide on an annual basis (see § 2866.31(c)). The final rule makes no changes to the version of this definition that appeared in the proposed rule.

The term "collocation" was defined in § 2861.5 of the proposed rule as "[A]nother use, other than the holder's use, added to a communications use facility. Collocation may occur inside the building or on a tower." The BLM removed the definition of the term from this final rule because the term is not used in the regulatory text. A commenter noted this discrepancy as well as a related error in the paperwork collection requirements in the supplemental information published with the proposed rule. The paperwork collection requirements stated that § 2866.41 will add a regulation requiring holders of ancillary facilities to request collocation, and if the BLM does not respond to a request for collocation within 60 days, the collocation will be deemed approved. Section 2866.41 in the proposed rule did not include a provision requiring holders of ancillary facilities to request collocation nor a

provision that such a request would be deemed automatically approved in 60 days if not denied by BLM. The statement in the paperwork collection requirements was in error and has been removed from the preamble of the final rule. As "collocation" is not used in the text of the final rule, the definition of the term is unnecessary and has been removed from the final rule.

The final rule adds a definition of "communications facility," which was requested by a commenter. The definition of "communication facility" is the same as the definition of "facility" in § 2861.5 and § 2801.5(b).

The rule adds the term and a definition of "communications site" to establish what is meant when describing a communications site within an authorization document. The lack of a definition has caused confusion because, often, the BLM and industry refer to a "communications site" when they really mean a "communications facility." This definition clarifies the difference between the terms. The final rule makes no changes to the version of this definition that appeared in the proposed rule.

The rule adds the term and a definition of "communications site management plans" to clarify that these plans guide development and operations at communications sites. These plans are implementation level plans, meaning that they take action consistent with the relevant land use plan (generally a Resource Management Plan (RMP)). Communication site management plans provide direction to the users for the day-to-day operations of the communications site and provide holders and future proponents with the development conditions for a particular site. The final rule makes no changes to the version of this definition that appeared in the proposed rule.

The rule adds the term and a definition of "communications uses" to describe the types of uses considered to be a communications use. This definition includes all ROW uses to which part 2860 applies. The final rule makes no changes to the version of this definition that appeared in the proposed rule.

The definition for the term "Communications uses rent schedule" was moved here from § 2801.5. The change is necessary to maintain consistency in terminology throughout new part 2860. The term "communications uses rent schedule" continues to apply to all types of communications uses identified in the previous definition of the term at § 2801.5 for purposes of identifying and collecting rent, and it also applies to the

following additional uses added to this definition: “facility manager,” “internet service provider (ISP),” “passive reflector,” and “local exchange network.” The final rule includes only minor, nonsubstantive changes to the version of this definition that appeared in the proposed rule.

The rule adds the term and definition of “duly filed application” to explain that it is an application that includes all the elements required by § 2864.25. One commenter asked that the BLM change the definition for the term “duly filed application” to include a reference to § 2864.25, not § 2804.25 as it was written in the proposed rule. In response to this comment, the citation in the rule changed to § 2864.25.

The rule adds the term and a definition of “occupant.” Occupants are entities, other than the holder of a grant, which use a facility covered by that authorization. The final rule makes no changes to the version of this definition that appeared in the proposed rule.

A commenter stated that the BLM should revise the proposed rule language to clarify that before the BLM will issue a grant to allow placement of equipment on Federal property (or property owned by others who presumably have similar concerns), permission must be attained from the agency.

The authorization for communications uses provides for subleasing of uses so the agency does not need to be involved in every change within a communications facility so long as the subleased collocated use is within the existing facility or on the existing tower. The final rule is not revised in response to this comment.

#### Section 2861.8 Severability

This section of the rule, which is based on existing § 2801.8 and parallels § 2881.8 in the final rule, states that if a court holds any provisions of the rules 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 should not be affected. If any portion of this final rule were to be stayed or invalidated by a reviewing court, the remaining elements would continue to provide BLM with important and independently effective tools relating to the administration of its ROW program. For example, the cost recovery provisions in this final rule may function independently of the provisions concerning communications uses and FLPMA Section 512. Similarly, the provisions implementing FLPMA Section 512 and the provisions governing communications uses may

function independently. Individual sections of the rule may function independently as well. The final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Section 2861.9 When do I need a grant?

This section explains the communications-related activities that require an authorization. The final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Subpart 2862—Lands Available for Grants

##### Section 2862.11 How does the BLM designate communications sites and establish communications site management plans?

Section 2862.11 describes how the BLM designates communications sites and when communications site management plans are prepared. This section is based on existing § 2802.11, which describes how the BLM designates ROW corridors and designated leasing areas.

Under § 2862.11(a), the BLM will coordinate in the preparation of the communications site management plans with other Federal agencies, State, local, and Tribal governments, and the public, consistent with the coordination requirements of existing § 2802.11(a).

Paragraph (b) identifies factors the BLM considers when determining land suitability for communications uses, in addition to the factors described in existing § 2802.11(b). One commenter recommended adding “proximity to private and residential property” to the list of factors that the BLM considers under paragraph (b). The BLM will not revise § 2802.11(b) because the suggested addition is already covered by § 2802.11(b)(7).

Paragraph (c) provides for communications site management plans, which are implementation-level plans that tier to the applicable RMP. While communications site management plans are generally adopted outside the land use planning process, the BLM often refers to these plans in RMPs. The identification of communications sites and the adoption of their complementary management plans must be supported by appropriate NEPA analysis, which may take the form of an applicable categorical exclusion or determination that a prior NEPA analysis is adequate.

A commenter noted that RMP revisions may be necessary if existing RMPs do not address communication

sites. Communication site management plans are site specific plans regarding the current and future communication site uses at a specific location and are a technical report to supplement an RMP, since the site can change over time throughout the life of the RMP. This comment does not make any suggestions for changes to the rule and thus is outside the scope of this rulemaking effort.

Ultimately, the final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Subpart 2864—Applying for Grants

##### Section 2864.10 What should I do before I file my application?

Section 2864.10 is based on existing § 2804.10. Section 2864.10(a) describes the purpose of a preliminary application review meeting. Preliminary application review meetings provide valuable information and reveal project constraints to proponents. This information should result in more thorough and complete applications that may streamline BLM application processing, consistent with E.O. 13821 and a Presidential Memorandum directed to the Secretary, both issued on January 8, 2018. A preliminary application review meeting is not a requirement but is strongly encouraged.

Paragraph (b) prompts applicants to ask the BLM for a copy of any applicable communications site management plan for the site of the proposed project. By using an existing communications site management plan as a reference, applicants can better develop an application that is consistent with the site management plan, which will help streamline the BLM’s application processing.

Paragraph (c) specifies what an applicant should acquire before submitting an application to the BLM. A complete communications uses application almost always requires proof of a Federal Communications Commission (FCC) license. If an applicant has already included a license as part of its application, it eliminates the need for the BLM to request that information, and thereby cuts down on processing times.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

##### Section 2864.12 What must I do when submitting my application?

Section 2864.12 describes the supplemental information needed to accompany the SF–299, which is required for all communications uses applications. Section 2864.12 is based

on existing § 2804.12 but includes additional specific communications uses requirements for applications. Existing § 2804.12(f) states that the BLM may require you to submit additional information during the processing of your application. This section standardizes the requirements specific to communications uses to streamline the application process for these types of authorizations. Paragraph (a) of this section clarifies that when an application for a ROW is filed electronically, an actual signature may not be required. Instead of a manual signature, the applicant could meet the BLM's standards for electronic commerce. This revision allows applicants to file their applications electronically. These changes streamline application submissions and allow for more flexibility in how applications are submitted.

Paragraph (a)(1) of this section refers to § 2804.12 for a list of attachments that should be included in all applications.

Paragraph (a)(2) requires an applicant to provide proof of their FCC license. This requirement is consistent with current BLM practice, and the BLM is incorporating this requirement into the regulations to notify applicants of what to expect. There is no expectation that this new language will create any additional burden for communications uses applicants.

Paragraph (a)(3) of this section requires an applicant to submit GIS shapefiles for a map of the proposed project. This requirement is consistent with changes that the final rule makes to § 2804.12(a)(4), which already requires an applicant to submit a map of the proposed project and now further requires an applicant to submit GIS shapefiles or equivalent format, upon request. This new requirement is expected to reduce application processing times by allowing the BLM to integrate project locations into existing resource datasets and analyze the potential resource impacts more quickly.

One commenter expressed support for the requirement in § 2864.12(a)(3) for applicants to submit GIS shapefiles with an application for a ROW. However, the commenter also noted that data shared may exclude attributes that could be considered critical infrastructure and may require a nondisclosure agreement prior to submittal. Conversely, another commenter requested the BLM modify language to: (1) retain flexibility in the geographic information required rather than requiring a specific file format (*i.e.*, shapefiles); and (2) limit data collection to what is necessary for the purposes of site management. The BLM agrees with

both comments. However, the data shared need to be in a format acceptable to the BLM so that the agency can use them in the analysis of the proposed action. The final rule reflects a compromise position that requires data to be submitted in GIS shapefiles or an equivalent format. The BLM collects potential siting information such as facilities, ROW boundaries, surface disturbance, and access roads from applicants for interdisciplinary analysis. Per 43 CFR 2804.13, the BLM will keep confidential any information marked as such to the extent allowed by law.

Paragraph (a)(4) of this section requires an application to include draft engineering or construction drawings. By including these drawings, applicants should expect faster application processing times. An applicant usually produces draft construction drawings before an applicant intends to submit their application, so the BLM does not expect this requirement to create any additional burden. The BLM expects that the inclusion of this information in the application will streamline application processing times.

Paragraph (a)(5) of this section requires that a communications uses application include technical data related to communication equipment used in and on the proposed facility. This rule specifies the types of technical data, such as frequencies and power output of the proposed use, that applicants must submit to allow the BLM to determine whether the proposed use would be consistent with the applicable communications site management plan and would be compatible with existing communications uses at the proposed communications site. This provision is consistent with current BLM policy, which requires this information from applicants.

Paragraph (a)(6) requires an applicant to provide a communications uses plan of development (POD) in support of an application. The BLM may require a POD for an application under § 2804.25(c). The POD is an essential tool for the BLM to understand the scope and complexity of the proposed project. A complete POD can drastically reduce the time spent on processing an application, primarily during the NEPA process. Since BLM policy already requires a POD to be submitted with all applications, this rule should not create an additional burden on the applicant.

Paragraph (b) states that the BLM may require additional information from an applicant about their application while it is being processed. For example, the BLM may require an applicant to submit information about the applicant's plans

to comply with a visual plan included in the RMP for the area (*e.g.*, paint color or stealth design). These changes explain that the BLM will not process an application until the additional information has been submitted. The BLM anticipates this change will help expedite application review and processing. This paragraph is based on existing § 2804.12(f).

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2864.24** Do I always have to use Standard Form 299 when submitting my application for a Communications Uses authorization?

This section requires applicants to use Standard Form 299 to file applications for communications uses. The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2864.25** How will the BLM process my Communications Uses application?

Section 2864.25 provides that the BLM will process communications uses applications consistent with existing § 2804.25. In addition, this section requires the BLM to approve or deny a duly filed application for a grant within 270 days. This is in accordance with the MOBILE NOW Act, which requires Federal agencies to approve or deny a communications facility installation application within 270 days of receiving a duly filed application. The BLM believes this new regulation will shorten application processing times and establish consistency among BLM offices.

Two commenters expressed support for the 270-day timeline to help expedite application review times and decisions. One commenter requested that the BLM clarify whether the 270-day timeline outlined in proposed § 2864.25 would affect public involvement opportunities, including scoping and comment period durations.

The 270-day processing time limit is not discretionary. It is a legislatively mandated requirement of the MOBILE NOW Act. The MOBILE NOW Act requires agencies to approve or deny applications within 270 days of a duly filed application. (See definitions at 43 CFR 2861.5 for the definition of a duly filed application.) For the large majority of applications, the 270-day processing time limit is sufficient for BLM to complete the NEPA process, including the public comment period. All public comments on proposed actions subject to the 270-day processing time limit will

need to be delivered to the agency within the timeframes given for public comments to ensure the BLM has time to review and, where appropriate, incorporate comments into the NEPA analysis. The BLM does not anticipate shortening public comment periods, but for proposed actions subject to the 270-day processing time limit, the agency will have less ability to review and incorporate comments received after the timeframes given for public comment.

While the BLM normally meets the 270-day time frame, sometimes the BLM is not able to complete its application review process in that time. Any work conducted beyond the 270 days should be with the applicant's agreement.

One commenter recommended the BLM further modify this language to indicate that an application will be deemed complete after BLM notification of completeness or the passage of 60 days from submission of a duly filed application, whichever is earlier. Because the BLM cannot process an incomplete application, the BLM cannot adopt the commenter's suggestion that an application be deemed complete 60 days after it is filed, regardless of the completeness of the application. If an application is incomplete, the BLM will notify the applicant within 60 days of receiving the application as to what is needed to complete the application.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2864.26** Under what circumstances may the BLM deny my application?

Section 2864.26 is based on existing § 2804.26 and identifies when an application for communications uses may be denied. Reasons for denial include the provisions of existing § 2804.26, along with reasons specific to communications uses, such as interference with other communications users.

Paragraph (a) of this section is based on § 2804.26(a)(1), which states that an application may be denied if the proposed use is inconsistent with any other previously authorized ROW, including communications uses on the public lands. It is the goal of the BLM to allow multiple communications uses within a communications site area if they are compatible with one another. Existing communications uses ROW authorization holders will be given the opportunity during the application process to provide evidence of potential interference with their use. The BLM will evaluate any such evidence to determine if the subsequently proposed communications uses might potentially

interfere with the previously authorized communications uses, and if so, whether a denial is warranted under the circumstances.

Under paragraphs (b) and (c) of this section, an application can be denied if the proposed use presents a public health or safety issue or is not in conformance with the RMP or communications site management plan.

One commenter requested the BLM modify the proposed rule language to provide the criteria the BLM will use when deciding whether an application is denied for failure to comply with BLM requests for additional information.

The BLM declines to change the rule in response to this comment. The BLM may require additional information above what is specifically required in the regulations in order to make an informed decision on an application. Additional information could be site specific information, such as detailed visual resource management analysis, that is difficult to anticipate and categorize in advance. Failure to receive the information from an applicant prevents the BLM from making a fully informed decision. The BLM also uses the seven criteria defined in § 2804.26 for denying an application. The BLM will send a deficiency notice, usually with a deadline, before denying an application. If an application is denied, the applicant has an opportunity to appeal the decision.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2864.35** How will the BLM prioritize my Communications Uses application?

Section 2864.35 describes how the BLM will prioritize applications for grants. This section is based on existing § 2804.35, which describes how the BLM prioritizes solar and wind applications. Under this section, the BLM will prioritize processing applications for grants that meet the needs of underserved, rural, and Tribal communities and first responders. This section was added in response to E.O. 13821, discussed earlier in this preamble.

A commenter expressed support for prioritizing applications for grants that meet the needs of underserved, rural, and Tribal communities and first responders. The commenter requested the BLM provide additional information regarding how the categories are further defined and how they might be prioritized amongst each other in the event a given site is proposed on

property that overlaps multiple categories.

The BLM did not address the portion of the comment requesting the BLM further define and prioritize the categories of "underserved," "rural," "Tribal," and "first responder." The BLM will address each application on a case-by-case basis and will provide further guidance on this issue as necessary. The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Subpart 2865—Terms and Conditions of Grants**

**Section 2865.14** What rights does a grant provide?

Section 2865.14 describes the rights provided by a grant, in addition to the rights described in existing § 2805.14.

Paragraph (a) of this section is based on existing § 2805.14(a) but has been revised to clarify that only facilities explicitly allowed by an authorization are acceptable. The final rule makes no changes to the version of this paragraph that appeared in the proposed rule.

Paragraph (b) of this section is based on existing § 2805.14(b) and revises the language so that subleasing provisions are consistent between communications uses and all other ROWs. In response to a commenter's request to clarify the term "subleasing" as it relates to the rights granted under an authorization and whether subleasing refers only to collocations within or on authorized facilities, this final rule revises the proposed rule to include definitions of "ancillary" and "subleasing" in § 2801.5 to help clarify each term.

Paragraph (c) of this section is based on existing § 2805.14(c) and states that the authorization holder may allow another entity to conduct day-to-day operations of the facility, as authorized by the BLM. Section 2805.14(c) describes access to lands, but this section instead refers to "lands or facilities." This change is consistent with other changes to the regulations moved to new part 2860 from part 2800, which acknowledge that an authorization may be either a grant to use a facility or a grant for the use of public lands. The final rule makes no changes to the version of this paragraph that appeared in the proposed rule.

Paragraph (d) of this section sets the standard length for a grant at 30 years. The BLM considers a 30-year-term to be consistent with Section 504(b) of FLPMA's "reasonable term" limitation, and that interpretation is being carried forward for grants under this new part. The BLM may determine in a given case that a shorter term is appropriate for an

authorization. For example, a BLM office could determine the resource issues at the proposed site, such as environmental or Tribal concerns, may warrant a shorter term for the authorization. One commenter expressed support for the 30-year term for communications use grants included in the proposed rule, as consistent with FLPMA, because it will provide increased investment certainty for applicants. The final rule makes no changes to the version of this paragraph that appeared in the proposed rule.

One commenter requested the BLM modify proposed rule language to address when and how owners can attain rights to keep beam paths that require clear line-of-sight

communication free of obstructions on BLM-managed land.

