

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Parts 2800 and 2880****[WO-350-2800-24 1A]****RIN 1004-AC74****Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) of the United States Department of the Interior proposes to: amend its right-of-way regulations to revise rent and cost recovery procedures and policies; adjust cost recovery fees to reflect cost increases since the current regulations became effective in July 1987; eliminate automatic exemptions from cost recovery for federal agencies, except for those agencies and projects exempted by law; use a short-term right-of-way instead of a temporary use permit for rights-of-way issued under the Federal Land Policy and Management Act of 1976; clarify how BLM will apply rent schedules for communication site rights-of-way; broaden the conditions for which BLM will require advance payment of rent; rephrase the language of the regulations into plain language; and reorganize the regulations to reflect the sequence in which BLM takes action on applications.

DATES: Send your comments to reach BLM on or before October 13, 1999. BLM will not necessarily consider any comments received after the above date during its decision process on the proposed rule. Because of the length of the comment period, BLM does not intend to extend it.

ADDRESSES: You may mail comments to: Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C St., N.W., Washington, D.C. 20240. You may also hand-deliver comments to: BLM, 1620 L St., N.W., Room 401, Washington, D.C. Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing."

FOR FURTHER INFORMATION CONTACT: Ron Montagna, (202) 452-7782, ron_montagna@blm.gov. Individuals

who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures and Information
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures*Electronic Access and Filing Address*

You may view an electronic version of this proposed rule at BLM's Internet home page at www.blm.gov. You may also comment via the Internet to: WOCComment@blm.gov. If you submit your comments electronically, please submit them as an ASCII file to minimize computer problems and include "Attention: AC74" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452-5030.

Written Comments

Confine written comments on the proposed rule to issues pertinent to the proposed rule and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph of the proposal which you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which it receives after the comment period closes (see **DATES**), or comments delivered to an address other than those listed above (see **ADDRESSES**).

Written comments, including the names, street addresses, and other contact information about respondents, will be available for public review at the above address during regular business hours (7:45 am to 4:15 pm), Monday through Friday, except holidays. Comments made by Internet will be available for inspection at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will consider each request on a case-by-case basis. Such requests will be granted to the extent allowed by law. All submissions from organizations or businesses, and

from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

BLM is interested in all comments that you may have on the issues. We are especially interested, however, in comments and rationale in the following areas:

- Whether or not BLM should continue to issue temporary use permits for rights-of-way issued under the Federal Land Policy and Management Act;
- Whether or not there should be a separate cost recovery decision for monitoring costs or whether each application category decision should continue to determine both the processing and the monitoring category fees. If you believe that there should be separate application and monitoring categories, please provide definitions for the monitoring categories and identify methods that BLM can use to relate a fee to a specific category;
- Whether BLM should charge for processing right-of-way grant renewals, and, if so, on what should the costs be based;
- Whether or not federal agencies should continue to be exempt from cost recovery and rent payments;
- When and under what conditions BLM should require the advance payment of rent;
- Whether BLM should establish a new "Minimal Impact" cost recovery category for non-Mineral Leasing Act actions that require less than 8 hours to process; and
- Whether BLM should impose fees for late payment of rent.

Interagency Coordination

The United States Department of Agriculture, Forest Service, is currently preparing regulations to recover its costs for processing and administering special use authorizations on National Forest System lands. In doing so, the Forest Service intends to adopt, to the extent possible, the processes, procedures, and schedules identified in this proposed rule. The Forest Service will evaluate the comments received in response to this proposed rule and will consider those comments in developing proposed regulations applicable to special use applications and authorizations on National Forest System lands. The Forest Service intends to publish its proposed cost recovery regulations for review and comment as soon after the close of the comment period on these proposed rules as possible.

II. Background

General Authorities and Policies

Section 501 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761, authorizes the BLM to issue and renew rights-of-way under, over, and through lands under its jurisdiction. These rights-of-way may contain facilities for impounding, storing and transporting water; for transporting and distributing liquids and gases other than oil and gas; for distributing and transporting solid materials, other than oil and gas and products refined from them; for generating, transmitting, and distributing electricity; for transmitting and receiving electronic signals, such as radio, television and telegraph; and for transportation corridors, such as railroads, roads, tramways, and livestock driveways.

Section 28 of the Mineral Leasing Act, as amended (MLA), 30 U.S.C. 185, authorizes the Secretary of the Interior to grant to qualified applicants rights-of-way through Federal lands for transporting oil, gas, synthetic liquid or gaseous fuels, or other refined products. The MLA also allows for temporary use permits to supplement each pipeline right-of-way for the purposes of constructing, operating, maintaining and terminating the pipeline and to protect the natural environment and public safety.

BLM has designed its right-of-way program to coordinate the actions of individuals, governments, and businesses in using public lands for right-of-way purposes; promote the sharing of rights-of-way; protect the quality of natural resources; prevent unnecessary environmental damage to lands and resources; and protect the right-of-way holder's investments in improvements on the right-of-way.

Statistics About Rights-of-Way

As of September 30, 1998, there were 87,511 active right-of-way grants under BLM administration. Most of the grants are located in the western states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Wyoming, North and South Dakota and Oklahoma. New Mexico had the largest number of grants, and Wyoming had the next largest. There were 63 grants located east of the Mississippi River. Of the right-of-way grants, approximately 28 percent are for roads and highways, 28 percent represent oil and gas related systems, 4 percent represent grants for communication sites, 13 percent represent grants for electrical generation and transmission lines, and 27 percent

are for other uses, such as telephone, telegraph, and other miscellaneous systems.

III. Discussion of the Proposed Rule

Unless specifically stated in the discussion below, BLM does not intend to make policy changes by rewording and streamlining the regulatory text. If you believe that rewording the regulatory text has resulted in BLM's eliminating or changing important concepts or policies, please describe in your comments these modifications or omissions and the reasons that you believe the regulations should retain the concept from the existing regulations.

General Discussion

The discussions below affect more than one section of the proposed regulations and contain proposed policy changes and the rationale for them.

Cost Recovery Provisions

(Proposed sections 2803.14, 2804.16, 2883.11, and 2884.13, and subparts 2807 and 2887)

It may be helpful to read the preamble to the July 25, 1986, proposed rules, published at 51 FR 26836, and to the July 8, 1987, final rules at 52 FR 25802, to get more background information on current cost recovery policies.

BLM proposes the following specific changes to the cost recovery provisions:

- Reduce the number of fee categories used for recovering the cost of processing applications from five to four (for rights-of-way issued under FLPMA) and from six to four (for rights-of-way issued under the MLA);
- Clarify the definition of the term "category I, II, etc.," to include processing steps and work hours;
- Provide a "master agreement" category for multiple applications submitted by a single applicant in a specific geographical area;
- Adjust the fees for both processing an application and for monitoring any ensuing grant to reflect the reasonable (FLPMA) or actual (MLA) costs and the effects of inflation;
- Use proposed fees to determine the cost reimbursement fees for assignments and renewals; and
- Broaden the conditions under which BLM will require advance payment of rents.

We expect that these proposed changes will shorten application processing time, reduce costs, and result in a more equitable distribution of business costs between the benefitting entity and the general public.

Background for changes. Section 504(g) of FLPMA authorizes BLM to recover the "reasonable" costs of

processing and monitoring rights-of-way issued under Title V, 43 U.S.C. 1761. Section 28(f) of the MLA, 30 U.S.C. 185(l), requires applicants for pipeline rights-of-way issued under the MLA to reimburse the United States for the administrative and other costs involved in processing applications and for the United States' costs of monitoring activities under those grants. The administrative and other costs associated with MLA grants are collectively referred to as "actual costs."

Section 304(b) of FLPMA allows the Secretary of the Interior to establish "reasonable costs" for processing applications and other documents relating to public lands. Several factors that the Secretary may consider in establishing reasonable costs include the costs of special studies; preparing and distributing environmental documents, such as environmental assessments and environmental impact statements; monitoring the construction, operation, maintenance, and termination of facilities; and other special activities.

BLM first issued cost recovery regulations for linear and areal rights-of-way in 1979. The regulations for FLPMA rights-of-way were successfully challenged in federal court in *Nevada Power Co. v. Watt*, 711 F.2d 913 (10th Cir. 1983), on the basis that the regulations did not sufficiently consider each of the "reasonability criteria" in section 304(b) of FLPMA, 43 U.S.C. 1734(b). BLM then developed definitions for these criteria, which were published in July 1987.

Based on field studies conducted in 1982 and 1983, which measured the costs of processing right-of-way applications and monitoring grants, BLM developed a number of "cost categories" and the corresponding average costs of processing applications that fall into one or another of these categories. BLM broke the cost information into various elements, e.g., filing, status review, field examination, environmental considerations, and document preparation. For FLPMA rights-of-way, BLM related these costs to the statutory reasonability criteria and made decisions to: (1) retain the cost if it was reasonable, (2) eliminate the cost if it did not meet the reasonability requirements, or (3) adjust the cost downward, if it contained both public and private benefits under the reasonability requirements. From this analysis, BLM proposed four cost categories with fixed cost recovery fee amounts and a fifth category, as described in the next paragraph, requiring the full reasonable costs as determined by BLM.

In cases where a fixed fee amount would not be appropriate, such as complex projects, BLM established a final category for the reasonable costs of processing individual cases and of monitoring activities under the grant. In these cases, each applicant had the options of: (1) completely analyzing the estimated actual costs relative to the reasonability criteria, (2) waiving the full analysis and completing a less demanding analysis that could limit the costs recovered to 1 percent of construction costs, or (3) waiving these analyses and agreeing to pay the full reasonable costs involved, as jointly determined by BLM and the applicant.

For MLA rights-of-way, BLM also used the 1982 through 1983 field studies to establish five fixed fee amount categories, each based on its relevant average actual cost. A final sixth category requiring periodic payment of actual costs was also included for these rights-of-way.

At the time of the study BLM did not have sufficient cost data on monitoring grants to determine the exact monitoring costs. To provide some recovery of costs, BLM estimated the necessary monitoring cost for each fixed fee category for both FLPMA and MLA rights-of-way.

FLPMA applicants could request that BLM review their specific circumstances and consider a waiver or reduction in the amount of the processing or monitoring fees or both. Current regulations exclude from the cost recovery provisions certain applicants, such as federal agencies, "non-utility type" state and local governments, and applicants for "cost-share" roads and reciprocal right-of-way agreements.

BLM conducted an extensive field study of processing and monitoring costs in 1986. The study generally verified the processing costs developed from the earlier study. The study also demonstrated that the costs related to monitoring could be further refined. Current regulations do not specify any method for increasing costs for inflation or similar factors except for proposing a change in regulations. As the cost of living has increased steadily for the last 40 years (the last yearly drop in the Consumer Price Index occurred in 1955), a mechanism for adjusting processing and monitoring fees is desirable. BLM has looked at various indices, e.g., the Consumer Price Index (CPI), the CPI-U (urban), and the Implicit Price Deflator-Gross Domestic Product (IPD-GDP), that could be used to update fee schedules periodically.

In 1995 the Inspector General (IG) for the Department of the Interior audited

BLM's cost recovery efforts on rights-of-way. The IG found BLM's financial system was not adequate to give a good estimate of the costs of the right-of-way program. The IG found that BLM's processing fees were too low. The IG estimated costs from two approaches: (1) examining randomly selected case files and estimating the time required to perform the work involved and (2) polling BLM personnel as to the amount of time spent on right-of-way casework. In both cases the IG compared these estimates to the actual amount of cost recovery money collected for the specific cases in (1) and (2). Based on 75 sample cases and an estimated 3,000 cases per year, the IG estimated that BLM was losing \$640,000 per year in processing costs. (The 3,000-case figure includes cases which, under current regulations, are excluded from cost recovery.) The IG recommended that BLM revise the regulations to recover all applicable costs.

BLM has adopted the IG's recommendations by proposing to: (1) increase the processing and monitoring costs for right-of-way applications, (2) provide for cost adjustments to accommodate increases in the economic indicator reflecting the general cost of labor, and (3) eliminate fixed dollar amounts from the regulations to allow for periodic cost adjustments.

The following paragraphs describe the proposed changes to the cost recovery provisions of the existing right-of-way regulations. Changes would decrease the number of cost recovery categories for both FLPMA and MLA applications and for monitoring categories, revise the definitions of the categories, eliminate the automatic exemption from paying processing costs for Federal agencies, and increase category fees.

Cost recovery categories. Experience suggests a need for one less fixed fee amount category for FLPMA applications processed under proposed section 2804.20 and two less categories for MLA applications processed under proposed section 2884.18. BLM rarely uses existing Category IV for FLPMA applications or existing Categories IV and V for MLA applications. These categories involved applications which historically require multiple field examinations that are normally associated with collecting original data to complete environmental analysis or to verify the existence or absence of a threatened or endangered plant or animal species. In these cases, the work involved in processing the applications generally meets the criteria for Category V for FLPMA applications and Category VI for MLA applications, both of which address complex projects.

The proposed regulations at sections 2804.14 and 2884.12 would remove the existing Category IV for FLPMA applications and Categories IV and V for MLA applications. BLM would establish a new Category IV for use with both types of applications. The new Category IV would require the applicant to pay the full reasonable or actual cost to BLM of processing right-of-way applications that require multiple field examinations and collecting or verifying original data.

The proposed regulations at sections 2804.17 and 2884.13 establish a "master agreement" category for both FLPMA and MLA right-of-way applications. A master agreement is an agreement between BLM and you that, among other things, specifies you will reimburse BLM for the full reasonable costs of processing your application(s), if you are seeking a FLPMA grant, or the full actual costs of processing your application(s), if you are seeking an MLA grant. Paragraph (b) of proposed section 2804.17 lists the areas of negotiation. The master agreement application category is especially useful for MLA right-of-way applications. Most MLA right-of-way applications filed with BLM involve activities within a limited area, an oil and gas field of relatively compact size. For example in New Mexico, an oil and gas field about 50 miles by 50 miles was developed on or crossing BLM-administered lands. In a 20-month period, developers filed some 205 right-of-way applications, each requiring individual category decisions and the collection of separate fees. One developer filed about half of the applications; another filed about 15 percent. A coordinated agreement for processing multiple applications for rights-of-way located in a limited area would have resulted in a more timely and complete response for both BLM and the companies involved.

The proposed regulations specify what master agreements should include, what BLM expects of applicants, and what applicants may expect of BLM.

The Forest Service proposes a fee category called "Minimal Impact." The Forest Service considers this fee category to include minor recreation activities in an area already approved or designated in a forest plan for that use. Examples of "minor recreation activities" would be a one-time permit for a wedding, a marathon, a bike race, and a company picnic for more than 75 people. The Forest Service proposes a flat fee of \$75 for processing an application in the Minimal Impact Category and no monitoring fee, since the authorization covers a one-time event.

These activities do not qualify for grants issued under Title V of FLPMA, and BLM does not propose to add a Minimal Impact Category to our revised category list. If we did adopt a Minimal Impact Category, we would charge the same fee as the Forest Service proposes. We invite your comments on whether to include this category for short-term activities authorized by temporary use permits issued under the MLA or short-term grants issued under FLPMA.

Revised category definitions.

Applicants for grants have requested that BLM revise the existing category definitions. Applicants have stated that the definitions of the categories do not clearly state which costs to exclude or include. The proposed category definitions attempt to better define the categories by stating what factors BLM must consider in determining the application category. These factors include (1) whether or not original data are needed, (2) whether or not BLM must amend an existing land-use plan, (3) how many, if any, field examinations are needed, and (4) the estimated number of work hours needed to complete processing the application.

The current fee category for processing an application also establishes the fee category for monitoring the subsequent grant. Once BLM issues the grant, however, the situation may change from that existing when the application was processed and require reevaluation of monitoring costs. For example, the presence of an endangered species or of an archaeological site may require numerous field observations by BLM or the grant holder, especially during construction. Thus, monitoring costs may increase.

Current fee schedules of processing and monitoring costs are estimated average costs across BLM. The studies performed in 1986 tracked monitoring costs according to the category decisions for processing. While normal statistical analysis would eliminate unusually high or low values, the remainder, as an average, should account for most of the variables between easy-to-hard processing and easy-to-hard monitoring.

If BLM establishes monitoring fees separate from application processing fees, we propose to establish the monitoring categories based on the number of work hours involved, including the number of field examinations needed to monitor the grant. These hour estimates would be determined separately from the hour estimates for the processing fee categories. For instance, Monitoring Category I would consist of those grants that require less than 24 hours of work,

including field examinations; Monitoring Category II would consist of those grants requiring between 24 and 36 hours of work, including field examinations; and Monitoring Category III would consist of those grants requiring between 37 and 50 hours of work, including field examinations. If you believe that this is an inappropriate criterion upon which to base monitoring categories, please suggest alternative criteria.

Background for category fee amounts. Current regulations at subpart 2808 of this title set fees for processing and monitoring costs as follows:

Category	Processing fee	Monitoring fee
I	\$125	\$50
II	300	75
III	550	100
IV	925	200
V	Full reasonable costs as required.	

Based on the field study of some 1600 cases, BLM should have adjusted these fees in 1987, because of inflation and underestimating costs, to:

Category	Processing fee	Monitoring fee
I	\$175	\$65
II	300	100
III	575	175
IV	820	200

Current MLA regulations at subpart 2883 set application processing and monitoring fees as follows:

Category	Processing fee	Monitoring fee
I	\$125	\$25
II	275	50
III	350	75
IV	600	150
V	1,000	250

Based on the field study of more than 600 cases, BLM should have adjusted the MLA fees in 1987 to:

Category	Processing fee	Monitoring fee
I	\$150	\$ 50
II	225	75
III	575	250
IV	750	350
V	Full actual costs.	

Proposed fee amounts. Since the 1986 study, the cost of doing business has continued to rise. The Consumer Price Index, used to adjust the communication site rent schedule, and the Implicit Price Deflator Index, used to adjust other schedules, have risen

about 35 and 30 percent respectively. BLM calculated the proposed fee schedule for FLPMA applications and grants by adjusting the detailed study figures upward by 30 percent and rounded up to the nearest \$10. This is the proposed fee schedule for processing and monitoring FLPMA right-of-way applications and grants:

Category	Processing fee	Monitoring fee
I	\$230	\$ 80
II	390	130
III	750	230
IV	Full reasonable costs as required.	
Master agreement	As negotiated.	

BLM calculated the proposed fee schedule for MLA applications and grants in the same manner. The proposed fee schedule for these applications and grants is as follows:

Category	Processing fee	Monitoring fee
I	\$200	\$70
II	290	100
III	750	330
IV	Full actual costs.	
Master agreement	As negotiated.	

BLM sampled a number of cases in 1995. The sampling tended to agree with the adjusted 1986 study figures. Five Category I cases ranged from \$125 to \$510 to process, an average of about \$200. Fifteen cases in Category II ranged from \$82 to \$700 to process, with an average of about \$390. Only one Category III case was sampled, and its processing cost was \$600. Performing another extensive field cost study, such as was done in 1986, would not produce sufficient new data to justify its costs. Adding a "master agreement" category may remove about half the cases which currently fall into Categories I through III.

Annual fee adjustments. The regulations also propose adjusting the fee schedule for the following calendar year based on the previous year's change in the Implicit Price Deflator-Gross Domestic Product (IPD-GDP). BLM will round up changes to the nearest dollar. Review of other economic indices, such as the Consumer Price Index, discloses that these do not reflect a sufficiently high labor intensiveness to be used to adjust the cost recovery fee structure. We believe, however, that the IPD-GDP more closely reflects the relationship of labor to other costs and can be used as an adjustment factor. BLM proposes to use this index,

measured second quarter to second quarter, to adjust the fixed cost recovery fees annually. Under the proposed regulations, each year BLM would revise the fees, make copies of the revised fee schedule available in BLM offices before the beginning of the next calendar year, and post the fee schedule on the BLM Home Page on the Internet, <http://www.blm.gov>.

Rents for communication site rights-of-way would continue to use the Consumer Price Index because the rents are based on the population served. The CPI reflects changes in the urban economy more accurately than the IPD-GPD does.

If BLM adopts the increased cost recovery fee schedule as proposed, adjusted for the inflation rate, the fee schedule will be published in the **Federal Register** as part of the preamble to the final rule. The preamble would make clear that the fees would rise each year based on changes in the IPD-GDP.

If you believe that the proposed cost recovery fee increases are unreasonable, or not in the public interest, please provide your rationale and any suggestions you may have for alternative methods of charging reasonable processing and monitoring fees for FLPMA and MLA right-of-way applications.

Assignments and renewals. (Proposed subpart 2807). BLM proposes to use the category fee schedules as the basis for establishing and recovering the costs of processing assignments and renewals. Currently, the fee for assignments is \$50, and there is no fee for renewals. BLM proposes to determine the appropriate category based on the estimated time to process each request. For example, if the estimated time to process an assignment for a FLPMA right-of-way is no more than 24 work hours, the cost recovery fee would be the fee for a Category I application. BLM specifically requests your comments on whether to use the proposed cost recovery categories for assignments and renewals. If you oppose the change, please suggest an alternative method of recovering costs for processing assignments and renewals.

Cost Exemptions and Reductions

Background. Two final rulemakings, one on January 10, 1985, and the other on September 5, 1986, established BLM's current policies with respect to cost recovery for MLA grants. These policies are based on the 1973 amendments to the MLA, which require applicants for MLA rights-of-way or temporary use permits to reimburse the United States for all administrative and other costs involved in processing

applications and in monitoring, operating, maintaining, and terminating the MLA grants. Therefore, cost exemptions and reductions are not available for MLA rights-of-way, except for those state and local governments that are exempt from cost recovery under the current regulations at 43 CFR 2883.1-1(a)(2).

The final rule of July 8, 1987, described BLM's policies associated with determining the processing and monitoring costs for FLPMA right-of-way grants. The rule defined the terms "actual costs," which are the resources expended in processing a right-of-way application and monitoring the construction, operation, maintenance, and termination of the project and its facilities. Actual costs, less management overhead, form the amount to which BLM applies the "reasonability factors" listed in section 304(b) of FLPMA. For all but complex projects (Category V), the reasonability factors have little or no effect on actual costs. The rulemaking also defined the reasonability factors: "monetary value of the rights or privileges sought," "public benefits," "efficiency to government processing," and "other factors." The "other factors" definition provides the means for BLM State Directors to reduce actual processing costs based on a wide range of special circumstances, including unique instances of public benefits or services. These reductions generally fall under the broad category of "hardship," that is, paying full reasonable costs would create an undue hardship on the applicant.

The rule also established, as a method of computing reasonable costs, an alternative which represented one percent of construction costs. This alternative was based on the practice of the state of New York, which charged corporations a maximum fee of one-half of one percent of their actual construction costs to process their right-of-way applications for non-residential projects and a maximum of 2 percent of actual construction costs for residential projects. This fee included the costs of preparing environmental impact statements and other processing activities. Finally, the rule exempted federal agencies and state and local governments and their agencies and instrumentalities from paying processing and monitoring costs.

Automatic exemptions. BLM considered eliminating the exemptions for federal, state, and local governments to pay processing and monitoring costs established by the July 8, 1987, final rule. This exemption, under the current regulations, does not apply to municipalities that derive the majority

of their revenues from user fees. We decided against proposing to eliminate the exemption for state and local governments for several reasons, including the fact that these entities comprise less than 10 percent of all applicants and grant holders. Because of their small numbers, eliminating the automatic exemption for them would not significantly decrease BLM's revenues from cost recovery. Municipalities that derive the majority of their revenues from user fees would continue to pay processing and monitoring costs.

Currently, many federal agencies fund the processing of FLPMA right-of-way applications affecting their lands. The amount they pay is determined through negotiations. This process does not always produce consistency across BLM organizational units. BLM proposes to achieve consistency by assigning each federal project to a category. The category designation will enable other federal agencies to determine their costs in advance and will also reduce the administrative paperwork involved in federal transactions.

