

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Table of Contents

- .10 Notice of Decision
 - A. Offer to Issue
 - B. Decision Issuing Grant
 - C. Decisions Denying Applications
 - D. Appeals

- .11 Grant Content
 - A. BLM Form 2800-14
 - B. Lands Occupied
 - C. Term of the Grant
 - 1. Termination Date
 - 2. Generally
 - 3. Administrative Units
 - 4. Multiple Agencies
 - 5. Reciprocal ROW Grants
 - 6. Perpetual Term or Conversion to Easements
 - 7. Grants with Unspecified Term

- .12 Terms and Conditions
 - A. Guide Stipulations
 - B. Non-Guide Stipulations
 - C. Performance Stipulations
 - D. Bonds
 - 1. General
 - a. When Bond Coverage is Required - Criteria.
 - (1) Applicant History
 - (2) Nature of Project
 - (3) Limited and Limited Liability entities
 - 2. What to Bond
 - 3. Amount of Bond
 - 4. Bond and Surety System
 - 5. Release of Bonds
 - 6. Reduction in Bond Amount
 - 7. Bond Collections

- .13 Effective Date
 - A. Delayed Start

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

- .14 Rights Conveyed
 - A. Multiple Uses or Facilities
 - B. Third-party Use

- .15 Rights Retained
 - A. Entry
 - B. Third Party Use
 - C. Resources
 - D. Terms and Conditions

- .16 Monitoring Fees
 - A. Determination of Monitoring Fee Category
 - 1. Construction and Initial Operations Phase
 - 2. Continual Monitoring
 - 3. Major Maintenance or Adjustments
 - 4. Terminations of Grant
 - 5. Bonding
 - 6. Category 5
 - 7. Category 6
 - a. Existing Agreement
 - b. New Determination
 - B. Reductions
 - C. Appeals
 - 1. Categories 1-4
 - 2. Category 6

- .17 Payment of Monitoring Fees
 - A. Categories 1 through 4
 - B. Category 5
 - C. Category 6
 - 1. Existing Processing Agreement
 - 2. New Determination of Category 6

- .18 Monitoring Principles
 - A. Manner
 - B. Consultation

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Illustrations

1. Sample Offer to Issue Grant Letter
2. Sample Decision Issuing Grant
3. Grant of Right-of-Way - Form 2800-14
4. Notice to Proceed - Form 2800-15
5. Sample – Processing and Monitoring Fee Schedule
6. Sample – Cost Recovery Category Determination Record
7. Communication Use Lease – Form 2800-18

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

.10 Notice of Decision.

A. Offer to Issue. Once the grant has been prepared submit duplicate originals to the applicant for review, signature, and return of both originals. (See Illustration 1.) Estimated rent and monitoring fees may also be requested at this time.

1. Any protests of record should be mentioned and the solution that the BLM has taken, or proposes to take, must be included in the Offer to Issue.

2. The Offer to Issue is not an appealable decision. The applicant should be encouraged to meet with the AO to discuss any issues.

3. Rent is estimated because the actual date of issuance is unknown at this point in the process.

4. If monitoring is formally determined as part of the Offer to Issue, use the Category and Fee Determination Record as an attachment since it would be subject to appeal at this time.

B. Decision Issuing Grant. All grants shall be issued by a formal, appealable, decision (see Illustration 2). The decision shall also, as appropriate:

1. Determine the Monitoring Category and require payment (see .16);

2. Determine the actual rent and rent period; requesting any payment due (see 2806);

3. Discuss and decide any protests that were filed.

C. Decisions Denying Applications must contain:

1. Reasons for the denial,

2. Processing fees remaining to be paid, and

3. Other matters.

D. Appeals.

1. All decisions are subject to appeal.

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

2. Unless the decisions provide otherwise, the decisions are in full force and effect unless the IBLA grants a stay.

.11 Grant Content. A ROW grant is the instrument the BLM uses to ensure the facility authorized is constructed, operated, and terminated in a safe and environmentally sound manner.