The BLM is not modifying the proposed rule in response to this comment. It is the holder's responsibility to propose communications use locations on public lands that meet the needs of the applicant. The applicant is responsible for including issues such as the beam path reliability in their POD. The POD should contain clear direction as to how the holder would need to operate and maintain their beam path in the future to achieve a clear path for operations. The agency would subsequently analyze the proposal under NEPA. The final approved POD would then set the

course for future maintenance actions by the holder.

Subpart 2866—Annual Rents and Payments

Subpart 2866 contains the rental requirements for grants. Many of the sections have been moved from existing subpart 2806 with no substantive changes from existing requirements. The changes from existing requirements are intended to streamline the rental process for communications uses and are discussed in detail in the following section-by-section analysis. The following chart shows which sections of existing subpart 2806 are moved into subpart 2866.

TABLE 4—NEW SUBPART 2866 VS FORMER SUBPART 2806

New section 2866 based on or moved from former section 2806			
Former section	Former title	New section	New title
Subpart 2806	Annual rents and payments	Subpart 2866	Annual rents and payments
Based on § 2806.14	Under what circumstances am I exempt from paying rent?	§ 2866.14	Under what circumstances am I exempt from paying rent?
Based on § 2806.15	Under what circumstances may BLM waive or reduce my rent?	§ 2866.15	Under what circumstances may the BLM waive or reduce my rent?
Based on § 2806.23	How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?	§ 2866.23	How will the BLM calculate my rent for linear rights-of-way for Communications Uses?
Moved from § 2806.30	What are the rents for communication site rights-of-way?	§ 2866.30	What are the rents for Communications Uses?
Moved from § 2806.31	How will BLM calculate rent for a right-of-way for communication uses in the schedule?	§ 2866.31	How will the BLM calculate rent for Communications Uses in the schedule?
Moved from § 2806.32	How does BLM determine the population strata served?	§ 2866.32	How does the BLM determine the population strata served for your facility?
Moved from § 2806.33	How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?	§ 2866.33	How will the BLM calculate the rent for a single use communication facility grant?
Moved from § 2806.34	How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?	§ 2866.34	How will the BLM calculate the rent for a multiple-use communication facility grant?
Moved from § 2806.35	How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?	§ 2866.35	How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?
Moved from § 2806.36	If I am a tenant or customer in a facility, must I have my own grant or lease and if so, how will this affect my rent?	§ 2866.36	If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?
Moved from § 2806.37	How will BLM calculate rent for a grant or lease involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?	§ 2866.37	How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?
Moved from § 2806.38	Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?	§ 2866.38	Can I combine multiple grants for facilities located at one site into a single grant?
Moved from § 2806.39	How will BLM calculate rent for a lease for a facility manager's use?	§ 2866.39	How will the BLM calculate rent for a grant for a facility manager's use?
Moved from § 2806.40	How will BLM calculate rent for a grant or lease for ancillary communication uses associated with communication uses on the rent schedule?	§ 2866.40	How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?
Moved from § 2806.41	How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?	§ 2866.41	How will the BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?
Moved from § 2806.42	How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?	§ 2866.42	How will the BLM calculate rent for Communications Uses within a federally owned communications facility?



TABLE 4—NEW SUBPART 2866 VS FORMER SUBPART 2806—Continued

New section 2866 based on or moved from former section 2806			
Former section	Former title	New section	New title
Subpart 2806	Annual rents and payments	Subpart 2866	Annual rents and payments
Moved from § 2806.43, but the terms would be moved to § 2861.5.	How does BLM calculate rent for passive reflectors and local exchange networks?	§ 2866.43	How does the BLM calculate rent for passive reflectors and local exchange networks?
Moved from § 2806.44	How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses?	§ 2866.44	How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

For a discussion of the sections in subpart 2806 that were removed by this rule, see the preamble discussion of subpart 2806.

Section 2866.14 Under what circumstances am I exempt from paying rent?

Section 2866.14 identifies when a holder is exempt from paying rent. Paragraph (a)(1) of this section states that Federal, State, and local governments, along with their instrumentalities, are exempt from paying rent. Paragraphs (a)(2) and (a)(3) are based on paragraphs (a)(3) and (a)(4) of § 2806.14. Paragraph (b) describes the exceptions to these exemptions. Under paragraph (b)(1) of this section, a holder will not be exempt from paying rent if the holder is in trespass. This is not a change from existing requirements but has been added to the regulations to provide clarity to holders.

Paragraphs (b)(2)(i) and (b)(2)(ii) explain that a State or local government entity is not exempt from paying rent when the facility is being used for commercial purposes or when the principal source of revenue is generated from customer use charges. These requirements are consistent with existing § 2804.16(a).

Under added paragraph (b)(2)(iii), a State or local government entity is not exempt from rent if it charges rent to the United States Government for occupancy within an exempt facility (above routine operation and maintenance costs). The BLM and other Federal agencies are often charged rent to occupy space in another governmental (State or local government) facility when their authorization to occupy the public lands is exempt from rent. The BLM is making this change to encourage reciprocal rent exemptions for the United States. The provisions of this section are intended to ensure that the Federal Government is charged reasonable rates for maintenance and operations only.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.15 Under what circumstances may the BLM waive or reduce my rent?

Section 2866.15 includes rental reduction or waiver provisions that apply specifically to the communications uses program.

Under paragraph (a) of this section, the BLM can waive or reduce rent for holders that are licensed by the FCC as non-commercial and educational broadcasters.

Under paragraph (b) of this section, and consistent with existing Section 2806.15, the BLM can waive or reduce rent for amateur radio clubs that provide a benefit to the general public or to the programs of the Secretary, for verified nonprofit organizations, or for entities that can demonstrate undue hardship and public interest.

Paragraph (c) of this section identifies when the BLM may not waive or reduce rent. These exceptions include when an organization operates for the benefit of its members; when any portion of the authorized facility is being used for commercial purposes; when the holder is charging the United States to occupy a facility; and when a holder charges fees beyond reasonable operation and maintenance to an occupant whose rent would normally be exempt or waived by the BLM. This provision is consistent with § 2866.14(b)(2).

Paragraph (d) of this section describes when the BLM can revoke a holder's waiver of rent. Under paragraph (d) of this section, the BLM will revoke a holder's waiver if it determines that the authorization holder no longer meets the criteria for a waiver.

This section provides several additional ways by which the BLM could waive the rent of users who provide a public benefit and are not operating solely to make a profit. This section will streamline our processes by

demonstrating to the public when rent can be waived or reduced and by reducing the need for the BLM to further analyze a request.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?

Section 2866.23 is based on existing § 2806.23 and provides some additional clarification that linear communications uses, such as fiber optic and telephone cable, will be charged rent using the linear ROW rent schedule found in § 2806.23. The communications uses rent schedule is specific to small areas, while the linear schedule is used for long and narrow ROWs, such as pipelines or power lines. Since a linear communications use is a long and narrow facility, the linear rent schedule is more appropriate.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2866.30 What are the rents for Communications Uses?

While much of part 2860 is based on sections of part 2800, which would remain as part of the rule, the communications site rent provisions (§§ 2866.30 through 2866.44) have been moved from subpart 2806 to new subpart 2866. Changes from existing provisions are discussed in this and the following sections of this preamble.

Section 2866.30 is substantively the same as existing § 2806.30. This section describes how the BLM will assess annual rent for communications uses. The final rule updates the address for the BLM and makes other minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.31 How will the BLM calculate rent for Communications Uses in the schedule?

Section 2866.31 is substantively the same as existing § 2806.31. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.32 How does the BLM determine the population strata served for your facility?

Section 2866.32 is substantively the same as existing § 2806.32, and there are no substantive changes from existing requirements.

Section 2866.33 How will the BLM calculate the rent for a single use communication facility grant?

Section 2866.33 is substantively the same as existing § 2806.33, and there are no substantive changes from existing requirements.

Section 2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?

Section 2866.34 is substantively the same as existing § 2806.34. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.35 How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and “other” category uses?

Section 2866.35 is substantively the same as existing § 2806.35. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

Section 2866.36 is substantively the same as existing § 2806.36, and there are no substantive changes from existing requirements.

One commenter requested the BLM revise proposed § 2866.36(c) to permit the BLM to collect the full annual rent from either the grant holder or the tenant. This comment is outside the scope of this rule. The BLM is not addressing payment collection requirements in this rulemaking.

Section 2866.37 How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?

Section 2866.37 is substantively the same as existing § 2806.37, and there are no substantive changes from existing requirements.

Section 2866.38 Can I combine multiple grants for facilities located at one site into a single grant?

Section 2866.38 is substantively the same as existing § 2806.38 and is revised to require submittal of an SF 299 for BLM authorization to combine facilities into a single grant.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2866.39 How will the BLM calculate rent for a grant for a facility manager’s use?

Section 2866.39 is substantively the same as existing § 2806.39. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?

Section 2866.40 is substantively the same as existing § 2806.40, and there are no substantive changes from existing requirements. The BLM considers “ancillary” communication facilities to be those used solely for the purpose of internal communications.

For the final rule, the BLM added a reference to the new definition of “ancillary” found in § 2801.5 to provide clarity to the reader.

Section 2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?

Section 2866.41 is substantively the same as existing § 2806.41, and there are no substantive changes from existing requirements.

One commenter requested that the BLM modify the proposed rule language to acknowledge the rent exemption clause (§ 2866.14), so it is clear that the Federal rent exemption applies in circumstances where the communications use facility is authorized as ancillary to a grant but is not used for the sole purpose of internal communications.

The final rule is not modified in response to this comment. If the communications use is not for the sole purpose of internal communications, then the service is implied to be a commercial communications use. If that is the case, then the agency is allowed to charge for that use, and therefore, the use would not be rent exempt.

One commenter recommended that the proposed rule allow BLM to permit fiber optic cable on linear high voltage transmission lines as ancillary or appurtenant communication facilities and equipment that support the electric transmission grid.

The BLM believes that the final rule accounts for this comment. Fiber optic and microwave directly supporting a powerline or other facility, when not resold as a commercial use, is considered an ancillary facility, and will continue to be rent exempt. Therefore, the final rule is not modified in response to this comment.

Section 2866.42 How will the BLM calculate rent for Communications Uses within a federally-owned communications facility?

Section 2866.42 is substantively the same as existing § 2806.42, and there are no substantive changes from existing requirements.

One commenter requested the BLM modify § 2866.42(b) to clarify (1) how the term Facility Owner (as defined in § 2861.5) applies to Federal agencies that do not operate for personal or commercial purposes, and (2) that Federal agencies are exempt from paying rent even if the BLM considers them to be a facility owner.

The final rule is not modified in response to this comment. By definition, a Federal agency is a facility owner because it owns and operates equipment on public lands. The use by a Federal agency is generally exempt from rent. Occupants who occupy space within a Federal facility will hold their own authorization for which they must generally pay rent to the BLM for their communications uses of the public lands. The final rule revises the definition of a “facility owner” to provide clarification that a Federal purpose is one purpose for which a facility owner may operate communications equipment in the facility. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?

Section 2866.43 is substantively the same as existing § 2806.43, except that

the definitions for “passive reflector” and “local exchange network” have been added to § 2861.5 instead. The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2866.44** How will the BLM calculate rent for a facility owner’s or facility manager’s grant which authorizes Communications Uses?

Section 2866.44 is substantively the same as existing § 2806.44. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Subpart 2868—Communications Uses Trespass**

**Section 2868.10** What is a Communications Uses trespass?

Section 2868.10 is based on § 2808.10 but provides for additional communications uses-specific circumstances that the BLM considers trespass. The intent of this section is to define a trespass so that facility owners and users understand how best to avoid unauthorized use.

Paragraph (a) states that adding to or altering from the communications facilities described in the authorization without approval from the BLM is a trespass.

Paragraph (b) of this section states that facility owners who permit communications uses of other users by allowing them to sublease any portion of their facilities without approval will be considered to be in trespass.

Paragraph (c) provides that natural structures, such as trees and rocks, may not be used to house or support equipment without the BLM’s prior approval, and that doing so constitutes trespass. Using trees and rocks to house or support equipment leads to unacceptable resource damage and is not a sustainable practice.

All the provisions in this section have been a part of BLM policy for many years, but it became clear that users were confused about what the BLM considers trespass. The BLM believes that publishing these provisions as regulations offers additional clarity to the public and will lead to a reduction in unauthorized use.

One commenter stated that the BLM should modify the proposed trespass language in section 2868.10 to address concerns that: (1) language regarding placement of any type of facilities is too broad; and (2) if the regulations require authorization and, if necessary, rent to

be paid to the BLM for entities that want to locate equipment on structures, the holder will retain the right to determine if the proposed use is compatible with the holder’s pre-existing use.

The BLM is not modifying the rule as suggested by the comment. If a use of the public lands is not provided for in an authorization it is considered an unauthorized use and therefore a trespass. An application for a ROW should accurately describe the facilities it seeks an authorization for, and the BLM will include a description of the authorized facilities within the ROW grant. Collocated equipment should be disclosed to the BLM at the time of applications and prior to installation. If undisclosed equipment is discovered later by the BLM, it will be considered unauthorized.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**43 CFR Part 2880 Rights-of-Way Under the Mineral Leasing Act**

The MLA requires that the applicant reimburse the United States for administrative and other costs incurred in processing a ROW application. The BLM refers to such costs as “actual costs” and defines that term to include the financial resources the BLM expends in processing and monitoring ROW activities under the MLA, including the direct and indirect costs, exclusive of management overhead costs.

The MLA does not limit or qualify the actual cost requirement, nor does it list any factors that the BLM may or should consider when determining reimbursable costs. The BLM bases actual cost information on Federal accounting and reporting systems. The BLM is making changes to part 2880 to provide consistency with the FLPMA ROW regulations at part 2800.

**Part 2881—General Information**

**Section 2881.2** What is the objective of the BLM’s right-of-way program?

This rule adds the words “wherever practical” to the objective described in § 2881.2(c). This change is consistent with § 2801.2(c). For a more detailed discussion, please see the preamble discussion for § 2801.2(c).

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2881.5** What acronyms and terms are used in the regulations in this part?

This rule amends the definitions of terms that appear in § 2881.5(b) to be consistent with changes to the

definitions of those same terms in § 2801.5. For a detailed discussion of these changes and the BLM’s response to relevant comments, please see the preamble discussion of § 2801.5.

**Section 2881.7** Scope

This rule amends paragraphs (a) and (b)(1) in § 2881.7. These modifications clarify when an action will be processed under the regulations of Part 2880 and when an action will be processed under the Application for Permit to Drill (APD) regulations (43 CFR part 3160 and subpart 3171). Within the surface use plan of operation area, the BLM will process “related facilities,” as defined in § 2881.5, under the APD regulations. Once a pipeline or related facility leaves the surface use plan of operation area and is outside the boundary of the lease area it will be considered “off lease” and, at the lease boundary, becomes an activity processed under these regulations to the extent it is still on Federal land and subject to paragraph (b). Moreover, pipelines and related facilities operated by a party who is not the lessee or lease operator of a Federal oil and gas lease or that are downstream from a custody transfer metering device will be processed under these regulations regardless of whether the pipelines and related facilities are on or off lease.

These changes do not impact oil and gas operators, who must still coordinate with the BLM to manage their pipelines and related facilities. This rule ensures consistency in BLM operations and how these facilities are managed under these regulations.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2881.8** Severability

The BLM is redesignating § 2881.9 as 2881.8 to be consistent with the numbering of the equivalent sections in parts 2800 and 2860. This section of the rule states that if a court holds any provisions of the rules 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 should not be affected. If any portion of this final rule were to be stayed or invalidated by a reviewing court, the remaining elements would continue to provide BLM with important and independently effective tools relating to the administration of its ROW program.

**Subpart 2883—Qualifications for Holding MLA Grants and TUPs****Section 2883.14** What happens to my grant or TUP if I die?

Because an application is not an inheritable interest, the BLM is changing the title of this section from “What happens to my application, grant, or TUP if I die?” to “What happens to my grant or TUP if I die?” Paragraph (a) has been revised to remove the reference to the applicant and the application.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Subpart 2884—Applying for MLA Grants or TUPs****Section 2884.11** What information must I submit in my application?

This rule revises §§ 2884.11(a) and 2884.11(c)(6) for consistency with § 2804.12. For a detailed discussion of commenter suggestions and changes to this section, see the preamble discussion of § 2804.12.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2884.12** What are the fee categories for cost recovery?

The rule revises the title of this section to read, “What are the fee categories for cost recovery?” for consistency with § 2804.14. For a detailed discussion of the other changes to this section, please see the preamble discussion of § 2804.14.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2884.13** When will the BLM waive cost recovery fees?

The rule revises the title of this section to read “When will the BLM waive cost recovery fees?” rather than “Who is exempt from paying processing and monitoring fees?” The BLM is amending § 2884.13 for consistency with § 2804.16. For a detailed discussion of these changes, please see the preamble discussion of § 2804.16.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2884.14** When does the BLM reevaluate the cost recovery fees?

The rule revises the title of this section to change “processing and monitoring” to “cost recovery.” This change is consistent with the proposed changes to § 2804.15.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2884.15** What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?

The rule amends § 2884.15 to clarify the use of a Master Agreement and to replace the term “processing and monitoring” with “cost recovery” to be inclusive of administrative actions. These changes are consistent with the changes to § 2804.17. For a more detailed discussion of these changes, please see the preamble discussion of § 2804.17.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2884.16** What provisions do Master Agreements contain and what are their limitations?

