



441 G St. N.W.
Washington, DC 20548

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May 16, 2024

The Honorable Joe Manchin
Chairman
The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Bruce Westerman
Chairman
The Honorable Raúl Grijalva
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Bureau of Land Management: Rights-of-Way, Leasing, and Operations for Renewable Energy*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Bureau of Land Management (BLM) entitled “Rights-of-Way, Leasing, and Operations for Renewable Energy” (RIN: 1004-AE78). We received the rule on April 30, 2024. It was published in the *Federal Register* as a final rule on May 1, 2024. 89 Fed. Reg. 35634. The effective date of the rule is July 1, 2024.

According to BLM, this final rule updates BLM’s renewable energy and right-of-way programs. Specifically, the rule addresses implementation of new authority from the Energy Act of 2020, Pub. L. No. 116-260, div. Z, title III, § 3103, 134 Stat. 1182, 2516 (Dec. 27, 2020), *codified at* 43 U.S.C. § 3003, pertaining to solar and wind energy generation rents and fees. It also expands agency discretion to process applications for solar and wind energy generation rights-of-way inside designated leasing areas, according to BLM. BLM notes that the rule will make technical changes, corrections, and clarifications to the regulations, and will update BLM’s procedures governing BLM’s administration of rights-of-way issued under Title V of the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, title V, 90 Stat. 2743, 2776–2782, *codified as amended at* 43 U.S.C. § 1761–1772 (Oct. 21, 1976) (FLPMA), including for solar and wind energy applications and development authorizations.

Enclosed is our assessment of BLM’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Kyle Moorman
Division Chief, Regulatory Affairs
Bureau of Land Management

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
ENTITLED
“RIGHTS-OF-WAY, LEASING, AND OPERATIONS FOR RENEWABLE ENERGY”
(RIN: 1004-AE78)

(i) Cost-benefit analysis

The Department of the Interior, Bureau of Land Management (BLM) stated that reducing the acreage rent and capacity fee in this final rule will encourage solar and wind energy development with a goal of increasing the share of clean energy in the United States’ domestic power infrastructure. According to BLM, decreasing the costs for developers to construct and operate solar and wind energy development will allow them to increase investments in new facilities, which will promote additional development. BLM also anticipates that the rule will decrease the cost for developers, which may enable them to invest in projects on tribal, state, or private lands. Over time, BLM expects that the decreased cost to developers will translate to a reduction in the cost of solar and wind energy, making solar- and wind-generated energy more competitive, and stabilizing or reducing the cost to consumers.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

BLM determined that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

BLM determined that this final rule does not contain a federal mandate that may result in expenditures of \$100 million or more, adjusted annually for inflation, for state, local, and tribal governments, in the aggregate, or to the private sector in any one year. BLM further noted that the rule would not significantly or uniquely affect small governments.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to

GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

BLM did not discuss the Administrative Pay-As-You-Go Act of 2023 in the rule or in its submission to us.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On June 16, 2023, BLM published a proposed rule. 88 Fed. Reg. 39726. Prior to issuing the proposed rule, in 2021 BLM conducted listening sessions seeking public comment on BLM’s potential use of the Energy Act of 2020 authority to “reduce acreage rental rates and capacity fees” to “promote the greatest use of wind and solar energy resources.” In May 2022, BLM published interim guidance to implement that authority, pending completion of this final rule. BLM published the rule after considering comments received on the proposed rule and other factors.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

BLM determined that this final rule contains information collection requirements that are subject to review by OMB under the Act. According to BLM, OMB has generally approved existing information collection requirements related to wind and solar rights-of-way grants or leases in 43 C.F.R. part 2800, under OMB Control Number 1004-1206, which expires on June 30, 2026. BLM also explained that the regulation requires the use of Standard Form 299 (SF-299), “Application for Transportation and Utility Systems and Facilities on Federal Lands,” for right-of-way applications and the regulations at 43 C.F.R. part 2800. According to BLM, OMB has approved the requirements associated with SF-299 and has assigned Control Number 0596-0249.

BLM noted that the rule contains one new information collection requirement for wind and solar grant or leaseholders to submit a certified statement each year identifying the first year’s estimated energy generation on public lands and prior year’s actual energy generation on public lands. In light of the new information collection requirement, as well as a few other adjustments to burdens for existing requirements, the estimated burden for information collection under OMB Control Number 1004-1206 is 47,338 annual burden hours and an annual burden cost of \$2,182,302.

Statutory authorization for the rule

BLM promulgated this final rule pursuant to sections 1733, 1740, 1763, 1764, and 3003 of title 43 of the United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that the rule constitutes a “significant regulatory action” within the scope of the Order.

Executive Order No. 13132 (Federalism)

BLM determined that a federalism summary impact statement is not required because this final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.