Eliminating the one percent alternative. As mentioned previously, the July 1987 final rule established the payment of up to one percent of actual construction costs as an alternative method of paying the reasonable costs of processing right-of-way applications and monitoring the issued grants. The approach was viewed to have several benefits: (1) efficiency to both the applicant and BLM by avoiding complex data collection and by eliminating complex cost calculations, (2) providing an incentive to BLM to stay under the one percent cost level in processing and monitoring activities, and (3) giving a readily available dollar value for establishing a reasonable level of actual cost reimbursement. The current regulations contain this alternative at 43 CFR 2808.3-1(f).

Although this alternative seemed to have merit at the time, in practice it has been used only once, in resolving a situation in *Public Service Commission v. Watt*. BLM has not done an analyses of why applicants have not used this approach and will not speculate on the reasons. We are proposing to eliminate the one percent alternative. If you believe that we should retain this alternative, please provide the rationale for doing so in your comments.

"Other factors." Current regulations at 43 CFR 2808.5 list a number of factors which BLM State Directors may use to reduce or waive processing and monitoring costs. Although the preamble to the July 1987 rule did not specifically state so, the factors are a list

of what could be termed "hardship" situations. BLM considers that "hardship" is one of the "other factors" which section 304(b) of FLPMA allows BLM to consider in determining reasonable costs. Examples of hardship situations include: (1) the project requiring the right-of-way grant could not be built because the processing and monitoring costs would be excessive, (2) public health and safety could be compromised if the right-of-way project were not built, and (3) the public benefits of the project greatly outweigh the costs. The language at proposed section 2804.18, paragraph (b), called "Other considerations," lists possible hardship situations.

The proposed regulations at section 2804.18 attempt to clarify that the exemptions and reductions listed apply to all FLPMA processing and monitoring cost categories, not just those having the highest costs (Category IV applications). In preparing the financial plans required as part of the information for Category IV applications (see proposed sections 2804.16(a)(3) for FLPMA applications and 2884.12 for MLA applications) and in negotiating cost recovery master agreements (see proposed section 2804.17 for FLPMA applications and section 2884.13 for MLA applications), you should identify what you expect BLM to pay for and what you expect to pay for. FLPMA applicants should also identify any hardship factors that they believe apply to their project. BLM will consider these factors during negotiations over the final processing and monitoring costs.

Federal agencies may not qualify for cost reductions under the hardship factors. They may, however, qualify for reductions under the reasonability criteria as proposed at section 2804.18.

The following sections describe other proposed changes to the existing regulations that do not involve fees. The proposed changes involve a new customer service standard for processing applications, organizational matters, clarifications of policies relating to rents for both linear and communication-site rights-of-way, a description of how the proposed regulations are organized, and when you may appeal BLM decisions.

Customer Service Standards

Executive Order 12862, "Setting Customer Service Standards," requires federal agencies to provide a standard of customer service equal to the best in the business. To accomplish this, Executive agencies should identify the customers that they serve, post customer service standards and measure results against them, provide customers with choices

in both sources of service and means of delivery and make information, services and complaint systems easily accessible.

The right-of-way program is committed to providing its customers with excellent, efficient service. Through a series of internal policy directives, starting in December 1995, program staff and managers have streamlined right-of-way application processing by: (1) encouraging applicants to file applications by fax and to pay by credit cards, (2) reiterating the processing times stated in Manual sections, (3) allowing applicants for MLA rights-of-way to file as part of their applications for a permit to drill, (4) reaching an understanding with State Historic Preservation Officers as to how BLM will conduct cultural surveys and the State Historic Preservation Officers will review applications and recommend provisions to preserve the cultural values of lands affected by potential rights-of-way, (5) sending customer service cards to right-of-way customers and requesting that the customers rate BLM's service in specific areas, and (6) modifying the financial system to assure that processing and monitoring fees go directly to the field office that generates the fee.

The proposed regulations at section 2804.20(c) would further assist the customer service effort by providing applicants with written notices of when they can expect BLM to process their applications if processing the application will take longer than the estimated time periods. This information should assist applicants and grant holders in planning for constructing or changing their projects.

Hazardous Materials

The proposed regulations would contain language addressing the storing, transporting, and using of hazardous materials on right-of-way grants as they relate to the following statutes: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* (CERCLA); the Resource Conservation and Recovery Act, 42 U.S.C. 6991 *et seq.* (RCRA); the Clean Water Act, 33 U.S.C. 1251 *et seq.*; the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*; and the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.* CERCLA holds responsible parties liable for the costs of cleaning up hazardous waste sites. RCRA sets minimum guidelines and standards for manufacturing and disposal of hazardous and solid wastes.

The current regulations do not address hazardous materials. Because of the importance of the safe use of rights-

of-way and resource protection, BLM decided to incorporate hazardous material provisions into the proposed regulations. While most other BLM regulations do not yet specifically address hazardous materials, BLM concluded that addressing hazardous materials in the right-of-way regulations was a suitable beginning. The proposed revisions include the following:

(1) Adding to the definitions section of the regulations at section 2801.5 several terms used in the acts:

"discharge," "hazardous material," and "release;" and

(2) Clarifying that there is no maximum limit for strict liability for damages or injuries resulting from the actual or threatened discharge or release of hazardous substances, as defined by CERCLA, at section 2807.12.

These definitions and conditions would apply to part 2880 by cross reference.

All the proposed changes follow the "polluter pays" principle. If the grant holder is an innocent holder, he will still be held responsible for all costs and clean up from an accident or the release of hazardous substances. BLM believes that any other policy would shift the liability from the holder onto the United States and would result in less holder accountability.

We intend to add similar program-specific language to other regulations as they are revised.

Organizational Matters

Regional offices. Utility and industry applicants have suggested that BLM could shorten processing time for right-of-way applications if we established one or more "regional right-of-way offices" solely for processing applications involving cost recovery. BLM has not adopted this approach in the proposed rule because establishing regional right-of-way offices would fracture the existing interdisciplinary approach to decisionmaking that BLM uses. Such offices would be understaffed, as from time to time a variety of specialists are needed for advice on proposed impacts or mitigation methods. Currently, BLM gets this expertise from existing BLM offices where the specialists are performing duties other than processing applications or monitoring grants.

BLM is exploring the way that we process various applications. We periodically look at ways to consolidate, simplify, and cut costs when we process all types of applications. One possible way to cut costs and maximize resources would be to have a single specialist do all field examinations of a single site for which multiple

applications exist. For instance, when an oil and gas lessee needs approval of an application for permit to drill and a right-of-way for a road to the drill pad, a single specialist could visit the site and gather the necessary data to serve the processing of both applications. BLM welcomes any comments you may have on increasing our efficiency and cutting the time for processing your applications.

Water power situations. Water power projects require a license from the Federal Energy Regulatory Commission (FERC) under the Water Power Act of 1920, as amended. If the project involves public lands, BLM must also issue a right-of-way grant. There are some exceptions for relicensing existing projects. FERC can collect costs incurred by it and other Federal agencies, including BLM, from the water power applicant or holder. This creates a potential double collection, where both FERC and BLM could collect from the applicant/holder the costs of a single project. To prevent this, BLM will only report to FERC those processing and monitoring costs that are not associated with BLM actions on the right-of-way application or grant. When a right-of-way application or grant is not involved, BLM will report all of its costs associated with a water power application or relicensing to FERC. The language at proposed section 2804.24 reflects this policy.

Rents

Non-communication site rent payments. Section 504(g) of FLPMA requires right-of-way grant holders to pay annually, and in advance, the fair market value of their grant. This amount constitutes the "rent" for the grant. Originally, FLPMA allowed BLM to bill grant holders for more than 1 year if the annual rent was less than \$100. Amendments in 1986 changed the provision to give private individuals the option of paying annually or at some interval greater than 1 year if their rent payments exceed \$100 per year.

A March 1995 study by the Inspector General of the Department of the Interior (IG) found that BLM had not established a cost-effective system for billing annual rents. There was no minimum collection amount, and BLM billed for all annual rents that exceeded \$1 per year. About 7,700 courtesy notices for bills of \$34 or less were sent to grant holders. The IG further noted that BLM annually sent over 14,000 bills to 21 grant holders. The IG recommended that BLM establish a minimum rent collection amount and revise the right-of-way regulations to provide for advance lump-sum

payments covering more than 5 years when the annual rent is less than \$100 per year. Even so, a substantial percentage of the bills for \$34 or less represented 5 years' worth of rent.

Based on the 1986 amendment to FLPMA and the IG's recommendations, BLM proposes to modify the way that we bill right-of-way grant holders. BLM must take steps to reduce the administrative workload that field offices bear in billing grant holders annually for rents, collections of rents, and proper depositing of the rents. Proposed section 2806.10 states that BLM may bill for rents annually or for periods of more than 1 year. Private individuals whose rent payments exceed \$100 per year may elect to make annual payments rather than lump sum payments. Current policy requires advance rent payments in 5-year intervals if the rent amount is less than \$100. The proposed rule would change this policy to allow BLM greater flexibility to address specific situations. We invite suggestions and comments on how long the advance payment period should be and what amount the annual rent payment should be to trigger the advance or lump sum payment.

This proposed rule does not address either minimum rent amounts or another IG recommendation, that of increasing the rent amounts on the current linear rent schedule. A joint BLM-Forest Service team is analyzing these recommendations and other concerns related to linear rights-of-way.

We request your comments, however, on whether BLM should charge fees for the late payment of rents. We are considering adding language to the regulations which would allow us to collect fees for the late payment of rents because (1) charging a fee for the late payment of money owed is a normal business practice in the private sector, with other federal agencies, and with other programs within BLM; (2) BLM is incurring significant administrative charges for attempting to collect late rent payments, without being able to recoup any of the administrative costs; and (3) imposing a late charge may encourage grant holders to make rent payments when they are due and avoid possible termination of their grants. When BLM terminates a grant, we may be able to recover rent payments owed under the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, but cannot recover the administrative costs associated with our prior collection efforts.

You can find regulatory provisions which allow for BLM's collecting late payment charges at 43 CFR 2920.8(a)(3) and 43 CFR 4130.8-1(f). You may

review these provisions to assist you in making comments or suggestions on whether BLM should charge a fee for late payment of right-of-way rents.

If BLM decides to impose a late payment charge for delinquent rents, we propose to base the charge on the method described at 43 CFR 4130.8-1(f). If we decide to use a different methodology, we will describe the proposed method in a separate proposed rule.

Communication site rents. BLM proposes to amend the provisions for communication site rents as follows:

- Adding or revising various definitions related to rents applicable to rights-of-way for communication sites;
- Clarifying procedures promulgated in a final rule published in November 1995 as to how BLM will apply the communication site rent schedule in various circumstances; and
- Adding a provision that explains how BLM determines the "population served." We specifically invite your comments on whether or not all rules concerning communication site management should be segregated into a separate section of the right-of-way regulations. If our analysis of the comments received on this proposed rule indicates that a separate section for communication site management is appropriate, BLM will adopt it in the final rule without any change in the policies reflected in this proposed rule.

Background for changes to communication site right-of-way rents. On November 13, 1995, BLM published regulations establishing a rental schedule for communication uses in the **Federal Register**. The schedule was the result of recommendations from the Radio and Television Use Fee Advisory Committee and the General Accounting Office. BLM intended the schedule to: (1) establish a fair and consistent approach for determining rental payments, based upon using facilities at various communication sites, (2) encourage tenants in a communication facility to consolidate their separate authorizations into a single authorization, and (3) reduce the number of disputes concerning rental values. These changes reduced the costs of obtaining appraisals and billing costs and minimized BLM involvement in managing the use and occupancy of facilities.

The rent schedule bases rent on nine categories of communication uses on BLM-managed lands and groups these uses into three major categories: broadcast, non-broadcast and other. The "broadcast" category includes television, FM radio, rebroadcast devices, and cable television. The "non-

broadcast" category includes commercial mobile radio service, cellular telephone, private mobile communications, common carrier, and microwave communications. The "other" category includes small, unobtrusive, low-power uses serving small numbers of customers. Rents correlate with the population of the community where the facility is located or that it serves, or both. BLM uses the *Rand McNally Commercial Atlas and Marketing Guide* to determine the population size of communities of 50,000 or more. For communities of less than 50,000 people, BLM uses the category of use and the most recent Census Bureau census.

Before BLM established a schedule for communication site right-of-way rentals, all such rents were determined through appraisal. All uses within a facility generally required a separate right-of-way authorization, and BLM appraised each use separately. Appraisals were expensive and needed frequent updating to reflect changes in fair market value. BLM administers approximately 3,200 rights-of-way for communication sites, half of which pay no rent because they are exempt under statutory and regulatory provisions. By implementing the rent schedule, BLM no longer bills rent on an individual user basis. BLM now requires only the facility owner to have an authorization for multiple use occupancy and bases the rent on the highest value use in the facility, plus 25 percent of the scheduled rent for each of the other uses in, or associated with, the facility for which rent is to be paid. The rent schedule identifies nine categories of use and nine population strata. Uses serving larger populations generally have higher associated rent values, as compared with those same uses serving smaller populations.

BLM's rent schedule for rights-of-way devoted to communication uses became effective on December 13, 1995. BLM decided not to implement the new schedule until January 1, 1997, so that we could properly train field personnel to apply it and could resolve any outstanding policy issues. The Forest Service adopted a similar schedule through a policy published in the **Federal Register** on October 27, 1995. Nineteen ninety-seven was the first year of BLM's 5-year phase-in period for the new schedule. During this year BLM received several questions from affected grant holders about the schedule, but there were no protests filed that resulted in appeals to IBLA. BLM and the Forest Service have jointly developed policies and procedures to ensure that both agencies consistently apply the

schedule under similar circumstances, regardless of which agency authorizes the communication use.

The changes contained in this proposed rule modify the regulatory text to reflect what has been implemented through internal BLM and Forest Service policy in the last 2 years. Unless otherwise specified, these proposed regulatory revisions only clarify how BLM will apply the schedule in various circumstances and will ensure that the schedule is applied fairly and consistently for all uses and holders of communication facilities located on BLM-managed lands. The proposed revisions do not change the rental values assigned to the uses or population strata of the original schedule.

The proposed regulations and policies are consistent with the Telecommunications Act of 1996, 47 U.S.C. 332 note, and the various General Services Administration government-wide policy bulletins on determining the locations of telecommunications facilities, including commercial antennas, on public lands.

New or revised definitions. (Section 2806.5). These definitions would affect subpart 2806 only. BLM would:

- Add new definitions for "commercial purpose," "communication use rent schedule," "facility manager," "facility owner," "reselling," and "site"; and
- Revise the definitions for "customer," "tenant," and "other communication uses" category.

Adding a definition for "commercial purpose" would establish the condition that must exist before BLM will charge rent. Adding a definition for "communication use rent schedule" would identify all the uses and population strata that are included in the rent schedule.

The proposed regulations use two new terms, "facility manager" and "facility owner." A facility manager owns a communication facility on public land, leases space to other tenants in the facility, and has a communications authorization, usually a lease, but does not have his or her own communications equipment in the facility. A "facility owner" owns a communication facility on public land, may or may not lease space to other tenants in the facility, and has a communications authorization, usually a lease, but has his or her own communications equipment within the facility. The difference is that the facility manager does not operate communication equipment for his or her own use; the facility owner does. BLM is introducing these terms because we

charge rent only to those entities who hold authorizations. Tenants and customers do not ordinarily pay rent to BLM.

Adding a definition for "reselling" is necessary, as reselling is a critical component for determining whether an occupant is considered a tenant, subject to rent, or a customer, not subject to rent.

Amending the definition of "other communication uses, within the overall definition of "communication use rent schedule," to delete the reference to passive reflectors as an example of an "other communication use" is consistent with the intent of the November 13, 1995, preamble to the communication site regulations (60 FR 57068) and with the Forest Service definition for this category. Amending the definition of "tenant" to include the words "or broadcast" would identify television or radio broadcast uses as a commercial activity subject to rent when located in another's facility and would make it consistent with the Forest Service definition of this term. Revising the definition of "customer" to incorporate the changes for the definition of "tenant" and to clarify the term would make it consistent with the Forest Service definition of the term. Under the proposed definition, BLM would exclude private and internal communication uses located in another holder's facility, and not just located in a commercial mobile radio service facility, for the purposes of calculating rent.

Other changes proposed for applying the communication site use rent schedule. (Proposed sections 2806.17 through 2806.27) BLM would remove the statement at section 2803.1-2(d) that the rent schedule does not apply to public telecommunication service operators providing public television or radio broadcast services and who are granted a waiver or reduction of rent. A similar statement appears, however, in proposed section 2806.11. BLM may still grant reductions of rent for these uses if the provisions of proposed section 2806.12 apply.

Section 2803.1-2(d)(2)(ii) now provides for a review of right-of-way rents on a case-by-case basis 10 years after BLM issues the grants, and no more than every 5 years after that, to determine whether rents are appropriate. Such a request amounts to asking BLM to conduct an appraisal, estimated to cost \$2,000 each in 1995. If all holders were to make such a request, right-of-way rental determinations for communication uses would revert to the methods used before November 1995. This would greatly

increase costs (an estimated \$3 million for the 1,500-plus authorizations now subject to rent) and would negate the administrative savings envisioned by using the new rent schedule. Proposed section 2806.17(a) directs BLM to review the rent schedule every 10 years to ensure that the schedule reflects a rational fair market value estimate and eliminates the provision that allows each holder to request one or more reviews after 5 years.

Proposed sections 2806.17 through 2806.27 clarify how BLM would apply the schedule in the various combinations of facility owners, tenants, customers, and the types of uses and populations served by these uses. These proposed sections would enable users and agency personnel to fully understand how to apply the schedule, given the varied circumstances that can exist. These provisions would not alter any of the basic provisions of the current rental schedule. This addition provides a basis for applying the communication use rent schedule fairly and consistently by both BLM and the Forest Service.

One proposed change is to add the term "site" to the definitions section at 2806.5 to clarify "site" and "facility." These terms are used throughout the proposed sections, particularly at proposed section 2806.19, *How will BLM determine the rent for a single-use communication facility?* The term "site" is used to refer to the area, such as a mountain top, which contains one or more communication facilities. The

term "facility" is used to refer to the authorized improvements associated with a site, e.g., TV, radio, or cell phone antennae. A single site may accommodate several facilities for a variety of communication uses, some facilities serving metropolitan areas, such as TV broadcast towers and antennae, and some serving local areas, such as cellular phone antennae. The facilities located at a particular site are there because the site allows the facilities to serve a particular market or geographical area effectively.

Appeals section. The proposed regulations eliminate the existing subpart on Appeals, subpart 2804, and propose to replace it with references to the right of appeal at each point where you may appeal a decision. If an appeal is authorized, the proposed rule references "part 4." This proposed modification is meant only to improve the organization of the rule. It is not intended to add or remove appeal opportunities. Current regulations also contain references to the right of appeal at each appealable decision point. BLM has issued proposed regulations to revise and consolidate its appeals regulations at part 1840 and 1850 into a revised part 1840. (See 61 FR 54120 through 54141, October 17, 1996.) If or when BLM promulgates revised appeal regulations, this final revised rule will reflect them.

Reorganizing the Regulations

The proposed rule would reorganize the material and present it in the order

in which prospective applicants for rights-of-way across public lands would need it. The proposed regulations also give information about what is expected of right-of-way grant holders and how BLM monitors the grants. This restructuring is meant to make the regulations simpler to understand and is not meant to have any substantive effect.

BLM proposes to adopt the preferred numbering system of the Office of the **Federal Register**. The existing regulations indicate one section as subordinate to another by using hyphens in the number. For example, sections 2808.3-1 and 2808.3-2 are subordinate to section 2808.3. In the proposed rule, sections are arranged sequentially, beginning with the number "0." For example, section 2804.10 is followed by subordinate sections 2804.11, 2804.12, 2804.13, and so forth. In some cases, these leading sections may serve only as main headings.

The following cross-reference table describes the major organizational changes. Use the table as a guide to help you find where provisions found in the current regulations appear, in either an unchanged (except for style) or substantively revised form, in the proposed regulations. Proposed new provisions and policy appear in the text under both the GENERAL and SECTION-SPECIFIC DISCUSSIONS in the preamble, not in the table that follows.

Where is it now?	Where would it go?
Section 2800.0-1, Purpose	Eliminated as redundant to material in section 2801.7, What is the scope of these regulations?
Section 2800.0-3, Authority	Section eliminated. Authority appears in introductory material at the beginning of part 2800 under "Authority" heading.
Section 2800.0-5, Definitions	Section changed and renumbered as section 2801.5, What definitions do I need to know to understand these regulations? Minor changes in definitions to reflect plain language writing style.
Section 2800.0-7, Scope	Text streamlined, reworded and renumbered to appear in two sections: 2801.7, What is the scope of these regulations? And 2801.8, Are there any rights-of-way outside the scope of these regulations?
Section 2800.0-9, Information collection	Text streamlined and moved to new section 2801.9, Does BLM have the authority to ask me for the information required in these regulations?
Section 2801.1-1, Nature of right-of-way interest.	Text streamlined, reworded, and moved to proposed section 2805.12, What rights does the grant convey?, and 2805.13, What rights does the United States retain? References to temporary use permits removed, as BLM proposes to eliminate these instruments.
Section 2801.1-2, Reciprocal grants	Text streamlined, reworded, and moved to proposed section 2805.13, What rights does the United States retain?, paragraph (d), as a potential condition of issuing a grant.
Section 2801.2, Terms and conditions of grants	Text streamlined, reworded, and moved to proposed section 2805.12, What rights does the grant convey?, as follows: (a)(1) to paragraph (c)(1); paragraph (a)(2) to paragraph (c)(8); paragraph (a)(3) to paragraph (c)(2); paragraph (a)(4) to paragraph (c)(3); paragraph (b)(1) to paragraph (c)(7)(i); paragraph (b)(2) to paragraph (c)(7)(ii); paragraph (b)(3) to paragraph (c)(7)(iii); paragraph (b)(4) to paragraph (c)(7)(iv); paragraph (b)(5) to paragraph (c)(7)(v); and paragraph (b)(6) to paragraph (c)(7)(vi).
Section 2801.3, Unauthorized use, occupancy, or development.	Text streamlined and moved to proposed subpart 2808, What do I need to know about trespass?
Section 2801.4, Rights-of-way issued on or before October 1, 1976.	Text streamlined and moved to proposed section 2801.7, What is the scope of these regulations?