The rule amends provisions in § 2884.16(a) that describe how processing and monitoring activities are included in a Master Agreement. Section 2884.16(c) was added to clarify that a Master Agreement will waive a holder’s rights to request a reduction in cost recovery fees. This is the current practice of the BLM and is not a substantive change. These changes are consistent with the amendments to § 2804.18. For a more detailed discussion of these revisions, including changes to the final rule, please see the preamble discussion of § 2804.18.

**Section 2884.17** How will the BLM manage my Category 6 project?

The rule amends § 2884.17 by revising the heading to read “How will the BLM manage my Category 6 project?” The BLM also revised § 2884.17(a) to include processing and monitoring activities. Revised § 2884.17(b) describes what the BLM will do in monitoring a grant. Paragraph (b)(4) of this section states that the BLM could collect a deposit before beginning work on a Category 6 project. These changes are consistent with the amendments to § 2804.19. For a more detailed discussion of these revisions, please see the preamble discussion of § 2804.19.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2884.21** How will the BLM process my application?

The rule amends § 2884.21 for consistency with the revisions made to § 2804.25. For a more detailed

discussion of these revisions, please see the preamble discussion of § 2804.25.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2884.23** Under what circumstances may the BLM deny my application?

The rule revises paragraph (a)(6) of this section, which states that the BLM could deny your ROW application if you fail to comply with a deficiency notice. This revision makes this paragraph consistent with §§ 2804.26 and 2864.26.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

**Section 2884.24** What fees must I pay if the BLM denies my application, or if I withdraw my application or relinquish my grant or TUP?

The rule amends § 2884.24 to provide consistency with § 2804.27. For a more detailed discussion of these amendments, please see the preamble discussion of § 2804.27.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

**Section 2884.27** What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?

The rule amends § 2884.27 by revising the title to read, “What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?” Also, this section is revised to remove any reference to a temporary use permit (TUP). Currently, any time a new grant or TUP application is filed with the BLM and the project involves a pipeline 24 or more inches in diameter, the regulations require BLM to notify Congress of the filed application.

This rule eliminates the requirement to report a TUP for several reasons. The Mineral Leasing Act, which draws a distinction between ROWs and temporary permits, see 30 U.S.C. 185(e), requires Congressional notification only for ROWs. 30 U.S.C. 185(w). Extending this statutory requirement to TUPs, which authorize activities that are only of a temporary and limited nature, creates a significant, unnecessary workload for BLM offices, the Department, and Congress.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

### Subpart 2885—Terms and Conditions of MLA Grants and TUPs

#### Section 2885.12 What rights does a grant or TUP provide?

The rule amends the title of § 2885.12 from “What rights does a grant or TUP convey?” to “What rights does a grant or TUP provide?” to be clear that the BLM does not convey any ownership rights to a ROW holder.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Section 2885.17 What happens if I do not pay rents and fees or if I pay the rents or fees late?

The rule amends § 2885.17 to provide consistency with § 2806.13. For a more detailed discussion of these changes, please see the preamble discussion of § 2806.13.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

#### Section 2885.19 What is the rent for a linear right-of-way grant?

The rule revises paragraph (b) to update the contact address of the BLM and highlight availability of the Per Acre Rent Schedule on the BLM website.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

#### Section 2885.24 If I hold a grant or TUP, what cost recovery fees must I pay?

The rule amends the title for § 2885.24 to read, “If I hold a grant or TUP, what cost recovery fees must I pay?” to include permitting and monitoring activities. The rule revises §§ 2885.24(a) and 2885.24(b) and adds a new § 2885.24(c). Section 2885.24(a) now refers you to § 2884.12(b) for the descriptions of the minor category fees. Section 2885.24(b) states that Categories 1 through 4 will be updated on an annual basis. New § 2885.24(c) explains how to obtain a copy of the current cost recovery fee schedule.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

### Subpart 2886—Operations on MLA Grants and TUPs

#### Section 2886.17 Under what conditions may the BLM suspend or terminate my grant or TUP?

Section 2886.17 is revised to add a new paragraph (c)(3), which states that

the BLM may terminate your grant or TUP if it is terminated by court order. If a court were to terminate a grant or TUP, the BLM must implement the court order. This is not a change to BLM practice but provides clarity to the public.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

### Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs

#### Section 2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?

Section 2887.10(b) is revised to change the term “processing and monitoring” to “cost recovery,” consistent with § 2807.20(b).

The final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Section 2887.11 May I assign or make other changes to my grant or TUP?

Section 2887.11(i) is added to clarify that an authorization amendment is necessary for a substantial deviation from location or use.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Section 2887.12 How do I renew my grant?

The rule amends § 2887.12 to provide consistency with § 2807.22. For a more detailed discussion of these changes, please see the preamble discussion of § 2807.22.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

### Subpart 2888—Trespass

#### Section 2888.10 What is a trespass?

The BLM revised this paragraph in the final rule to add “subleasing” to the acts that may constitute a trespass, consistent with the similar revision to § 2808.10.

### Part 2920—Leases, Permits and Easements

### Subpart 2920—Leases, Permits and Easements: General Provisions

#### Section 2920.0–5 Definitions

Section 2920.0–5 is amended to add the term and a definition of “cost recovery” and is reorganized to be in alphabetical order and to make minor, nonsubstantive language changes.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

#### Section 2920.6 Payment of Cost Recovery Fees

The title of § 2920.6 is amended from “Reimbursement of costs” to “Payment of cost recovery fees,” and the content of the section is updated to reflect this change. The change better explains the process of collecting estimated cost recovery fees before the work is performed rather than afterward through reimbursement.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

#### Section 2920.8 Fees

Section 2920.8 is amended by revising § 2920.8(b) to say, “cost recovery fees,” to provide consistency with the revisions made to part 2800.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

## IV. Procedural Matters

### *Regulatory Planning and Review (Executive Orders 12866, 14094 and 13563)*

Executive Order (E.O.) 12866 (58 FR 51725, October 4, 1993), as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. E.O. 13563 (76 FR 3821, January 11, 2011) 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 concluded that the rule is a significant regulatory action.

This rule would not have a significant effect on the economy. The BLM estimated that the rule would have distributional impacts in the form of transfer payments of about \$3.47 million per year from firms and individuals to the BLM. Transfer payments are monetary payments from one group to another that do not affect total resources available to society.

For more detailed information, see the Economic and Threshold Analysis prepared for this rule. The economic 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–AE60,” click the “Search” button, open the Docket Folder, and look under Supporting Documents.

One commenter disagreed with the BLM’s findings in the Economic Analysis that the rule would not increase the burden on society or cause detrimental economic effects and requested that the BLM further evaluate the rule’s compliance with Executive Orders (E.O.) 12866 and 13563, with particular focus on how public comment periods could be affected by the proposed changes to the regulation.

The BLM determined that the changes made by this rule are administrative or procedural in nature. Additionally, in preparing this regulation, the BLM was cognizant of the goal of minimizing economic impacts to ROW applicants and holders. For instance, entities that make cost recovery payments may take advantage of a Master Agreement which in many instances will reduce their costs. Also, there are opportunities for users to request reductions in cost recovery payments for hardship situations. This rule will not shorten public comment periods.

The BLM has evaluated the rule’s compliance with E.O. 12866 and 13563. Under E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) determined that the final rule is a significant regulatory action. The rule, like all BLM regulations, will be subject to a periodic review under E.O. 13563 to ensure the regulation remains necessary.

There are several provisions in the rule that help ensure the rule does not increase the burden on society. For instance, in § 2804.25, a new paragraph is added to the rule requiring an operating plan or agreement for all powerline ROWs, which gives the BLM an opportunity to ensure there is, in every instance, a plan to reduce risk of wildfire and other adverse impacts. Section 2805.12 includes a provision that the BLM may require grant holders to remove facilities that pose health and safety risks sooner than 3 months, as is presently the case under the existing regulation, thereby potentially reducing adverse impacts of projects in such cases. Section 2805.14 enhances protection of safety and the environment by removing the word “minor” from its discussion of removing vegetation. Section 2805.15 includes language clarifying that any change in

the terms or conditions will require a new grant, which may require a fresh environmental analysis by the BLM. Section 2806.13 expands the provision for collecting unpaid rents, thereby promoting compensation for the use of public lands.

#### *Revitalizing Our Nation’s Commitment to Environmental Justice (E.O. 14096; E.O. 12898)*

Under Executive Order 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All” (which builds upon Executive Order 12898<sup>1</sup>) agencies must, as appropriate and consistent with applicable law, identify, analyze, and address the disproportionate and adverse human health and environmental effects (including risks) and hazards of rulemaking actions and other Federal activities on communities with environmental justice concerns. (88 FR 25251, Apr. 26, 2023). This rule streamlines the processing of ROWs and their associated fees and requires operations and maintenance plans for powerline ROWs. These rule changes are not expected to have an effect on any particular population. Therefore, this rule is not expected to negatively impact any community and is not expected to cause any disproportionate and adverse impacts to communities with environmental justice concerns.

#### *Regulatory Flexibility Act*

This rule will not 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 30 affected industries. The BLM determined that a large share of the entities in the affected industries—in the majority of the industries, over 90% of the covered entities at the national level—are small

businesses as defined by the Small Business Act (SBA).<sup>1</sup> The BLM’s analysis of this point is given in Table 3 of the Economic Analysis for this final rule.

However, the BLM believes that the impact on the small entities is not significant. In the Economic Analysis, the total cost recovery payments per year of a small entity are compared to its receipts. Table 11 in the Economic Analysis gives a break-out of small establishments by industry and size class. The table shows the cost recovery payments as a percentage of receipts. Cost recovery payments of a small business under the final rule are estimated to be \$9,000 per year, including an incremental \$3,500 cost attributable to the rule. For most of the size categories, cost recovery charges as a percentage of receipts are less than 1%.

Moreover, section 2804.21 of the BLM’s regulations currently provides that the BLM may account for financial hardship on a case-by-case basis when determining cost recovery fees, providing an avenue for relief for small businesses if they are meaningfully impacted by cost recovery payments.

Further, the rule will benefit small businesses by streamlining the BLM’s processes.

For the purpose of carrying out its review pursuant to the RFA, we certify that the rule will not have a “significant economic impact on a substantial number of small entities,” as that phrase is used in 5 U.S.C. 605. A regulatory flexibility analysis is therefore not required.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The rule will result in additional cost recovery payments (or receipts to the United States Government) paid mostly by firms and individuals. These payments are “transfer payments.” Transfer payments are monetary payments from one group to another that do not affect total resources available to society.

(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 BLM determined that the relatively minor increase in minor category fees will not

<sup>1</sup> 59 FR 7629, February 16, 1994.

<sup>1</sup> 13 CFR 121.201 and U.S. Census Bureau 2017 Economic Analysis.

pose an impact to small businesses. As explained above, cost recovery payments for a small business under the final rule are estimated to be \$9,000 per year, including an incremental \$3,500 cost attributable to the rule. Table 11 of the Economic Analysis shows that for most industry and size categories, cost recovery payments as a percentage of receipts are less than 1%. In a few industries, for the smallest size categories, cost recovery payments exceed 1% of receipts. In such cases, it is important to note that section 2804.21 of the BLM's existing regulations provides that the BLM may account for financial hardship on a case-by-case basis when determining cost recovery fees. Further, there are aspects of the rule that will provide operating flexibility for small businesses, likely allowing them to manage their powerline and communications site ROWs more efficiently or at reduced cost.

(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 will not have adverse effects on any of these criteria. It will encourage the development of communications uses in rural areas in accordance with E.O. 13821 and the MOBILE NOW Act.

#### *Unfunded Mandates Reform Act*

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 final rule that may result in aggregate expenditure by State, local, and Tribal governments, or by the private sector, of \$100 million or more in any one 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, or Tribal governments, in the aggregate, or to the private sector in any 1 year. The rule will not 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 (53 FR 8859, March 15, 1988) 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. This rule will 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 (64 FR 43255, August 4, 1999), 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 (61 FR 4729, February 5, 1996). 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 Tribal Governments (E.O. 13175, E.O. 14112, and Departmental Policy)*

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty.

In accordance with E.O. 13175 (65 FR 67249, November 9, 2000) and E.O. 14112 (88 FR 86021, December 11, 2023), the BLM has evaluated this rulemaking and determined that it would not have substantial direct effects on federally recognized Indian tribes. Nevertheless, on a government-to-government basis the BLM initiated consultation with Tribal governments that wished to discuss the rule.

In August 2021, the BLM sent a letter to federally recognized Indian Tribes and Alaska Native Corporations notifying them about the BLM's intent to pursue this rulemaking. In that letter, the BLM invited the tribes to government-to-government consultation. On October 28, 2021, the BLM met with Ahtna, Inc., an Alaska Native Regional Corporation, to discuss

this and other BLM rulemakings. Ahtna encouraged BLM to work with other state land management agencies, asked for clarification of the Tribal consultation process during the BLM rulemaking process, and requested a timeline for implementation of the rule and the new cost recovery schedule. On December 1, 2021, the BLM met with the Santa Rosa Rancheria Tachi-Yokut Tribe to discuss this and other BLM rulemakings. The Tribe asked whether the time requirements for processing applications in the MOBILE NOW Act would eliminate or reduce Tribal consultation. Neither the MOBILE NOW Act nor this rule alters the BLM's responsibility to consult with Tribes. Tribal consultation will continue consistent with applicable law and policy. The Tribe also requested a timeline for when the rule would be finalized. The rule will take effect 30 days after it is published in the **Federal Register**.

#### *Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

The Paperwork Reduction Act (PRA) generally provides that an agency may not conduct or sponsor, and not withstanding any other provision of law a person is not required to respond to, a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). This rule contains new information collections that require OMB approval under the PRA. The BLM may not conduct or sponsor and, notwithstanding any other provision of law, you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

The information collection activities associated with the application process in this rule require the use of SF-299 (Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property) and the Communications Site Tenant/Customer Inventory Certification of Facility Owner or Manager. The OMB has previously approved the information collection requirements associated with BLM's use of Common Form SF-299 as part of the application process. You may view the BLM's approved Request for use of the Common Form at <http://www.reginfo.gov/public/do/PRAMain>. Additionally, § 2884.11 refers to BLM

forms Application for Permit to Drill or Reenter (BLM Form 3160–3) and Sundry Notice and Report on Wells (BLM Form 3160–5). These forms are part of the requirements for applying for MLA Grants or TUPs. The information required as part of these applications is contained in the current regulations under this paragraph and is currently approved by OMB under OMB control number 1004–0137. The rule would not change these forms, nor the associated information collected as part of the application requirements.

This rule includes provisions pertaining to non-hour burdens authorized by FLPMA and the MLA. FLPMA is the only authority under which communications uses on BLM-managed lands may be authorized. However, both FLPMA (43 U.S.C. 1734(b) and 1764(g)) and the MLA (30 U.S.C. 185(l)) authorize the BLM and other applicable Federal agencies to collect funds from ROW applicants or holders to reimburse an agency for expenses incurred while processing an application and monitoring a grant. When this rule becomes effective, the BLM will include non-hour burdens for other uses (e.g., electric generation and pipelines) in requests to revise OMB Control Numbers 1004–0137 (Onshore Oil and Gas Operations and Production) and 1004–0206 (Competitive Processes, Terms and Conditions for Leasing of Public Lands for Solar and Wind Energy Development).

The information collection requirements identified below require approval by OMB:

(1) *Appeals/Petitions for a Stay* (43 CFR 2801.10 and 43 CFR 2881.10)—Current regulations at 43 CFR 2801.10 and 43 CFR 2881.10 provide a process for applicants to appeal a BLM decision issued under the regulations in parts 2800 and 2880, respectively, in accordance with part 4 of Title 43. All BLM decisions under parts 2800 and 2880 remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in the respective part. The applicant may petition for a stay of a BLM decision under part 4 with the Department's Office of Hearings and Appeals. Unless otherwise noted, the BLM would take no action on the application while the appeal is pending. (43 CFR 2801.10(b), 2881.10(b).)

(2) *Designation of Agent or Third Party* (43 CFR 2803.11)—Amendments to § 2803.11 require notification of an intent to designate another person or entity to act on behalf of a holder of a FLPMA grant (i.e., any authorization or instrument issued under FLPMA Title V, 43 U.S.C. 1761–1772). This is a new

information collection activity, although existing § 2803.11 states that another person may act on the holder's behalf if the holder has "authorized the person to do so under the laws of the State where the ROW is or will be located." These amendments retain the existing language and, in addition, require the following in a designation notification:

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

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

If an applicant designates an agent or third party to act on their behalf, they are still responsible for following the terms and conditions of the grant. In addition, these amendments require the holder of the grant to maintain current contact information for the intended agent.

(3) *Request for a Master Agreement* (43 CFR 2804.17 and 43 CFR 2884.15)—Sections 2804.17 and 2884.15 describe the information a holder of a FLPMA grant, MLA grant, or TUP must provide to the BLM when requesting a "Master Agreement (Cost Recovery Category 5)." A Master Agreement, as described in §§ 2804.17 and 2884.15, is a written agreement covering processing and monitoring fees negotiated between the BLM and the holder. The term "Cost Recovery Category 5" refers to agreements involving multiple BLM grant approvals within defined geographic areas. As amended, §§ 2804.17 and 2884.15 will further define Cost Recovery Category 5 as involving projects within defined geographic areas "or for a specific common activity for many projects." These are the only amendments to §§ 2804.17 and 2884.15.

