



Fact Sheet Solar and Wind Rule

November 10, 2016

The Bureau of Land Management’s (BLM) final Solar and Wind Rule will facilitate responsible solar and wind energy development on public lands and ensure that American taxpayers receive a fair return from the use of those resources. Among other things, the rule streamlines review processes and provides financial incentives designed to encourage development within designated leasing areas (DLAs). To achieve these objectives, the rule makes a number of improvements and refinements to existing policies and regulations governing the BLM’s renewable energy program.

The rule is called “Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections for 43 CFR Parts 2800 and 2880.”

Overview of Final Rule

Building on the proposed rule, existing regulatory and statutory authority, and the Western Solar Plan, the final rule:

- Incentivizes development in areas with the highest generation potential and fewest resource conflicts, called DLAs, by: (i) providing financial incentives to developers, including less frequent adjustments to rent and longer phase-ins for other fees; (ii) allowing standard bonds as opposed to bonds based on full reclamation costs; (iii) awarding leases in these areas through competitive processes; and (iv) streamlining the leasing process by, for example, granting applicants site control earlier;
- Ensures transparency and predictability in rents and fees – for example, gives developers the option of selecting fixed rate adjustments instead of market-based adjustments;
- Updates the BLM’s current fee structure in response to market conditions, which will bring down near-term costs for solar projects; and
- Broadens the BLM’s authority to utilize competitive processes outside of designated leasing areas.

The rule also complements BLM’s landscape-scale planning efforts, including the Western Solar Plan, California’s Desert Renewable Energy Conservation Plan, and Arizona’s Restoration Design Energy Project.

Summary of Principal Changes Between the Current Policy and the Final Rule

Issue	Current Policy	Final Rule
Approach to Obtaining Fair Market Value for Solar Energy	Policy includes acreage and MW rates. Rates are based on National Agricultural Statistics Service (NASS) land survey data and power market conditions from 2010. Does not allow phase-in of MW rates.	Final rule includes acreage and MW rates. Initial rates are based on NASS land data and valuation of power pricing for five-year period (2010-2014). Provides for MW rate phase-in. MW rates lower than current policy.
Approach to Obtaining Fair Market Value for Wind Energy	Policy includes acreage and MW rates. Rates are based on NASS data and valuation of power pricing in 2008. Does not provide for the phase-in of MW capacity rates following commencement of power generation.	Final rule includes acreage and MW rates (aligns approach for wind and solar). Initial rates based on NASS land data and valuation of power pricing for five-year period (2010-2014). Provides for MW rate phase-in. Rule's rates based on market surveys prepared by the Office of Valuation Services.
Acreage Rent & MW Capacity Fee Changes over Time	Periodic updates to rates based on changes in NASS land values and power pricing markets.	Two options: (1) Periodic updates to rates based on changes in NASS land values and power pricing markets (<i>Standard Rate Adjustments</i>), or (2) Fixed percentage adjustments at fixed intervals from date of issuance (<i>Scheduled Rate Adjustments</i>).
Approach to Competitive Leasing	Competition allowed only when applicants submit competing applications for rights of way in the same area. No competitive leasing allowed at BLM's own initiative.	Allows BLM to utilize competitive processes at its own initiative or when there are competing applications. - Within DLAs, allows lease award to highest bidder. - Outside of DLAs, highest bidder obtains "preferred applicant status."
Approach to Development Within DLAs (e.g., SEZs)	Compete for preferred applicant status; application processed according to BLM's usual procedures.	<i>For Grants (outside DLAs)</i> ¹ -Compete for preferred applicant status; application processed according to BLM's usual procedures. <i>For Leases (inside DLAs)</i> -High bidder receives lease following auction based on preliminary NEPA; permission to begin construction subject to project-specific reviews.

¹ Grants and leases are both forms of rights-of-way that the BLM can issue to entities wishing to use the public lands for, among other things, renewable energy generation projects. Under the rule, developments within DLAs will be authorized by leases and developments outside of DLAs will be authorized by grants.