Where is it now?	Where would it go?
Section 2802.1, Preapplication activity	Text streamlined and moved to proposed sections as follows: paragraph (a) to 2802.10, What lands are available for FLPMA rights-of-way?; paragraph (b) to proposed section 2804.13, Will BLM keep my information confidential?; paragraph (c) to proposed section 2804.14, Is there a filing fee for my application?; paragraph (d) to proposed section 2804.25, What can I do on the proposed right-of-way while BLM is processing my application?; and paragraph (e) to proposed section 2804.10, What should I do before I file my application?
Section 2802.2–1, Application filing	Text streamlined and moved to proposed section 2804.11, Where do I file my application?
Section 2802.2–2, Coordination of applications	Text streamlined, reworted, and moved to proposed section 2804.12, What information do I need to submit in my application?, paragraph (b).
Section 2802.3, Application content	Text streamlined, reworted, and moved to proposed section 2804.12, What information do I need to submit in my application?
Section 2802.4, Application processing	Text streamlined, reworted and moved to proposed sections as follows: paragraph (a) to proposed section 2804.21, Can BLM reject my application?, for paragraphs (1) through (5), and to proposed section 2804.20, How will BLM process my application?, for the acknowledgment; paragraph (b) eliminated because BLM proposes to eliminate temporary use permits and to replace them with short-term right-of-way grants; paragraph (c) to proposed section 2804.12, What information do I need to submit in my application?; paragraphs (d), (e) and (h) to proposed section 2804.20, How will BLM process my application?; paragraph (f) to proposed section 2805.13, What rights does the United States retain?, paragraph (e); and paragraph (g) to proposed section 2805.11, When is the grant effective?
Section 2802.5, Special applications procedures	Paragraph (a) eliminated because the grace period has expired; paragraph (b) eliminated as redundant of text in other parts of the regulations.
Section 2803.1–2, Rental	Text streamlined and moved to proposed subpart 2806, What information do I need to know about rents for right-of-way grants?, where there are separate discussions of linear (sections 2806.14 through 2806.16, communication site (2806.17 through 2806.27) and other (2806.28) rents. Text also clarifies treatment of different types of communication sites, based on the November 1995 regulations.
Section 2803.1–3, Competitive bidding	Text significantly streamlined and moved to proposed section 2804.23, Do I always have to submit an application for a right-of-way to receive a grant? Procedural detail removed as more appropriate for internal agency guidance and to allow greater flexibility in using competitive bidding.
Section 2803.1–4, Bonding	Text reworted and moved to proposed section 2805.10, What rights does the grant convey?, paragraph (c)(6).
Section 2803.1–5, Liability	Text streamlined, reworted and moved as follows: paragraph (a) to proposed paragraph (a) of section 2807.12, For what am I liable?; paragraph (b) to proposed paragraph (b) of section 2807.12; paragraph (c) to proposed paragraph (d) of section 2807.12; paragraph (d) to proposed paragraph (c)(6) of section 2807.12; paragraph (e) to proposed paragraph (f) of section 2807.12; paragraph (f) to proposed section 2807.13, What liabilities do State and local governments have?; paragraph (g) to proposed paragraph (c) of section 2807.12; paragraph (h) to proposed paragraph (f) of section 2807.12; and paragraph (i) to proposed paragraph (e) of section 2807.12.
Section 2803.2, Holder activity	Text streamlined, reworted and moved to proposed sections as follows: paragraph (a) to proposed section 2807.10, When can I start activities under my grant?; and paragraph (b), (c) and (d) to proposed section 2807.11, When must I contact BLM?
Section 2803.3, Immediate temporary suspension of activities.	Text streamlined, reworted and moved to proposed section 2805.17, Can BLM temporarily suspend my activities to protect public health and safety and the environment without providing an administrative hearing?
Section 2803.4, Suspension and termination of right-of-way grants.	Text streamlined, reworted, and moved as follows: paragraphs (a), (b), (c) and (d) to proposed section 2807.16, Can BLM terminate or suspend my grant?; paragraph (d) to proposed section 2807.17, How will I know that BLM intends to suspend or terminate my grant?, paragraph (a); and paragraph (e) to proposed paragraph (c) of section 2807.16, Can BLM terminate or suspend my grant?
Section 2803.1–4, Disposition of improvements upon termination.	Text streamlined, reworted and moved to proposed section 2807.18, What happens to any improvements on my grant when it terminates?
Section 2803.5, Change in Federal jurisdiction or disposal of lands.	Text streamlined, reworted, and moved to proposed section 2807.14, What happens if BLM transfers management of the land on which my grant is located to another Federal agency or outside of public ownership?
Section 2803.6–1, Amendments	Text streamlined, reworted, and moved to proposed section 2807.19, When must I amend my application or grant?
Section 2803.6–2, Amendments to existing railroad grants.	Text streamlined, reworted, and moved to proposed paragraph (c) of section 2807.19, When must I amend my grant?
Section 2803.6–3, Assignments	Text streamlined, reworted, and moved to proposed section 2807.20, May I assign my grant?
Section 2803.6–4, Reimbursement of costs for assignments.	Text streamlined, reworted, and moved to proposed section 2807.21, What will BLM charge for reviewing a request for assignment?
Section 2803.6–5, Renewals of right-of-way grants and temporary use permits.	Text streamlined, reworted, and moved to proposed section 2807.22, Can I renew my grant?
Section 2804.1, Appeals	Subpart eliminated. Information about actions which you may appeal appears in the sections to which it applies.
Section 2806.1, Corridor designation	Text streamlined and more simply worded. Material appears in renumbered section 2802.10, What lands are available for right-of-way grants?
Section 2806.2, Designation criteria	Text streamlined and reworted. Material appears in renumbered section 2802.11, How does BLM designate corridors?
Section 2806.2–1, Procedures for designation ..	Text streamlined, reworted, and moved to section 2802.10, What lands are available for right-of-way grants?

Where is it now?	Where would it go?
Section 2807.1, Application filing	Text streamlined, reworted, and moved to proposed section 2809.10, Can Federal agencies get a right-of-way grant?
Section 2807.1-1, Document preparation	Text streamlined, reworted, and moved to proposed section 2805.10, What does a grant contain?
Section 2807.1-2, Reservation termination and suspension.	Text streamlined, reworted, and moved to proposed section 2807.16, Can BLM terminate or suspend my grant?
Section 2808.1, General	Text streamlined, reworted, and moved to proposed section 2804.14, Is there a filing fee for my application?, paragraph (a).
Section 2808.2-1, Application categories	Text streamlined, reworted, and moved to proposed section 2804.14, Is there a filing fee for my application?, paragraph (c).
Section 2808.2-2, Category determination	Text streamlined, reworted, and moved to proposed section 2804.14, Is there a filing fee for my application?, paragraph (e) and (g).
Section 2808.3-1, Application fees	Text streamlined, reworted, and moved to proposed sections as follows: paragraph (a) to proposed section 2804.14, Is there a filing fee for my application?, paragraph (b); paragraph (b) to proposed section 2804.14, paragraph (f). Paragraphs (c), (d) and (e) to proposed section 2804.16, How will BLM process my Category IV application?; paragraph (f) to proposed section 2804.18, Can BLM reduce my reimbursement costs?, paragraph (a)(2); paragraph (g) to proposed section 2804.18, paragraph (e); and paragraph (i) to proposed section 2804.18, paragraph (d).
Section 2803.3-2, Periodic advance payments	Text streamlined, reworted, and moved to proposed sections as follows: paragraphs (a) and (b) to proposed section 2804.16, How will BLM process my Category IV application?, paragraph (b); paragraph (c) to proposed section 2804.14, Is a filing fee for my application?, paragraph (g); and paragraph (d) eliminated, as this is redundant of other sections, such as 2804.14.
Section 2803.3-3, Costs incurred for a withdrawn or denied application.	Text streamlined, reworted, and moved to proposed section 2804.22, Do I owe any money if BLM rejects my application or I withdraw my application?
Section 2803.3-4, Joint liability for payments	Text streamlined, reworted, and moved to proposed section 2804.19, What happens if there are two or more competing applications for the same facility or system?
Section 2808.4, Reimbursement of costs for monitoring.	Text streamlined, reworted, and moved to proposed section 2805.14, What are monitoring fees?
Section 2808.5, Other cost considerations	Text streamlined, reworted, and moved to proposed section 2804.18, Can BLM reduce my reimbursement costs?
Section 2808.6, Action pending decision and appeal.	Text consolidated with that in current section 2808.5, reworted and moved to proposed section 2804.18, Can BLM reduce my reimbursement costs?
Section 2880.0-3, Authority	Section eliminated. Material appears as "Authority" in the introductory material at the beginning of part 2880.
Section 2880.0-5, Definitions	Minor changes in definitions to reflect plain language writing style. Definition of "public lands" in proposed section 2801.5 replaced by definition of "Federal lands" in proposed section. Section renumbered as 2881.5, What definitions do I need to know to understand these regulations?
Section 2880.0-7, Scope	Text reworted into plain language and appears in two proposed sections: 2881.7, What is the scope of these regulations? And 2881.8, What grants are not covered by these regulations?
Section 2881.1-1, Nature of right-of-way interest.	Text streamlined, reworted, and moved to proposed section 2885.11, What are the terms and conditions of the grant or permit? Cross references proposed section 2805.10, for terms and conditions in common with non-MLA rights-of-way.
Section 2881.1-2, Nature of temporary use permit.	Same as entry above at section 2881.1-1.
Section 2881.1-3, Reservation of rights to the United States.	Text streamlined and moved to proposed section 2885.12, What are the terms and conditions of the grant or permit?, which cross references proposed section 2805.13, since many terms and conditions are common to both types of rights-of-way. Proposed section 2885.12 emphasizes only those terms and conditions which are MLA-specific.
Section 2881.2, Terms and conditions, interest granted.	Text streamlined and moved to proposed section 2885.12, What are the terms and conditions of the grant or permit?
Section 2881.3, Unauthorized use, occupancy or development.	Text streamlined and moved to proposed subpart 2888, What general information do I need to know about trespass? Contains a cross reference to proposed subpart 2808.
Section 2882.1, Preapplication activity	Text streamlined, reworted, and moved to proposed sections as follows: paragraph (a) to proposed section 2884.10, What should I do before I file my application?; paragraph (b) eliminated as redundant of regulatory text elsewhere, including subpart 2883, What qualifications do I need to have to hold an MLA grant or permit?; paragraph (c) to proposed section 2884.12, Is there a filing fee for my application?; and paragraph (d) to proposed section 2884.22, What may I do on the proposed right-of-way while BLM is processing my application?
Section 2882.2-1, Application qualifications	Text streamlined, reworted, and moved to proposed sections as follows: paragraphs (a) and (b) to subpart 2803, What qualifications do I need to have to hold an MLA grant or permit?; and paragraph (c) to proposed section 2884.16, What do I file my application for an MLA grant or permit?
Section 2882.2-2, Application filing	Text streamlined, reworted, and moved to proposed section 2884.16, Where do I file my application for an MLA grant or permit?
Section 2882.2-3, Application content	Text streamlined, reworted, and moved to proposed section 2884.11, What information do I need to provide in my application?

Where is it now?	Where would it go?
Section 2882.3, Application processing	Text streamlined, reworded, and moved to proposed sections as follows: paragraphs (a), (b), (f) and (g) to proposed section 2884.18, How will BLM process my application?; paragraph (c) to proposed section 2884.11, Can BLM reject my application?; paragraphs (d) and (h) to proposed section 2884.19, Can BLM ask me for additional information?; paragraph (e) eliminated as redundant of other text; paragraphs (i) and (j) to proposed section 2884.23, When will BLM issue the grant or permit?; paragraphs (k) and (l) to proposed section 2885.10, When is the MLA grant or permit effective?; and paragraph (m) to proposed section 2885.11, What are the terms and conditions of the grant or permit?
Section 2882.4, Interagency agreements	Text eliminated as redundant of other text in other sections, such as proposed sections 2884.10 and 2884.18.
Section 2883.1-1, Cost reimbursement	Text streamlined, reworded, and moved to proposed section 2884.12, Is there a filing fee for my application?
Section 2883.1-2, Rental payments	Text streamlined, reworded, and moved to proposed section 2885.12, How much does it cost to hold a grant or permit? Cross references to proposed subpart 2806—What information do I need to know about rents for MLA right-of-way grants?
Section 2883.1-3, Bonding	Text streamlined, reworded, and moved to proposed section 2885.11, What are the terms and conditions of the grant?, as a condition of issuing the grant.
Section 2883.1-4, Liability	Text streamlined, reworded, and moved to proposed section 2886.15, For what am I liable?, and proposed section 2885.13, Who is liable for payments?
Section 2883.1-5, Common carriers	Text streamlined and incorporated as a provision of the grant at proposed section 2885.11, What are the terms and conditions of the grant or permit?, paragraph (c).
Section 2883.1-6, Export	Text streamlined and incorporated as a provision of the grant at proposed section 2885.11, What are the terms and conditions of the grant or permit?, paragraph (b) on the terms and conditions of use.
Section 2883.2, Holder activity	Text streamlined, reworded, and moved to proposed sections as follows: paragraph (a) to proposed section 2886.11, Who regulates my activities?; paragraphs (b) and (c) to proposed section 2886.13, When must I contact BLM?; paragraphs (d), (e) and (f) to proposed section 2887.10, What conditions require amending a grant?
Section 2883.3, Construction procedures	Text streamlined, reworded, and moved to proposed section 2886.10, When can I start activities under my grant or permit?
Section 2883.4, Operation and maintenance	Text streamlined and consolidated with existing section 2883.3, Construction procedures, into proposed section 2886.10, When can I start activities under my grant or permit?
Section 2883.5, Immediate temporary suspension of activities.	Text streamlined, reworded, and moved to proposed section 2886.18, When can BLM terminate or suspend my grant or permit?
Section 2883.6-1, Suspension and termination of permits.	Text streamlined, reworded, and moved to proposed section 2886.17, When can BLM terminate or suspend temporary use permits?, which cross references proposed sections 2807.15 and 2807.16.
Section 2883.6-2, Suspension and termination of temporary use permits.	Section eliminated, as temporary use permits are covered in proposed section 2886.17, When can BLM terminate or suspend temporary use permits?
Section 2883.7, Change in jurisdiction or disposal of lands.	Text streamlined, reworded, and moved to proposed section 2886.16, What happens if BLM transfers management of the land on which my grant is located to another agency or outside public ownership?
Section 2883.8, Restoration of Federal lands	Text streamlined, reworded, and consolidated within proposed section 2885.11, What are the terms and conditions of my grant or permit?, as a provision of the grant or permit, cross referenced to proposed subpart 2805—What terms and conditions do grants contain?
Section 2884.1, Appeals	Section eliminated. Right of appeal noted in text where appealable action is discussed.
Section 2887.0-3, Authority	Section eliminated. Act cited in "Authority" section as heading in the introductory material before part 2880 listings begin.

Additional reorganization may occur as a result of the public comments received. The preamble to the final regulations will address any additional reorganization of the regulatory text made as a result of public comments.

Section-Specific Discussions

The material in this section describes proposed changes affecting a single section and policies relating to the proposed changes. It also describes new sections. Sections which consist entirely of language rephrased from material in the current regulations without any other changes are not discussed.

Part 2800

Section 2801.5, What definitions do I need to know to understand these regulations? The discussions below

pertain only to those definitions proposed for change or proposed to be added.

The existing terms "public service provided," "cost incurred for the benefit of general public interest," "monetary value of the rights and privileges sought," "actual costs," "management overhead," and "efficiency to Government processing," found at section 2800.0-5, would be incorporated into section 2804.18, Can BLM reduce my reimbursement costs?, as factors which BLM may consider in determining whether or not to reduce the processing fee for all categories of applications, including Category IV applications. The terms "road use, amortization and maintenance charges" and "written demand" would be

removed because they are no longer used.

Three new terms, "discharge," "hazardous material," and "release" would be added to be consistent with the provisions of the Clean Water Act and BLM's hazardous materials policies with respect to the right-of-way program. BLM complies with these laws, but the current regulations do not explicitly address their requirements. The terms "discharge" and "release" would have the meanings given at section 1321(a)(2) of the Clean Water Act and section 9601(22) of CERCLA, respectively.

The new term "hazardous material" would cover the following substances or materials:

(1) Any substance or material defined as a "hazardous substance" under CERCLA at 42 U.S.C. 9601(14),

(2) Any regulated substance in underground storage tanks, as defined by the Resources Conservation and Recovery Act (RCRA) at 42 U.S.C. 6991 *et seq.*,

(3) "Oil," as defined in the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701 *et seq.*, and

(4) Other substances defined and regulated as "hazardous" by applicable federal, state and local law.

BLM intends to use the term "hazardous material," rather than "hazardous substance," because the term is broader. Right-of-way holders, including oil and gas pipeline companies, use, store or transport various hazardous materials across public lands. BLM seeks to protect the public lands from oil discharges and releases. The broad definition also aligns with BLM's responsibility to minimize damage to scenic and scientific values and fish and wildlife habitat, to protect the environment from impacts resulting from issuing and using right-of-way grants, and to protect the public lands from undue degradation.

The new term "field examination" defines one of the factors that BLM will use to determine the category upon which to base processing and monitoring costs. BLM proposes to base the definition on the number of vehicles, rather than the number of people occupying the vehicles, because we believe that measuring costs on the basis of trips will encourage BLM to combine trips and use our expertise most efficiently.

You should compare the term "public land" at proposed section 2801.5 to the term "federal land" at proposed section 2881.5. *What definitions do I need to know to understand these regulations?* The lands available for right-of-way grants under FLPMA are different from the lands available for grants and temporary use permits under the MLA. Lands under BLM jurisdiction are called "public lands" for the purposes of FLPMA. For the purposes of the MLA, the term "federal lands" includes both lands under BLM jurisdiction and under the jurisdiction of other federal agencies, state governments, and private individuals (if the minerals were reserved to the United States.) Under the MLA, BLM only issues grants on federal lands which are under the jurisdiction of BLM or when a proposed use involves two or more other federal agencies. Lands in the National Park Service System are statutorily excluded

from both MLA and FLPMA because they are administered by the National Park Service and are generally not subject to non-Park Service uses. Other lands excluded from right-of-way use under both FLPMA and MLA are lands located on the Outer Continental Shelf and those held in trust for Aleuts, Eskimos, and Indians.

The proposed regulations continue to define the terms "right-of-way" and "grant" separately. The term "right-of-way" describes the physical feature, the land, upon which the holder is exercising the right to use or traverse the right-of-way. The term "grant" describes the instrument (easement, lease, license, or permit) which gives the holder authority to use or traverse the land for right-of-way purposes. Although FLPMA uses the term "right-of-way" to describe both the land and the instrument, in practice using the term in both ways has proven confusing. The phrase "authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project" would be dropped from the definition of "right-of-way grant" because it is redundant of material found in the definition of the term "right-of-way." The term "grant" does not imply the conveyance of the title.

The term "temporary use permit" would be removed and replaced by a definition for "temporary use." The term "temporary use" signifies BLM's intent to issue short-term grants issued under part 2800, when the use is of a temporary nature. We make this proposal because, in practice, the same provisions apply to both use permits and grants and because processing times for the two documents are similar. The only difference between temporary use permits issued under part 2800 and grants is duration. The proposed change would also eliminate confusion caused by using the term permit for both short-term grants and permits for other uses authorized under part 2920. We are unable to propose this change for rights-of-way issued under part 2880 because the MLA specifically allows for temporary use permits. Therefore, section 2881.5 retains a definition for "temporary use permit."

Section 2801.10, Severability. This new section would describe the legal principle of "severability" and apply it to the regulations in part 2800. Under severability, if any portion of these regulations were found invalid as to a particular set of circumstances or particular people, the remaining portions of the regulations would remain valid and BLM could enforce them separately and legitimately. This

principle has always applied to the regulations but is stated here for information and clarity.

Section 2802.10, What lands are available for right-of-way grants? This section combines and retains the information found in the current regulations at sections 2806.1, Corridor designation, and 2806.2-1, Procedures for designation. It explains that the availability of land for right-of-way use is tied to BLM's land-use planning process, which may designate corridors and avoidance, exclusion and open areas. Although BLM designates right-of-way corridors and issues grants within these corridors to the maximum extent practical, it is not always possible to restrict uses to designated corridors, in cases such as rights-of-way connecting wells, residences, and buildings to existing facilities.

New paragraph (c) suggests that you visit the BLM office nearest you before you file an application for a right-of-way grant. During the visit you can learn whether the land that you want to use is available, what the qualifications are for holding a grant, what the application requirements are and how long it may take BLM to process your request. You can also learn if other federal and state agencies need to be involved. (See also the discussion at proposed section 2804.10, What should I do before I file my application?)

Section 2802.11, How does BLM designate corridors? This section contains material currently found in the regulations at section 2806.2, *Designation criteria*. The proposed rule would add two new criteria: transportation and utility corridor studies developed by user groups (paragraph (h)) and existing transportation and utility corridors that are capable of accommodating additional compatible uses without further review (paragraph (j)). Experience has shown that BLM managers use these two factors, in addition to the others, in making decisions about siting right-of-way corridors.

Subpart 2803, What qualifications must I meet to get a right-of-way grant? The proposed regulations contain four new sections— 2803.10, *Who can hold a grant?*; 2803.11, *Must I submit proof of my qualifications with my application?*; 2803.12, *Can other people act on my behalf?*; and 2803.13, *What happens to my grant if I die?*—with information about who may hold a grant. This information has not appeared in the regulations at part 2800 since 1982, when BLM decided to eliminate it and place it on the application form, SF-299. We believe

that placing the qualifications information back in the regulations will make it easier for individuals and groups to find information about BLM's right-of-way program.

Section 2804.10, What should I do before I file my application? This proposed section begins the completely revised subpart about applying for grants. It contains a streamlined version of the material currently found in section 2802.1, Preapplication activity, paragraphs (a) and (e). BLM encourages anyone interested in obtaining a right-of-way grant across public lands to visit the nearest BLM office to get information about the right-of-way program, lands available for right-of-way grants, and other factors affecting their applications. Visiting BLM before filing your application may shorten the time that it takes BLM to process your application and determine whether or not to issue a grant. At this meeting, BLM may be able to provide you with an estimate or informal determination of what it may cost to process your application.

Section 2804.12, What information do I need to submit in my application? Currently, this information is contained in several subparts, including 2802 and 2808. BLM intends that this subpart provide all the information that you may need to apply for a grant issued under the provisions of FLPMA. The subpart presents the necessary information in a sequence in which you might ask questions about the application procedures.

The new language in this section would specify the form number of the application, SF-299, and give a brief description of the information that the form requires. This description is a condensed version of the list of information in the current regulations at section 2802.3, paragraph (a).

Section 2804.14, Is there a filing fee for my application? This proposed section contains information from several sections of subpart 2808, including section 2808.1, General; 2808.2-1, Application categories; 2808.2-2, Category determination; and 2808.3-1, Application fees. The major changes contained in this section are discussed in the "Cost Recovery Provisions" section in the GENERAL DISCUSSION portion of this preamble. These include: (1) Increasing application processing and grant monitoring fees to reflect the reasonable costs of processing and monitoring activities, (2) providing a mechanism to adjust these fees based on changes in the "Implicit Price Deflator-Gross Domestic Product," (3) eliminating the automatic exemption from paying the

reasonable costs of processing applications and monitoring grants for federal agencies, (4) eliminating the 1 per cent of construction costs alternative to paying full reasonable processing costs; (5) reducing the number of cost recovery categories for both FLPMA and MLA applications; and (6) adding a new category, "master agreement," to cover multiple applications in a limited geographic area. Otherwise, BLM proposes no policy changes except to reword the regulatory provisions for clarity.

Section 2804.16, How will BLM process a Category IV application? This new section provides information in one place about Category IV, in which BLM recovers the "full reasonable costs" of processing right-of-way grant applications under FLPMA. Currently, this information is scattered throughout several sections of the regulations, including 2808.2-1, Application categories; 2808.3-2, Periodic advance payments; and 2808.4, Reimbursement of costs for monitoring.

Section 2804.17, What is a master agreement and what does it contain? This new section would give information about the proposed new category called "master agreements." As described in the "Cost Recovery Provisions" section in the GENERAL DISCUSSION section of this preamble, master agreements are optional but may be of use to applicants or grant holders seeking multiple grants in a limited geographical area. They are especially useful to developers of oil and gas fields. These developers may need many grants to build access roads, feeder lines, and pipelines to transport the product(s) from the field. This section specifies what information master agreements must contain.

Section 2804.18, Can BLM reduce my reimbursement costs? This proposed section contains information about applying for a reduction of processing and monitoring costs. The only policy changes from the existing regulations are as follows: (1) The proposed section lists the "reasonability" criteria on which you may seek to reduce your processing costs, and (2) the proposed section does not use the term "waive." The term "reduction" as used in the proposed rule includes a provision for a reduction to zero dollars. All other changes are to increase clarity and your ease of finding and using the information that you may need in order to seek a reduction of processing and monitoring costs.

BLM believes that this provision needs to be clear, since we are eliminating exemptions from processing costs for federal agencies except for

those exempted by statute. We welcome any comments that you may have on ways to streamline the process for determining whether or not we should grant your requests for reductions and on the types of information needed to adjudicate such applications.

Section 2804.19, What happens if there are two or more competing applications for the same facility or system? This new section clarifies how BLM will assess processing costs in situations where there is more than one applicant for a facility or system. This discussion is separated by category because BLM expects that the first three cost categories will not involve costs attributable to more than one application.

Applicants for FLPMA Category IV applications are responsible for all reasonable costs identifiable with their applications. For costs that cannot be easily identified with a specific application, such as the costs of preparing environmental impact statements, all applicants will pay an equal share or a proportion agreed to in writing.