Sections 2804.17 and 2884.15 require that a request for a Master Agreement include:

(A) A description of the geographic area covered by the Agreement and the scope of the activity the holder plans;

(B) A preliminary work plan that states what work the holder must do and what work the BLM must do to process the application;

(C) A preliminary cost estimate and a timetable for processing the application and completing the projects;

(D) A statement whether the holder wants the Agreement to apply to future applications in the same geographic area that are not part of the same projects; and

(E) Any other relevant information that the BLM needs to process the application (e.g., financial information, maps, environmental or cultural data

about the area covered by the application and/or grants).

(4) *Written Agreements—Category 6 Projects* (43 CFR 2804.19 and 43 CFR 2884.17)—The term "Cost Recovery Category 6" refers to agreements involving a large scale or highly complex FLPMA grant, MLA grant, or TUP approval. As amended, §§ 2804.14 and 2884.12 define Cost Recovery Category 6 to include activities that will require more than 64 hours or require an environmental impact statement. For Category 6 applications, the applicant and the BLM must enter into a written agreement that describes how the BLM will process the application and monitor the grant. The BLM may require that the final agreement contains a work plan and a financial plan, and a description of any existing agreements they have with other Federal agencies for cost reimbursement associated with the application or grant.

For the BLM to determine reasonable costs associated with a Category 6 project, the written agreement must include a written analysis of those factors applicable to the project, unless the applicant agrees in writing to waive consideration of reasonable costs and elects to pay actual costs. The BLM may require the applicant to submit additional information in support of their position.

(5) *Analysis of Factors—Cost Recovery Fee Determination* (43 CFR 2804.21)—Along with the written application, applicants may submit their analysis of how each of the factors, as applicable, in § 2804.21(a) pertains to their application. The BLM will notify the applicant in writing of the fee determination.

(6) *Withdrawing Applications/Relinquishing Grants* (43 CFR 2804.27 and 43 CFR 2884.24)—Applicants may withdraw their application in writing before the BLM issues a grant. Grant holders may request to relinquish their grant in writing. If they withdraw their application or relinquish their grant, they are liable for all processing costs the United States has incurred up to the time of the withdrawal or relinquishment and for the reasonable costs of termination proceedings. Any money not paid by the applicant is due within 30 calendar days after receiving a bill for the amount due. Any money paid by the applicant that is not used to cover costs the United States incurred as a result of their application will be refunded to them.

(7) *Request for Alternative Requirement* (43 CFR 2804.40)—If the applicant is unable to meet any of the requirements in subpart 2804, they may request approval for an alternative



requirement from the BLM. Any such request is not approved until the BLM provides their approval in writing. The request for alternative 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 before the deadline of a particular requirement has passed.

(8) *Request for Extension (43 CFR 2805.12(c)(5))*—Grant holders must take appropriate remedial action within 30 days after receipt of a written noncompliance notice unless they have been provided an extension of time by the BLM. Alternatively, they must show good cause for any delays in repairs, use, or removal; estimate when corrective action will be completed; provide evidence of diligent operation of the facilities; and submit a written request for an extension of the 30-day deadline. If they do not comply with this provision, the BLM may suspend or terminate the authorization.

(9) *Rights the United States Retains—Financial Documents (43 CFR 2805.15)*—The amendment to § 2805.15 adds to the list of rights retained by the United States the right to require a holder to submit applicable financial documents and supporting documents including, but not limited to, contractual and subleasing agreements. This amendment is consistent with the requirements of existing § 2805.12(a)(15).

(10) *Operating Plans or Agreements (43 CFR 2804.25(c)(2) and 43 CFR 2805.21(a))*—Paragraphs 2804.25(c)(2) and 2805.21(a) require an operating plan or agreement for all new powerline ROWs. Applications to amend and renew powerline ROWs must follow the same procedures as applications for new ROWs and are subject to this requirement. Existing holders of powerline ROWs are not required to submit an operating plan or agreement under the rule until they renew or amend their grant but may submit such plans on a voluntary basis. Holders of ROWs may submit an operating plan or agreement to the BLM on a voluntary basis even if their ROW is not for a powerline.

Under existing § 2804.25(c), the BLM may require applicants to submit a POD for a ROW, as necessary. Paragraph 2805.21(c) describes requirements of the operating plans or agreements that powerline ROW applicants are required to submit.

(A) Plan requirements: An operating plan or agreement must:

(i) Identify the applicable facilities to be maintained;

(ii) Take into account the holder's own operations and maintenance plans for the applicable ROW;

(iii) Include the vegetation management, inspection, operation and maintenance methods that may be used to comply with applicable law, including fire safety requirements and reliability standards established by the ERO;

(iv) Include schedules for:

(a) The applicable owner or operator to notify the BLM about non-emergency routine and major maintenance;

(b) The applicable owner or operator to request approval from the BLM about undertaking non-emergency routine and major maintenance; and

(c) The BLM to respond to a request by an owner or operator;

(v) Describe processes for:

(a) Identifying changes in conditions; and

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

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

(11) *Modification of Operating Plans or Agreements (43 CFR 2805.21(e))*—Paragraph 2805.21(e) provides that the BLM will notify the holder if an operating plan or agreement requires modifications. The BLM will provide advance reasonable notice to the holder that a modification is necessary, and the holder would submit the proposed modification to the BLM. The BLM will review and approve the operating plan or agreement modification in the timeframe identified for submitting new approvals. Under § 2805.21(e)(4), the holder may continue to operate and maintain the ROW or facility in accordance with the approved operating plan or agreement, if the activity does not conflict with the identified condition that requires a plan modification.

(12) *Agreements in Lieu of Operating Plans (43 CFR 2805.21(f))*—

Paragraph 2805.21(f) provides that certain holders may enter into an agreement with the BLM in lieu of an operating plan. Agreements need to include schedules, as described in section 2805.21(c)(4) and are subject to the same modification requirements of section 2805.21(e).

(13) *Notifications—Emergency Conditions (43 CFR 2805.22(a))*—Owners or operators of electric transmission or distribution lines will notify the authorized officer not later than 1 day after the date of their response to emergency conditions.

(14) *Request for Approval—Non-Emergency Conditions (43 CFR 2805.22(b))*—Owners or operators must request approval from the BLM for a proposed activity if their plan:

(A) Requires them to seek specific approval for the proposed activity; or

(B) Does not address the proposed activity. They may also need to amend their operating plan or agreement if they anticipate conducting this activity on a recurring basis.

(15) *Phasing Rent—Hardship (43 CFR 2806.22 & 43 CFR 2866.31)*—The BLM uses separate rental schedules for linear ROWs (see § 2806.22) and for communications uses grants (see § 2866.30). When the BLM adjusts its rental schedule under these sections, some holders' rents may increase dramatically. The rule includes provisions in each of these sections (see §§ 2806.22(c) and 2866.30) to provide holders experiencing undue hardship with the option to phase in the cost difference over a 3-year period. If a holder's rent would more than double from the previous year, the holder may request a phase-in of the increased rent in accordance with § 2806.15(b)(5).

(16) *Amendments (43 CFR 2807.20 and 43 CFR 2887.10)*—Applicants must amend their application or seek an amendment of their grant when there is a proposed substantial deviation in location or use. The requirements to amend an application or grant are the same as those for a new application, including paying cost recovery fees and rent according to §§ 2804.14, 2805.16, and 2806.10.

(17) *Renewals (43 CFR 2807.22 and 43 CFR 2887.12)*—Applicants must submit an application to renew their existing grant at least 120 days prior to grant expiration.

(18) *Request for Preliminary Application Review (43 CFR 2864.10)*—In addition to the provisions listed in § 2804.10, before filing their application, the applicant should:

(A) Schedule a preliminary application review meeting with the appropriate personnel in the BLM field office with jurisdiction over the lands the applicant seeks to use. During the preliminary application review meeting, the BLM can:

(i) Identify potential constraints;

(ii) Determine whether the lands are located inside a communications site management plan area;

(iii) Tentatively schedule the processing of the proposed application; and

(iv) Inform the applicant of financial obligations, such as processing and monitoring costs and rents.

(B) Request a copy of the most recent communications site management plan for that site, if one is available.

(C) Ensure the applicant has all other necessary licenses, authorizations, or permits required for the operation of the facility.

(19) *Request for Exemption (43 CFR 2806.14 and 43 CFR 2866.14)*—

Applicants for or holders of an authorization for electric or telephone facilities may request an exemption if they were financed in whole or in part by, or were eligible for financing under, the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*) or if their facilities are extensions of facilities that are exempt from paying rental. This exemption may be requested during the application process for a new grant, or an existing grant holder may request an exemption if they are now eligible after a change in policy. The BLM issued an Instruction Memorandum in 2016 (IM–2016–122) after a Memorandum of Understanding in 2014 established the new policy. Holders do not need to have sought financing from the Rural Utilities Service to qualify for this exemption. Holders will need to document the facility's eligibility for REA financing.

(20) *Request for Waiver or Reduction in Annual Rent (43 CFR 2806.15, 43 CFR 2866.15, and 43 CFR 2866.30)*—A holder may request a rent waiver or reduction if paying the full rent would cause the holder undue hardship and it is in the public interest to waive or reduce the rent. For example, an undue hardship can be a financial impact on a small business, or it could involve situations where there is a need to relocate the facility to comply with public health and safety or environmental protection laws not in effect at the time the original grant was issued. The holder would need to submit information to support an undue hardship claim. Several other sections of the rule allow a holder to request a waiver or reduction to their rent under the provisions of §§ 2806.15, 2866.15, and 2866.30.

(21) *Annual Statement (43 CFR 2866.31(c))*—By October 15 of each year, communications uses grant holders must submit to the BLM a certified statement listing any tenants and customers in their facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. The BLM may require grant holders to submit additional information to calculate their rent. The BLM will determine the rent based on the annual inventory certification statement provided. The BLM requires only facility owners or facility managers

to hold a grant (unless they are an occupant in a federally owned facility as described in § 2866.42) and will charge rent for grants based on the total number of communications uses within the right-of-way and the type of uses and population strata the facility or site serves. Failure to submit the annual inventory certification (by electronic correspondence or postmarked) by October 15 may result in the grantee not receiving any discounts, reductions, exemptions, or waivers (see §§ 2866.14, 2866.15, and 2866.34), for which they may have been entitled.

(22) *Request to Authorize Facilities Under a Single Grant (43 CFR 2866.38)*—Applicants holding authorizations for two or more facilities on the same communications site may submit a written request to authorize those facilities under a single grant.

(23) *Environmental Impact Statement (43 CFR 2804.14(e), 43 CFR 2884.12(e))*—In processing an application, the BLM may determine at any time that an Environmental Impact Statement (EIS) is necessary to evaluate the application. The EIS may be prepared by the applicant, the BLM, or by both parties.

A summary of the information collection burdens imposed by this rule is provided below. A detailed analysis of each information collection as contained in this rule is provided in the information collection request that has been submitted to OMB for review under the PRA.

*Title of Collection:* Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way.

43 CFR parts 2800, 2860, 2880 and 2920.

*OMB Control Number:* 1004–0219.

*Form Numbers:* SF–299 (Burden approved by OMB in Request for Common Form under OMB Control No. 0596–0249); BLM Forms 3160–3 and 3160–5 (Burden approved by OMB under OMB Control No. 1004–0137).

*Type of Review:* New Collection.

*Respondents/Affected Public:* Individuals, private sector, and State/local/Tribal governments who seek or hold rights-of-way on public lands.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* On occasion and annually for the Annual Statement required in 43 CFR 2866.31.

*Number of Respondents:* 5,554.

*Annual Responses:* 5,554.

*Total Annual Burden Hours:* 187,816.

*Average Response Time:* Varies from 4 to 40 hours depending on actively.

*Total Annual Cost Burden (non-hour burden):* \$15,790,000.

If you want to comment on the information-collection requirements in this rule, please send your comments and suggestions on this information-collection request within 30 days of publication of this final rule in the *Federal Register* to OMB at [www.reginfo.gov](http://www.reginfo.gov). Click on the link, “Currently under Review—Open for Public Comments.”

#### *National Environmental Policy Act*

The BLM determined the promulgation of this final rule is administrative and procedural in nature and that whatever environmental effects it may have are too broad, speculative, or conjectural to lend themselves to meaningful analysis at this stage. Future actions implementing the final rule will be subject to NEPA, either collectively or case by case. The BLM also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, the action is categorically excluded from environmental review under NEPA. 43 CFR 46.210(i). The BLM has documented this categorical exclusion's applicability to this action and posted it for public review. See DOI–BLM–WO–3500–2022–0002–CX at [www.regulations.gov](http://www.regulations.gov).

One commenter expressed concern that outreach efforts associated with the rule limited public awareness and opportunity to comment on the rule's environmental impacts as part of a NEPA process. This commenter also disagreed with the BLM's determination that the rule is categorically excluded from further documentation under NEPA in accordance with 43 CFR 46.210(i) and requested a more detailed environmental analysis. Another commenter expressed concern that inclusion of temporary access rights in grants could establish a precedent for future action, which could be deemed to be an “extraordinary circumstance,” identified at 43 CFR 46.215(e), that makes application of the categorical exclusion inappropriate.

The BLM followed all requirements to publish a proposed rule. The BLM also prepared a communication plan, posted content to the website and on social media, and published a news release. Additionally, the BLM re-opened the comment period to allow further comments.

Additional process under NEPA is not required for this rule because a categorical exclusion applies. The BLM determined that the changes made by this rule are administrative or procedural in nature and that the

environmental effects of the rule are too speculative at this stage for meaningful analysis. 43 CFR 46.210(i). Actions taken to implement the procedures in this rule will be subject to NEPA.

The BLM does not share the commenter's concern that granting temporary access rights for a ROW will establish a precedent for granting future action. Each application submitted to the BLM is evaluated on an individual basis, and granting temporary access rights for a particular ROW application does not create a precedent for future action on other applications.

The BLM has determined that none of the extraordinary circumstances applies. See Categorical Exclusion, DOI-BLM-WO-3500-2022-0002-CX at [www.regulations.gov](http://www.regulations.gov).

*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)*

This rule is not a significant energy action under E.O. 13211 (66 FR 28355, May 22, 2001). Section 4(b) of E.O. 13211 defines a "significant energy action" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of OIRA as a "significant energy action."

The BLM reviewed the rule and determined that it is not a significant energy action as defined by E.O. 13211. A Statement of Energy Effects is not required.

**Authors**

The principal authors of this rule are: Stephen Fusilier, BLM Division of Lands, Realty and Cadastral Survey; Erica Pionke, BLM Division of Lands, Realty and Cadastral Survey; Robert Wilson, BLM Division of Lands, Realty and Cadastral Survey; Delissa Minnick, BLM Division of Lands, Realty and Cadastral Survey; Jeff Holdren, BLM Division of Lands, Realty and Cadastral Survey; Jennifer Noe, BLM Division of Regulatory Affairs; assisted by the DOI Office of the Solicitor.

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

**Steven H. Feldgus,**

*Principal Deputy Assistant Secretary, Land and Minerals Management.*

**List of Subjects**

*43 CFR Part 2800*

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

*43 CFR Part 2860*

Communications, Penalties, Public lands and rights-of-way, Reporting and recordkeeping requirements.

*43 CFR Part 2880*

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

*43 CFR Part 2920*

Penalties, Public lands, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the BLM is amending 43 CFR chapter II as set forth below:

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

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

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

**Subpart 2801—General information**

■ 2. Amend § 2801.2 by revising paragraph (c) to read as follows:

**§ 2801.2 What is the objective of the BLM's right-of-way program?**

\* \* \* \* \*

(c) Promotes the use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

\* \* \* \* \*

■ 3. Amend § 2801.5 by

■ a. In paragraph (a), removing the acronym "RMA";

■ b. Revising and republishing paragraph (b).

The revision and republication reads as follows:

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

(a) \* \* \*

(b) *Terms.* As used in this part, the term:

*Acreage rent* means rent assessed for solar and wind energy development grants and leases that is determined by the number of acres authorized for the grant or lease.

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

*Actual costs* means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in monitoring the construction, operation, and termination of a facility authorized by a grant or permit. Actual costs includes both direct and indirect costs, exclusive of management overhead costs.

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

*Application filing fee* means a filing fee specific to solar and wind energy applications. This fee is an initial payment for the reasonable costs for processing, inspecting, and monitoring a right-of-way.

*Assignment* means the transfer, in whole or in part, of any right or interest in a right-of-way grant or lease from the holder (assignor) to a subsequent party (assignee) with the BLM's written approval. A change in ownership of the grant or lease, or other related change-in-control transaction involving the holder, including a merger or acquisition, also constitutes an assignment for purposes of these regulations requiring the BLM's written approval, unless applicable statutory authority provides otherwise.

*Casual use* means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. *Examples of casual use include:* Surveying, marking routes, and collecting data to use to prepare grant applications.

*Commercial purpose or activity* refers to the circumstance where a holder attempts to produce a profit by allowing the use of its facilities by an additional party. BLM may assess an appropriate rent for such commercial activities. The holder's use may not otherwise be subject to rent charges under BLM's rental provisions.

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

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

*Designated leasing area* means a parcel of land with specific boundaries identified by the BLM land use planning process as being a preferred location for solar or wind energy development that may be offered competitively.

*Designated right-of-way corridor* means a parcel of land with specific boundaries identified by law, Secretarial order, the land use planning process, or other management decision, as being a preferred location for existing and future linear rights-of-way and facilities. The corridor may be suitable to accommodate more than one right-of-way use or facility, provided that they are compatible with one another and the corridor designation.

*Discharge* has the meaning found at 33 U.S.C. 1321(a)(2) of the Clean Water Act.

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

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

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

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

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

or grow into the powerline facility before the next routine vegetation management cycle; and

(ii) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the right-of-way for the powerline facility and the associated approved operating plan or agreement.