A. BLM Form 2800-14. This form is used to maintain uniformity and consistency in the granting program (see Illustration 3). ROW grants shall be as simple and burden-free as possible.

1. Form 2800-18, Communications Use Lease (see Illustration 7), is used for communication sites.

B. Lands Occupied. The lands occupied may or may not correspond to those applied for. The 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 or unduly degrade the environment.

C. Term of the Grant. The term of each grant shall be specific and is primarily dependent upon a reasonable period needed to accomplish the purpose of the authorization.

1. Termination Date. All grants issued for more than one full year shall have a termination date of December 31st.

2. Generally. Except as provided below in a., b., and c., no term should exceed 30 years.

a. Grants for State and Local Government highways and roads may be perpetual.

b. Reciprocal grants must have equal terms and may be perpetual.

.11C2c

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

c. Grants or portion of grants involved in lands being transferred out of Federal ownership (see 2807.15).

3. Administrative Units. The terms of grants for similar projects within the same administrative unit should be identical, unless there are compelling circumstances which warrant different terms.

4. Multiple Agencies. Where possible, the term of a ROW grant should reflect the term of grants or licenses issued by other agencies for the same project. For example, the term of a ROW grant for a transmission line from a hydroproject should match the licensing period of the FERC.

5. Reciprocal ROW Grants may be issued in perpetuity when in conjunction with perpetual access rights granted to the United States by a non-Federal entity.

6. Perpetual Terms or Conversion to Easements. ROW grants may be issued or amended to a perpetual term or to an easement only where and when the public lands are transferred out of BLM management or Federal ownership, and administration of the ROW is not reserved to the BLM. (See 2807.15).

7. Grants with Unspecified Terms. Sometimes grants were issued that do not have a term specified in the grant. For these:

a. If the authorizing statute specified a maximum term, i.e., not to exceed 50 years, consider the grant to have a term of 50 years from initial date, or

b. If the authorizing statute is silent, consider the grant to have a perpetual term.

.12 Terms and Conditions. Terms and conditions (stipulations) in the grant describe the specific rights and accompanying responsibilities granted to the holder, and those retained by the United States. All stipulations shall be written in explicit, concise, easy to understand, standard English. Legal jargon shall be avoided whenever possible. All stipulations included in a ROW grant shall be legally enforceable. Stipulations which refer to materials located in case files or NEPA documents are not adequate and will not be used. A well designed POD with mitigation itemization and incorporation of Best Management Practices greatly reduces the need for other terms and conditions.

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

A. Guide Stipulations. Stipulations contained in the approved Guide Stipulations for ROW Administration shall be used whenever applicable without revision.

B. Non-Guide Stipulations are formulated for specific situations which are not addressed in the ROW Guide Stipulations. All non-guide stipulations or changes in ROW Guide Stipulations must be approved by the next higher level than the level delegated to authorize the grant.

C. Performance Stipulations. Maximize the use of performance (versus development) stipulations to the greatest extent practical; take every appropriate opportunity to incorporate satisfactory performance stipulations into ROW grants by the use of PODs.

D. Bonds are normally required.

1. General. Bonds are used to cover any losses, damages, or injury to human health, the environment, and property in connection with the use and occupancy of a ROW, including terminating the grant; and to secure all obligations imposed by the grant and applicable laws and regulations.

a. When Bond Coverage is Required - Criteria. A bond will be required when, as a result of the decision making process, the AO determines that one is appropriate. Consider things such as:

(1) Applicant History. Does the applicant have a history of noncompliance with grant stipulations? Is there apparent financial stability of the applicant to meet the requirements of the right-of-way grant?

(2) Nature of Project. Consider the amount of foreseeable environmental disturbance the project could cause and the public land resources that could potentially be disturbed. Also be alert to projects using novel "field expedient" construction techniques.