Section 2804.20, How will BLM process my application? contains a customer service standard at proposed paragraph (c). The standard states that BLM will process your application for a right-of-way within 30 working days of receiving it if the application falls within the criteria for Categories I through III and if BLM may categorically exclude the action from environmental analysis or prepare an environmental assessment for it. If BLM cannot process your application within 60 working days, a BLM field official will notify you in writing and give you an explanation for the delay and an estimated completion date. If your application falls within the criteria for Category IV application, a BLM field official will notify you in writing and give you an estimated completion date. This standard is found in BLM Manual Section 2801.35B1g2b(1) and is intended to make us more responsive to right-of-way customers.

Section 2804.23, Do I always have to submit an application to receive a right-of-way grant? is an updated version of current section 2803.1-3, which describes in detail procedures for competitive leasing. BLM proposes to update and streamline that section because it is seldom used and contains guidance more appropriate for a Manual section or handbook. The current regulation also restricts the use of competitive bidding to site-type rights-of-way, and BLM wants to broaden the use of competitive bidding to include other situations, such as rights-of-way

used for emerging technologies. The proposed regulation would broaden competitive bidding to increase BLM's flexibility in using it for site-specific situations.

Section 2805.10, What does a grant contain? This proposed section contains material from the current section 2801.2, Terms and conditions of interest granted, and new language concerning hazardous materials and adjusting bond amount. The new language about hazardous materials, which appears as terms and conditions of use in paragraph (c), would require grant holders to notify the appropriate authorities of actual and threatened discharges or releases of hazardous materials, to handle hazardous materials in a proper manner and to comply with all liability and indemnification requirements and provisions. (See the discussion at section 2807.10 of this preamble.) Because BLM believes that preventing discharges and releases of hazardous materials into the environment is a part of doing business, we propose to expand the language in this section.

The new language concerning BLM's adjustment of bond amounts also occurs in paragraph (c) of section 2805.10. Currently all grant holders furnish a bond or other security to cover losses, damages, or injury to human health, the environment, and property resulting from activities on the right-of-way. The proposed provision allows BLM to decrease or increase the amount of the bond to reflect changes in the risk associated with changed conditions and the grant holder's record of complying with the provisions of the grant.

Section 2805.12, What rights does the grant convey? This proposed section contains material from current section 2801.1-1, Nature of right-of-way interest, paragraphs (b) through (f) and (k), with no proposed regulatory changes. This section describes the rights that the grant gives you. They are only the rights expressly contained in the grant and do not include any rights that the United States retains. Your use of resources within the right-of-way is limited to project and facility purposes but includes minor trimming, pruning, and clearing as necessary. Your grant is limited to the activities necessary to build, operate, maintain, and terminate the authorized project and facilities.

Section 2805.14, What are monitoring fees? and 2805.15, When do I pay monitoring fees? The information about monitoring fees is included in these two proposed sections in this subpart. Monitoring fees are assessed when BLM issues the grant. Although not a term or condition of the grant, payment of

monitoring fees is a condition of obtaining the grant. The language of proposed section 2805.14, paragraph (b), would change if BLM decides to develop and administer monitoring fees and categories separately from application processing fees. (See discussion under "Cost Recovery Provisions" in the GENERAL DISCUSSION section of this preamble.) If BLM decides to develop and administer monitoring fees and categories separate from the processing fee categories, we will repropose the regulations in this section and provide you with an opportunity to comment on the proposed categories and fees only if we do not adopt the proposal described in the "Revised Category Definitions" section of the GENERAL DISCUSSION in this preamble.

Subpart 2806, What information do I need to know about rents for right-of-way grants? For a discussion of the major policy changes to the sections in this subpart, see the discussion of *Rents* in the GENERAL DISCUSSION section of this preamble. All other changes proposed are intended to improve the clarity and readability of the requirements for paying rents under FLPMA grants, except for one proposed change. This proposed change occurs at section 2806.11, *Are there exceptions to paying rents?* This section describes the circumstances under which there are exemptions from paying rents on grants. The Omnibus Parks and Public Lands Management Act of 1996, which amended section 504(g) of FLPMA, struck out the phrase "financed pursuant to the Rural Electrification Act of 1936, as amended," and replaced it with the phrase "eligible for financing pursuant to the Rural Electrification Act of 1936, as amended, determined without regard to any application requirement under that Act." This statutory change has caused some large, for-profit utility grant holders to apply for rent reductions under FLPMA.

In mid-1997 the Forest Service sought guidance from the Committee on Natural Resources of the U.S. House of Representatives. The Committee Chairman, Representative Don Young, responded by letter dated October 1, 1997. In his letter, Mr. Young stated that the intent of the statutory revision was to exempt all not-for-profit rural electric and telephone cooperatives from paying rent on their grants, whether these cooperatives had built their facilities with financing from the Rural Utility Service or not. Mr. Young further stated that the Committee believed that rural and electric cooperatives filled an essential need by providing electric and telephone service in areas of difficult

terrain and low customer density. Based on this information, BLM believes that the exemption from paying rents does not apply to all utility holders, just those who can document their non-profit status as defined in the Internal Revenue Code at section 501(c)(3).

BLM therefore proposes to amend the existing provision at section 2803.1-2(b)(1)(iii) to include non-profit electric and telephone cooperatives that built facilities financed by or eligible for financing from the Rural Utility Service. The revised text, at paragraph (b) of proposed section 2806.11, would read: "The facilities constructed on the right-of-way were constructed with funds from the Rural Electrification Act of 1936, as amended (REA), or are non-profit rural electric or telephone cooperative facilities eligible for REA financing; or are extensions of such facilities."

Section 2806.14, What are the rent costs for linear rights-of-way? would make one change to existing policy. Current policy states that BLM will use the rent schedule for linear grants unless the grant meets two criteria: the land value exceeds the area's value by at least a factor of 10 and the expected rent is sufficient to warrant a separate appraisal. Some linear uses of rights-of-way have a significant value that is not related to land value. In these cases, the value comes from the type of use. Because the criteria require both factors to be met before BLM considers rent separately from the rent schedule, we must currently use the rent schedule for these uses. Having to use the rent schedule for these grants prevents us from collecting their fair market value. If we could use other methods to determine rent for these grants, we could collect fair market value, as required by FLPMA. We therefore propose to separate the factors that we will use to determine when not to use the linear rent schedule. See the language in the current regulations at section 2803.1-2(c)(v)(A), and compare with the proposed regulations at section 2806.14(a)(1).

Section 2807.12, For what am I liable? contains the material in the current regulations at section 2803.1-5, Liability. It contains new language in two areas: (1) the maximum limit on the amount of damages would rise from \$1 million to \$5 million, and (2) there would be no maximum limitation on strict liability resulting from damages or injuries caused by hazardous substances or as allowed by law. See the discussion under "Hazardous materials" in the GENERAL DISCUSSION section of this preamble.

Section 504(h) of FLPMA gives the Secretary of the Interior the authority to promulgate regulations specifying the extent to which right-of-way holders are liable to the United States for damages or injuries resulting from occupying or using a right-of-way grant. The provision further states that the regulation must include a maximum limitation on damages comparable to the foreseeable risks and hazards presented. Current regulations, promulgated in July 1980, set the limit at \$1 million. The proposed regulations would raise the limit to \$5 million, owing to inflation and other factors.

The liability limit does not apply to damages or injuries resulting from the discharge or release of hazardous substances as defined by CERCLA or otherwise allowed by law. The Federal Court of Appeals in *United States v. Chromalloy American Corporation*, 158 F.3d 345, 350 (5th Cir. 1998), recently cited CERCLA for the proposition that "notwithstanding any other provision of law, a private party will reimburse the United States for all costs incurred." The court held that CERCLA establishes a federal action in strict liability that allows administrators to recover damages quickly and does not place limits on liability. CERCLA preempts the liability cap established by FLPMA for hazardous substances only.

Eliminating the liability cap for hazardous substances also aligns with BLM's policy of having the polluter pay. A grant holder is fully liable for all clean-up and restoration costs, damages, fees, and penalties assessed against the holder's storing or using hazardous substances in developing, relinquishing, or using the right-of-way, regardless of fault.

Section 2807.13, What liabilities do state and local governments have? requires state and local governments or their agencies to furnish a bond to protect the liability exposure of the United States from claims by third parties.

Section 2807.20, May I assign my grant? contains the same customer service standard for processing time as that of applications for grants. This standard is adopted from BLM Manual Section 2801.35B1g2b(1) and estimates the processing time as 30 working days for applications which do not require extensive administrative work. If processing an application for assignment takes more than 60 days, BLM will notify you in writing, explain the reason for the delay, and give an estimated processing time.

Section 2807.21, What will BLM charge me to review a request for assignment? BLM proposes to charge

processing fees for assignments, based on the category of the application, rather than the flat fee currently charged. For this reason, the section contains a brief statement of the way in which we will charge fees. The fee would be charged based on the number of work hours involved in processing the assignment. Generally, the work involves adjudicating the prospective assignee's qualifications to hold the grant; visiting the project site to determine the status of the project and whether or not operations are in compliance with applicable statutes, regulations, and the terms and conditions of the grant; and preparing the necessary legal paperwork. BLM would estimate the work hours involved in these activities, consult the schedule for the appropriate number of hours, and charge accordingly. (See the discussion at the "Assignments and Renewals" section under the GENERAL DISCUSSION in this preamble.)

Section 2807.22, Can I renew my grant? The proposed section contains material from existing section 2803.6-5. Note that the reference to "temporary use permits" has been eliminated because BLM proposes to eliminate temporary use permits for rights-of-way issued under FLPMA and replace them with short-term grants. The same customer service standard for processing times would apply to applications for renewal as to new applications.

Subpart 2808, What do I need to know about trespass? This proposed subpart contains material currently found at Section 2801.3. The first section, 2808.10, *What is trespass?*, briefly describes the term. The next section, 2808.11, *What will BLM do if it determines that I am in trespass?*, describes your liability if BLM determines that you are in trespass. Liability includes monetary damages and rehabilitating, restoring, and stabilizing any damaged areas. It also describes the penalties that BLM may assess. Section 2808.12, *May I receive a grant if I am in trespass?*, states that you should apply to BLM to determine whether BLM will authorize your unauthorized use.

Part 2880

This proposed part describes provisions relating to grants issued under the Mineral Leasing Act. Holders of these grants operate and maintain oil and natural gas pipelines and related facilities which have rights-of-way through public lands. This part summarizes or cross references information found at part 2800 and highlights those provisions which are

peculiar to oil and natural gas pipeline systems and facilities. BLM intends that the summary will provide readers with enough information to determine whether they need to consult part 2800 for additional detail.

Section 2881.5, What definitions do I need to know to understand these regulations? This proposed section starts a new part and contains material relating to terms used in connection with grant holders whose grants BLM issued under the terms of the MLA. These grant holders operate and maintain oil and natural gas pipelines and related facilities which use right-of-way corridors through public lands.

The proposed regulations in this section generally retain the definitions found in the current regulations at section 2880.0-5. Major differences between the definitions in proposed section 2800.5 and this proposed section are the lands covered by the grant, "federal lands," and terms related to the oil and gas resources and the pipeline facilities for transporting them, that is, "production facilities" and "related facilities." Other definitions should be identical, however; and introductory language refers you to the definitions in part 2800.

Section 2881.7, What is the scope of these regulations? The definitions section defines the term "production facilities." Paragraph (b) clarifies that the only facilities which require a grant on an oil and gas lease are those that are both owned by a third party and are downstream of storage tanks or a metering device.

Proposed Section 2881.9, Does BLM have the authority to ask me for the information required in these regulations? describes the information collection requirements related to grants and temporary use permits connected with oil and natural gas pipelines and their related facilities. This would be a new section and would comply with the Office of Management and Budget's guidelines concerning the reporting requirements for regulations to comply with the provisions of the Paperwork Reduction Act of 1995.

Section 2881.10, Severability. This new section is a counterpart to proposed section 2801.1. It applies the legal principle of "severability" to the regulations in this part. The principle has always been true of these regulations but would be stated here for clarity and understanding.

Subpart 2882, What lands are available for MLA grants and permits? This proposed subpart is a summary of the information presented at subpart 2802. It has no counterpart in the current regulations at part 2880. BLM

uses its planning process to make decisions about land uses and restrictions on their use, including decisions on whether to allow pipeline corridors through federal lands in particular locations.

Subpart 2883, What qualifications do I need to hold an MLA grant or permit?, describes the qualifications that entities need in order to be issued and to hold a grant or permit under the Mineral Leasing Act (MLA). These qualifications are given in the MLA and repeated in the current regulations at 43 CFR 2882.2-1. The proposed regulations make no changes except for rewording the material into plainer language.

Section 2884.19, How will BLM process my application?, applies the same customer service standard to processing applications for MLA grants as for FLPMA grants. This standard states that, for Category I through III applications, BLM will process your application within 30 working days of receiving it. If BLM cannot process the application within 60 working days, a BLM field official will provide you with a written explanation of the delay and an estimated completion time for processing the application. If you have a Category IV application, BLM will provide you with a written estimate of the estimated processing time.

Subpart 2885, What are the terms and conditions of MLA right-of-way grants and permits? This subpart describes those terms and conditions which are specific to MLA grants and permits. BLM is retaining the term "temporary use permit" for MLA rights-of-way because the statute specifically refers to these instruments. Proposed section 2885.12, *What are the terms and conditions of the grant or permit?* cross references section 2805.12 for terms and conditions common to both types of grants. Proposed paragraph (b) describes those conditions specific to these types of grants and permits: restrictions on exporting domestically produced crude oil and on pipeline diameters and requirements to use the pipeline as a common carrier.

IV. Procedural Matters

The principal authors of this proposed rule are Ted Bingham, Arizona State Office; Priscilla McLain, Oregon State Office; Ron Montagna, Washington Office; and Bil Weigand, Idaho State Office, with the assistance of staff from the Regulatory Affairs Group. The authors considered the following requirements in preparing the proposed rule:

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address previously specified. BLM invites the public to review these documents by contacting us at the address listed above (see **ADDRESSES**) and suggests that anyone wishing to comment in response to the EA and FONSI do so in accordance with the *Written Comments* section above or contact us directly.

Paperwork Reduction Act

BLM has submitted an information collection package to the Office of Management and Budget for its approval of the information requirements contained in subparts 2802, 2803, 2805, 2806, 2882, 2883, and 2884 of the proposed rule under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Proposed changes in the regulations may increase processing and monitoring fees for all applicants subject to cost recovery fees for grants and could increase the number of applicants seeking a reduction of processing and monitoring fees. BLM expects the public reporting burden of these proposed regulations to be as follows: preparing Plans of Development, 40 hours per response; negotiating master agreements, 30 hours per response; providing maps of projects, one-half hour per response; providing detailed "as built" maps, 8-16 hours per response for Category I through III applications and 120 hours per response for Category IV applications; providing BLM with copies of certificates, permits, and approvals from other agencies, one-half hour per response; getting copies of location maps from state and local governments, one-half hour per response; applying for processing cost reductions, 2.5 hours per response; and providing information about multiple tenants at communication site grants, 1 hour per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We specifically request your comments on: (1) whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of BLM's estimate of burden of the proposed collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them in preparing the final rule.

Send comments regarding this information collection, including suggestions for reducing the burden, to: Office of Management and Budget, Interior Desk Officer (1004-NEW) or (1004-0060), Office of Information and Regulatory Affairs, Washington, D.C. 20503, and Information Collection Clearance Officer (WO-630), Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either beneficial or detrimental, on a substantial number of small entities.

BLM has determined under the RFA that this proposed rule would not have a significant impact on a substantial number of small entities. Current data collection categories do not allow us to determine who among the grant holders is a small business; therefore, we have no accurate data on the number of small entities affected by these regulations. The proposed processing and monitoring fees would increase for all applicants and grant holders, including small businesses. This fee increase may increase the number of applicants seeking reductions of recoverable costs, including small businesses.

In the past, small entities may have qualified for reductions under the criteria. Small businesses which would be adversely affected by the increased processing and monitoring fees could apply for reductions on a case-by-case basis; and, in those cases where they qualified, could get them. Increases in the categories most likely to affect small

businesses—Categories I and II—are 83 percent and 30 percent respectively (processing costs) and 60 percent and 73 percent (monitoring costs) for FLPMA applications and 60 percent and 5 percent (processing costs) and 280 percent and 200 percent (monitoring costs) for MLA applications respectively. Even if, under the proposed rules, small entities do not qualify for exemptions, the fee increases for the categories for which they would most likely apply are the lowest processing fees assessed: \$230 and \$390 (processing costs) and \$80 and \$130 (monitoring costs) for FLPMA applications and \$200 and \$290 (processing costs) and \$70 and \$100 (monitoring costs) for MLA applications.

BLM considered eliminating the current automatic exemptions from paying FLPMA processing and monitoring costs for all governmental entities—federal, state, and local—as a means of recovering more of the costs or processing applications and monitoring issued grants. Analyses of applicants and right-of-way holders indicate, however, that state and local governments constitute in total less than 10 percent of all current applicants. Based on economic return alone, eliminating the automatic exemption for these entities is not warranted. Further, many local governments that are affected by BLM regulations qualify as small entities under the RFA. Eliminating the automatic exemption for local governments could increase their operating costs by requiring them to apply for a reduction of processing and monitoring costs without any corresponding overall public benefit.

BLM therefore proposes to retain the automatic exemption for state and local governments but to charge federal agencies for cost recovery if those federal agencies are not exempted by law from paying processing and monitoring fees. We propose to eliminate the automatic exemption for federal agencies because many already pay these costs through interagency agreements with BLM and because there would be greater uniformity of charges to the federal agencies.

Unfunded Mandates Reform Act

The proposed rule will not result in any unfunded mandate to any state, local or tribal government in the aggregate, or to the private sector, of \$100 million or more in any one year. The proposed regulations would pose no additional burdens on these governmental entities, as the exemptions from paying processing and monitoring fees for state and local

governments would remain, and so would the procedures for processing applications and monitoring grants.

Executive Order 12612

The proposed rule will not have a substantial direct effect on 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. The elements which this rule proposes to change—principally, increased processing and monitoring costs—do not have sufficient federalism implications to warrant preparing a federalism assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of EO 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property uses from the definition of “policies that have takings implications.” The proposed rule was written with the intent not to increase the regulatory burden on the regulated public. The regulations only apply to public and federal lands over which BLM has jurisdiction and do not change the terms and conditions of existing grants and temporary use permits. Therefore, the proposed rule will impair no private property rights. The Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this EO.

Executive Order 12866

The proposed rule would not cause economic impacts of \$100 million or more per year, does not propose any novel policy changes, cause significant sectoral impacts, or conflict with any other regulations. Although the proposed rule is not “significant,” as defined under EO 12866, the rule is important because it provides the public with information about a needed and wanted service: the use of public lands for right-of-way purposes, when there is no choice as to the provider, BLM. At a maximum, the proposed changes have an economic impact of approximately \$12 million annually, as described in this section.

Section 304 of the Federal Land Policy and Management Act allows the Secretary of the Interior to charge “reasonable filing and service fees and reasonable charges and commissions with respect to applications and other

documents relating to the public lands.” Section 28(f) of the Mineral Leasing Act requires applicants for oil and gas pipeline rights-of-way to reimburse the United States for the administrative and other costs, i.e., “actual costs,” of monitoring activities under their grants.

The estimated maximum increase in fees generated by the proposed regulations is \$2.7 million annually. Entities adversely affected by these increases may qualify for fee reductions, in some cases to no fees. Those entities already granted fee reductions will retain their reductions for future applications. Those entities exempted by law from paying processing and monitoring fees will continue to be exempted. For those having to pay, the proposed processing fee increases range from 6 to 114 percent (\$15 to \$400), with an overall average of \$148. The proposed monitoring fee increases range from 60 to 313 percent (\$30 to \$265), with an overall average of \$81.

On a percentage basis, the monitoring fee increases proposed are higher than the proposed processing fee increases. The higher percentage increase results from several factors: (1) when BLM established the current monitoring fees, it did not have accurate data about the costs of constructing, operating, and terminating facilities within right-of-way grants; and (2) the policy that BLM uses to charge for monitoring fees does not reflect changes in resources present in the right-of-way over time. For example, BLM’s policy is that the processing category of the application determines the category of the monitoring fee. An application that required minimal processing time might require considerably more time to monitor if an endangered species moved into the grant area. Using the same processing and monitoring fee categories would result in a revenue loss. We are therefore requesting comments on whether to continue the practice of having the processing category determine the monitoring fee category.

Statutory language in the Omnibus Parks and Land Management Act of 1996 could adversely affect the rent revenue by increasing the number of facilities exempt from paying rent. Section 504(g) of the Federal Land Policy and Management Act (FLPMA) specifies that rents for rights-of-way are equivalent to the fair market value of the grant and that the Secretary of the Interior may charge less rent to federal agencies, state and local governments, and non-profit associations and corporations not owned by profit-making associations, especially those non-profit associations financed with funds from

the Rural Electrification Act of 1936, as amended (REA). The Omnibus Act changed FLPMA's statutory language from "financed pursuant to the Rural Electrification Act of 1936, as amended," to "eligible for financing pursuant to the Rural Electrification Act of 1936, as amended, determined without regard to any application requirement under the Act."

The impact of this change could range economically from minimal to the loss of BLM's entire annual rental revenue, \$9.5 million in fiscal year 1998, depending on what "eligible for financing pursuant to the Rural Electrification Act" means. Unlike processing and monitoring fees, which return to the BLM offices administering the right-of-way program, rent payments are deposited into the general revenues of the U.S. Treasury. Their loss would deprive the federal government and the general public of money which could be used for public purposes. BLM has adopted the position of Chairman Don Young of the Committee on Natural Resources on the meaning of the phrase "eligible for REA financing." Chairman Young stated in a letter to the U.S. Forest Service that the intent of the language was to exempt all not-for-profit rural electric and telephone cooperatives from paying rent on their right-of-way grants, whether or not these cooperatives had built their facilities with financing from the Rural Utility Service. (The Rural Utility Service is the federal agency that implements the REA.) Chairman Young did not intend that large, for-profit corporations, which build facilities eligible for REA financing, be able to get rent reductions. (See the preamble discussion at section 2806.11, Are there exceptions to paying rents?, for a discussion of this point.)

Other proposed regulatory revisions clarify existing right-of-way regulations pertaining to determining rents for communication site rights-of-way but have no direct economic effects. The clarifications do not propose new or novel policies relating to communication site rights-of-way or increase the rent amounts.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated?; (2) Does the proposed rule contain technical language or jargon that interferes with its clarity?; (3) Does the format of the proposed rule (grouping and order of sections, use of headings,

paragraphing, etc.) aid or reduce its clarity?; (4) Would the rule be easier to understand if it were divided into more but shorter sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for instance, § 2803.10, Who can hold a grant?); and (5) Is the description of the proposed rule in the "supplementary information" section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C St., NW, Washington, D.C. 20240. You may also e-mail the comments to: Execsec@ios.doi.gov.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of the order.

List of Subjects

43 CFR Part 2800

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

43 CFR Part 2880

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

Dated: May 4, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management

For the reasons set out in the preamble and under the authority of the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*; the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*; and the Secretary's enforcement powers, BLM proposes to revise parts 2800 and 2880 of Title 43 of the Code of Federal Regulations as follows:

1. Revise part 2800 to read as follows:

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2801—What General Information Do I Need To Know About the Right-of-Way Program?

Sec.

2801.5 What definitions do I need to know to understand these regulations?

2801.7 What is the scope of these regulations?

2801.8 Are any rights-of-way outside the scope of these regulations?

2801.9 Does BLM have the authority to ask me for the information required in these regulations?

2801.10 Severability

Subpart 2802—What Lands Are Available for Right-of-Way Grants?

2802.10 What lands are available for right-of-way grants?

2802.11 How does BLM designate corridors?

Subpart 2803—What Qualifications Must I Meet To Get a Right-of-Way Grant?

2803.10 Who can hold a grant?

2803.11 Must I submit proof of qualifications with my application?

2803.12 Can other people act in my behalf?

2803.13 What happens to my grant if I die?

Subpart 2804—How Do I Apply for a Right-of-Way Grant?