*Hazardous material* means:

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

(ii) Any regulated substance contained in or released from underground storage tanks, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. 6991;

(iii) Oil, as defined by the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701(23); or

(iv) Other substances applicable Federal, state, tribal, or local law define and regulate as “hazardous.”

*Holder* means any entity with a BLM right-of-way authorization.

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

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

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

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

standards and as identified in an approved operating plan or agreement.

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

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

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

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

(i) *Net capacity factor* means the average operational time divided by the average potential operational time of a solar or wind energy development, multiplied by the current technology efficiency rates. The BLM establishes net capacity factors for different technology types but may determine another net capacity factor to be more appropriate, on a case-by-case or regional basis, to reflect changes in technology, such as a solar or wind project that employs energy storage technologies, or if a grant or lease holder or applicant is able to demonstrate that another net capacity factor is appropriate for a particular project or region. The net capacity factor for each technology type is:

- (A) Photovoltaic (PV)—20 percent;
- (B) Concentrated photovoltaic (CPV) and concentrated solar power (CSP)—25 percent;
- (C) CSP with storage capacity of 3 hours or more—30 percent; and
- (D) Wind energy—35 percent;

(ii) *Megawatt hour (MWh) price* means the 5 calendar-year average of the annual weighted average wholesale prices per MWh for the major trading hubs serving the 11 western States of the continental United States (U.S.);

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

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

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

*Monetary value of the rights and privileges you seek* means the objective value of the right-of-way or what the right-of-way grant is worth in financial terms to the applicant.

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

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

(ii) For Monitoring Category 5 (Master Agreements), monitoring activities include those actions or activities agreed to in the Master Agreement; and

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

*Operating plan or agreement* means a plan or agreement prepared by the right-of-way holder, approved by the authorized officer, and incorporated by reference into the corresponding right-of-way that provides for long-term, cost-

effective, efficient, and timely inspection, operation, maintenance, and vegetation management of the facility or facilities on public lands within the linear right-of-way and on public lands adjacent to either side of the linear right-of-way to fell or prune hazard trees and to construct, reconstruct, and maintain access roads and trails, to enhance electric reliability, promote public safety, and avoid fire hazards.

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

*Performance and reclamation bond* means the document provided by the holder of a right-of-way grant or lease that provides the appropriate financial guarantees, including cash, to cover potential liabilities or specific requirements identified by the BLM for the construction, operation, decommissioning, and reclamation of an authorized right-of-way on public lands.

(i) *Acceptable bond instruments.* The BLM will accept cash, cashier's or certified check, certificate or book entry deposits, negotiable U.S. Treasury securities, and surety bonds from the approved list of sureties (U.S. Treasury Circular 570) payable to the BLM. Irrevocable letters of credit payable to the BLM and issued by banks or financial institutions organized or authorized to transact business in the United States are also acceptable bond instruments. An insurance policy can also qualify as an acceptable bond instrument, provided that the BLM is a named beneficiary of the policy, and the BLM determines that the insurance policy will guarantee performance of financial obligations and was issued by an insurance carrier that has the authority to issue policies in the applicable jurisdiction and whose insurance operations are organized or authorized to transact business in the United States.

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

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

communications uses that serve other purposes.

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

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

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

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

*Public lands* means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership, except lands:

(i) Located on the Outer Continental Shelf; and

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

*Reasonable costs* has the meaning found at section 304(b) of the Act.

*Reclamation cost estimate (RCE)* means the estimate of costs to restore the land to a condition that will support pre-disturbance land uses. This includes the cost to remove all improvements made under the right-of-way authorization, return the land to approximate original contour, and establish a sustainable vegetative community, as required by the BLM. The RCE will be used to establish the appropriate amount for financial guarantees of land uses on the public lands, including those uses authorized by right-of-way grants or leases issued under this part.

*Release* has the meaning found at 42 U.S.C. 9601(22) of CERCLA.

*Right-of-way* means the public lands that the BLM authorizes a holder to use or occupy under a particular grant or lease.

*Screening criteria for solar and wind energy development* refers to the policies and procedures that the BLM uses to prioritize how it processes solar and wind energy development right-of-way applications to facilitate the environmentally responsible

development of such facilities through the consideration of resource conflicts, land use plans, and applicable statutory and regulatory requirements.

Applications for projects with lesser resource conflicts are anticipated to be less costly and time-consuming for the BLM to process and will be prioritized over those with greater resource conflicts.

*Short-term right-of-way grant* means any grant issued for a term of 3 years or less for such uses as storage sites, construction areas, and site testing and monitoring activities, including site characterization studies and environmental monitoring.

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

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

*Third party* means any person or entity other than BLM, the applicant, or the holder of a right-of-way authorization.

*Tramway* means a system for carrying passengers, logs, or other material using traveling carriages or cars suspended from an overhead cable or cables supported by a series of towers, hangers, tailhold anchors, guyline trees, etc.

*Transportation and utility corridor* means a parcel of land identified through a land use planning process as being a preferred location for existing and future linear rights-of-way and facilities. The corridor may be suitable to accommodate more than one right-of-way use or facility, provided that the uses are compatible with one another and the corridor designation.

*Vegetation management* means:

(i) *Emergency vegetation management*—unplanned felling and

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

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

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

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

#### § 2801.9 [Amended]

■ 4. Amend § 2801.9 by removing paragraph (a)(5) and redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(5) and (a)(6).

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

■ 5. Amend § 2802.10 by revising paragraph (c) to read as follows:

##### § 2802.10 What lands are available for grants?

\* \* \* \* \*

(c) You should contact the BLM to:

- (1) Determine the appropriate BLM office with which to coordinate;
- (2) Determine whether or not the land you want to use is available for that use; and
- (3) Begin discussions about any application(s) you may need to file.

#### Subpart 2803—Qualifications for Holding FLPMA Grants

■ 6. Revise § 2803.11 to read as follows:

##### § 2803.11 Can another person act on my behalf?

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

(a) If you intend to designate another person or entity to act on your behalf or

operate as your third-party agent, you must first:

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

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

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

■ 7. Amend § 2803.12 by revising the section heading and paragraph (a) to read as follows:

##### § 2803.12 What happens to my grant if I die?

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

\* \* \* \* \*

#### Subpart 2804—Applying for FLPMA Grants

■ 8. Amend § 2804.12 by revising paragraphs (a) introductory text and (a)(4) to read as follows:

##### § 2804.12 What must I do when submitting my application?

(a) File your application on Standard Form 299, available from any BLM office or at <https://www.blm.gov>, and fill in the required information. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include the following:

\* \* \* \* \*

(4) A map of the project showing its proposed location and existing facilities adjacent to the proposal, and Geographic Information Systems (GIS) shapefiles, or equivalent format, when requested by the BLM;

\* \* \* \* \*

■ 9. Revise § 2804.14 to read as follows:

##### § 2804.14 What are the fee categories for cost recovery?

(a) Unless your fees are waived under § 2804.16, you must pay cost recovery fees for the reasonable costs associated with your application and grant. Subject to applicable laws and regulations, if your application involves Federal agencies other than the BLM, your fee may also include the reasonable costs estimated to be incurred by those Federal agencies. Instead of paying the BLM a fee for the reasonable costs incurred by other Federal agencies in processing your application, you may pay other Federal agencies directly. The

fees for Categories 1 through 4 (see paragraph (b) of this section) are one-time fees and are not refundable. Reasonable costs are those costs defined in Section 304(b) of FLPMA (43 U.S.C. 1734(b)). The fees are categorized based on an estimate of the amount of time that the Federal Government will expend to process your application, issue a decision granting or denying the

application, and monitor that land use authorization.  
 (b) The BLM bases cost recovery fees on categories. The BLM will update the fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD-GDP, as measured second quarter to second quarter rounded to the nearest dollar. The BLM will update Category 5 fees, which may include preliminary application review, processing, and

monitoring, as specified in the applicable Master Agreement. Category 6 fees are for situations when a right-of-way activity will require more than 64 hours, or when an environmental impact statement (EIS) is required and may include preliminary application review costs. The cost recovery categories and the estimated range of Federal work hours for each category are:

TABLE 1 TO PARAGRAPH (b)—COST RECOVERY CATEGORIES

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

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

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

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

(e) In processing your application, the BLM may determine at any time that the application requires preparing an EIS. If this occurs, the BLM will send you a decision changing your cost recovery

category to Category 6. You may appeal this decision under § 2801.10.

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

■ 10. Amend § 2804.15 by revising the section heading to read as follows:

**§ 2804.15 When does the BLM reevaluate the cost recovery fees?**

\* \* \* \* \*

■ 11. Revise § 2804.16 to read as follows:

**§ 2804.16 When will the BLM waive cost recovery fees?**

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

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

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

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

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

■ 12. Amend § 2804.17 by revising the section heading and paragraph (a) to read as follows:

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

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

\* \* \* \* \*

■ 13. Revise and republish § 2804.18 to read as follows:

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

- (a) A Master Agreement:
- (1) Specifies that you must comply with all applicable laws and regulations;
  - (2) Describes the work you will do and the work the BLM will do to complete right-of-way activities;
  - (3) Describes the method of periodic billing, payment, and auditing;
  - (4) Describes the processes, studies, or evaluations you will pay for;

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

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

(7) Contains provisions allowing for periodic review and updating, if required;

(8) Contains specific conditions for terminating the Agreement;

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

(10) Contains any other provisions BLM considers necessary.

(b) BLM will not enter into any Agreement that is not in the public interest.

(c) If you sign a Master Agreement, you waive your right to request a reduction of cost recovery fees.

■ 14. Amend § 2804.19 by revising the section heading and paragraphs (a) and (b) to read as follows:

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

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

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

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

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

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

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

(5) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

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

(iv) Financial information you must submit; and

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

■ 15. Amend § 2804.20 by revising the section heading, introductory text, and paragraph (a) introductory text to read as follows:

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

The BLM will consider the factors in paragraph (a) of this section and § 2804.21 of this subpart to determine reasonable costs. Submit to the BLM field office having jurisdiction over the lands covered by your application a written analysis of those factors applicable to your project unless you agree in writing to waive consideration of those factors and elect to pay actual costs (see § 2804.14(f) of this subpart). Submitting your analysis with the application will expedite its handling. The BLM may require you to submit additional information in support of your position. The BLM will continue to work on your application while you are responding to our request, as long as a deposit has been received by the BLM as provided in § 2804.19(a)(4).

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

\* \* \* \* \*

■ 16. Amend § 2804.21 by revising the section heading and paragraphs (a) introductory text, (a)(2), (a)(7), and (b) to read as follows:

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

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

\* \* \* \* \*

(2) The costs of performing any or all right-of-way activities grossly exceed the costs of constructing the project;

\* \* \* \* \*

(7) For whatever other reason, such as public benefits or public services provided, cost recovery fees would be inconsistent with prudent and appropriate management of public lands and with your equitable interests or the equitable interests of the United States.

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

■ 17. Amend § 2804.25 by:

■ a. Revising the section heading and paragraph (a)(1);

■ b. Redesignating paragraph (c)(2) as (c)(3) and adding a new paragraph (c)(2); and

■ c. Revising paragraph (d).

The revisions and addition read as follows:

**§ 2804.25 How will the BLM process my application?**

(a) \* \* \*

(1) Identify your cost recovery fee described at § 2804.14, unless you are exempt from paying fees; and

\* \* \* \* \*

(c) \* \* \*

(2) For all powerline rights-of-way, you must submit an operating plan or agreement, unless you have an approved plan that meets the requirements of § 2805.21; or

\* \* \* \* \*

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

TABLE 1 TO PARAGRAPH (d)

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



TABLE 1 TO PARAGRAPH (d)—Continued

Processing category	Processing time	Conditions
6 .....	Over 60 calendar days ..	The BLM will notify you in writing within the initial 60-day processing period of the estimated processing time.

\* \* \* \* \*

■ 18. Amend § 2804.26 by adding paragraph (a)(9) to read as follows:

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

(a) \* \* \*

(9) You do not comply with a deficiency notice (see § 2804.25(c)) within the time specified in the notice or with a BLM request for additional information needed to process your application.

\* \* \* \* \*

■ 19. Revise § 2804.27 to read as follows:

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

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

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

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

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

cover costs the United States incurred as a result of your grant.

■ 20. Amend subpart 2805 by revising the heading to read as follows:

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

■ 21. Amend § 2805.11 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows:

**§ 2805.11 What does a grant contain?**

\* \* \* \* \*

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

\* \* \* \* \*

■ 22. Amend § 2805.12 by revising the section heading, and paragraphs (a)(4), (a)(8)(vi), (c)(5), and (d)(3) to read as follows:

**§ 2805.12 With what terms and conditions must I comply?**

(a) \* \* \*

(4) Do everything reasonable to prevent and suppress wildfires on or adjacent to the right-of-way;

\* \* \* \* \*

(8) \* \* \*

(vi) Ensure that you construct, operate, maintain, and decommission the facilities authorized by the right-of-way in a manner consistent with the grant, including the approved POD, if one was required, or any approved operating plan or agreement;

\* \* \* \* \*

(c) \* \* \*

(5) Repair and place into service, or remove from the site, damaged or abandoned facilities that:

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

(ii) Present a hazard to human health or safety. You must take appropriate remedial action within 30 days after receipt of a written noncompliance notice unless you have been provided an extension of time by the BLM. Alternatively, you must show good

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

\* \* \* \* \*

(d) \* \* \*

(3) You must repair and place into service, or remove from the site, damaged or abandoned facilities that:

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

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

\* \* \* \* \*

■ 23. Amend § 2805.14 by revising the section heading and paragraphs (b), (d), and (e) to read as follows:

**§ 2805.14 What rights does a grant provide?**

\* \* \* \* \*

(b) If your authorization specifically allows for subleasing, you may allow other parties to use your facility for the purposes specified in your authorization and you may charge fees for such use. If your authorization does not specifically allow subleasing, you may not let anyone else use your facility and you may not charge for its use unless the BLM authorizes or requires it in writing;

\* \* \* \* \*

(d) Do trimming, pruning, and removal of vegetation to maintain the right-of-way or facility and protect public health and safety;

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

\* \* \* \* \*

■ 24. Amend § 2805.15 by revising paragraphs (a) and (e) and adding paragraphs (f) and (g) to read as follows:

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

\* \* \* \* \*

(a) Access the lands and enter the facilities described in the authorization. The BLM will give you reasonable notice before it enters any facility on the right-of-way;

\* \* \* \* \*

(e) Change the terms and conditions of your grant as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment. After a grant is signed by the BLM, any modification of the terms and conditions generally requires the BLM to issue a new or amended grant;

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

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

■ 25. Revise § 2805.16 to read as follows:

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

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

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

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

■ 26. Add §§ 2805.21 and 2805.22 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(4) Include schedules for:

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

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

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

(5) Describe processes for:

(i) Identifying changes in conditions; and

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

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

(d) *Plan approval.* The BLM will, to the extent practicable, review and

decide whether to approve an operating plan or agreement within 120 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) Requires you to seek specific approval for the proposed activity; or
- (ii) Does not address the proposed activity. You may also need to amend your operating plan or agreement if you anticipate conducting this activity on a recurring basis.

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

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

- (1) Pruning or removal of vegetation or hazard trees to prevent fire ignition from electric transmission and distribution facilities during emergency conditions or cyclic maintenance; and
- (2) Cooperating with the BLM in its efforts to investigate, suppress, and respond to fires within and near the right-of-way.

**Subpart 2806—Annual Rents and Payments**

■ 27. Amend § 2806.13 by revising paragraph (e) and adding paragraph (h) to read as follows:

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

\* \* \* \* \*

(e) Subject to applicable laws and regulations, the BLM will retroactively bill for uncollected or under-collected rent, fees, and late payments.

\* \* \* \* \*

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

■ 28. Amend § 2806.14 by revising paragraph (a)(4) to read as follows.

**§ 2806.14 Under what circumstances am I exempt from paying rent?**

(a) \* \* \*

(4) Electric or telephone facilities constructed on the right-of-way were financed in whole or in part, or eligible for financing, under the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*) or are extensions of such facilities. You do not need to have sought financing from the Rural Utilities Service to qualify for this exemption. The BLM may require you to document the facility's eligibility for REA financing.

\* \* \* \* \*

■ 29. Amend § 2806.15 by revising and republishing paragraph (b) and removing paragraph (c) to read as follows:

**§ 2806.15 Under what circumstances may BLM waive or reduce my rent?**

\* \* \* \* \*

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

- (1) You are a non-profit organization, corporation, or association which is not controlled by, or is not a subsidiary of, a profit making corporation or business enterprise and the facility or project will provide a benefit or special service to the general public or to a program of the Secretary;
- (2) You provide without charge, or at reduced rates, a valuable benefit to the public at large or to the programs of the Secretary of the Interior;
- (3) Your grant describes your intended use of new and existing routes to access your right-of-way (see § 2805.11(b)). This paragraph does not apply to oil and gas leases issued under part 3100 of this chapter;
- (4) Your grant involves a cost share road or a reciprocal right-of-way agreement not subject to subpart 2812 of this chapter. In these cases, the BLM will determine the rent based on the proportion of use; or
- (5) Paying the full rent will cause you undue hardship and it is in the public interest to waive or reduce your rent. In your request for a waiver or rental reduction you must include a suggested alternative rental payment plan or timeframe within which you anticipate resuming full rental payments. The BLM may also require you to submit specific financial and technical data or other information that corrects or modifies the statement of financial capability required by § 2804.12(a)(5) of this part.