Issue	Current Policy	Final Rule
Bonding	<p><i>For Grants</i>-Based on reclamation cost estimate. Does not consider salvage/recycling values. Bond cannot be less than minimum bond amount (if one is established).</p> <p><i>For Leases</i>-Not applicable.</p>	<p><i>For Grants</i>-Bond determined based on reclamation cost estimate for grants. May consider salvage/recycling of project materials. If BLM approves, the bond may be less than min. amount.</p> <p><i>For Leases</i>-Bond based on rule's standard bond amount. No reclamation cost estimate required. Lesser bond amount possible with BLM approval.</p>
Application Process Requirements	<p><i>For Grants</i>-Two pre-application meetings required before submittal. Public meeting required. BLM offices are directed to prioritize applications based on screening criteria establish by policy.</p> <p><i>For Leases</i>-Not applicable.</p>	<p><i>For Grants</i>-Two preliminary application review meetings required within 6 months submission, plus one public meeting. BLM may waive preliminary meetings. BLM offices will prioritize applications based on screening criteria identified in the rule.</p> <p><i>For Leases</i>-No requirements of the competitive process.</p>
Approval of Application	<p><i>For Grants</i>-Site-specific surveys, studies, and inventories completed for NEPA review. Complete NEPA review and issue decision.</p> <p><i>For Leases</i>-Not applicable.</p>	<p><i>For Grants</i>-Site specific surveys, studies, and inventories completed for NEPA review. Complete NEPA review and issue decision.</p> <p><i>For Leases</i>-No specific approval requirements, would depend on need for project-specific reviews.</p>

Principal Changes from the Proposed Rule

Based on comments received on the proposed rule, discussions with stakeholders, and additional internal reviews, the BLM made a number of changes between the proposed and final rules. The most notable changes include:

- The final rule provides two options for future adjustments to acreage rents and MW capacity fees:
 - The **Standard Rate Adjustment Method** periodically adjusts acreage rents and MW capacity fees in response to changes in NASS survey data and power market prices; as a result, rates can fluctuate up or down,
 - The **Scheduled Rate Adjustment Method** allows developers to select fixed adjustments at defined periods in lieu of market-based adjustments; this option was developed to address concerns about uncertainty in the Standard Method. (Note: The rule allows all

- existing projects to select a scheduled rate adjustment method based on their existing rates; option must be selected within 2 years of the rule’s effective date.)
- In addition to these options, developers retain the right to request alternative project- or region-specific payment terms – e.g., acreage rent and MW capacity fees.
 - The proposed rule’s requirement for pre-application meetings has been modified to require “preliminary application review meetings” after the submission of an application.
 - The final rule omits the proposed rule’s requirements for large-scale pipelines with diameter of 10” or greater.
 - The final rule incorporates a state-specific factor to adjust the solar and wind energy acreage rent determinations. The net effect of this factor may lower the zone a county is assigned based on NASS land values.
 - The final rule expressly allows for consideration of energy storage, including providing for the use of alternative MW capacity fees for projects that incorporate energy storage.
 - The final rule includes provisions that extend phase-in of new rates for pending wind energy projects that satisfy certain requirements (must have had an application, POD, and cost recovery agreement in place before September 30, 2014).
 - Bonding requirements now clearly provide for consideration of salvage and other values for project materials, if project proponents provide adequate supporting documentation with their reclamation cost estimate.

Compliance Costs

The BLM has determined that the final rule will not have a significant economic impact on a substantial number of small businesses. It will, however, affect the payments due from all 44 existing wind authorizations and all 22 existing solar authorizations, and going forward will also affect an estimated three new solar energy grants per year, two new wind energy grants per year, and one new lease per year. Of all of the provisions in the final rule, those related to project rents and fees (including late payment fees, MW capacity fees, and testing fees) will have the largest economic impact.

Based on studies prepared by the Department’s Office of Valuation Services, relative to the BLM’s current policies, the rule will generally increase rents and fees for wind projects and decrease rents and fees for solar projects. The impact of the rule’s provisions on any individual project, however, will depend on whether the project is new or existing, whether it relies on a grant or a lease, and whether the project operator selects the standard or scheduled rate adjustment method, among other factors.

Overall, the rule will result in both one time and annual net reductions in payments to the BLM. Across all operators, the BLM estimates these reductions to be: \$1.5 million on a one-time basis and \$14.2 million net on an ongoing annual basis across all projects.²

² The \$14.2 million net reduction in annual costs results from a \$19 million net reduction in rent and fees paid that is partially offset by an estimated \$4.8 million per year in bonus bids received following competitive auctions and a net \$652,000 in new costs associated with other requirements (\$1.6 million per year in cost increases, and \$1 million per year in cost reductions). The latter are considered transfer costs, and therefore are not considered to have a net economic impact.

Procedural History

- The Advance Notice of Proposed Rulemaking was published in December 2011.
- Secretary Salazar signed the Record of Decision for the Solar Programmatic EIS, a foundational document for the rule, in October 2012. This became known as the Western Solar Energy Plan.
- The Proposed Solar and Wind Rule was published September 30, 2014, for a 60-day comment period. The comment period was extended 15 days, closing on Dec. 16, 2014.
- The BLM received a total of 36 comment letters and received other feedback during stakeholder engagement meetings.