2804.10 What should I do before I file my application?

2804.11 Where do I file my application?

2804.12 What information do I need to submit in my application?

2804.13 Will BLM keep my information confidential?

2804.14 Is there a filing fee for my application?

2804.15 Am I exempt from paying cost recovery charges?

2804.16 How will BLM process my Category IV application?

2804.17 What is a master agreement and what does it contain?

2804.18 Can BLM reduce my reimbursement costs?

2804.19 What happens if there are two or more competing applications for the same facility or system?

2804.20 How will BLM process my application?

2804.21 Can BLM reject my application?

2804.22 Do I owe any money if BLM rejects my application or if I withdraw my application?

2804.23 Do I always have to submit an application for a right-of-way to receive a grant?

2804.24 Do I have to pay the costs of processing BLM rights-of-way associated with Federal Energy Regulatory Commission (FERC) licenses?

2804.25 What can I do on the proposed right-of-way while BLM is processing my application?

Subpart 2805—What Terms and Conditions Do Grants Contain?

2805.10 What does a grant contain?

2805.11 When is the grant effective?

2805.12 What rights does the grant convey?

2805.13 What rights does the United States retain?

2805.14 What are monitoring fees?

2805.15 When do I pay monitoring costs?

Subpart 2806—What Information Do I Need To Know About Rents for Right-of-Way Grants?

- 2806.5 What definitions do I need to know to understand these regulations?
- 2806.10 Must I pay rent for using my right-of-way?
- 2806.11 Are there exceptions to paying rents?
- 2806.12 Can my rent be reduced?
- 2806.13 What happens if I default on my rent payment?
- 2806.14 What are the rent costs for linear rights-of-way?
- 2806.15 Does the linear rent schedule ever change?
- 2806.16 How will BLM calculate my rent for linear rights-of-way covered by the schedule?
- 2806.17 What are the rent costs for communication facilities or uses?
- 2806.18 How does BLM calculate rent for communication uses?
- 2806.19 How will BLM determine the rent for a single-use communication facility?
- 2806.20 How will BLM calculate the rent for a multiple use communication facility?
- 2806.21 How will BLM calculate rent for private mobile radio service (PMRS), internal microwave and "other" category uses?
- 2806.22 How will BLM authorize and calculate rent for customers and tenants who choose to have their own right-of-way facility to be used in common with an existing right-of-way of the owner of a communication facility that they use or occupy?
- 2806.23 How will BLM calculate rents as to "shared facilities" or for multiple facilities that are under one authorization?
- 2806.24 How does BLM calculate rent for a facility manager use?
- 2806.25 How does BLM calculate rent for ancillary uses?
- 2806.26 How does BLM calculate rent for uses within federally owned facilities?
- 2806.27 What happens if converting to the rent schedule causes a \$1,000 or more increase in my rent?
- 2806.28 What are the rent costs for other rights-of-way and uses?

Subpart 2807—What Can I do on the Right-of-Way Once BLM Issues the Grant?

- 2807.10 When can I start activities under my grant?
- 2807.11 When must I contact BLM?
- 2807.12 For what am I liable?
- 2807.13 What liabilities do state and local governments have?
- 2807.14 What happens if BLM transfers management of the land on which my grant is located to another federal agency or outside of public ownership?
- 2807.15 Can BLM temporarily suspend my activities to protect public health and safety or the environment without providing an administrative hearing?
- 2807.16 Can BLM terminate or suspend my grant?
- 2807.17 How will I know that BLM intends to suspend or terminate my grant?

- 2807.18 What happens to any improvements on my grant when it terminates?
- 2807.19 When must I amend my application or grant?
- 2807.20 May I assign my grant?
- 2807.21 What will BLM charge to review a request for assignment?
- 2807.22 Can I renew my grant?

Subpart 2808—What Do I Need To Know About Trespass?

- 2808.10 What is trespass?
- 2808.11 What will BLM do if it determines that I am in trespass?
- 2808.12 May my trespass use be authorized?

Subpart 2809—Are There any Special Requirements Relating to Grants Issued to Federal Agencies?

- 2809.10 Can federal agencies get a right-of-way grant?
- 2809.11 What will the grant contain?
- 2809.12 Can BLM suspend or terminate the grant?

Authority: 43 U.S.C. 1733, 1734(b), 1740 and 1761—1762.

Subpart 2801—What General Information Do I Need To Know About the Right-of-Way Program?**§ 2801.5 What definitions do I need to know to understand these regulations?**

As used in this part, the term:

- (a) *Act* means the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*
- (b) *Casual use* means activities and practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources, or improvements, and which do not require a right-of-way grant under this title. *Example:* activities which do not involve the use of explosives or heavy equipment or vehicle movement, except over already established roads and trails.
- (c) *Designated right-of-way corridor* means a linear or areal parcel of land identified by law, Secretarial order, the land-use planning process or other management decision, as being a preferred location for existing and future rights-of-way and suitable to accommodate more than one right-of-way.
- (d) *Discharge* has the meaning found at 33 U.S.C. 1321(a)(2) of the Clean Water Act.
- (e) *Facility* means an improvement constructed or to be constructed or used or to be used within a right-of-way grant. For purposes of communication site rights-of-way or uses, facility means the building, tower and/or other related incidental improvements authorized under terms of the right-of-way grant or lease.

(f) *Field examination* generally means a one-day trip, in one vehicle, from the office to the site of the right-of-way proposal, regardless of the number of specialists traveling in the vehicle. When operational efficiency dictates separate trips, BLM will include the efficient use of hourly time required to verify or collect the data needed to process the application, or monitor the grant.

(g) *Grant* means any authorization or instrument (easement, lease, license, or permit) issued by BLM pursuant to Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.*, or the Mineral Leasing Act, 30 U.S.C. 185.

(h) *Hazardous material* means:

(1) Any substance or material defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C. 9601(14);

(2) 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 *et seq.*;

(3) 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 *et seq.*; or

(4) other substances defined and regulated as "hazardous" by applicable federal, state, or local law.

(i) *Holder* means any entity with a right-of-way authorization from BLM.

(j) *Project* means the transportation or other system which the right-of-way authorizes.

(k) *Public lands* means any land or 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:

(1) Those lands located on the Outer Continental Shelf, and

(2) Lands held in trust for the benefit of Indians, Aleuts and Eskimos.

(l) *Release* has the meaning found at 42 U.S.C. 9601(22) of the Comprehensive Environmental Response, Compensation, and Liability Act.

(m) *Right-of-way* means the public lands authorized to be used or occupied by a right-of-way grant.

(n) *Temporary use* means a short-term right-of-way grant that authorizes a revocable, nonpossessory privilege to use specified public lands in connection with constructing, operating, maintaining or terminating an associated right-of-way project.

(o) *Transportation and utility corridor* means a parcel of land, without fixed

limits or boundaries, that is used as the location for one or more transportation or utility rights-of-way.

(p) *Unnecessary and undue degradation* means surface disturbance that is greater than that which would occur when the same or a similar activity is being done by a prudent person in a usual, customary, and proficient manner that considers the effects of the activity on other resources and land uses outside the area of the activity. This disturbance may be either willful or nonwillful.

§ 2801.7 What is the scope of these regulations?

The regulations in this part apply to:

(a) Issuing, administering, amending, assigning, renewing, and terminating right-of-way grants for necessary transportation or other systems and facilities which require the use of public lands identified in 43 U.S.C. 1761, and which are in the public interest;

(b) Federal agency applications for transporting oil, natural gas, synthetic liquids, or gaseous fuels, and any refined products produced from them; and

(c) Rights-of-way issued on or before October 21, 1976, under then existing statutory authority, to the extent that these regulations do not diminish or reduce any rights conferred by the grant or the statute under which they were issued. Where there is a reduction, the grant or enabling statute will apply instead of these regulations.

§ 2801.8 Are any rights-of-way outside the scope of these regulations?

Yes. The regulations in this part do not apply to right-of-way grants for:

(a) Federal Aid highways, for which Federal Highway Administration procedures apply;

(b) Reciprocal and cost share road use agreements, for which subpart 2812 of this chapter applies;

(c) Lands within wilderness areas, although some uses may be authorized under parts 2920 and 8560 of this chapter; and

(d) Oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these materials, unless applied for by Federal agencies, for which part 2880 of this chapter applies.

§ 2801.9 Does BLM have the authority to ask me for the information required in these regulations?

(a) Yes. The Office of Management and Budget has approved the information collection requirements contained in Part 2800 under 44 U.S.C. 3507 and has assigned them clearance numbers of 1004-0060 (for Form SF-299) and 1004-_____ for the remainder

of the requirements. BLM uses this information to determine if using the public lands for right-of-way grants is appropriate. You must respond to obtain a benefit.

(b) BLM estimates that the public reporting burden for this information is as follows: 2 hours per response to fill out Form SF-299; 16 hours per response to prepare Plans of Development; 30 hours per response to negotiate master agreements; one-half hour per response to prepare a project map; one-half hour per response to supply BLM with copies of approved certificates and permits from other agencies and location maps from state and local governments; 2.5 hours per response to apply for cost reductions; and one hour per response to supply information about tenants at multiple use communication sites. These estimates include the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

(c) Send comments regarding this burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D. C. 20240.

§ 2801.10 Severability.

If any provisions of the rules in this part or their applicability to any person or circumstances are held invalid, the remainder of these rules and their applicability to other people or circumstances shall not be affected.

Subpart 2802—What Lands Are Available for FLPMA Rights-of-Way?

§ 2802.10 What lands are available for FLPMA rights-of-way?

(a) BLM may grant new rights-of-way on lands under its jurisdiction, except where they are specifically excluded or restricted by statute, regulation, planning, environmental, or other resource concerns.

(b) BLM may require common use of a right-of-way and may require, to the extent practical, location of new rights-of-way within existing or designated corridors. BLM designates corridors, as well as exclusion or avoidance areas, through the land-use planning process described at part 1610 of this chapter, and informs the public of designated corridors by appropriate means.

(c) You should contact the BLM office nearest to you to determine whether or not the land you want to use is available and to begin discussions about any application you may need to file.

§ 2802.11 How does BLM designate corridors?

BLM determines the locations and boundaries of right-of-way corridors after reviewing:

(a) Federal, state and local land-use plans, and applicable federal and state laws;

(b) Environmental impacts on natural and cultural resources;

(c) Physical effects and constraints on placing corridors due to geology, hydrology, meteorology, soil, or land forms;

(d) Costs of construction, operation and maintenance and costs of modifying or relocating existing facilities in a proposed corridor, i.e., the economic efficiency of placing a right-of-way corridor;

(e) Risks to national security;

(f) Potential health and safety hazards imposed on the public by facilities or activities located within the right-of-way corridor;

(g) Social and economic impacts of the corridor on public land users, adjacent landowners, and other groups or individuals;

(h) Transportation and utility corridor studies developed by user groups;

(i) Engineering and technological compatibility of proposed and existing facilities; and

(j) Existing transportation and utility corridors that are capable of accommodating additional compatible uses without further review.

Subpart 2803—What Qualifications Must I Meet To Get a Right-of-Way Grant?

§ 2803.10 Who can hold a grant?

You may hold a grant if you are an individual, group, association, corporation, partnership, or similar entity and if you:

(a) Are legally capable of holding an interest in real estate, and

(b) Can show that you are economically and technically capable of constructing, operating, and maintaining the proposed facilities.

§ 2803.11 Must I submit proof of my qualifications with my application?

Yes. If you are a partnership, corporation, association, or other legal entity, you must submit:

(a) Copies of the formal documents creating the relationship, such as papers of incorporation, and

(b) Evidence that the party signing the application has the authority to bind the applicant.

§ 2803.12 Can other people act on my behalf?

Only to the extent that you have formally, in writing, and legally given the person authority to do so.

§ 2803.13 What happens to my grant if I die?

It depends on the situation. If your grant contains a provision for this situation, the grant provision applies. Otherwise, the new owner (heir) must apply to BLM for an assignment of the grant, and BLM must approve the assignment. (See § 2807.19)

Subpart 2804—How Do I Apply for a Right-of-Way Grant?**§ 2804.10 What should I do before I file my application?**

Before filing an application with BLM, you are strongly encouraged to visit or telephone the BLM field office having jurisdiction over the lands affected by your application to identify potential constraints, determine whether or not the lands are located within a designated or existing right-of-way corridor and tentatively schedule the processing of your application. BLM may share this information with federal, state, and local government agencies to ensure that these agencies are aware of any authorizations you may need from them and that effective coordinated planning is initiated as soon as possible.

§ 2804.11 Where do I file my application?

(a) File the application for a right-of-way grant in the BLM field office having jurisdiction over the lands affected by your application.

(b) If your application affects more than one BLM administrative unit, you may file at any BLM office having jurisdiction over any part of the project. BLM will notify you where to direct subsequent communications.

§ 2804.12 What information do I need to submit in my application?

(a) File your application on Form SF-299, available from any BLM office, and fill in the required information. On the form, give your name and address and the name and address of any authorized agent and completely describe the project, including:

- (1) The scope of the facilities;
- (2) The estimated schedule for constructing and maintaining the project;
- (3) The estimated life of the project and the construction and reclamation techniques proposed;
- (4) A map of the project, showing its approximate location and existing improvements adjacent to the proposal;

(5) A statement of your financial and technical capability to construct, operate, maintain, and terminate the project;

(6) Any plans, contracts, or agreements concerning your use of the right-of-way that might affect competition; and

(7) Your certification that you are of legal age and authorized to do business in the State and that you have submitted correct information to the best of your knowledge.

(b) If you are a business entity, you must disclose the following information:

- (1) The name and address of each participant in the business,
 - (2) The name and address of each shareholder owning 3 percent or more of the voting shares of the business,
 - (3) The name and address of each affiliate of the business,
 - (4) The number of shares and the percentage of any class of voting stock of any affiliate controlled by the entity, and
 - (5) The number of shares and the percentage of any class of voting stock of any affiliate that controls the entity.
- (c) BLM may require you to submit additional information at any time while processing your application.
- (d) If you are a federal oil and gas lessee or operator, you may include your right-of-way needs with your application for permit to drill or other sundry notice required under part 3100 of this title.

(e) If you are filing with another federal agency for a license, certificate of public convenience and necessity, or other authorization for a project involving a right-of-way on public lands, simultaneously file an application with BLM for a grant. Include a copy or reference all of the information you have filed with the other federal agency.

§ 2804.13 Will BLM keep my information confidential?

BLM will keep any information that you mark as "confidential" or "proprietary" confidential to the extent allowed under the Freedom of Information Act (5 U.S.C. 552).

§ 2804.14 Is there a filing fee for my application?

(a) Yes. Unless you apply for and receive a reduction (see § 2804.18 of this subpart) or are exempt under § 2804.15 of this subpart, you must reimburse BLM for the reasonable costs of processing your application before BLM incurs them. These costs are not refundable and are based on an estimate of the amount of work that BLM must do to process your application.

(b) Processing costs are based on categories, defined as follows:

(1) *Category I.* Either BLM has on hand or you supply the data necessary to process your application; neither a land-use plan amendment nor a field examination is required; and estimated processing time is no more than 24 work hours for all BLM personnel involved in the application review. *Cost:* Refer to the FLPMA fee schedule, available from any BLM field office.

(2) *Category II.* Same as I, plus one field examination is needed to verify existing data; and the estimated processing time, including the time required to conduct the field exam, falls between 25 and 36 work hours for all BLM personnel involved in the application review. *Cost:* Refer to the FLPMA fee schedule, available from any BLM field office.

(3) *Category III.* Same as I, plus two field examinations are needed to verify existing data; and the estimated processing time, including the time required to conduct the field exams, falls between 37 and 50 work hours for all BLM personnel involved in the application review. *Cost:* Refer to the FLPMA fee schedule, available from any BLM field office.

(4) *Category IV.* Original data must be collected; a plan amendment may be needed; two or more field examinations are needed; and estimated processing time, including the time required for the field exams, is more than 50 work hours for all BLM personnel involved in the application review. *Cost:* Full reasonable costs.

(5) *Master agreement.* Instead of one of categories I through IV, you may enter into an agreement with BLM to fully reimburse BLM for all reasonable processing costs. The agreement should be written to include any applications you may subsequently file within the same area.

(c) The cost for the first three categories is contained in a schedule maintained by BLM. BLM updates these schedules each calendar year, based on the previous year's change in the Implicit Price Deflator-Gross Domestic Product, as measured second quarter to second quarter. BLM will round these changes up to the nearest dollar. You may obtain a copy of the revised schedule from any BLM State or field office or by writing: Director, BLM, 1849 C St., N.W., Mail Stop 1000LS, Washington, D.C. 20240. BLM will post the schedule on the BLM Homepage on the Internet, <http://www.blm.gov>.

(d) After an initial review of your application, BLM will notify you of the category into which your application fits; you must submit the payment

before BLM begins processing your application. For Category IV and master agreement applications, see § 2804.16(b) of this subpart. Your signature on a cost recovery master agreement constitutes your agreement with the category decision. If you disagree with the category that BLM has determined for your application, you may appeal the decision to the Interior Board of Land Appeals under part 4 of this title.

(1) If you appeal a Category I through III determination, BLM will process your application while the appeal is pending, if you have submitted the processing fee. You will get a refund or adjustment of your application fee upon resolution of the appeal, if IBLA finds in your favor.

(2) If you appeal a Category IV determination, BLM will not process your application further until the appeal is resolved.

(e) In processing your application, BLM may determine at any time that the application requires preparing an environmental impact statement. BLM will then send you a decision changing your cost recovery category to Category IV. You may appeal the decision under part 4 of this title. BLM will make no other changes in category determination.

§ 2804.15 Am I exempt from paying cost recovery charges?

You are exempt from paying processing and monitoring fees only if:

(a) You are a state or local government or an agency of such a government, when BLM issues the grant for governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt; or

(b) You participate in a cost-share road or reciprocal right-of-way agreement.

§ 2804.16 How will BLM process my Category IV application?

(a) BLM will:

(1) Determine the issues to be analyzed under NEPA;

(2) Prepare a preliminary work plan;

(3) Develop a preliminary financial plan, which estimates the reasonable cost of processing your application;

(4) Discuss with you the preliminary plans and data, the availability of funds, your options for the timing of paying reimbursable costs and what financial information you need to submit. You may conduct the studies that BLM needs to process your application, but you must do the work to BLM standards. BLM will make the final

determinations and conclusions arising from the studies; and

(5) Develop the final scoping, work and financial plan which reflects any work you have agreed to do. BLM will also complete the final estimates of the amount of the costs you will need to reimburse, including any reduction granted to you.

(b) BLM will periodically estimate processing costs for a specific work period and notify you of the amount due. If your payment exceeds the costs that BLM incurred for the period, BLM will either adjust the next billing to reflect the excess or refund you the excess under the provisions of 43 U.S.C. 1734.

§ 2804.17 What is a cost recovery master agreement and what does it contain?

(a) If your proposal involves a project that would require multiple approvals from BLM, you may want to enter into a cost recovery master agreement.

(b) For BLM to approve the agreement, its contents must:

(1) Describe the geographical area covered by the agreement and the scope of the activity planned;

(2) Include a work plan, updated periodically as appropriate, and approved by you and BLM;

(3) Contain a preliminary cost estimate for processing the application and completing the project;

(4) Specify that you will be bound by all regulations otherwise applicable to a Category IV determination;

(5) Describe the method of periodic billing, payment and auditing;

(6) State whether the agreement will bind future applications in the same geographic area that are not part of the same project;

(7) Explain how monitoring will be performed and how monitoring costs will be recovered;

(8) Contain specific conditions for terminating the agreement; and

(9) Contain any other information that BLM needs to process the application.

(c) If you sign a master agreement, you waive your right to request a reduction of cost reimbursement charges. (See § 2804.18.)

§ 2804.18 Can BLM reduce my reimbursement costs?

Yes, in limited circumstances. (See paragraphs (a) and (b) of this section.) You may submit a written request for reduction of the processing costs to the BLM field office having jurisdiction over the lands covered by your application. Submitting your reduction request with the application will expedite its handling. BLM may require you to submit additional information

needed to support your request. While we consider your written request, BLM will not process your application.

(a) *Category IV Applications, Reasonability.* The State Director will apply the reasonability criteria of FLPMA, 43 U.S.C. 1734(b), in determining the amount you owe. You may submit your analysis of the following information, if you believe one or more of the criteria apply:

(1) Reasonable costs to BLM of processing a right-of-way application and of monitoring construction, operation and termination of a facility authorized by the right-of-way grant;

(2) Monetary value of the rights and privileges you seek, that is, the cost of providing the end result through the next least costly method;

(3) Costs incurred for the benefit of the general public interest, that is, the costs for studies and data collection that have value to the United States or the general public apart from processing the application;

(4) BLM's ability to process an application with maximum efficiency and minimum waste and effort; and

(5) Any tangible improvements, such as roads, trails and recreation facilities, with significant public value that are expected in connection with constructing and operating the project.

(b) *Other considerations.* The State Director may, at his or her discretion, reduce your payment of reimbursable costs in any category for any of the reasons listed in this paragraph. You may submit information showing how your situation meets one or more of these factors:

(1) Hardship conditions, that is, payment of all reasonable costs would:

(i) Result in financial hardship to your small business, and you would receive little value from your grant as compared to the costs of processing your application, or

(ii) Create such financial hardship so as to prevent your use and enjoyment of your private right-of-way for a non-commercial purpose.

(2) The costs of processing the application grossly exceed the costs of constructing the project;

(3) A major portion of the processing costs results from issues not related to the actual right-of-way grant;

(4) You are a non-profit organization, corporation, or association which is not controlled by or a subsidiary of a profit-making enterprise, and

(i) The studies undertaken in connection with the processing of the application have a public benefit, or

(ii) The facility or project will provide a benefit or special service to the general public or to a program of the Secretary;

(5) You need a right-of-way to construct a facility to prevent or mitigate damages to any lands or property or to mitigate hazards or danger to public health and safety resulting from an act of God, an act of war or negligence of the United States;

(6) You have a grant and need to relocate a facility on it to an area outside the existing grant to comply with public health and safety and environmental protection laws and regulations which were not in effect at the time your original grant was issued;

(7) You have a grant and need to secure a new grant to relocate facilities which have to be moved because a federal agency or federally funded project needs the lands, if the United States does not refund costs associated with your relocation; or

(8) For whatever other reason, collecting processing fees would be inconsistent with prudent and appropriate management of public lands and with your equitable interests.

(c) *Action on request.* BLM will notify you in writing of what you owe after considering your analysis.

(1) If you disagree with BLM's determination, you may appeal it under part 4 of this title. BLM will take no action on your application while the appeal is pending.

(2) If BLM reduces the cost reimbursement, we will determine the actual amount of the reduction and adjust your bills accordingly.

(d) *Restriction on reduction.* If no funds are available to process your application, BLM may not process your application until funds are available.

§ 2804.19 What happens if there are two or more competing applications for the same facility or system?

If this happens,

(a) *Category I through III:* You must reimburse BLM for processing costs as if the other application or applications had not been filed.

(b) *Category IV:* You are responsible for the costs identified with your application. If BLM cannot readily separate costs, such as costs associated with preparing environmental analyses, you and competing applicants must pay an equal share or a proportion agreed to in writing among all applicants and BLM. If you agree to share the cost of processing your application and that of a competing applicant, and the competitor fails to pay the agreed upon amount, you will be liable for the entire amount due. BLM will not do any work without the advance payment.

§ 2804.20 How will BLM process my application?

(a) BLM will notify you in writing when it receives your application and your cost reimbursement payment described at § 2804.14 of this subpart.

(b) BLM may require you to submit additional information necessary to review the application. This information may include a detailed construction, operation, rehabilitation, and environmental protection plan, *i.e.*, a "Plan of Development," and any needed cultural resource surveys or inventories for threatened or endangered species. If BLM needs more information, we will request this information in writing. BLM will give you written notification of any deficiencies in the information you provided and give you the opportunity to file the additional information. BLM will also notify you of any applications for grants which involve all or part of the lands you applied for.

(c) BLM will process your application within 30 working days of receiving it if it is a Category I through III application that qualifies for a categorical exclusion or requires an environmental assessment. If it is a Category IV application or one requiring an environmental impact statement, BLM will notify you in writing of the estimated processing time for your application. If processing any category of application will take longer than 60 working days, BLM will notify you and provide you with an explanation of the delay and an estimate of the processing time.