■ 30. 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 at <https://www.blm.gov>, from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

**§§ 2806.30 through 2806.44 [Removed]**

■ 31. Remove the undesignated heading "Communication Site Rights-of-Way" and

**§§ 2806.30 through 2806.44.**

■ 32. Amend § 2806.52 by adding a paragraph heading to paragraph (a)(3), and revising paragraphs (a)(6) and (b)(2) to read as follows:

**§ 2806.52 Rents and fees for solar energy development grants.**

\* \* \* \* \*

(a) \* \* \*

(3) *Basis of assignment.* \* \* \*

\* \* \* \* \*

(6) *Copies.* You may obtain a copy of the current per acre zone rates for solar energy development (solar energy acreage rent schedule) at <https://www.blm.gov>, from your local BLM state, district, or field office, or by writing: Attention to the National Renewable Energy Coordination Office, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

(b) \* \* \*

(2) *MW rate schedule.* You may obtain a copy of the current MW rate schedule for solar energy development at <https://www.blm.gov>, from your local BLM state, district, or field office, or by writing: Attention to the National Renewable Energy Coordination Office, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

\* \* \* \* \*

**Subpart 2807—Grant Administration and Operation**

■ 33. Amend § 2807.12 by redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g) to read as follows:

**§ 2807.12 If I hold a grant, for what am I liable?**

\* \* \* \* \*

(g) The BLM will not impose strict liability for damages or injuries resulting from:

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

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

\* \* \* \* \*

■ 34. Amend § 2807.17 by revising paragraph (b) to read as follows:

**§ 2807.17 Under what conditions may the BLM suspend or terminate my grant?**

\* \* \* \* \*

(b) A grant also terminates when:

(1) The grant contains a term or condition that has been met that requires the grant to terminate;

(2) BLM consents in writing to your request to relinquish the grant;

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

(4) It is required by law to terminate.

\* \* \* \* \*

■ 35. Amend § 2807.20 by revising paragraphs (b) and (d) to read as follows:

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

\* \* \* \* \*

(b) The requirements to amend an application or grant are the same as those for a new application, including paying cost recovery fees and rent according to §§ 2804.14, 2805.16, and 2806.10.

\* \* \* \* \*

(d) Grants issued prior to October 21, 1976:

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

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

(3) If the BLM has terminated your grant due to non-compliance with the terms and conditions of your grant, you must apply for a new grant.

(4) If the BLM approves your application for an amendment, the BLM will terminate your old grant and you will receive a new grant under 43 U.S.C. 1761 *et seq.* and the regulations in this part. The BLM may include the same terms and conditions in the new grant as were in the original grant as to annual

rent, duration, and nature of interest if the BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so.

\* \* \* \* \*

■ 36. Amend § 2807.22 by revising paragraph (f) and adding paragraph (h) to read as follows:

**§ 2807.22 How do I renew my grant?**

\* \* \* \* \*

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

\* \* \* \* \*

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

**Subpart 2808—Trespass**

■ 37. Amend § 2808.10 by revising paragraph (a) to read as follows:

**§ 2808.10 What is a trespass?**

(a) Trespass is using, occupying, developing, or subleasing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

\* \* \* \* \*

■ 38. Add part 2860 to read as follows:

**PART 2860—COMMUNICATIONS USES**

Sec.

**Subpart 2861—General Information**

2861.1 What requirements of part 2800 apply to my grant?

2861.2 What is the objective of the BLM's Communications Uses program?

2861.5 What acronyms and terms are used in the regulations in this part?

2861.8 Severability.

2861.9 When do I need a grant?

**Subpart 2862—Lands Available for Grants**

2862.11 How does the BLM designate communications sites and establish communications site management plans?

**Subpart 2864—Applying for Grants**

2864.10 What should I do before I file my application?

2864.12 What must I do when submitting my application?

2864.24 Do I always have to use Standard Form 299 when submitting my application for a Communications Uses authorization?

2864.25 How will the BLM process my Communications Uses application?

2864.26 Under what circumstances may the BLM deny my application?

2864.35 How will the BLM prioritize my Communications Uses application?

**Subpart 2865—Terms and Conditions of Grants**

2865.14 What rights does a grant provide?

**Subpart 2866—Annual Rents and Payments**

**General Provisions**

2866.14 Under what circumstances am I exempt from paying rent?

2866.15 Under what circumstances may the BLM waive or reduce my rent?

**Communications Uses Rental**

2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?

2866.30 What are the rents for Communications Uses?

2866.31 How will the BLM calculate rent for Communications Uses in the schedule?

2866.32 How does the BLM determine the population strata served for your facility?

2866.33 How will the BLM calculate the rent for a single use communication facility grant?

2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?

2866.35 How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?

2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

2866.37 How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?

2866.38 Can I combine multiple grants for facilities located at one site into a single grant?

2866.39 How will the BLM calculate rent for a grant for a facility manager's use?

2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?

2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?

2866.42 How will the BLM calculate rent for Communications Uses within a federally owned communications facility?

2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?

2866.44 How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

#### Subpart 2868—Communications Uses Trespass

2868.10 What is a Communications Uses trespass?

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

#### Subpart 2861—General Information

##### § 2861.1 What requirements of part 2800 apply to my grant?

Grants issued under this part must comply with the requirements of part 2800, except as otherwise described in this part.

##### § 2861.2 What is the objective of the BLM's Communications Uses program?

It is the BLM's objective to authorize and administer communications uses under Title V of the Federal Land Policy and Management Act of 1976 and the regulations in this part to qualified individuals or business or governmental entities and to direct and control communications uses on public lands in a manner that:

(a) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a governmental entity;

(b) Facilitates the orderly development of communications uses on BLM-administered lands and provides for a safe and high-quality communications environment for the public;

(c) Prevents unnecessary or undue degradation to public lands;

(d) Collects fair market value for communications uses that occupy BLM-administered lands through the collection of annual rental fees;

(e) Promotes the expansion of communications uses in rural America and use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

(f) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with State and local governments, Tribes, interested individuals, and appropriate quasi-public entities.

##### § 2861.5 What acronyms and terms are used in the regulations in this part?

In addition to the acronyms and terms listed in this section, the acronyms and terms listed in part 2800 of this chapter apply to this part. As used in this part:

*RMA* means the Rannally Metro Area Population Ranking as published in the most recent edition of the Rand McNally Commercial Atlas and Marketing Guide.

*Annual inventory certification* means a report that the holder of a grant submits to the BLM each year to report the uses within or on their facilities (see § 2866.31(c)).

*Base rent* means the dollar amount required from an authorization holder on BLM managed lands based on the communications uses with the highest value in the associated facility or facilities, as calculated according to the communications uses rent schedule. If a facility manager's or facility owner's scheduled rent is equal to the highest rent charged a tenant in the facility or facilities, then the facility manager's or facility owner's use determines the dollar amount of the base rent. Otherwise, the facility owner's, facility manager's, customer's, or tenant's use with the highest value, and which is not otherwise excluded from rent, determines the base rent.

*Communications facility* has the same meaning as *facility* under § 2801.5(b) of this chapter. *Communications site* means an area of public land designated for wireless communications uses that may be limited to a single communications facility, but most often encompasses more than one, and is identified by name, usually featuring a local prominent landmark.

*Communications site management plans* means implementation-level plans that provide direction to the users for the day-to-day operations of the communications site. *Communications uses* means any uses associated with the transmission of data, voice, or video, or any other transmission or reception uses authorized by 43 U.S.C. 1761(a)(5). Communications uses may occur in or on a communications facility or a linear facility, such as a telephone line or fiber optic cable line.

*Communications uses rent schedule* is a schedule of rents for the following types of communications uses, including related technologies, located in a facility associated with a particular grant. All use categories include ancillary communications equipment, such as internal microwave or internal one- or two-way radio, that are directly related to operating, maintaining, and monitoring the primary uses listed below. The Federal Communications Commission (FCC) may or may not

license the primary uses. The type of use and community served, identified on an FCC license, if one has been issued, do not supersede either the definitions in this subpart or the procedures in § 2866.30 for calculating rent for communications facilities and uses located on public land:

(i) *Television broadcast* means a use that broadcasts UHF and VHF audio and video signals for general public reception. This category does not include low-power television (LPTV) or rebroadcast devices, such as translators, or transmitting devices, such as microwave relays serving broadcast translators;

(ii) *AM and FM radio broadcast* means a use that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception. This category does not include low-power FM radio; rebroadcast devices, such as translators; or boosters or microwave relays serving broadcast translators;

(iii) *Cable television* means a use that transmits video programming to multiple subscribers in a community over a wired or wireless network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems, such as private systems serving hotels and residences;

(iv) *Broadcast translator, low-power television, and low-power FM radio* means a use of translators, LPTV, or low-power FM radio (LPFM). Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases, the translator relays the true signal to an amplifier or another translator. LPTV and LPFM are broadcast translators that originate programming. This category also includes translators associated with public telecommunication services;

(v) *Commercial mobile radio service (CMRS)* means commercial mobile radio uses that provide mobile communication service to individual customers. Examples of CMRS include: Community repeaters, trunked radio (specialized mobile radio), two-way radio voice dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and other two-way voice and paging services;

(vi) *Facility managers* are grant holders that lease building, tower, and related facility space to a variety of tenants and customers as part of the holder's business enterprise, but do not own or operate communication

equipment in the facility for their own uses;

(vii) *Cellular telephone* means a system of mobile or fixed communication devices that uses a combination of radio and telephone switching technology and provides public switched network services to fixed or mobile users, or both, within a defined geographic area. The system consists of one or more cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, or microwave communications link equipment. Examples include: Personal Communication Service, Enhanced Specialized Mobile Radio, Improved Mobile Telephone Service, Air-to-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service;

(viii) *Private mobile radio service (PMRS)* means uses supporting private mobile radio systems primarily for a single entity for mobile internal communications. PMRS service is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Examples include: Private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities;

(ix) *Microwave* means communications uses that:

(A) Provide long-line intrastate and interstate public telephone, television, and data transmissions; or

(B) Support the primary business of pipeline and power companies, railroads, land resource management companies, or wireless internet service provider (ISP) companies;

(x) *Internet service provider (ISP)* refers to a holder who utilizes wireless technology to connect subscribers to the internet;

(xi) *Passive reflector* means various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and a terminal. A passive reflector commonly serves a microwave communication system. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power;

(xii) *Local exchange network* means radio service that provides basic telephone service, primarily to rural communities; and

(xiii) *Other communications uses* means private communications uses, such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring

equipment, and other small, low-power devices used to monitor or control remote activities.

*Customer* means an occupant who is paying a facility manager, facility owner, or tenant for using all or any part of the space in the facility, or for communication services, and is not selling communication services or broadcasting to others. The BLM considers persons or entities benefitting from private or internal communications uses located in a holder's facility as customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent owed by a facility owner, facility manager, or tenant, except as noted in §§ 2806.34(b)(4) of this chapter and 2866.42. Examples of customers include: Users of PMRS, users in the microwave category when the microwave use is limited to internal communications, and all users in the category of "Other communications uses" (see paragraph (xiii) of the definition of *communications uses rent schedule* in this section).

*Duly filed application* means an application which includes all the elements required by § 2864.25.

*Facility* means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the authorization holder. For purposes of communications site rights-of-way, facility means the building, tower, cabinet, and related incidental structures or improvements authorized under the terms of the authorization.

*Facility manager* means a person or entity that leases space in a facility to communications users and:

(i) Holds a communication use grant;

(ii) Owns a communications facility on lands covered by that grant; and

(iii) Does not own or operate communications equipment in the facility for personal or commercial purposes.

*Facility owner* means a person or entity that may or may not lease space in a facility to communications users and:

(i) Holds a communications uses grant;

(ii) Owns a communications facility on lands covered by that grant; and

(iii) Owns and operates their own communications equipment in the facility for personal, Federal, or commercial purposes.

*Grant* means an authorization or instrument (e.g., lease) the BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.*, and those authorizations and instruments the BLM and its

predecessors issued for like purposes before October 21, 1976, under then existing statutory authority.

*Occupant* means an entity who uses any portion of a facility owned by a grant holder.

*Site* means an area, such as a mountaintop, where a holder locates one or more communication or other right-of-way facilities.

*Tenant* means an occupant who is paying a facility manager, facility owner, or other entity for occupying and using all or any part of a facility. A tenant operates communication equipment in the facility for profit by broadcasting to others or selling communication services. For purposes of calculating the amount of rent that the BLM charges, a tenant's use does not include:

(i) Private mobile radio or internal microwave use that is not being sold; or

(ii) A use in the category of "Other Communications Uses" (see paragraph (xiii) of the definition of *Communications uses rent schedule* in this section).

#### § 2861.8 Severability.

If a court holds any provisions of the rules 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.

#### § 2861.9 When do I need a grant?

You must have an authorization under this part to use public lands for communications uses systems or facilities over, under, on, or through public lands. These include, but are not limited to systems for transmitting or receiving electronic signals and other means of communication by:

(a) Installing a facility that is not under a current valid authorization; or

(b) Installing a linear communications facility, such as fiber optic cable.

#### Subpart 2862—Lands Available for Grants

##### § 2862.11 How does the BLM designate communications sites and establish communications site management plans?

(a) The BLM may determine the location and boundaries of communications sites. When establishing a communications site, the BLM coordinates with other Federal agencies, State, local, and Tribal governments, and the public to identify resource-related issues, concerns, and needs.

(b) When determining which lands may be suitable for communications sites, the BLM will consider all factors described in § 2802.11(b). Additional

factors the BLM will consider include, but are not limited to, access to the site, existing infrastructure, signal coverage, available space, and industry demand.

(c) The BLM may establish a communications site management plan to guide the development of communications uses at the site. The plans describe the types of communications uses that are permitted to operate at a communications site.

### Subpart 2864—Applying for Grants

#### § 2864.10 What should I do before I file my application?

In addition to the suggested actions listed in § 2804.10, before you file your application you should:

(a) Schedule a preliminary application review meeting with the appropriate personnel in the BLM field office having jurisdiction over the lands you seek to use. Preliminary application review meetings help you to plan your project, coordinate with the BLM, and ensure a smooth permitting process. During the preliminary application review meeting, the BLM can:

(1) Identify potential constraints;  
 (2) Determine whether the lands are located inside a communications site management plan area;  
 (3) Tentatively schedule the processing of your proposed application; and

(4) Inform you of your financial obligations, such as processing and monitoring costs and rents.

(b) Request a copy of the most recent communications site management plan for that site if one is available.

(c) Ensure you have all other necessary licenses, authorizations, or permits required for the operation of your facility.

#### § 2864.12 What must I do when submitting my application?

(a) You must file your application on a hard copy of Standard Form 299, available from any BLM office or electronically at <http://www.blm.gov>, and fill in the required information as completely as possible. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include the following:

(1) All necessary information under § 2804.12 of this chapter;  
 (2) Federal Communications Commission (FCC) call sign, or license, for all licensed uses;  
 (3) Geographic Information Systems (GIS) shapefiles, or equivalent format;  
 (4) Draft engineering/construction drawings of your proposed facility;  
 (5) Technical data related to your project; and

(6) Draft communications use plan of development.

(b) The BLM may at any time during the application process request additional information relevant to the permitting of your proposal. You must submit this information before the BLM will continue processing your application.

#### § 2864.24 Do I always have to use Standard Form 299 when submitting my application for a Communications Uses authorization?

You must file an application for communications uses using Standard Form 299.

#### § 2864.25 How will the BLM process my Communications Uses application?

The BLM will process your communications uses application in accordance with the provisions in § 2804.25. The BLM will notify you in writing with an offer of an authorization or a denial of your application within 270 days of receiving a duly filed application.

#### § 2864.26 Under what circumstances may the BLM deny my application?

In addition to the considerations listed in § 2804.26, the BLM may deny your application under this part if:

(a) The proposed use would interfere with previously authorized uses of public lands, including rights-of-way for communications uses;

(b) The proposed use presents a public health or safety issue; or

(c) The proposed use is not in conformance with the applicable resource management plan or communications site management plan.

#### § 2864.35 How will the BLM prioritize my Communications Uses application?

The BLM will prioritize your application in a manner that assists in meeting the needs of underserved, rural, and Tribal communities and first responders to strengthen telecommunications infrastructure throughout the United States.

### Subpart 2865—Terms and Conditions of Grants

#### § 2865.14 What rights does a grant provide?

In addition to the rights listed in § 2805.14 of this chapter, the authorization provides to you the right to:

(a) Use the described lands to construct, operate, maintain, and terminate authorized facilities within the right-of-way for authorized purposes under the terms and conditions of your authorization;

(b) If your authorization specifically allows for subleasing, allow other parties to use your facility for the purposes specified in your authorization and charge fees for such use. If your authorization does not specifically authorize subleasing, you may not let anyone else use your facility and you may not charge for its use unless the BLM authorizes or requires it in writing;

(c) Allow others to utilize the lands or facilities if the authorization specifies; and

(d) Hold the grant for a term of 30 years, unless the BLM determines a shorter term is appropriate.

### Subpart 2866—Annual Rents and Payments

#### General Provisions

#### § 2866.14 Under what circumstances am I exempt from paying rent?

(a) You are exempt from rent under this part if:

(1) You are a Federal, State, or local governmental entity (except as provided by paragraph (b) of this section);

(2) You have been granted an exemption under a statute providing for such; or

(3) Your facilities were financed in whole or in part, or are eligible for financing, under the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*) or are extensions of such facilities. However, when a holder who is exempt from rent under REA adds non-eligible tenant uses on the authorization, the holder will become subject to rent in accordance with §§ 2866.30 through 2866.44.