(3) Limited and Limited Liability entities. The establishment papers of these entities must be reviewed as to the ease of the officers and others to eliminate the entity or the maximum limitation of liability. Bonding should be commensurate to the degree that liability would fall to the BLM in any noncompliance or default.

2. What to Bond. Normally, specific stipulations are targeted for bonding. The AO should determine in advance those stipulations suitable for bonding.

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2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

3. Amount of Bond. The amount of the bond should be determined by estimating the cost to the United States to satisfy every stipulation covered by the bond in the event of noncompliance by the holder. In arriving at this estimation, all costs should be considered including, but not limited to, direct, indirect, administrative, equipment, contracting, monitoring and reclamation costs.

4. Bond and Surety System. Bonds must be entered into the Bond and Surety System. The Bond and Surety is an automated system (part of LR2000) that contains bond and surety information for branch offices of the BLM. Its purpose is to streamline, accelerate, and facilitate bond actions by making information readily available.

5. Release of Bonds. Once the bond has been accepted, it can be released, canceled, or terminated only pursuant to its own terms. The BLM will not release, terminate, or permit the cancellation of the bond until all obligations have been fulfilled or satisfactory replacement bonds have been accepted.

6. Reduction in Bond Amount. Where a bond has been obtained to cover a phased operation, the amount of bond may be reduced upon satisfactory completion of a phase.

7. Bond Collections. Prior to initiating efforts to collect on a bond, the compliance process must be completed and documented. The AO should consider a temporary suspension of activities if there is a violation of the grant stipulations which the holder refuses to correct

.13 Effective Date. Unless a specific date is provided in the Grant or Decision issuing the Grant, the Grant is effective upon the date signed by the AO.

A. Delayed Start. Often a grant will be issued with a “Notice to Proceed” stipulation when the initiation of construction must be delayed pending completion of things such as a species inventory or a soils test by the applicant/holder. Use Form 2800-15, Notice to Proceed (Illustration 4) to authorize construction to be started.

.14 Rights Conveyed. The grant conveys only those rights which it expressly describes. It is subject to the valid existing rights of others, including the United States. The rights granted should be for a specific use(s) or purpose(s).

For example: Construction, operation, maintenance, and termination of a domestic water pipeline.

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

A. Multiple Uses or Facilities. Different uses or facilities serving a single project or applicant/holder should be issued as one grant *provided they come under the same authorization authority*. The grant should specify the major use or facility “supported by” the other uses/facilities.

For example:

1) A communication site supported by an access road and electric service line, or

2) An electric transmission line needing operation/maintenance road access across other public lands.

B. Third-party Use. If specifically authorized by the grant, the holder may allow other parties to use its facility for the purposes specified in the grant and may charge for its use, except for those facilities authorized under the Act of March 4, 1911. The holder of facilities authorized under the Act of March 4, 1911, may allow other parties to use its facilities unless expressly prohibited in the grant.

.15 Rights Retained. The United States retains and may exercise any rights the grant does not expressly convey to the holder. Among these are the BLM’s rights to:

Note: For pre-FLPMA grants the rights retained may be very different. The specific authorizing law and regulations must be reviewed for these cases.

A. Entry. A continuing right of access to enter the public land covered by the grant at any time; including the right to enter physically any part of a facility with prior notice.

B. Third Party Use. The right to authorize third parties to use the public lands within the ROW. Such use(s) shall be compatible with the holder’s use.

C. Resources. Ownership of the resources of the land, including timber and vegetative or mineral materials and any other living or non-living resources.

D. Terms and Conditions. Change the terms and conditions of the grant as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

.16 Monitoring Fees. The reasonable costs the Federal government incurs in monitoring the construction, operation, maintenance, and termination of the project and protection and rehabilitation of the public lands involved with the grant are recovered as monitoring fees.

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Note. Monitoring categories may be changed or fees may be charged for ROW amendments, assignments and renewals if the terms and conditions are changed from those of the original grant.