(d) Before issuing a grant, BLM will:

(1) Complete an environmental analysis, as required by 40 CFR part 1501;

(2) Determine whether or not your proposed use complies with applicable Federal and State laws and local ordinances;

(3) Determine whether it is in the public interest to require you to grant the United States an equivalent right-of-way across lands that you own;

(4) Consult as necessary with other governmental entities;

(5) Hold public meetings if sufficient public interest exists to warrant their time and expense. BLM will publish a notice in the **Federal Register** or a local newspaper if we hold any public meetings;

(6) Take any other action necessary to fully evaluate and decide whether to approve or deny your application.

(e) If approved, the decision may:

(1) Include any terms, conditions that BLM determines to be in the public interest. This may include modifying your proposed use, changing the route

or location of the facilities, and other stipulations.

(2) Prevent your use of the right-of-way until you have an approved Plan of Development and BLM has issued a Notice to Proceed.

(3) Impose a specific term for the grant. Each grant that BLM issues for 20 years or more will contain a provision requiring periodic review at the end of the twentieth year and at 10-year intervals thereafter. BLM may change the terms and conditions of the grant as a result of these reviews.

§ 2804.21 Can BLM reject my application?

Yes. BLM may reject your application if:

(a) The proposed grant is inconsistent with the purpose for which the public lands are being managed;

(b) The proposed grant would not be in the public interest;

(c) You are not qualified to hold a grant;

(d) Issuing the grant would be inconsistent with the Act or other applicable laws;

(e) You do not have or cannot demonstrate the technical or financial capability to operate facilities located with the grant; or

(f) You do not adequately comply with a deficiency notice (see § 2804.19(b) of this subpart).

§ 2804.22 Do I owe any money if BLM rejects my application or if I withdraw my application?

Yes. You owe only the initial processing fee, unless you have a Category IV application or have entered into a master agreement. Then, the following conditions apply:

(a) If BLM rejects your application, you are liable for all reasonable costs that BLM incurred in processing it. The money you have not paid is due within 30 days of your receiving a bill for the amount due.

(b) If you withdraw your application before BLM issues a grant, you are liable for all the reasonable processing costs and for the reasonable costs of terminating your application. Any money you have not paid is due within 30 days of your receiving a bill for the amount due.

§ 2804.23 Do I always have to submit an application for a right-of-way to receive a grant?

(a) No. Where competitive interest exists, BLM may offer grants and set rent through a competitive bid process. BLM will describe the procedures for a competitive bid through a bid announcement published in a newspaper of general circulation in the

area affected by the potential right-of-way.

(b) Oil and gas lessees or operators may include right-of-way needs with their Applications for Permits to Drill or similar surface use requirements under the regulations at part 3100 of this chapter.

§ 2804.24 Do I have to pay the costs of processing BLM rights-of-way associated with Federal Energy Regulatory Commission (FERC) licenses?

Yes. You must reimburse BLM for the costs which it incurs in processing your application. BLM will bill you for this service. FERC will bill you for costs incurred in processing the FERC license or relicense. BLM will determine the amount that you have to pay by using the cost recovery categories described at § 2804.14 of this subpart.

§ 2804.25 What can I do on the proposed right-of-way while BLM is processing my application?

You may conduct casual use activities on the lands covered by the application, as may any other member of the public. For any activities that are not casual use, you must get prior approval from BLM.

Subpart 2805—What Terms and Conditions Do Grants Contain?

§ 2805.10 What does a grant contain?

The grant states what your rights are on the lands subject to the grant and contains information about:

(a) *What lands you can use or occupy.* The lands may or may not correspond to those you applied for. BLM will limit the grant to those lands which the BLM determines:

- (1) Will be occupied by the authorized facilities;
- (2) Are necessary for constructing, operating, maintaining, and terminating the authorized facilities;
- (3) Are necessary to protect the public health and safety; and
- (4) Will not unnecessarily damage the environment.

(b) *How long you can use the right-of-way.* Each grant will state the length of time that you are authorized to use the right-of-way. BLM will consider the following factors in establishing a reasonable time limit:

- (1) The public purpose served,
- (2) Cost and useful life of the facility, and
- (3) Time limitations imposed by licenses or permits required by other federal agencies and state or local governments.

(c) *Terms and conditions of use.* If you accept a grant, you must agree to comply with and be bound by certain terms and conditions. You must:

(1) Comply with all local, state, and federal laws and regulations applicable to the authorized use, construction, maintenance, and termination of the project and existing at the time the BLM issues the grant and those state, local, and federal laws and regulations subsequently enacted, issued, or amended during the term of the grant;

(2) Rebuild and repair roads, fences, and established trails destroyed or damaged by constructing, operating, maintaining, or terminating the project and build and maintain suitable crossings for existing roads and significant trails that intersect the project;

(3) Do everything reasonable, on your own or at BLM's request, to prevent and suppress fires on or in the immediate vicinity of the right-of-way area;

(4) Not discriminate against any employee or applicant for employment associated with the authorized use because of race, creed, color, sex, or national origin and require subcontractors to refrain from discrimination also;

(5) Pay rentals and reimbursable costs as described at §§ 2806.10 and 2805.14;

(6) Certify that you have a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property resulting from or related to your activities on the right-of-way. Coverage includes liabilities for damages or injuries resulting from actual or threatened releases or discharges of hazardous materials. Based on changes in conditions or risk and your record of compliance, BLM may require a bond or an increase or decrease in an existing bond at any time during the term of the grant;

(7) Assume full liability if third parties are injured or damages occur to property on or around the grant area (see § 2807.12);

(8) Comply with project-specific terms and conditions, including requirements to:

(i) Restore, revegetate, and curtail erosion or any other rehabilitation measure determined necessary;

(ii) Ensure that activities in connection with the grant comply with applicable air and water quality standards or related facility siting standards contained in applicable federal or state law or regulations;

(iii) Control or prevent damage to environmental values, federal property, and public health and safety;

(iv) Protect the interests of individuals living in the general area who rely on the area for subsistence purposes; and

(v) Ensure that the facilities are constructed, used, operated, and

terminated in a manner consistent with the grant and on the lands included in the grant;

(9) Immediately notify all federal, state, and local agencies with jurisdiction over the land, including BLM, of any actual or threatened release or discharge of hazardous material and send a copy of the notification to BLM;

(10) Not dispose of hazardous materials on your grant, except as provided by the terms and conditions of your grant, and not store hazardous materials on your grant for more than 90 days, less if required by law;

(11) Annually and on assigning, renewing, and terminating your grant, certify that you have complied with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*;

(12) Control and remove any release or discharge of hazardous materials that occurs on or near the right-of-way, whether the release or discharge is authorized under the grant. You must also remediate or restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other federal, state or local agency having jurisdiction over the land, resource or hazardous material;

(13) Comply with all liability and indemnification provisions and stipulations; and

(14) Comply with all other stipulations that BLM may require.

§ 2805.11 When is the grant effective?

The grant is effective after both you and BLM sign it. Your signature indicates that you accept its terms and conditions. You must also pay any necessary rent and monitoring. Your signed acceptance constitutes an agreement between you and the United States that your right to use the public lands, as specified in the grant, is subject to the terms and conditions of the grant and the provisions of applicable laws and regulations.

§ 2805.12 What rights does the grant convey?

The grant conveys to you only those rights which it expressly contains. It is issued subject to the valid existing rights of others, including the United States. Rights which the grant conveys to you include the right to:

(a) Use the affected lands to construct, operate, maintain, and terminate facilities within the right-of-way for authorized purposes under the terms and conditions described in the grant;

(b) If your grant specifically authorizes it, allow other parties to use your facility for the purposes specified

in your grant and charge for its use. Otherwise, you may not let anyone else use your facility unless BLM authorizes or requires it in writing;

(c) Allow others to use the land as your agent in the exercise of the rights that the grant specifies;

(d) Do minor trimming, pruning, and removing of vegetation to maintain the right-of-way or facility;

(e) Make use of common varieties of stone and soil which are removed when constructing part of the project, in constructing other parts of the project within the authorized right-of-way, without additional BLM authorization or payment; and

(f) Assign the grant to another, provided that you obtain BLM's prior written approval.

§ 2805.13 What rights does the United States retain?

The United States retains and may exercise any rights the grant does not expressly convey to you. These include the right of BLM to:

(a) Access the lands covered by the grant and enter any facility you construct on the grant after BLM gives you reasonable notice;

(b) Require common use of the land included in your right-of-way and authorize use of the right-of-way for compatible uses. You may not charge for the use of the lands made subject to such additional rights-of-way;

(c) Retain ownership of the products of the land, including living and non-living resources. You have no right to use these resources, except as noted in § 2805.12 of this subpart;

(d) Require you to grant it an equivalent right-of-way for an access road across your land if BLM determines the reciprocal grant is needed in the public interest;

(e) Determine whether or not your grant is renewable; and

(f) Change the terms and conditions of your grant through changes in legislation, regulation, or otherwise necessary to protect public health and safety and the environment.

§ 2805.14 What are monitoring fees?

(a) Monitoring fees are similar to the processing costs fees described at §§ 2804.14 and 2804.16. BLM incurs costs in monitoring your construction, operation, maintenance and termination of the facilities we authorized under the grant and in protecting and rehabilitating the affected public lands. BLM uses the same category for monitoring as it does for determining the category of the application. (See § 2804.14.)

(b) *Costs for Categories I through III.* For Categories I through III, there is a

one-time monitoring fee based on a fee schedule available from any BLM office. BLM annually updates these costs, using the same method it uses for application processing costs. (See paragraph (c) of § 2804.14.)

(c) *Costs for Category IV.* See § 2805.15(b) of this subpart.

§ 2805.15 When do I pay monitoring costs?

(a) *All categories.* For Categories I through III, you must submit the payments for monitoring with your written acceptance of the terms and conditions of the grant. For Category IV, you must submit the first periodic advance payment with your written acceptance. If you have a master agreement with BLM, pay the monitoring costs per the agreement. BLM will not issue your grant until it receives the required payment.

(b) *Periodic advance payments.* If you have a Category IV application, BLM may periodically estimate the costs of monitoring your use of the grant. BLM will include this fee in the costs associated with processing costs described at § 2804.14. If your payments exceed reasonable costs, BLM will reimburse you the difference or adjust the next billing to reflect the overpayment. Unless you have written authorization from BLM, you may not offset or deduct the amount due from your payments. The periodic advance payments are subject to re-estimation if conditions warrant.

Subpart 2806—What Information Do I Need to Know About Rents for Right-of-Way Grants?

§ 2806.5 What definitions do I need to know to understand these regulations?

As used in this subpart, the term:

(a) *Base rent* means the dollar amount required from the holder of a right-of-way on BLM-managed lands based on the communication use with the highest rent in the associated facility, as calculated according to the terms of the right-of-way grant or lease. If a facility manager or owner's scheduled rent is equal to another assigned scheduled rent in the facility, then the facility manager or owner's use determines the dollar amount of the base rent.

(b) *Commercial purpose* refers to the circumstance where a facility owner charges rent for the use of a facility that generates more than the operating expenses of the facility attributable to that use, thus producing a profit for the facility owner. The facility owner's use may not otherwise be subject to rent charges under BLM's rental provisions. *Example:* A two-way radio service, used

only by paying subscribers, is housed in an REA-financed facility located on a rent-free right-of-way. The facility owner charges the radio service an annual rent for using all or part of the facility that exceeds the portion of the annual operating expenses, such as Federal, State and local taxes, if any, and financing charges (but not depreciation), maintenance, labor, remodeling, replacement, and utility costs, that are attributable to the radio service's using the facility. Under the circumstances, the otherwise rent-free facility is being used for a commercial purpose, and, therefore, BLM will charge the facility owner an appropriate rent;

(c) *Communication use rent schedule* is a schedule of rents for the following types of communication uses, including related technologies, located in a facility associated with a particular right-of-way grant. For rent calculation purposes, all use categories include ancillary communications equipment, such as microwave or internal one- or two-way radio:

(1) *Television broadcast* means a use, licensed by the Federal Communications Commission (FCC), that broadcasts UHF and VHF audio and video signals for general public reception and ancillary communication equipment directly related to the operations, maintenance and monitoring of the use. This category does not include Low Power Television (LPT) or rebroadcast devices, such as translators, or transmitting devices, such as microwave relays serving broadcast translators. BLM does not consider ancillary equipment used in direct support of the primary communication use as a separate use for rent calculation purposes;

(2) *AM and FM radio broadcast* means a use, licensed by the FCC, that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception and ancillary communication equipment, directly related to operating, maintaining and monitoring the use. This category does not include FCC-licensed low-power FM radio; rebroadcast devices, such as translators; boosters or microwave relays serving broadcast translators;

(3) *Broadcast radio and low power television* means a use, licensed by the FCC, that operates translators and low power television, low-power FM radio (LPMF), and ancillary communication equipment, including microwave facilities, directly related to operating, maintaining, or monitoring the use. 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 another amplifier or translator. LPTV and LPFM are broadcast translators that originate programming. This category of use includes translators associated with public telecommunication services.

(4) *Cable television* means a use, licensed by the FCC, that transmits video programming to multiple subscribers in a community over a wired or wireless network and communication equipment directly related to operating, maintaining, or monitoring the use. 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 or residences;

(5) *Cellular telephone* means systems and related technologies, licensed by the FCC, used for mobile communications, using a combination of radio and telephone switching technology and providing public switched network services to fixed and mobile users within a defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and microwave communications link equipment and the ancillary communication equipment directly related to maintaining and monitoring the use. *Examples:* Personal Communication Service (PCS), Enhanced Specialized Mobile Radio (ESMR), Improved Mobile Telephone Service (IMTS), Air-to-Ground, Offshore Radio Telephone Service, and Cell Site Extenders;

(6) *Commercial mobile radio service/facility manager* means commercial mobile radio uses or their holders, licensed by the FCC, that provide communication service to individual customers and ancillary communication equipment directly related to operating, maintaining, or monitoring the use. *Examples:* Two-way voice and paging services, such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, and microwave communications link equipment or those holders that lease building, tower, and related facility space to a variety of tenants as part of their business enterprise and act as facility managers;

(7) *Microwave* means FCC-licensed uses that operate long-line intrastate and interstate public telephone, television, information, and data transmissions; uses in support of pipeline and power

companies, railroads, and land resource management companies that support their primary business, and communication equipment directly related to operating, maintaining or monitoring the use;

(8) *Private mobile radio* means FCC-licensed uses supporting private mobile radio systems primarily for a single entity and communication equipment directly related to operating, maintaining, or monitoring the use. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. *Examples:* Private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities; and

(9) *Other communication uses* means FCC-licensed private communication 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.

(d) *Customer* means an occupant who is paying a facility manager or owner, or a tenant, for using all or any part of the space in the facility, or for communication services, and is not reselling or broadcasting communication services to others. *Examples:* Two-way radio, internal microwave communications, and all uses under the "other" category when located within someone else's facility. Persons or entities benefiting from private or internal communication uses located in another holder's facility are considered customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent that is charged by BLM, except as noted in § 2806.20(b)(4) of this subpart.

(e) *Facility manager* means a person or entity that:

(1) Owns a communication facility on federal land;

(2) Leases space to other communication users;

(3) Does not own or operate communications equipment in the facility for personal use; and

(4) Holds a communication use authorization.

(f) *Facility owner* means a person or entity that:

(1) Owns a communication facility on a right-of-way grant;

(2) Owns and operates his or her own communications equipment in the facility;

(3) Holds a communication use authorization; and

(4) May or may not lease space to other communication users in that facility.

(g) *Reselling* means providing communication services to others for profit, such as Commercial Mobile Radio Service providers, providers of cellular telephone services, or communication businesses, such as television and radio broadcasters.

(h) *Site* means an area, such as a mountain top, where one or more communication facilities are located.

(i) *Tenant* means an occupant who pays rent for occupying and using all or any part of a facility and operates communication equipment in the facility to resell or broadcast the communication services to others for a profit. For purposes of calculating the amount of rent that BLM charges, the term "tenant" does not include private mobile radio or internal microwave use that is not being re-sold, or uses included in the category of "Other Communication Uses."

(j) *Zone* means one of eight groupings of land value into which all areas of the contiguous United States were placed for linear rent assessment purposes.

(k) *Zone value* means the per acre, fair market value of land that is used to calculate rents for linear right-of-way grants. For example, lands within a zone with a value of \$50 per acre are in Zone 1, lands within a zone with a value of \$100 are in Zone 2, land within a zone with a value of \$200 are in Zone 3, and so forth.

§ 2806.10 Must I pay rent for using my right-of-way?

Yes. You must pay rent in advance, unless your rent is based in whole or in part on a percentage of production or similar terms. The rent is equivalent to the fair market rental value, which BLM establishes based on sound business management principles.

(a) BLM will charge the rent beginning on the first day of the month following the effective date of the grant through the last day of the month when the grant terminates. Example: If a right-of-way became effective on January 10 and terminated on September 16, the rental period would be February 1 through September 30, or 8 months.

(b) BLM will set or adjust the annual billing periods to coincide with the calendar year by prorating the rent on the basis of 12 months.

(c) BLM may require that you make either annual payments or payments for more than 1 year at a time. However, if you are a private individual and the annual rent is more than \$100, you may elect to make either annual payments or payments for more than 1 year.

(d) If BLM issued your right-of-way on or before October 21, 1976, under then existing statutes, you may request a hearing with BLM before a proposed rent increase becomes effective. This applies to rent increases due to a fair market value appraisal or from initially being put on a rent schedule. You may not request a hearing on annual adjustments once you are on a schedule.

(e) If you disagree with the rent that BLM charges, you may appeal the decision under part 4 of this title.

§ 2806.11 Are there exceptions to paying rents?

Yes, you do not have to pay rent for your use if:

(a) BLM issues the grant under a statute which does not allow it to charge rent, or

(b) You are a federal, state, or local government or their agency or instrumentality, unless you are using the system or space for commercial purposes or you are a municipal utility or cooperative whose principal source of revenue is customer charges; or

(c) You have been granted a waiver of rent under a statute permitting waiver; or

(d) The facilities constructed on the right-of-way were constructed with funds from the Rural Electrification Act of 1936, as amended (REA), or are owned and operated by a non-profit rural electric or telephone cooperative eligible for REA financing, or are extensions of such facilities. You must be able to document your eligibility for REA financing. However, BLM will charge you rent based on your tenants and customers if:

(1) You are a commercial communications company using power poles under an agreement with the Rural Utility Service, or

(2) You hold a communication site right-of-way grant used and occupied by tenants, or

(3) You provide communication services to customers for commercial purposes in connection with your right-of-way.

§ 2806.12 Can my rent be reduced?

Yes. BLM may reduce your rent payment where:

(a) You are a non-profit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise; and

(b) 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; or

(c) You hold an outstanding permit, lease, license, or contract for which the United States is already receiving

compensation. This does not apply to oil and gas leases under part 3100 of this title, where you are required to secure a grant under part 2800 for access to reach the lease area, or a right-of-way under part 2880 to transport products to or from the lease area; or

(d) The grant involves a reciprocal right-of-way agreement not subject to part 2812 of this title. BLM will determine the fair market value rent for cost share roads or reciprocal rights-of-way based on the proportion of use; or

(e) The BLM State Director determines that paying the full rent will cause you hardship, as defined at § 2804.18(b)(1), and that reducing or waiving the rental payment is in the public interest. BLM may require you to submit data and information to support a proposed finding that your grant qualifies for a reduction or waiver of rental. (See § 2804.18 for information about how to apply for a rent reduction.)

§ 2806.13 What happens if I default on my rent payment?

If you do not pay the rent when it is due under the terms and conditions of the grant or applicable law, and delinquency continues for 30 days after BLM sends you a payment notice, BLM may terminate your grant or take appropriate action to collect the rent owed. After you have defaulted, you may not remove any structures, buildings, or equipment without BLM's written permission. The rent due remains a debt that you owe to the United States. If you pay the rent after the lease or grant has terminated, the grant is not automatically reinstated. You must file a new application with BLM. BLM will consider the history of your failure to pay rent in deciding whether to offer you a new grant.

§ 2806.14 What are the rent costs for linear rights-of-way?

(a)(1) BLM will normally use a schedule, which is updated annually, to determine the rent for your linear grant. BLM may use an alternate means to compute your rent if:

(i) The land value of a substantial segment or area within the right-of-way exceeds the zone's value by a factor of 10, or

(ii) The expected rent is sufficient to warrant a separate appraisal.

(2) Once you are on a rent schedule, BLM will not use the conditions in paragraphs (a)(1)(i) and (ii) of this section to remove you from the schedule, unless you file an application to amend your right-of-way grant.

(b) You may obtain the current linear right-of-way rent schedule from any BLM State or field office or by writing:

Director, BLM, 1849 C St., N.W., Mail Stop 1000 LS, Washington, D.C. 20240. BLM will also post the current rent schedule on the BLM Homepage on the Internet, <http://www.blm.gov>.

§ 2806.15 Does the linear rent schedule ever change?

Yes. BLM annually adjusts the rental schedule by multiplying the current year's rent-per-acre by the annual change, second quarter to second quarter (June 30 to June 30), in the Implicit Price Deflator-Gross Domestic Product Index, as published in the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

§ 2806.16 How will BLM calculate my rent for linear rights-of-way covered by the schedule?

BLM calculates your rent by multiplying the rent-per-acre from the current schedule by the number of acres in the grant and the number of years in the rental period. If BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

§ 2806.17 What are the rent costs for communication facilities or uses?

(a) *Schedule of rents.* BLM uses a communication use rent schedule to determine the rent for communication site rights-of-way. The schedule is based on the population served, as depicted by the Rannally Metro Area population rankings, and the type of communication use or uses for which communication site rights-of-way are ordinarily granted. These uses are listed as part of the definition of "communication use rent schedule," set out at § 2806.5 of this subpart. You may obtain a copy of the schedule from any BLM State or field office or by writing: Director, BLM, 1849 C St., N.W., Mail Stop 1000 LS, Washington, D. C. 20240. BLM posts the communication site rent schedule to the BLM National HomePage on the internet, at <http://www.blm.gov>. BLM annually updates the schedule based on two sources: the U. S. Department of Labor Consumer Price Index for All Urban Consumers, U. S. City Average, published in July of each year, and the Rannally Metro Area population rankings. BLM will limit adjustments based on the Consumer Price Index to no more than 5 percent. At least every 10 years BLM will review the rent schedule to ensure that the schedule reflects a rational fair market value estimate.

(b) *Uses not covered by the schedule.* The communication use rent schedule does not apply to:

(1) Communication site uses, facilities and devices located entirely within the exterior boundaries of an oil and gas lease, but which are directly associated with the operations of the oil and gas lease, for which see part 3100 of this chapter. Any other communication use, not directly associated with the lease operation, is not excluded; or

(2) Communication facilities and uses ancillary to and authorized under a linear right-of-way grant, such as a railroad right-of-way grant;

(3) Communication uses, including new, unrelated technologies, not listed on the schedule;

(4) Right-of-way grants for which the rent is determined through appraisals, competitive bidding, or other reasonable methods; and

(5) Situations where the expected rent exceeds the schedule by five times or the communication site serves a population of one million or more and the expected rent for the communication use or uses is more than \$10,000 above the schedule rent. The State Director must concur in this determination.

§ 2806.18 How does BLM calculate rent for communication uses covered by the schedule?

(a) *Basic rule.* BLM determines rentals for:

(1) *Single use facilities* by applying the rental rate for the type of use and the community served, and

(2) *Multiple-use facilities* by determining the highest value use in the facility or facilities as the base rent (when under one authorization), plus 25 percent of the schedule rent for all tenant uses in the facility, if these are not used as the base rent.

(b) *Exemption.* BLM will exclude customer uses, unless expressly provided for, and any other waived or exempted uses, when calculating rents.

(c) *Basic action.* By October 15 of each year, you must submit a certified statement listing the tenants in the facility and the category of use for each tenant as of September 30 of the year. BLM may require you to submit any additional information needed to calculate your rent.