(b) Exceptions:

(1) The exemptions in this section do not apply if you are in trespass.

(2) If you are a governmental entity, you are not exempt from rent when:

(i) The facility, system, space, or any part of the authorization is being used for commercial purposes;

(ii) You are a municipal utility or cooperative whose principal source of revenue is customer charges; or

(iii) You charge the United States rent for occupancy within or on your facility beyond standard operation and maintenance fees.

#### § 2866.15 Under what circumstances may the BLM waive or reduce my rent?

(a) The BLM may waive or reduce your rent if you are licensed by the FCC as noncommercial and educational.

(b) The BLM may evaluate and approve, in writing, any requests for waiver or reduction in the annual rent for authorizations granted to:

(1) An amateur radio club (such as Civil Air Patrol) which provides a

benefit to the general public or to the programs of the Secretary of the Interior;

(2) A nonprofit organization; or

(3) Holders that demonstrate that their rates will cause undue hardship and that it is in the public interest to waive or reduce the rent (see § 2806.15(b)(5)).

(c) The BLM will not waive or reduce your rent when:

(1) Your organization exists and operates for the principal benefit of its members;

(2) The facility, system, space, or any part of the right-of-way area is being used for commercial purposes;

(3) You charge the United States to occupy your facility; or

(4) You charge rent to your occupant or occupants, beyond standard operation and maintenance fees, when those occupants' use or uses are exempted or waived from rent by the BLM.

(d) The BLM will revoke your existing waiver or reduction of rent if the BLM determines that you no longer meet the criteria above for a waiver or reduction.

**§ 2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?**

The BLM will calculate your rent for linear rights-of-way for communications uses, such as telephone lines and fiber optic cable, as provided in § 2806.23.

**§ 2866.30 What are the rents for Communications Uses?**

(a) *Rent schedule.* You may obtain a copy of the current schedule from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C St. NW, Mail Stop 2134LM, Washington, DC 20240. The BLM also posts the current communications use rent schedule at <http://www.blm.gov>.

(1) The BLM uses a rent schedule to calculate the rent for communications uses. The schedule is based on population strata (the population served), as depicted in the most recent version of the Rationally Metro Area (RMA) Population Ranking, and the type of communications use or uses for which the BLM normally grants communication site rights-of-way. These uses are listed as part of the definition of "communications uses rent schedule," set out at § 2861.5.

(2) The BLM will update the schedule annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI-U), as of July of each year (difference in CPI-U from July of one year to July of the following year), and the RMA population rankings.

(3) The BLM will limit the annual adjustment based on the Consumer Price Index to no more than 5 percent. The BLM will review the rent schedule to ensure that the schedule reflects fair market value.

(b) *Uses not covered by the schedule.* The communications uses rent schedule does not apply to:

(1) Communications uses located entirely within the boundaries of an oil and gas lease, and solely supporting the operations of the oil and gas lease (see parts 3160 through 3190 of this Chapter);

(2) Communications facilities and uses ancillary to a linear authorization that are entirely within the scope of an authorized linear right-of-way, such as a railroad authorization or an oil and gas pipeline authorization, that solely support the operations authorized by that right-of-way and that are owned and operated by the authorization holder for that right-of-way;

(3) Linear communications uses not listed on the schedule, such as telephone lines, fiber optic cables, and new technologies;

(4) Grants for which the BLM determines the rent by competitive bidding; or

(5) Communication facilities and uses for which a BLM State Director concurs that:

(i) The expected annual rent, that the BLM estimates from market data, exceeds the rent from the rent schedule by at least five times; or

(ii) The communication site serves a population of one million or more and the expected annual rent for the communications use or uses is more than \$10,000 above the rent from the rent schedule.

**§ 2866.31 How will the BLM calculate rent for Communications Uses in the schedule?**

(a) *Basic rule.* The BLM calculates rents for:

(1) Single-use facilities by applying the rent from the communications uses rent schedule (see § 2866.30) for the type of use and the population strata served; and

(2) Multiple-use facilities, whose authorizations provide for subleasing, by setting the rent of the highest value use in the facility or facilities as the base rent (taken from the rent schedule) and adding to the base rent 25 percent of the rent from the rent schedule for all tenant uses in the facility or facilities that are not already being used as the base rent (rent = base rent + 25 percent of all rent due to additional tenant uses in the facility or facilities) (see also §§ 2866.32 and 2866.34).

(b) *Exclusions.* When calculating rent, the BLM will exclude customer uses,

except as provided for at §§ 2866.34(b)(4) and 2866.42. The BLM will also exclude those uses exempted from rent by § 2866.14 of this subpart, and any uses for which rent has been waived or reduced to zero as described in § 2866.15.

(c) *Annual statement.* By October 15 of each year, you, as a grant holder, must submit to the BLM a certified statement listing any tenants and customers in your facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. The BLM may require you to submit additional information to calculate your rent. The BLM will determine the rent based on the annual inventory certification statement provided. The BLM requires only facility owners or facility managers to hold a grant (unless you are an occupant in a federally owned facility as described in § 2866.42) and will charge you rent for your grant based on the total number of communications uses within the right-of-way and the type of uses and population strata the facility or site serves. If you fail to submit your annual inventory certification by October 15 (by electronic correspondence or postmarked), you may not receive any discounts, reductions, exemptions, or waivers (see §§ 2866.14, 2866.15, and 2866.34), to which you may have been entitled.

**§ 2866.32 How does the BLM determine the population strata served for your facility?**

(a) The BLM determines the population strata served as follows:

(1) If the site or facility is within a designated RMA, the BLM will use the population strata of the RMA;

(2) If the site or facility is within a designated RMA, and it serves two or more RMAs, the BLM will use the population strata of the RMA having the greatest population;

(3) If the site or facility is outside an RMA, and it serves one or more RMAs, the BLM will use the population strata of the RMA served having the greatest population;

(4) If the site or facility is outside an RMA and the site does not serve an RMA, the BLM will use the population strata of the community it serves having the greatest population, as identified in the current edition of the Rand McNally Road Atlas; or

(5) If the site or facility is outside an RMA, and it serves a community of less than 25,000, the BLM will use the lowest population strata shown on the rent schedule.

(b)(1) The BLM considers all facilities (and all uses within the same facility)



located at one site to serve the same RMA or community. However, at its discretion, the BLM may make case-by-case exceptions in determining the population served at a particular site by uses not located within the same facility and not authorized under the same grant. For example, when a site has a mix of high-power and low-power uses that are authorized by separate grants, and only the high-power uses are capable of serving an RMA or community with the greatest population, the BLM may separately determine the population strata served by the low-power uses (if not collocated in the same facility with the high-power uses), and calculate the rent as described in § 2866.30.

(2) For purposes of rent calculation, all uses within the same facility and/or authorized under the same grant must serve the same population strata.

(3) For purposes of rent calculation, the BLM will not modify the population rankings published in the Rand McNally Commercial Atlas and Marketing Guide or the population of the community served.

**§ 2866.33 How will the BLM calculate the rent for a single use communication facility grant?**

The BLM calculates the rent for a grant authorizing a single-use communication facility from the communications uses rent schedule (see § 2866.30 of this subpart), based on your authorized single use and the population strata it serves (see § 2866.32 of this subpart).

**§ 2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?**

(a) *Basic rule.* The BLM first determines the population strata the communication facility serves according to § 2866.32 of this subpart and then calculates the rent assessed to facility owners and facility managers for a grant for a communication facility that authorizes subleasing with tenants, customers, or both, as follows:

(1) The BLM will determine the rent of the highest value use in the facility or facilities as the base rent, and add to it 25 percent of the rent from the rent schedule (see § 2866.30) for each tenant use in the facility or facilities;

(2) If the highest value use is not the use of the facility owner or facility manager, the BLM will consider the owner's or manager's use like any tenant or customer use in calculating the rent (see § 2866.35(b) for facility owners and § 2866.39(a) for facility managers);

(3) If a tenant use is the highest value use, the BLM will exclude the rent for

that tenant's use when calculating the additional 25 percent amount under paragraph (a)(1) of this section for tenant uses;

(4) If a holder has multiple uses authorized under the same grant, such as a TV and a FM radio station, the BLM will calculate the rent as in paragraph (a)(1) of this section. In this case, the TV rent would be the highest value use and the BLM would charge the FM portion according to the rent schedule as if it were a tenant use.

(b) *Special applications.* The following provisions apply when calculating rents for communications uses exempted from rent under § 2866.14 of this subpart or communications uses whose rent has been waived or reduced to zero under § 2866.15 of this subpart:

(1) The BLM will exclude exempted uses or uses whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15) of either a facility owner or a facility manager in calculating rents. The BLM will exclude similar uses (see §§ 2866.14 and 2866.15) of a customer or tenant if they choose to hold their own grant (see § 2866.36) or are occupants in a Federal facility (see § 2866.42(a));

(2) The BLM will charge rent to a facility owner whose own use is either exempted from rent or whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15), but who has tenants in the facility, in an amount equal to the rent of the highest value tenant use plus 25 percent of the rent from the rent schedule for each of the remaining tenant uses subject to rent;

(3) The BLM will not charge rent to a facility owner, facility manager, or tenant (when holding a grant) when all of the following occur:

(i) The BLM exempts from rent, waives, or reduces to zero the rent for the holder's use (see §§ 2866.14 and 2866.15);

(ii) Rent from all other uses in the facility is exempted, waived, or reduced to zero, or the BLM considers such uses as customer uses; and

(iii) The holder is not operating the facility for commercial purposes (see § 2866.15(c)(2)) with respect to such other uses in the facility; and

(4) If a holder, whose own use is exempted from rent or whose rent has been waived or reduced to zero, is conducting a commercial activity with customers or tenants whose uses are also exempted from rent or whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15), the BLM will charge rent, notwithstanding § 2866.31(b), based on the highest value use within the facility. This paragraph

(b)(4) does not apply to facilities exempt from rent under § 2866.14(a)(3) except when the facility also includes ineligible facilities.

**§ 2866.35 How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?**

If an entity engaged in a PMRS, internal microwave, or "other" use is:

(a) Using space in a facility owned by either a facility owner or facility manager, the BLM will consider the entity to be a customer and not include these uses in the rent calculation for the facility; or

(b) The facility owner, the BLM will follow the provisions in § 2866.31 to calculate rent for a grant involving these uses. However, the BLM includes the rent from the rent schedule for a PMRS, internal microwave, or other use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. The BLM excludes these uses in the 25 percent calculation (see § 2866.31(a)) when their value does not exceed the highest value in the facility.

**§ 2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?**

(a) You may have your own authorization, but the BLM does not require a separate grant for tenants and customers using a facility authorized by a BLM grant that contains a subleasing provision. The BLM charges the facility owner or facility manager rent based on the highest value use within the facility (including any tenant or customer use authorized by a separate grant) and 25 percent of the rent from the rent schedule for each of the other uses subject to rent (including any tenant or customer use a separate grant authorizes and the facility owner's use if it is not the highest value use).

(b) If you own a building, equipment shelter, or tower on public lands for communication purposes, you must have an authorization under this part, even if you are also a tenant or customer in someone else's facility.

(c) The BLM will charge tenants and customers who hold their own grant in a facility, as grant holders, the full annual rent for their use based on the BLM communications use rent schedule. The BLM will also include such tenant or customer use in calculating the rent the facility owner or facility manager must pay.

**§ 2866.37 How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?**

The BLM will include the single use in calculating rent for each grant authorizing that use. For example, a television station locates its antenna on a tower authorized by grant “A” and locates its related broadcast equipment in a building authorized by grant “B.” The statement listing tenants and customers for each facility (see § 2866.31(c) of this subpart) must include the television use because each facility is benefitting economically from having the television broadcast equipment located there, even though the combined equipment is supporting only one single end use.

**§ 2866.38 Can I combine multiple grants for facilities located at one site into a single grant?**

If you hold grants for two or more facilities on the same communications site, you may submit an SF–299 application and be subject to cost recovery for the BLM to authorize those facilities under a single grant. The highest value use in all the combined facilities determines the base rent. The BLM then charges for each remaining use in the combined facilities at 25 percent of the rent from the rent schedule. These uses include those uses the BLM previously calculated as base rents when the BLM authorized each of the facilities on an individual basis.

**§ 2866.39 How will the BLM calculate rent for a grant for a facility manager’s use?**

(a) The BLM will follow the provisions in § 2866.31 to calculate rent for a grant involving a facility manager’s use. However, the BLM includes the rent from the rent schedule for a facility manager’s use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. The BLM excludes the facility manager’s use in the 25 percent calculation (see § 2866.31(a)) when its value does not exceed the highest value in the facility.

(b) If you are a facility owner and you terminate your use within the facility, but want to retain the grant for other purposes, the BLM will continue to charge you for your authorized use until the BLM amends the grant to change your use to facility manager or to some other communications use.

**§ 2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?**

If the ancillary communication equipment is used solely in direct support of the primary use (see the definition of communications uses rent schedule in § 2861.5 and the definition of ancillary in § 2801.5 of this chapter), the BLM will calculate and charge rent only for the primary use.

**§ 2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?**

When a communications facility is authorized as ancillary to (*i.e.*, used for the sole purpose of internal communications) a grant or some other type of use authorization (*e.g.*, a mineral lease or sundry notice), the BLM will determine the rent using the linear rent schedule (see § 2866.20) or rent scheme associated with the other authorization, and not the communications uses rent schedule.

**§ 2866.42 How will the BLM calculate rent for Communications Uses within a federally owned communications facility?**

(a) If you are an occupant of a federally owned communication facility, you must have your own grant and pay rent in accordance with these regulations; and

(b) If a Federal agency holds a grant and agrees to operate the facility as a facility owner under § 2866.31, occupants do not need a separate BLM grant, and the BLM will calculate and charge rent to the Federal facility owner under §§ 2866.30 through 2866.44.

**§ 2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?**

The BLM calculates rent for passive reflectors and local exchange networks by using the same rent schedules for passive reflectors and local exchange networks as the Forest Service uses for the region in which the facilities are located. You may obtain the pertinent schedules from the Forest Service or from any BLM state or field office in the region in question. For passive reflectors and local exchange networks not covered by a Forest Service regional schedule, the BLM will use the provisions in § 2806.70 of this chapter to determine rent. See the Forest Service regulations at 36 CFR chapter II.

**§ 2866.44 How will the BLM calculate rent for a facility owner’s or facility manager’s grant which authorizes Communications Uses?**

This section applies to a grant that authorizes a mixture of communications

uses, some of which are subject to the communications uses rent schedule and some of which are not. The BLM will determine rent for these grants under the provisions of this section.

(a) The BLM establishes the rent for each of the uses in the facility that are not covered by the communications uses rent schedule using § 2806.70 of this chapter.

(b) The BLM establishes the rent for each of the uses in the facility that are covered by the rent schedule using §§ 2866.30 and 2866.31.

(c) The BLM determines the facility owner or facility manager’s rent by identifying the highest rent in the facility of those established under paragraphs (a) and (b) of this section and adding to it 25 percent of the rent of all other uses subject to rent.

**Subpart 2868—Communications Uses Trespass**

**§ 2868.10 What is a Communications Uses Trespass?**

In addition to the provisions of § 2808.10 of this chapter, holders of a grant must comply with this section. The following are prohibited:

(a) Placement of any type of facilities such as generators, fuel tanks, equipment cabinets, additional towers or wind or solar power generation equipment on the public lands without formal BLM authorization to do so;

(b) Subleasing communications facilities by allowing another entity to place equipment or utilize your tower without having BLM subleasing authority to do so; or

(c) Affixing communications equipment, such as antennas, to vegetation or rocks on public lands without express authorization to do so.

**PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT**

■ 39. The authority citation for part 2880 continues to read as follows:

**Authority:** 30 U.S.C. 185 and 189, and 43 U.S.C. 1732(b), 1733, and 1740.

**Subpart 2881—General Information**

■ 40. Amend § 2881.2 by revising paragraph (c) to read as follows:

**§ 2881.2 What is the objective of the BLM’s right-of-way program?**

\* \* \* \* \*

(c) Promotes the use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

\* \* \* \* \*

■ 41. Amend § 2881.5 by revising and republishing paragraph (b) to read as follows:

**§ 2881.5 What acronyms and terms are used in the regulations in this part?**

(b) *Terms.* Unless a term is defined in this part, the defined terms in part 2800 of this chapter apply to this part. As used in this part, the term:

*Act* means section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

*Actual costs* means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in monitoring the construction, operation, and termination of a facility authorized by a grant or permit. Actual costs include both direct and indirect costs, exclusive of management overhead costs.

*Casual use* means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. Examples of casual use include: Surveying, marking routes, and collecting data to prepare applications for grants or TUPs.

*Complete application* means your application contains all the required information under § 2884.11 and you received notification from the BLM that your application is complete.

*Cost recovery* is a fee charged to an applicant or holder to cover the costs incurred by the BLM in the processing and monitoring associated with a right-of-way grant or TUP on public lands.

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

*Facility* means an improvement or structure, whether existing or planned, that is, or would be, owned and controlled by the grant or TUP holder within the right-of-way or TUP area.

*Federal lands* means all lands owned by the United States, except lands:

- (i) In the National Park System;
- (ii) Held in trust for an Indian or Indian tribe; or
- (iii) On the Outer Continental Shelf.