A. Determination of Monitoring Fee Category. The AO will estimate the appropriate monitoring category and include this estimation in the Offer to Issue letter (see .10 above). Final determination of the monitoring category will occur in the Decision issuing the grant. As the fee for Categories 1 through 4 are adjusted annually be sure the proper schedule is used.

1. Construction and Initial Operations Phase. Estimate the number of hours needed to monitor the construction and initial operation of ROW facilities. This may be sufficient for those applications processed as Category 1-4.

2. Continual Monitoring may be required for archaeological, cultural, revegetation and stabilization, or T&E species conditions to be placed in the ROW grant.

3. Major Maintenance or Adjustments. Is the facility of a type that one could expect to have to monitor major maintenance (replacement of underground pipe for example) or adjustments?

4. Termination of the Grant. Is the facility such that you can expect to monitor the shutdown, removal of improvements and restoration of the land?

5. Bonding may be considered for 3. and 4., above, where there is difficulty in estimating necessary monitoring hours.

6. Category 5. Monitoring costs are determined in accordance with the Master Agreement.

7. Category 6. Monitoring costs are determined by:

a. Existing Agreement. If both the processing and monitoring categories are category 6, then the monitoring fee payments are in accord with the cost recovery agreement in place, or

b. New Determination. If the processing category was category 1-4 and the monitoring decision is category 6 then the monitoring fee is based on a BLM negotiated cost recovery agreement.

B. Reductions. See Manual 2804.

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

C. Appeals.

1. Categories 1-4. If the BLM determined fee has been paid the grant may be issued. The fee will be changed or modified and earned based on the final decision on the appeal.

2. Category 6. The grant will not be issued pending a final decision on the appeal.

.17 Payment of Monitoring Fees.

A. Categories 1 through 4. Unless there is good reason to collect this one-time fee at another time, the applicant should be requested to submit the fee, after signing to accept the terms and conditions, when returning the offered ROW grant.

B. Category 5 or Master Agreement. As specified in the agreement.

C. Category 6.

1. Existing Processing Agreement. Where both processing and monitoring are determined to be Category 6, payment would be made in accordance with the existing agreement.

2. New Determination of Category 6. Where it is determined that a Category 1 through 4 Processing case requires a Category 6 Monitoring decision, a signed cost recovery agreement is necessary before any grant issues. Payment would then be made under the terms of the agreement.

.18 Monitoring Principles. If not otherwise specified in the grant, the holder may begin activities immediately and without further communication from the BLM upon the AO's signature on the grant. The AO needs to assure readiness for monitoring activities prior to issuing the grant and include such things as:

A. Manner. The AO, or his representative, will make every possible effort to develop effective and candid communication with each holder and maintain conduct in an ethical, courteous, and professional manner in all compliance activities.

B. Consultation and coordination with the holder or his representative are essential in order to discuss specific requirements, the status of ongoing work, and/or problems and issues involving compliance.

Illustration 1
.10A

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Sample Offer to Issue Grant Letter

Letterhead

AZA-12345 (032)

Mr. David French
1808 N. Third St.
Phoenix, AZ 44444

Dear Mr. French:

Enclosed are two copies of an unsigned right-of-way (ROW) grant offer (BLM Form 2800-14) for your proposed pipeline, serial number AZA-12345. Please review the document and if it meets with your approval, sign and date both copies and return to the address shown above. Upon receipt of the signed documents and fees discussed below, we will issue the ROW grant, absent any other unresolved issues.

You must pay a fee to the BLM for the costs we will incur in monitoring the construction and operation of your authorized use. The fees are categorized according to the number of work hours necessary to monitor your grant, and are not refundable. We anticipate your use will require a monitoring Category ____, which involves a fee of \$_____. This fee must be paid prior to issuance of the grant.

Rent for use of public lands must be paid in advance of such use and prior to issuance of the right-of-way grant. Rent for linear rights-of-way is based on an established schedule that is adjusted annually based on the Implicit Price Deflator, Gross Domestic Product. You may obtain a copy of the rent schedule from this office or by accessing www.blm.gov.