§ 2806.19 How will BLM determine the rent for a single-use communication facility?

(a) BLM determines the rent for a single-use communication facility from the communication use rent schedule, based on the authorized single use and the population area served.

(b) BLM determines the population area served as follows:

(1) If the site or facility is within a designated Rationally Metro Area (RMA),

BLM will use the RMA to calculate the rent;

(2) If the site or facility is outside an RMA but serves one or more RMAs, BLM will use the largest RMA served to calculate the rent;

(3) If the site or facility is outside an RMA and the site does not serve the RMA, BLM will use the schedule rent for the population of the largest community served by the site.

(4) If the site or facility is outside an RMA and the site serves a community of less than 25,000, BLM will use the lowest rent shown on the schedule for the type of use.

(c) BLM may make case-by-case exceptions to calculate the rents described in paragraph (b) of this section only for just cause.

§ 2806.20 How will BLM calculate the rent for a multiple use communication facility?

(a) *Calculation rules.* BLM will first determine the population area served according to paragraphs (b) and (c) of § 2806.19 of this subpart and then calculate the rent for a communication facility with tenants or customers or both as follows:

(1) BLM will calculate the rent based on the highest value use in the facility, plus 25 percent of the scheduled rent for each of the other tenant uses in the facility;

(2) If the highest value use is not the use of the facility owner or manager, BLM will consider such owner's or manager's use like any other tenant use for calculating the rent;

(3) If the tenant use becomes the highest value use, BLM will exclude that use from the 25 percent of the schedule rent calculation relative to tenant uses;

(4) If a single authorization or entity has multiple uses, such as an FM and an AM radio station, BLM will base the rent on the sum of each use. The FM rent would be the highest value use and the AM portion would be charged according to the rent schedule for tenant use.

(b) *Exemptions to calculating rents.* The following rules apply to calculating rents for exempted or waived communication uses:

(1) BLM will exclude exempted or waived uses for either facility owners or tenants in calculating rents;

(2) BLM will treat facility owners whose own use is either exempted or waived from rent but who have tenants using or occupying space in their facility as any other facility owner and assess rent based on the highest value use plus 25 percent of the schedule rent for each of the other remaining uses, less exempted or waived uses; and

(3) You owe no rent if:

(i) The facility owner's use is exempted or waived from rent,

(ii) All other uses in the facility are exempt or are considered customer uses, and

(iii) The facility owner is not profiting from the other uses in the building facility.

(4) If the facility owner, whose own use is exempted from rent, is conducting a commercial activity with customers or tenants that are not exempt from rent, BLM will assess rent based on the highest value use within the facility;

§ 2806.21 How will BLM calculate rent for private mobile radio service (PMRS), internal microwave and "other" category uses?

If the PMRS, internal microwave or "other" use:

(a) Is located in someone else's facility, BLM will consider them customers and not include them in the rent calculation for the facility; or

(b) Is the facility owner, BLM will treat them as any other facility owner. If a tenant has a higher value use than the facility owner's use, that use becomes the base rent. The PMRS, internal microwave, or "other" use is then exempt as a customer.

§ 2806.22 How will BLM authorize and calculate rents for customers and tenants who choose to have their own right-of-way facility to be used in common with an existing right-of-way of the owner of a communication facility that they use or occupy?

(a) BLM does not require separate right-of-way grants for tenants and customers using or occupying an authorized facility. BLM assesses the facility owner rent based on the highest value use within the facility and 25 percent of scheduled rent for each of the other remaining tenant uses subject to rent.

(b) Tenants and customers who choose to retain or be granted their own right-of-way grants in common will be charged, as right-of-way holders, a full annual rent for their use based on the BLM communication use rent schedule and the population served. BLM will include their type of communication use as a use to be included in calculating the rent to be paid by the facility owner or manager.

§ 2806.23 How will BLM calculate rents as to "shared facilities" or for multiple facilities that are under one authorization?

(a) BLM considers each use within the shared facilities separately in determining rent. An example of shared facilities would be a holder or tenant with a microwave dish associated with

a building or tower on Facility A, which has an authorization from BLM, and other equipment or leased space associated with Facility B, which also has an authorization from BLM.

(b) If you hold multiple authorizations for two or more facilities on the same site, you can combine all those uses under one authorization. The highest value use in the facility becomes the base rent, and BLM assesses each of the other uses at 25 percent of the scheduled rent, unless it is waived or exempted.

§ 2806.24 How does BLM calculate rent for a facility manager use?

BLM employs the schedule value for a facility manager use only if the value is equal to or greater than the other uses in the facility. BLM does not include the use in the 25 percent calculation for other uses in the facility when it is not the highest value use.

§ 2806.25 How does BLM calculate rent for ancillary uses?

(a) If internal mobile radio and microwave systems are ancillary, that is, give support or connect one another on the same communications facility or give support for another use, then BLM will base rent only on the primary use, if the microwave ends at the facility and is used for control of the mobile or microwave system.

(b) If microwave and PMRS uses are located in the same facility but are independent of one another, BLM will consider each use as separate when calculating the rent.

(c) If a communication facility is ancillary to and authorized under a linear right-of-way grant for a linear use or facility, or for some other type of authorization, e.g., a mineral lease or sundry notice, BLM will determine the rent based on the linear schedule and not the communication site schedule. The rent for any communication facility use located on the right-of-way will have its rent calculated separately based on an appraisal or other reasonable valuation methods.

§ 2806.26 How does BLM calculate rent for uses within federally owned facilities?

If you are a tenant or customer in a federally owned facility, you must have your own authorization and pay the full schedule rent, based on the use and the population served. This does not apply to federal departments and agencies that have commercial ventures and operate as a facility manager or owner in accordance with this subpart.

§ 2806.27 What happens if converting to the rent schedule causes a \$1,000 or more increase in my rent?

BLM will phase in the new rent amount over a 5-year period. In the first year under the schedule, your rent payment will be the current year's rental plus \$1,000. BLM will divide the amount exceeding \$1,000 into four equal installments. Beginning the second year after the increase, BLM will add the installment, plus any changes in tenant use and the CPI-U index, to the previous year's rent.

§ 2806.28 What are the rent costs for other rights-of-way and uses?

(a) BLM will use the same rent schedules for passive reflectors and local network exchanges 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.

(b) When neither the linear nor the communication site schedule is appropriate, BLM determines rent through an appraisal process based on comparative market surveys, appraisals, competitive bid, or other reasonable methods. BLM will advise you of the rent determination. If you disagree with the determination, you will be afforded an opportunity for a hearing, and you may appeal BLM's final determination under part 4 of this title.

(c) To expedite processing of any grant, BLM may estimate rent and collect a deposit in advance. Once BLM completes its rent value determination, it will adjust the advance deposit to reflect the final fair market rent value determination and either issue you a refund or require you to pay the difference, as appropriate.

(d) For passive reflectors or local network exchanges not covered by a Forest Service rental schedule, see paragraph (b) of this section.

Subpart 2807—What Can I Do on the Right-of-Way Once BLM Issues the Grant?

§ 2807.10 When can I start activities under my grant?

When you can start depends on the terms of your grant. You can start activities when you receive the signed authorization from BLM, unless the grant includes a requirement for a written notice to proceed. If your grant contains a notice to proceed requirement, you may not initiate construction, operation, maintenance, or termination until BLM issues you a notice to proceed.

§ 2807.11 When must I contact BLM?

Contact BLM:

(a) At the times specified in your grant;

(b) When your use requires a substantial deviation from the grant. "Substantial deviation" means a deviation in location or authorized use which requires:

(1) Construction or use outside the boundaries of the authorized right-of-way, or

(2) Any change from or modification of the authorized use. Examples: adding equipment, overhead or underground lines, pipelines, structures or other facilities;

(c) When there is a change of status in your application or grant, such as a changed legal mailing address, principal partners, financial conditions, or business or corporate status; and

(d) When you submit a certification of construction, if required by the terms of your grant.

§ 2807.12 For what am I liable?

(a) You are fully liable to the United States and to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way.

(b) You will be held to a standard of strict liability for any activity or facility associated with your right-of-way area which BLM determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant the activities and facilities to which such standards apply.

(1) BLM will not impose strict liability for damage or injury resulting primarily from an act of war, an act of God or the negligence of the United States, except as otherwise provided by law.

(2) As used in this section, "strict liability" extends to costs incurred by the federal government to control or abate conditions, such as fire or oil spills, which threaten life, property or the environment, even if the threat occurs on areas that are not under federal jurisdiction. Your grant will contain stipulations that describe the strict liabilities and the maximum amounts imposed. This liability is separate and apart from liability under other provisions of law.

(c) If you cannot satisfy claims for injury or damage, any owners and all affiliates or subsidiaries of any holder of a grant, except for corporate stockholders, are jointly and severally liable to the United States.

(d) The rules of subrogation apply in cases where a third party caused the damage or injury.

(e) If BLM issues a grant to more than one holder, each is jointly and severally liable.

(f) By accepting the grant, you agree to fully indemnify and hold the United States harmless for liability, damage or claims arising in connection with your use and occupancy of right-of-way areas. You are liable to the United States for up to \$5 million for all damages, injuries, fees, and costs associated with your using, developing, and maintaining the grant and affected resources, regardless of fault. This financial limitation does not apply to the release or discharge of hazardous materials on or near the grant, or as otherwise allowed by law.

(g) You are strictly liable for all costs above the \$5 million limit which accrue because of negligence regarding hazardous substances.

(h) State and local governments may be excepted from the requirements of this section as discussed in § 2807.13(a) of this subpart.

§ 2807.13 What liabilities do state and local governments have?

(a) If you are a state or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that BLM issues your grant. If you do not have the legal power to assume liability, you must repair damages or make restitution to the fullest extent of your powers.

(b) BLM may require you to furnish a bond or other acceptable security to:

(1) Cover any losses, damages, or injury to human health, the environment, and property related to your activities on the right-of-way,

(2) Cover damages or injuries resulting from the actual or threatened release or discharge of hazardous materials, and

(3) Protect the liability exposure of the United States to claims by third parties arising out of your use of the right-of-way.

(c) Based on your record of compliance and changes in risk or conditions, BLM may require you to increase or decrease the amount of your security.

(d) The provisions of this section do not limit or exclude other remedies that the United States may seek.

§ 2807.14 What happens if BLM transfers management of the land on which my grant is located to another federal agency or outside of public ownership?

(a) BLM may transfer administration of the grant to another federal agency, unless doing so would diminish your rights.

(b) Where there is a proposal to transfer the land out of federal ownership, BLM may:

(1) Transfer the land subject to your grant,

(2) Transfer the land but retain management of your grant with the United States, or

(3) Reserve to the United States the land encumbered by the grant.

§ 2807.15 Can BLM temporarily suspend my activities to protect public health and safety or the environment without providing an administrative hearing?

(a) If BLM determines that you have violated one or more terms of your grant, we can order an immediate temporary suspension of activities within a grant area to protect the public health or safety or the environment. BLM can stop your activities before holding an administrative proceeding on the matter.

(b) BLM may make the temporary suspension order orally or in writing to you, your contractor or subcontractor or to any representative, agent, employee, or contractor representing you or conducting the activity. When BLM makes the order, the activity must stop immediately. BLM will promptly confirm an order by sending to you or your agent at your address a written notice explaining the reasons for the suspension order.

(c) The temporary order is effective until BLM issues another order permitting resumption of activities.

(d) You may file a written request for permission to resume at any time after BLM issues the order. In the request, give the facts supporting your request and the reasons you believe that BLM should lift the order.

(e) BLM must grant or deny your request within 5 working days after receiving it. If BLM does not respond within 5 working days, BLM has denied your request. You may then appeal under part 4 of this title.

§ 2807.16 Can BLM terminate or suspend my grant?

(a) BLM may elect to suspend your grant if you fail to comply with applicable laws and regulations or any terms and conditions of the grant.

(b) If your grant is an easement, BLM will refer the suspension or termination of the grant to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge to determine whether or not the termination or suspension is justified.

(c) A grant terminates when:

(1) As described in the grant, a fixed or agreed-upon condition, event, or time occurs;

(2) BLM accepts your written request or consents to terminate the grant; or

(3) BLM determines that you have failed to comply with applicable laws and regulations or any terms and conditions of the grant;

(d) Your failure to use your right-of-way for its authorized purpose for any continuous 5-year period (or for 2 years, if your grant is issued under part 2880 of this chapter), constitutes a presumption of abandonment. You may rebut the presumption by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control, such as acts of God, war, or casualties not attributable to you.

§ 2807.17 How will I know that BLM intends to suspend or terminate my grant?

(a) Before BLM suspends or terminates your grant, you will receive a written notice stating that BLM intends to suspend or terminate your grant and giving the grounds for such action. You will have a reasonable opportunity to cure any non-compliance.

(b) For grants issued before October 21, 1976, any subsequent grants issued as an easement, and grants issued under part 2880 of this chapter, BLM must give you written notice and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge (ALJ). If the ALJ determines that grounds for suspension or termination exist and such action is justified, BLM will suspend or terminate the grant.

§ 2807.18 What happens to any improvements on my grant when it terminates?

You must remove any structures and improvements within the right-of-way before it terminates, unless BLM instructs you otherwise in writing. After removing the structures or improvements, you must remediate and restore the site to a condition satisfactory to BLM, including the removal and clean up of any hazardous materials. If you fail to remove all structures or improvements within a reasonable period, BLM may declare them to be the property of the United States. However, you still will remain liable for the costs of removing them and for restoring the site.

§ 2807.19 When must I amend my application or grant?

Amend your application or grant when:

(a) There is a substantial deviation in location or use. (See paragraph (b) of § 2808.11.) The requirements for an amended application are the same as

those for a new application, including cost reimbursement according to § 2804.14.

(b) Your grant was issued before October 21, 1976, and you want to change your use or the terms and conditions of the grant. If BLM approves your application, you will receive a new right-of-way under 43 U.S.C. 1761 *et seq.* and this part.

(c) Your grant must be amended to allow realignment of a railroad and appurtenant communication facilities. BLM must issue a decision within 6 months after you file the application. BLM may include in any new grant the same terms and conditions as the original grant pertaining to payment of annual rents, duration of the grant, and the nature of interest held, if:

- (1) These terms are in the public interest,
- (2) The lands are of approximately equal value, and
- (3) The lands involved are not within an incorporated community.

§ 2807.20 May I assign my grant?

(a) If BLM approves your request, you may assign a grant in whole or in part.

(b) If you want to assign your grant, the proposed assignee must file an application under the same procedures as for a new grant. (See subpart 2804 of this part.)

(c) Additionally, the request for assignment must include the following:

- (1) Documentation that you, the assignor, agree to the assignment; and
- (2) A stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned and all applicable laws and regulations.

(d) BLM will not recognize an assignment until it approves the assignment in writing. BLM may modify or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment. BLM may decrease or increase rents if the new holder qualifies for an exemption or reduction and the old holder did not or vice versa.

(e) The processing times and conditions described at § 2804.20(c) apply to applications for assignment.

§ 2807.21 What will BLM charge for reviewing a request for assignment?

You must reimburse BLM in advance for the administrative costs of processing the proposed assignment in accordance with the work hours specified in the category descriptions at § 2804.14.

§ 2807.22 Can I renew my grant?

(a) If your grant provides for renewal, BLM will renew the grant if you are

using, maintaining, and operating the project or facility for the purposes authorized in the original grant and if you are operating and maintaining the grant according to its provisions and to the applicable laws and regulations.

(b) If your grant does not provide for renewal, you may ask BLM to renew the grant. Send BLM your request, in writing, at least 120 days before your grant expires. You will need to show that you are maintaining and operating the project or facility for the purposes authorized in the expiring grant and that you are operating and maintaining the grant according to its provisions and to the applicable laws and regulations. BLM has the discretion to renew the grant if doing so is in the public interest.

(c) In either case, paragraph (a) or (b) of this section, you should submit an application containing the same information necessary for a new application. (See subpart 2804 of this part.) You must reimburse BLM in advance for the administrative costs of processing the renewal in accordance with § 2804.14.

(d) BLM will review your application and determine the applicable terms and conditions.

Subpart 2808—What Do I Need To Know About Trespass?

§ 2808.10 What is trespass?

(a) Trespass is using, occupying, or developing the public lands without authorization or using, occupying, and developing them in a way that is beyond the scope and specific limitations of your authorization. Trespass includes acts or omissions causing undue or unnecessary degradation to the occupied public lands.

(b) There are two kinds of trespass, willful and non-willful.

(1) "Willful trespass" means voluntary or conscious trespass and actions taken with criminal or malicious intent. It includes a consistent pattern of actions taken with knowledge, even if those actions are taken in the belief that the conduct is reasonable or legal.

(2) "Non-willful trespass" means a trespass committed by mistake or inadvertence.

§ 2808.11 What will BLM do if it determines that I am in trespass?

(a) BLM will notify you in writing of the trespass and indicate your liability. Your liability includes:

- (1) Reimbursing the United States for all costs incurred in investigating and terminating the trespass;
- (2) Paying the rental value of the lands, as provided for in subpart 2806 of this part, for the current and past

years of trespass, or, where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee for unauthorized use of any BLM-administered road; and

(3) Rehabilitating, restoring, and stabilizing any damaged lands or resources. If you do not rehabilitate, restore, and stabilize the lands and resources within the time set by BLM in the notice, you will be liable for the United States's costs in rehabilitating, restoring, and stabilizing the lands and resources.

(b) BLM may assess penalties as follows:

(1) For all non-willful trespass which is not resolved within 30 days by meeting one of the conditions identified in § 9239.7-1 of this chapter, the penalty is an amount equal to the rental value; and, for roads, an amount equal to the charges for road use, amortization, and maintenance which have accrued since the trespass began;

(2) For repeated non-willful or willful trespass, the penalty is an amount that is two times the rental value; and, for roads, an amount two times the charges for road use, amortization and maintenance which have accrued since the trespass began.

(c) The penalty will not be less than the processing fee for a Category I application (see § 2804.14) for non-willful trespass or less than three times this value for repeated non-willful or willful trespass. You must pay whichever is the higher of the computed penalty or the minimum penalty amount.

(d) In addition to civil penalties, you may be tried before a United States magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both, for a knowing and willful trespass. (43 U.S.C. 1733(a))

(e) Until you satisfy your liability, BLM may refuse to process any applications for any activities on BLM land that you have pending.

(f) You may appeal a trespass decision under part 4 of this title.

(g) Nothing in this section limits your liability under any other state or federal law.

§ 2808.12 May I receive a grant if I am in trespass?

The only way to find out is to apply under the procedures described at subpart 2804 of this part. BLM will process your application as if it were a new use.

Subpart 2809—Are There Any Special Requirements Related To Issuing Grants to Federal Agencies?

§ 2809.10 Can federal agencies get a right-of-way grant?

Yes. Any federal agency can apply for a grant under the procedures contained in subpart 2804 of this part.

§ 2809.11 What will the grant contain?

The grant will contain the same terms and conditions as other grants governed by this part to the extent possible. It will include any terms and conditions appropriate for federal agencies. The grant does not have to conform to the agency's proposal and may contain such terms, conditions, and stipulations as BLM deems appropriate.

§ 2809.12 Can BLM suspend or terminate the grant?

BLM may suspend or terminate the grant only if its terms and conditions allow it or if the agency head holding the grant consents to it.

2. Revise part 2880 to read as follows:

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Subpart 2881—What General Information Do I Need To Know About the Regulations Concerning MLA Grants and Permits?

Sec.

2881.5 What definitions do I need to know to understand these regulations?

2881.7 What is the scope of these regulations?

2881.8 What grants are covered by these regulations?

2881.9 Does BLM have the authority to ask me for the information required in these regulations?

2881.10 Severability

Subpart 2882—What Lands Are Available for Oil and Natural Gas Pipelines and Their Related Facilities?

Subpart 2883—What Qualifications Do I Need To Have To Hold an MLA Grant or Temporary Use Permit?

2883.10 Who may hold a right-of-way grant under the Mineral Leasing Act?

2883.11 Who is ineligible to hold an MLA grant or permit?

2883.12 How do I prove I meet the qualifications?

2883.13 What happens if BLM issues me an MLA grant or permit and later determines that I am not qualified to hold it?

Subpart 2884—How Do I Apply for an MLA Grant or Permit?

2884.10 What should I do before I file my application?

2884.11 What information do I need to provide in my application?

2884.12 Is there a filing fee for my application?

2884.13 What is a master agreement and what must it contain?

2884.14 Are there any special payment requirements related to Category IV applications?

2884.15 What happens if there are two or more competing applications for the same pipeline facility or system?

2884.16 Where do I file my application for an MLA grant or permit?

2884.17 What are the public notification requirements for my application?

2884.18 How will BLM process my application?

2884.19 Can BLM ask me for additional information?

2884.20 Can BLM reject my application?

2884.21 Do I owe any money if BLM rejects my application or if I withdraw my application?

2884.22 What may I do on the proposed right-of-way while BLM is processing my application?

2884.23 When will BLM issue the grant or permit?

Subpart 2885—What Are the Terms and Conditions of MLA Grants and Permits?

2885.10 When is the MLA grant or permit effective?

2885.11 What are the terms and conditions of the grant or permit?

2885.12 How much does it cost to hold a grant or permit?

2885.13 Who is liable for payments?

2885.14 What happens if I default on my rental and other payments?

Subpart 2886—What Can I Do on My Grant or Permit Once I Obtain It?

2886.10 When can I start activities under my grant or permit?

2886.11 Who regulates my activities?

2886.12 What happens if I need a wider right-of-way in limited areas?

2886.13 When must I contact BLM?

2886.14 When can BLM suspend my activities?

2886.15 For what am I liable?

2886.16 What happens if BLM transfers management of the land on which my grant is located to another agency or outside public ownership?

2886.17 When can BLM terminate or suspend temporary use permits?

2886.18 When can BLM suspend or terminate my grant or permit?

2886.19 What happens to any improvements on my grant when it terminates?

Subpart 2887—What Information Do I Need To Know About Amending, Assigning or Renewing My MLA Grant or Permit?

2887.10 What conditions require amending a grant?

2887.11 May I assign my grant?

2887.12 May I renew my grant?

Subpart 2888—What Do I Need To Know About Trespass?

Authority: 30 U.S.C. 185, unless otherwise noted.

Subpart 2881—What General Information Do I Need To Know About MLA Grants and Permits?

§ 2881.5 What definitions do I need to know to understand these regulations?

Unless a term is otherwise defined in this section, the definitions appearing in part 2800 apply to this part. In addition, as used in this part, the term:

(a) *Act* means section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

(b) *Agency head* means the head of any federal department or independent federal office or agency, other than the Secretary of the Interior, who has jurisdiction over federal lands.

(c) *Casual use* means activities and practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources or improvements and which do not require a right-of-way grant or temporary use permit under this title. *Example:* activities which do not involve the use of explosives or heavy equipment and which do not involve vehicle movement, except over already established roads and trails.

(d) *Federal lands* means all lands owned by the United States, whether surface or mineral estate or both, without reference to how the lands were acquired or what federal agency manages the lands, except lands in the National Park System, lands held in trust for an Indian or Indian tribe, lands managed by the Tennessee Valley Authority, and lands on the Outer Continental Shelf.

(e) *Field examination* generally means a one-day trip, in one vehicle, from the office to the site of the right-of-way proposal, regardless of the number of specialists traveling in the vehicle. When operational efficiency dictates separate trips, BLM will include the efficient use of hourly time required to verify or collect the data needed to process the application, or monitor the grant.

(f) *Oil and gas* means oil, natural gas, synthetic liquid, or gaseous fuels, or any refined product produced from them.

(g) *Pipeline* means a line traversing 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 his lease.

(h) *Pipeline system* means all facilities, whether or not located on federal lands, used by a holder in connection with the construction, operation, maintenance, or termination of a pipeline.

(i) *Production facilities* means a lessee's or lease operator's pipes and equipment used on the leasehold to aid in extracting, processing, and storing oil and gas. The term includes:

(1) Storage tanks and processing equipment;

(2) Gathering lines upstream from such tanks and equipment, in the case of gas, upstream from the point of delivery; and

(3) 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.