*Grant* means any authorization or instrument BLM issues under section 28 of the Mineral Leasing Act, 30 U.S.C. 185, authorizing a nonpossessory, nonexclusive right to use Federal lands to construct, operate, maintain, or terminate a pipeline. The term includes those authorizations and instruments BLM and its predecessors issued for like purposes before November 16, 1973, under then existing statutory authority. It does not include authorizations issued under FLPMA (43 U.S.C. 1761 *et seq.*).

*Monitoring activities* means those activities, subject to § 2886.11, the

Federal Government performs to ensure compliance with a right-of-way grant or TUP, such as assignments, amendments, or renewals.

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

(ii) For Monitoring Category 5 (Master Agreements), monitoring activities include those actions or activities agreed to in the Master Agreement; and

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

*Oil or gas* means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them.

*Pipeline* means a line crossing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on its oil and gas lease.

*Pipeline system* means all facilities, whether or not located on Federal lands, used by a grant holder in connection with the construction, operation, maintenance, or termination of a pipeline.

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

(i) For Processing Categories 1 through 4, processing activities include preliminary application reviews, application processing, and administrative actions such as assignments and amendments to the right-of-way or TUP;

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

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

*Production facilities* means a lessee's or lease operator's pipes and equipment used on its oil and gas lease to aid in extracting, processing, and storing oil or gas. The term includes:

(i) Storage tanks and processing equipment;

(ii) Gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery; and

(iii) Pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

*Related facilities* means those structures, devices, improvements, and sites, located on Federal lands, which may or may not be connected or contiguous to the pipeline, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, such as:

- (i) Supporting structures;
- (ii) Airstrips;
- (iii) Roads;
- (iv) Campsites;
- (v) Pump stations, including associated heliports, structures, yards, and fences;
- (vi) Valves and other control devices;
- (vii) Surge and storage tanks;
- (viii) Bridges;
- (ix) Monitoring and communication devices and structures housing them;
- (x) Terminals, including structures, yards, docks, fences, and storage tank facilities;
- (xi) Retaining walls, berms, dikes, ditches, cuts and fills; and
- (xii) Structures and areas for storing supplies and equipment.

*Right-of-way* means the Federal lands BLM authorizes a holder to use or occupy under a grant.

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

*Temporary use permit or TUP* means a document BLM issues under 30 U.S.C. 185 that is a revocable, nonpossessory privilege to use specified Federal lands in the vicinity of and in connection with a right-of-way, to construct, operate, maintain, or terminate a pipeline or to

protect the environment or public safety. A TUP does not convey any interest in land.

*Third party* means any person or entity other than BLM, the applicant, or the holder of a right-of-way authorization.

■ 42. Amend § 2881.7 by revising paragraphs (a) and (b)(1) to read as follows:

**§ 2881.7 Scope.**

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

(1) Issuing, amending, assigning, renewing, and terminating grants and TUPs for pipelines, or parts thereof, that are:

(i) On Federal land and outside the boundary of any Federal oil and gas lease;

(ii) Within the boundary of a Federal oil and gas lease but owned by a party who is not a lessee or lease operator with respect to that lease; or

(iii) Within the boundary of a Federal oil and gas lease but downstream from a custody transfer metering device; and  
 (2) All grants and permits the BLM and its predecessors previously issued under Section 28 of the Act.

(b) \* \* \*

(1) Production facilities on an oil and gas lease that operate for the benefit of the lease;

\* \* \* \* \*

**§ 2881.9 [Redesignated as § 2881.8]**

■ 43. Redesignate § 2881.9 as § 2881.8.

**Subpart 2883—Qualifications for Holding MLA Grants and TUPs**

■ 44. Amend § 2883.14 by revising the section heading and paragraph (a) to read as follows:

**§ 2883.14 What happens to my grant or TUP if I die?**

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

\* \* \* \* \*

**Subpart 2884—Applying for MLA Grants or TUPs**

■ 45. Amend § 2884.11 by revising paragraphs (a) introductory text and (c)(6) to read as follows:

**§ 2884.11 What information must I submit in my application?**

(a) File your application on Form SF-299 or as part of an Application for Permit to Drill or Reenter (BLM Form 3160-3) or Sundry Notice and Report on Wells (BLM Form 3160-5), available from any BLM office. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include:

\* \* \* \* \*

(c) \* \* \*

(6) A map of the project, showing its proposed location and showing existing facilities adjacent to the proposal. The required map may include Geographic Information Systems (GIS) file geodatabases (FGDB), or equivalent format such as shapefiles or .kmz files, as requested by the BLM;

\* \* \* \* \*

■ 46. Revise § 2884.12 to read as follows:

**§ 2884.12 What are the fee categories for cost recovery?**

(a) You must pay a cost recovery fee with the application to cover the costs to the Federal Government of processing your application before the Federal

Government incurs them. These cost recovery fees are for the processing and monitoring activities associated with your grant. Subject to applicable laws and regulations, if your application will involve Federal agencies other than the BLM, your fee may also include the reasonable costs estimated to be incurred by those Federal agencies. Instead of paying the BLM a fee for the estimated work of other Federal agencies in processing your application, you may pay other Federal agencies directly for the costs estimated to be incurred by them. The cost recovery fees for Categories 1 through 4 (see paragraph (b) of this section) are not refundable. The fees are categorized based on an estimate of the amount of time that the Federal Government will spend to process your application and monitor your grant.

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

TABLE 1 TO PARAGRAPH (b)—MLA RIGHT-OF-WAY COST RECOVERY FEE CATEGORIES

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

TABLE 1 TO PARAGRAPH (b)—MLA RIGHT-OF-WAY COST RECOVERY FEE CATEGORIES—Continued

MLA right-of-way cost recovery category descriptions	Federal work hours involved
Category 6. Processing and monitoring associated with an application or existing grant or TUP, including preliminary-application reviews.*	Estimated Federal work hours are >64.

\* Preliminary application review costs are those expenses related to meetings held between a Federal agency and the applicant to discuss a right-of-way application. These reviews are not required but are encouraged.

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

(d) After an initial review of your application, the BLM will notify you of the processing category into which your application fits. You must then submit the appropriate payment for that category before the BLM will begin processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the cost recovery category decision. For reimbursement of the BLM's costs for Category 5 and 6 right-of-way applications or grants, see §§ 2884.15, 2884.16, and 2884.17. If you disagree with the category that the BLM has determined for your application, you may appeal the decision under § 2881.10. If you paid the cost recovery fee and you appeal a Category 1 through 4 determination, the BLM will work on your application, grant, or TUP while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your cost recovery fee.

(e) In processing your application, the BLM may determine at any time that the application requires preparing an EIS. If this occurs, the BLM will send you a decision changing your cost recovery category to Category 6. You may appeal the decision under § 2881.10.

(f) If you hold an authorization relating to TAPS, the BLM will send you a written statement seeking reimbursement of actual costs within 60 calendar days after the close of each quarter. Quarters end on the last day of March, June, September, and December. In processing applications and administering authorizations relating to TAPS, the Department of the Interior will avoid unnecessary employment of personnel and needless expenditure of funds.

■ 47. Revise § 2884.13 to read as follows:

**§ 2884.13 When will the BLM waive cost recovery fees?**

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

- (1) State or local government, or an agency of such a government, and the BLM issues the grant for governmental purposes benefitting the general public. However, if you collect revenue from charges you levy on customers for services similar to those of a profit-making corporation or business, or you assess similar fees to the United States for similar purposes, cost recovery fees will not be waived; or
- (2) Federal agency, and your cost recovery category determination is Category 1 to 4.

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

■ 48. Amend § 2884.14 by revising the section heading to read as follows:

**§ 2884.14 When does the BLM reevaluate the cost recovery fees?**

\* \* \* \* \*

■ 49. Amend § 2884.15 by revising the section heading and paragraph (a) to read as follows:

**§ 2884.15 What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?**

(a) A Master Agreement (Cost Recovery Category 5) is a written agreement covering processing and monitoring fees (see § 2884.16 of this part) negotiated between the BLM and you that involves multiple BLM grant or TUP approvals for projects within a defined geographic area or for a specific common activity for many projects.

\* \* \* \* \*

- 50. Amend § 2884.16 by:
  - a. Revising paragraphs (a)(2), (5) and (8);
  - b. Redesignating paragraph (a)(9) as (a)(10) and adding a new paragraph (a)(9); and
  - c. Adding paragraph (c).

The additions and revisions read as follows:

**§ 2884.16 What provisions do Master Agreements contain and what are their limitations?**

(a) \* \* \*

(2) Describes the work you will do and the work the BLM will do to complete right-of-way activities;

\* \* \* \* \*

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

\* \* \* \* \*

(8) Contains specific conditions for terminating the Agreement;

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

\* \* \* \* \*

(c) If you sign a Master Agreement, you waive your right to request a reduction of cost recovery fees.

- 51. Amend § 2884.17 by
  - a. Revising the section heading, paragraph (a), and paragraph (b)(3);
  - b. Redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6); and
  - c. Adding a new paragraph (b)(4).

The revisions and addition read as follows:

**§ 2884.17 How will the BLM manage my Category 6 project?**

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

(b) \* \* \*

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

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

\* \* \* \* \*

■ 52. Amend § 2884.21 by revising paragraph (c) to read as follows:

**§ 2884.21 How will the BLM process my application?**

\* \* \* \* \*

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

TABLE 1 TO PARAGRAPH (c)

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

\* \* \* \* \*

■ 53. Amend § 2884.23 by revising paragraph (a)(6) to read as follows:

**§ 2884.23 Under what circumstances may the BLM deny my application?**

(a) \* \* \*

(6) You do not comply with a deficiency notice (see § 2804.25(c)) or with any requests from the BLM for additional information needed to process the application.

\* \* \* \* \*

■ 54. Revise § 2884.24 to read as follows:

**§ 2884.24 What fees must I pay if the BLM denies my application, or if I withdraw my application or relinquish my grant or TUP?**

If the BLM denies your application, you withdraw it, or you relinquish your grant or TUP, you owe the current fees for the applicable cost recovery category as set forth at § 2884.12(b), unless you have a Category 5 or 6 application. Then, the following conditions apply:

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

(b) If you withdraw your application in writing before the BLM issues a grant or TUP, you are liable for all actual processing costs the United States has incurred up to the time you withdraw the application and for the actual costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due; and

(c) If you relinquish your grant or TUP in writing, you are liable for all actual costs the United States has incurred up to the time you relinquish the grant and for the actual costs of closing your grant. Any cost recovery money you have not previously paid is due within 30 calendar days after receiving a bill for the amount due. The BLM will refund

any cost recovery money you paid in Categories 5 or 6 that was not used to cover costs the United States incurred as a result of your grant.

■ 55. Revise § 2884.27 to read as follows:

**§ 2884.27 What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?**

If an application is for a grant for a pipeline 24 inches or more in diameter, the BLM will not issue or renew the grant until after the BLM notifies the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

**Subpart 2885—Terms and Conditions of MLA Grants and TUPs**

■ 56. Amend § 2885.12 by revising the section heading to read:

**§ 2885.12 What rights does a grant or TUP provide?**

\* \* \* \* \*

■ 57. Amend § 2885.17 by revising paragraph (e) and adding a new paragraph (g) to read as follows:

**§ 2885.17 What happens if I do not pay rents and fees or if I pay the rents or fees late?**

\* \* \* \* \*

(e) The BLM will retroactively bill for uncollected or under-collected rent, including late payment and administrative fees.

\* \* \* \* \*

(g) The BLM will not approve any further activities associated with your right-of-way until the BLM receives any outstanding payments that are due.

58. Amend § 2885.19 by revising paragraph (b) to read as follows:

**§ 2885.19 What is the rent for a linear right-of-way grant?**

\* \* \* \* \*

(b) You may obtain a copy of the current Per Acre Rent Schedule at <https://www.blm.gov>, by contacting your local BLM state, district, or field office,

or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

■ 59. Revise § 2885.24 to read as follows:

**§ 2885.24 If I hold a grant or TUP, what cost recovery fees must I pay?**

(a) Subject to § 2886.11, you must pay a fee to the BLM for any costs the Federal Government incurs in processing, inspecting, and monitoring the construction, operation, maintenance, and termination of the pipeline and protection and rehabilitation of the Federal lands your grant or TUP covers. The BLM categorizes the cost recovery fees based on the estimated number of work hours necessary to manage your grant or TUP. Categories 1 through 4 fees are not refundable. The description of each Category and the associated work hours is found at § 2884.12(b).

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

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

**Subpart 2886—Operations on MLA Grants and TUPs**

■ 60. Amend § 2886.17 by revising paragraph (c)(2), redesignating

paragraph (c)(3) as paragraph (c)(4) and adding a new paragraph (c)(3) to read as follows:

**§ 2886.17 Under what conditions may BLM suspend or terminate my grant or TUP?**

\* \* \* \* \*

(c) \* \* \*

(2) The BLM consents in writing to your request to relinquish the grant or TUP;

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

\* \* \* \* \*

**Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs**

■ 61. Amend § 2887.10 by revising paragraph (b) to read as follows:

**§ 2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?**

\* \* \* \* \*

(b) The requirements to amend an application or a grant or TUP are the same as those for a new application, including paying cost recovery fees and rent according to §§ 2884.12, 2885.23, 2885.19, and 2886.11.

\* \* \* \* \*

■ 62. Amend § 2887.11 by adding paragraph (i) to read as follows:

**§ 2887.11 May I assign or make other changes to my grant or TUP?**

\* \* \* \* \*

(i) You must seek an amendment of your authorization if you propose a substantial deviation in location or use.

■ 63. Amend § 2887.12 by revising paragraph (b) and adding paragraphs (f) and (g) to read as follows:

**§ 2887.12 How do I renew my grant?**

\* \* \* \* \*

(b) The BLM may modify the terms and conditions of the grant at the time of renewal, and you must pay the cost recovery fees.

\* \* \* \* \*

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

(g) The BLM will review your application and determine if you have complied with all of the provisions in this part and whether or not your authorized use will be renewed. The BLM will notify you within 30 days from acceptance of a complete application if it will take longer than 60 days to review your application.

**Subpart 2888—Trespass**

■ 64. Amend § 2888.10 by revising paragraph (a) to read as follows:

**§ 2888.10 What is a trespass?**

(a) Trespass is using, occupying, developing, or subleasing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

\* \* \* \* \*

**PART 2920—LEASES, PERMITS AND EASEMENTS**

■ 65. The authority citation for part 2920 continues to read as follows:

Authority: 43 U.S.C. 1740.

**Subpart 2920—Leases, Permits and Easements: General Provisions**

■ 66. Revise § 2920.0–5 to read as follows:

**§ 2920.0–5 Definitions.**

As used in this part, the term:

(a) *Applicant* means any person who submits an application for a land use authorization under this part.

(b) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(c) *Casual use* means any short-term non-commercial activity that does not cause appreciable damage or disturbance to the public lands, their resources, or improvements, and that is not prohibited by closure of the lands to such activities.

(d) *Cost recovery* is a fee charged to an applicant or holder to reimburse the United States for processing and monitoring costs that concern applications and other documents relating to the public lands, or that are incurred when processing, inspecting, or monitoring any proposed or authorized leases, permits, and easements located on the public lands.

(e) *Easement* means an authorization for a non-possessory, non-exclusive interest in lands which specifies the rights of the holder and the obligation of the Bureau of Land Management to use and manage the lands in a manner consistent with the terms of the easement.

(f) *Knowing and willful* means that a violation is *knowingly and willfully* committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or

duty that is required. The term does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. The term includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease, permit, and easement. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake nor mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

(g) *Land use authorization* means any authorization to use the public lands issued under this part.

(h) *Land use proposal* means an informal statement, in writing, from any person to the authorized officer requesting consideration of a specified use of the public lands.

(i) *Land use plan* means resource management plans or management framework plans prepared by the Bureau of Land Management pursuant to its land use planning system.

(j) *Lease* means an authorization to possess and use public lands for a fixed period of time.

(k) *Permit* means a short-term revocable authorization to use public lands for specified purposes.

(l) *Person* means any person or entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands or interests therein are located, who is a citizen of the United States, or in the case of a corporation, is subject to the laws of any State or of the United States.

(m) *Proponent* means any person who submits a land use proposal, either on his/her own initiative or in response to a notice for submission of such proposals.

(n) *Public lands* means lands or interests in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

■ 67. Amend § 2920.6 by revising the section heading and paragraphs (b), (d), and (h) to read as follows:

**§ 2920.6 Payment of cost recovery fees.**

\* \* \* \* \*

(b) The selected land use applicant shall pay cost recovery fees to the United States for reasonable administrative and other costs incurred by the United States in processing a land use authorization application and in monitoring construction, operation, maintenance, and rehabilitation of facilities authorized under this part, including preparation of reports and statements required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321 *et seq.*). The payment of cost recovery fees shall be in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

\* \* \* \* \*

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is

reached on the authorization is responsible for all reasonable costs incurred by the United States in processing the application up to the day that the authorized officer receives notice of the withdrawal and for costs subsequently incurred by the United States in terminating the proposed land use authorization process. Payment of cost recovery fees shall be made within 30 days of receipt of notice from the authorized officer of the amount due.

\* \* \* \* \*

(h) The authorized officer shall, on request, give a selected applicant an estimate, based on the best available cost information, of the reasonable costs that may be incurred by the United States in processing the proposed land use authorization. However, payment of

cost recovery fees shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

■ 68. Amend § 2920.8 by revising paragraph (b) to read as follows:

**§ 2920.8 Fees.**

\* \* \* \* \*

(b) *Cost Recovery fees.* Each request for renewal, transfer, or assignment of a lease or easement must be accompanied by non-refundable cost recovery fees determined in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

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