You have the option of paying the rent in 10-year periods or for the entire term of the right-of-way grant. Provided you remit payment by (date), your rent will be:

\$_____ for the first 10-year period from (month, year) to (month, year) or

\$_____ for the entire term of the grant (month, year) to (month, year).

Please return both signed copies of the grant, along with the monitoring fees and rent payment by (use date specified above). If these requirements are not met, the application may be denied.

Please be aware that you may not carry out any activities until you have received an authorized grant from this office. If you have any questions contact Rollie White, Realty Specialist, at 602-555-0435.

Sincerely,

Miranda James
Field Manager

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Sample Decision Issuing Grant

AZA-123456 (032)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Mr. David French :
1808 N. Third St. : Right-of-Way Grant AZA-123456
Anytown, AZ 44444 :

Right-of-Way Grant AZA-123456 Issued
Rental Determined
Monitoring Fee Determined

Enclosed is a copy of your right-of-way (ROW) grant, serial number AZA-123456, which allows the use of public land for a water pipeline. It was approved by the BLM on (date).

The advance rental for the ROW is determined to be \$_____ for the period from (month, year) to (month, year). The BLM has received your advance rental for this period. All subsequent rental billings will be due at the beginning of the calendar year starting (month, year). Future billings will be based on the rent schedule in effect at that time.

The monitoring fee for this ROW is determined to be a Category _____, which is \$_____. The BLM has received your monitoring fee.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted,
and
- (4) Whether the public interest favors granting the stay.

If you have any questions, please contact Rollie White, Realty Specialist, at (602) 555-0435.

Miranda James
Field Manager

Enclosures
Right-of-Way Grant AZA-123456
Right-of-Way Monitoring Category and Fee Determination Record
BLM Form 1842-1

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Grant of Right-of-Way - Form 2800-14
[To be revised per discussion]

Form 2800-14
(August 1985)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

Issuing Office

Serial Number

1. A (right-of-way) (permit) is hereby granted pursuant to:

- a. Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
- b. Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c. Other (describe) _____

2. Nature of Interest:

- a. By this instrument, the holder _____ receives a right to construct, operate, maintain, and terminate a _____ on public lands (or Federal land for MLA Rights-of-Way) described as follows:

b. The right-of-way or permit area granted herein is _____ feet wide, _____ feet long and contains _____ acres, more or less. If a site type facility, the facility contains _____ acres.

c. This instrument shall terminate on _____, _____ years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

d. This instrument may may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

(Continued on page 2)

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Grant of Right-of-Way Form 2800-14

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within _____ days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) _____, dated _____, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

(Signature of Holder)

(Signature of Authorized Officer)

(Title)

(Title)

(Date)

(Effective Date of Grant)

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Notice to Proceed - Form 2800-15

[Insert copy of Form 2800-15]

Illustration 5

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Sample Processing and Monitoring Fee Schedule

Calendar Year 2007 Cost Recovery Processing and Monitoring Fee Schedule for FLPMA and MLA Rights-of-Way Actions

Processing and Monitoring Category	Federal Work Hours Involved	Processing and Monitoring fee per application as of January 1, 2007. To be adjusted annually for changes in the IPD-GDP.
1. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are $>1 \leq 8$.	\$104
2. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are $> 8 \leq 24$.	\$368
3. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are $> 24 \leq 36$.	\$691
4. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are $> 36 \leq 50$.	\$990
5. Master agreements.	Varies.	As specified in the agreement.
6. Applications for new grants, assignments, renewals, and amendments to existing grants.	Estimated Federal work hours are > 50 .	Full reasonable costs (FLPMA) Full actual costs (MLA)

Illustration 7
.11A

2805 - TERMS AND CONDITIONS FOR FLPMA GRANTS

Communications Use Lease – Form 2800-18