(j) *Related facilities* means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, which are located on federal lands, and which are authorized under the Act, including but not limited to: supporting structures; airstrips; roads; campsites; pump stations, including associated heliports, structures, yards, and fences; valves and other control devices; surge and storage tanks; bridges, monitoring, and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or not connected or contiguous or not contiguous to the pipe.

(k) *Temporary use permit* means a revocable nonpossessory privilege to use specified federal lands near a right-of-way to construct, operate, maintain, or terminate a pipeline or to protect the natural environment and public safety.

§ 2881.7 What is the scope of these regulations?

The regulations in this part apply to:

(a) Issuing, administering, amending, assigning, renewing, and terminating new or existing grants and temporary use permits for pipelines to transport oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these materials. They apply when the federal land involved is either under the jurisdiction of BLM or under the jurisdiction of more than one federal agency;

(b) Facilities on a federal oil and gas lease owned by a third party, who is not the lessee or lease operator, and oil and gas pipeline systems owned by the lessee or lease operator that are downstream from storage tanks or a metering device; and

(c) All grants and permits BLM previously issued under section 28 of

the Act and to those issued by the Secretary of the Interior or his delegate in connection with the Trans-Alaska Oil Pipeline System.

§ 2881.8 What grants are not covered by these regulations?

The regulations in this part do not apply to:

(a) Federal land which is under the jurisdiction of a single federal department or agency, including bureaus, and agencies within the Department of the Interior, other than BLM;

(b) Right-of-way grants for federal departments or agencies. Such grants are subject to the regulations at part 2800 of this chapter;

(c) Production facilities owned by an oil and gas lessee or lease operator, if within the federal oil and gas lease, because the lease authorizes these facilities; and

(d) Grants issued under the authority of the Federal Land Policy and Management Act of 1976, which are addressed under part 2800 of this chapter.

§ 2881.9 Does BLM have the authority to ask me for the information required in these regulations?

(a) Yes. The Office of Management and Budget has approved the information collection requirements contained in Part 2880 under clearance 44 U.S.C. 3507 and assigned clearance number 1004-0060 (for Form SF-299) and 1004-_____ to them. BLM collects the information to determine if using particular parcels of the public lands for right-of-way corridors is appropriate. You must respond to get a benefit.

(b) Send comments regarding any aspect of the information collection, including suggestions for reducing the collection burden, to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D. C. 20240.

§ 2881.10 Severability.

If any provisions of the rules in this part or their applicability to any person or circumstances are held invalid, the remainder of these rules and their applicability to other people or circumstances shall not be affected.

Subpart 2882—What Lands Are Available for MLA Grants and Permits?

BLM uses the same criteria to determine whether lands are available for oil and gas rights-of-way as it does to determine whether lands are available for other rights-of-way. (See subpart 2802, part 2800, of this chapter.)

Where the proposed right-of-way involves additional federal lands or lands managed by two or more agencies other than BLM, such lands may also be available for such grants.

Subpart 2883—What Qualifications Do I Need To Hold an MLA Grant or Permit?

§ 2883.10 Who may hold a right-of-way grant under the MLA?

(a) To hold such a grant, you must be:

(1) Able to show that you are economically and technically capable of constructing, operating, and maintaining the proposed facilities; and

(2) A United States citizen; or

(3) An association of such citizens; or

(4) A corporation organized under the laws of the United States, or of any state therein; or

(5) A state or local government.

§ 2883.11 Who is not eligible to hold an MLA right-of-way grant or temporary use permit?

Aliens may not acquire or hold any direct or indirect interest in MLA grants or temporary use permits, except as otherwise provided by treaty or similar agreement.

§ 2883.12 How do I prove I meet the qualifications?

(a) If you are a private individual, BLM requires no proof of citizenship with your application.

(b) If you are a partnership, corporation, association, or other business entity, submit the following information in your application:

(1) The identity of the participants in the business entity;

(2) The name, address, and citizenship of each participant (partner, associate, or other);

(3) If a corporation, the name, address, and citizenship of each shareholder owning 3 percent or more of each class of shares, together with the number and percentage of any class of voting share of the entity which each shareholder is authorized to vote; and

(4) If a corporation, the name and address of each affiliate controlling or controlled by the entity, either directly or indirectly. Where the corporation controls an affiliate, disclose the number of shares and the percentage of each class of voting stock of the corporation owned, directly or indirectly, by the affiliate.

(c) If you already have supplied this information to BLM and the information remains accurate, you need only reference the serial number under which it is filed.

§ 2883.13 What happens if BLM issues me an MLA grant or permit and later determines that I am not qualified to hold it?

BLM will terminate your grant or permit, subject to your right of appeal to the Interior Board of Land Appeals under part 4 of this title.

Subpart 2884—How Do I Apply for an MLA Grant or Permit?

§ 2884.10 What should I do before I file my application?

(a) When you determine that an oil and gas pipeline project would cross lands under BLM jurisdiction or under the jurisdiction of two or more federal agencies, you should notify BLM or the Secretary of the Interior.

(b) Before filing an application with BLM, you are strongly encouraged to visit or telephone the BLM field office having jurisdiction over the lands affected by your application to identify potential routing and other constraints, determine whether or not the lands are located within a designated or existing right-of-way corridor, tentatively schedule the processing of your application, get information about qualifications for MLA grants and permits, and identify any work which will require obtaining one or more temporary use permits. BLM may share this information with federal, state, and local government agencies to ensure that these agencies are aware of any authorizations you may need from them.

§ 2884.11 What information do I need to provide in my application?

(a) File your application on Form SF-299 or as part of an Application to Drill or Sundry Notice. Include a complete description of the project, including the exact diameters and locations of the pipelines, proposed construction techniques, and the estimated life of the facility. Simultaneously file any applications with other federal agencies, such as the Federal Energy Regulatory Commission, for licenses, certificates, or other authorities involving a right-of-way with your application to BLM.

(b) BLM may request you to submit additional information beyond that required in the form to assist in processing your application. This information may include the following:

- (1) Any federal and state approvals required for the proposal,
- (2) A description of the alternative route(s) and mode(s) considered when developing the proposal,
- (3) Copies of or reference to similar applications or grants you have submitted or hold,
- (4) A statement of need and economic feasibility,

(5) A statement of the environmental, social and economic effects of the proposal, and

(6) Your technical and financial capabilities to implement the project.

(c) Before BLM reviews your request for a grant or grant renewal, you must submit the following information and material:

(1) Conditions for, and agreements among, owners or operators to add pumping facilities, looping, or otherwise to increase the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities;

(3) Minimum shipment or purchase tenders;

(4) Evidence of your technical and financial capabilities to implement the project; and

(5) Other information necessary to process your application.

(d) Should conditions or information change, promptly notify BLM and make the necessary changes to your application. Failing to do so may result in BLM's rejecting or revoking your application.

§ 2884.12 Is there a filing fee for my application?

(a) Yes. You must file a non-refundable processing fee with the application. The fee reimburses BLM for the costs of processing your application, including the costs of preparing any report or documents required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

(b) BLM categorizes applications according to the following criteria:

(1) *Category I.* Either BLM has on hand or you supply the data necessary to process your application; neither a field examination nor land use plan amendment is needed; and the estimated processing time does not exceed 24 work hours for all BLM personnel involved in reviewing the application. *Cost:* Refer to the MLA fee schedule, available from any BLM field office.

(2) *Category II.* Same as Category I, plus one field examination is needed to verify existing information; and the estimated processing time, including the time required to conduct the field exam, falls between 25 and 36 work hours for all BLM personnel involved in reviewing the application. *Cost:* Refer to the MLA fee schedule, available from any BLM field office.

(3) *Category III.* Category I, plus two field examinations are needed to verify existing information; and the estimated

processing time, including the time required to conduct the field exams, falls between 37 and 50 work hours for all BLM personnel involved in reviewing the application. *Cost:* Refer to the MLA fee schedule, available from any BLM field office.

(4) *Category IV.* Original data must be collected; a plan amendment may be needed; two or more field examinations are needed; and the estimated processing time, including the time required for the field exams, is more than 50 work hours for all BLM personnel involved in reviewing the application. *Cost:* Full actual costs.

(5) *Master agreement.* Instead of one of categories I through IV, you may enter into an agreement with BLM to fully reimburse BLM for actual processing costs. The agreement should be written to include any applications you may subsequently file within the same area.

(c) The costs for Categories I, II, and III are contained in a fee schedule that BLM maintains. BLM updates these fees each calendar year, based on the previous year's change in the Implicit Price Deflator-Gross Domestic Product, measured second quarter to second quarter. BLM will round changes to the nearest dollar. You may obtain a copy of the revised schedule from any BLM State or Field Office or by writing: Director, BLM, 1849 C St., N.W., Mail Stop 1000 LS, Washington, D. C. 20240. BLM will post the schedule to the BLM National HomePage on the internet, at <http://www.blm.gov>.

(d) After initially reviewing your application, BLM will determine the category based on estimated costs of processing the application. BLM will give you a written decision as to the processing category, and you must submit the payment before BLM begins processing your application. You may appeal the decision determining the category under part 4 of this title.

(e) If you overpay processing costs, BLM will refund you the amount that you overpaid and adjust your next bill or, if you request it in writing, apply the overpayment to rentals or monitoring costs.

(f) BLM may change the processing cost category to Category IV while processing your application if preparing an environmental impact statement becomes necessary. BLM will send you a written decision of the change and you may appeal this decision under part 4 of this title. While your appeal is pending, BLM will not process your application unless you have paid the processing fee.

(g) If you have a grant or permit relating to the Trans-Alaska Pipeline System, BLM will send you a written

statement of reimbursable costs by the sixtieth day after the close of each quarter. Quarters end on the last day of March, June, September, and December.

§ 2884.13 What is a master agreement and what must it contain?

(a) See paragraphs (a) and (b) of § 2804.17 of this chapter for information about specifications and requirements for master agreements.

(b) Your signature on a master agreement constitutes your agreement with the category determination.

§ 2884.14 Are there any special payment requirements related to Category IV applications?

Yes. If you have a Category IV application, you must also:

(a) Reimburse the United States for the full actual administrative and other costs of processing the application and monitoring the grant. BLM will credit your application processing fee toward your total cost reimbursement obligation; and

(b) For additional information, see § 2804.16 of this chapter.

§ 2884.15 What happens if there are two or more competing applications for the same pipeline facility or system?

If this happens,

(a) *Categories I through III:* You must reimburse BLM for processing costs as if the other application had not been filed.

(b) *Category IV:* You are responsible for the costs identifiable with your application. If BLM cannot readily separate costs, such as costs associated with preparing environmental documents, you must pay an equal share or a proportion agreed to in writing among all applicants and BLM. BLM will not do any work without an advance payment.

(c) *Who determines whether competition exists.* BLM will determine whether or not the applications for right-of-way grants are part of one right-of-way system or are competing applications for the same system.

(d) *Liability.* Each applicant is jointly and severally liable for costs of processing the application for the entire system.

§ 2884.16 Where do I file my application for an MLA grant or permit?

(a) If BLM has exclusive jurisdiction over the lands involved, file your application with the appropriate BLM State Office.

(b) If another federal agency has exclusive jurisdiction over the land involved, file your application with that agency and refer to their regulations for information about their requirements.

(c) If there are no BLM lands involved but the lands are under multiple federal jurisdiction, you may file your application with any BLM office in the vicinity of the project. BLM will notify you where to direct future communications about the project. See also § 2804.11 of this chapter.

(d) If several federal agencies, including BLM, have jurisdiction, file your application at the most convenient BLM office having jurisdiction over a portion of the federal lands. BLM will notify you where to direct all future communications concerning the project. See also § 2804.11(a) of this chapter.

§ 2884.17 What are the public notification requirements for my application?

(a) When BLM receives your application, it will publish a notice in a general circulation newspaper in the vicinity of the lands involved and in the **Federal Register**. BLM may not publish this notice for pipeline projects which it believes will have only minor impacts. The notice will contain:

(1) A description of the pipeline systems and such other information as BLM considers pertinent, and

(2) A statement of where the application and related documents are available for interested persons to review.

(b) BLM will send copies of the notice for review and comment to the:

(1) Governor of each state within which the pipeline system may be located, and

(2) Head of each local government or jurisdiction within which the pipeline system may be located.

(c) BLM will also refer the application to the:

(1) Heads of other federal agencies whose jurisdiction includes areas through which the right-of-way would cross, for consultation and other purposes; and

(2) House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources, if your application involves a pipeline that is 24 inches or more in diameter.

(d) BLM may hold public meetings on your application if there is sufficient interest to warrant the time and expense of such meetings. BLM will publish a notice of any such meetings in the **Federal Register** or in local newspapers.

§ 2884.18 How will BLM process my application?

BLM processes all applications for right-of-way grants and temporary use permits in the manner described at § 2804.20 of this chapter. The customer service standard, described in

§ 2804.20(c) of this chapter, applies to processing MLA applications.

§ 2884.19 Can BLM ask me for additional information?

(a) Yes. BLM may ask you for additional information in order to process your application. This may include, among other information, a detailed construction, operation, rehabilitation, and environmental protection plan, a Plan of Development, and a cultural resources inventory.

(b) If BLM needs more information, we will provide you with a written request and give you a written notice of any deficiencies in the information that you provided and any additional information that BLM needs. You will have a reasonable opportunity to file corrections.

(c) BLM may also ask other federal agencies for additional information, for conditions or stipulations which the grant should contain, and for advice as to whether or not to issue the grant.

§ 2884.20 Can BLM reject my application?

Yes. See § 2804.22 of this chapter.

§ 2884.21 Do I owe any money if BLM rejects my application or if I withdraw my application?

Yes. See § 2804.23 of this chapter. You owe the actual amount, as opposed to a reasonable amount, that BLM expends in processing your application.

§ 2884.22 What may I do on the land while BLM is processing my application?

You may not conduct any activities other than casual use on the lands under application. You must get prior approval from BLM before conducting any activities that are not casual use.

§ 2884.23 When will BLM issue the grant or permit?

If the grant involves:

(a) A pipeline 24 inches or more in diameter, BLM will not issue or renew the grant until after we notify the Congress;

(b) Lands not under BLM jurisdiction, BLM will not issue or renew the grant or permit until the heads of the other agency or agencies involved have concurred;

(c) Lands managed by several federal agencies, including BLM, BLM will not issue or renew the grant or permit until the Secretary of the Interior has consulted with these agencies. BLM may issue or renew the grant or permit without their concurrence, but not through lands within a federal reservation, if doing so would be inconsistent with the purposes of the reservation; and

(d) Lands managed by BLM, we will issue or renew the grant or permit when we approve your application.

Subpart 2885—What Are the Terms and Conditions of MLA Grants and Permits?

§ 2885.10 When is the MLA grant or permit effective?

See § 2805.11 of this chapter.

§ 2885.11 What are the terms and conditions of the grant or permit?

The general provisions at §§ 2805.10, 2805.12, and 2805.13 of this chapter apply. In addition, an MLA grant or permit contains the following requirements:

(a) *How long you may use the grant or permit.* Each grant will have a specific time limit, not to exceed 30 years. BLM will consider the following factors in establishing the time limit:

- (1) Cost of the facility,
- (2) Its useful life,
- (3) The public purpose served, and
- (4) Any potentially conflicting land uses.

(b) *Terms and conditions of use.* By accepting the grant or permit, you agree to comply with and be bound by its terms and conditions and by the regulations in subpart 2805, part 2800, of this chapter, the regulations in this part, and applicable laws. You must comply with the terms and conditions found at § 2805.10(c) of this chapter. In addition, you must:

(1) Construct, operate, and maintain the pipeline system, or a logical part of the system of which this pipeline right-of-way is a part, as BLM determines, as a common carrier. This means that you and your operators and joint owners must accept, convey, transport, or purchase all oil and gas delivered to the pipeline system without regard to where the oil and gas was produced, i.e., whether on federal or non-federal lands. See paragraph (c) of this section for the exception;

(2) Within 30 days after BLM requests it, file rate schedules and tariffs for oil and gas, or derivative products, transported by the pipeline system as a common carrier with the agency prescribed by the authorized officer, and provide proof to BLM that you have made the required filing;

(3) With certain exceptions, not export domestically produced crude oil without Presidential approval (30 U.S.C. 185 and 50 U.S.C. 2401);

(4) Not exceed a right-of-way width of 50 feet plus the ground occupied by the pipeline and related facilities without BLM's written authorization;

(5) Not use the grant area for any use other than that authorized by the grant.

If other pipelines or looping lines are required, first secure BLM's written authorization for the activity; and

(6) If appropriate, not construct or use the land until you submit to BLM a detailed construction, operation, rehabilitation, and environmental protection plan and receive a notice to proceed.

(c) The common carrier provisions of paragraph (b)(1) of this section do not apply to natural gas pipelines subject to regulation under the Natural Gas Act or by state or municipal agencies with the authority to set rates and charges for the sale of natural gas to consumers within the state or municipality.

(d) BLM may require you to certify that you have a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, or property resulting from or related to your activities on the right-of-way. Liability coverage includes potential damages or injuries resulting from actual or threatened discharges or releases of hazardous materials. Based on changes in conditions or risk and your record of compliance, BLM may require a decrease or increase in the amount of your security.

§ 2885.13 How much does it cost to hold a grant or permit?

In addition to the cost reimbursement requirements described at § 2883.13(a) you must pay rent and monitoring costs.

(a) *Rents.* The provisions for paying rents for MLA grants are the same as those for other grants, as given at §§ 2806.14, 2806.16, and 2806.28 of this chapter, except that you must always pay full rent. There are no reductions or waivers to paying rents for MLA grants.

(b) *Monitoring costs.* You must reimburse BLM for any costs we incur in monitoring your construction, operation, maintenance, and termination within grant areas and in protecting and rehabilitating the affected area. There are no exceptions to paying monitoring costs. BLM uses the same category for monitoring as it does for determining processing costs for each application. (See paragraphs (c) and (d) of this section.) As with the application processing costs (see § 2884.12), BLM updates this schedule annually, based on the previous year's change in the Implicit Price Deflator-Gross Domestic Product, second quarter to second quarter. BLM rounds these changes up to the nearest dollar. The monitoring cost schedule is available from any BLM State or field office or by writing: Director, Bureau of Land Management, 1849 C St., N.W., Mail Stop 1000LS, Washington, D.C. 20240. BLM will post this schedule to the BLM

Homepage on the Internet, <http://www.blm.gov>.

(c) *Categories I through III.* For Categories I through III, you must submit monitoring fees with your written acceptance of the terms and conditions of the grant. BLM will not accept your written acceptance of the grant until you pay the fees.

(d) *Category IV.* For Category IV monitoring costs and project agreements, you must submit your written acceptance of the terms and conditions of the grant and the estimated costs of BLM's administering and monitoring your grant. You must periodically pay the estimated costs in advance. If your payments exceed the actual cost, BLM will reimburse you the difference or adjust the next billing to reflect the overpayment.

§ 2885.14 Who is liable for payments?

See subpart 2804, part 2800, of this chapter.

§ 2885.15 What happens if I default on my rental and other payments?

See § 2806.12 of this chapter.

Subpart 2886—What Can I Do Once I Get My MLA Grant or Permit?

§ 2886.10 When can I start activities under my grant or permit?

See § 2807.10 of this chapter. Before you begin operations, you must send BLM a certification of construction, verifying that the pipeline system has been constructed and tested according to the terms of the grant or permit and is in compliance with all required plans, specifications and provisions of federal and state laws and regulations.

§ 2886.11 Who regulates my activities?

The head of the agency having administrative jurisdiction over the federal lands involved has the authority to regulate your activities, unless BLM and the agency head reach another agreement.

§ 2886.12 What happens if I need a wider right-of-way in limited areas?

You may apply to BLM for a wider right-of-way in limited areas to operate and maintain the pipeline after you construct it, protect the environment, or provide for public safety. BLM will send you a written report of its findings, either authorizing or disapproving your request for a wider right-of-way.

§ 2886.13 When must I contact BLM?

See § 2807.11 of this chapter.

§ 2886.14 When can BLM suspend my activities?

See § 2807.15 of this chapter. The same provisions apply to temporary use permits issued under this part.

§ 2886.15 For what am I liable?

See § 2807.12 of this chapter.

§ 2886.16 What happens if BLM transfers management of the land on which my grant or permit is located to another agency or outside public ownership?

See § 2807.14 of this chapter. The same provisions apply to temporary use permits issued under this part.

§ 2886.17 When can BLM suspend or terminate temporary use permits?

(a) BLM can suspend or terminate your temporary use permit when it determines that you have:

(1) Not complied with any term, condition, or stipulation in the grant or with applicable laws or regulations; or
(2) Deliberately failed to use the grant for the purpose for which BLM issued it; or

(3) Abandoned the grant.

(b) BLM will send you a written notice of non-compliance. You may file a written request to the next higher level of authority asking for a review of the notice. BLM will notify you within 10 working days of receipt of the request. BLM will review the situation that prompted the notice and provide you with a written determination of our findings within a reasonable period of time.

(c) If the decision is adverse to you, you may appeal it under part 4 of this title.

§ 2886.18 When can BLM suspend or terminate my grant or permit?

(a) If BLM determines your activities are endangering public health, safety or the environment, we may order you to suspend those activities immediately and to take immediate remedial action. BLM may give this order orally or in writing to you, your representative, or a contractor or subcontractor doing work for you, whether or not any action is being taken by other federal or state agencies. The activity must cease immediately. If BLM gives you the order

orally, we will follow up as soon as practicable with a written notice.

(b) In cases where public health, safety, or the environment are not being endangered, BLM will give you written notice when we intend to suspend or terminate your grant. BLM will refer the matter to the Office of Hearings and Appeals. An Administrative Law Judge in the Office of Hearings and Appeals will determine when grounds for suspension or termination exist, according to the regulations set out in part 4 of this title. The Administrative Law Judge's decision determines BLM's action on whether or not to suspend or terminate the grant or permit.

§ 2886.19 What happens to any improvements on my grant when it terminates?

See § 2807.18 of this chapter.

Subpart 2887—What Information Do I Need To Know If I Want to Amend, Assign, or Renew My MLA Grant?**§ 2887.10 What conditions require amending a grant?**

(a) You must apply for an amendment when you want to change the route of your pipeline or your use of the federal lands. You must apply for an amendment under the provisions of § 2807.19 of this chapter. Any unauthorized activity may be subject to prosecution under the applicable laws or to trespass charges under the provisions of subpart 2888 of this chapter.

(b) If you hold a pipeline grant issued before November 16, 1973, and there is a change in the pipeline route or your use of the federal lands, you must apply for a new right-of-way grant under the Act, as amended.

(c) BLM may ratify or confirm a grant that was issued under any provision of law if we can modify the grant to comply with the provisions of the Act and regulations. BLM and you must jointly approve any modifications.

§ 2887.11 May I assign my grant?

(a) Yes. You may assign a grant in whole or in part, if BLM approves your request.

(b) If you want to assign your grant, the proposed assignee must file an application under the same procedures as for a new grant. (See subpart 2884 of this part.)

(c) Additionally, the request for assignment must include the following:

(1) Documentation that you, the assignor, agree to the assignment; and
(2) A stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned.

(d) BLM will not recognize an assignment until it approves the assignment in writing. BLM may modify or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment.

(e) The processing time and conditions for original applications, as described at § 2804.19(c) of this chapter, apply to processing applications for assignments.

§ 2887.12 May I renew my grant?

(a) Yes, except for those cases where a grant has terminated by its own terms. BLM will renew the grant if the pipeline is being operated and maintained in accordance with all provisions of the right-of-way grant, the regulations in this part and the Act. If your grant has terminated, you must apply for a new grant under the procedures described at subpart 2884 of this part.

(b) BLM may modify the terms and conditions of the grant at the time of renewal, and you must pay in advance for the administrative costs of processing the request.

(c) The time and conditions for processing applications for rights-of-way, as described at § 2804.19(c) of this chapter, apply for applications for renewals.

Subpart 2888—What Do I Need To Know About Trespass?

See subpart 2808, part 2800, of this chapter.

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