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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2800

[LLWO301000.L13400000]

RIN 1004–AE19

Segregation of Lands—Renewable Energy

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its regulations to add provisions allowing the BLM to temporarily segregate from the operation of the public land laws, by publication of a **Federal Register** notice, public lands included in a pending wind or solar energy generation right-of-way (ROW) application, and public lands that the BLM identifies for potential future wind or solar energy generation right-of-way applications under applicable legal requirements. The purpose of such segregation is to promote the orderly administration of the public lands. Lands segregated under this rule will not be subject to appropriation under the public land laws, including location under the Mining Law of 1872 (Mining Law), for up to two years from the date of publication of notice under this rule, subject to valid existing rights, but would remain open under the Mineral Leasing Act of 1920 (MLA) and the Materials Act of 1947 (Materials Act).

DATES: This rule is effective May 30, 2013.

FOR FURTHER INFORMATION CONTACT: Ray Brady at (202) 912–7312 for information relating to the BLM's renewable energy program or the substance of this final rule or Ian Senio at (202) 912–7440 for information relating to the rulemaking process generally. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

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I. Background

On April 26, 2011 (76 FR 23230), the BLM published a proposed rule to amend the regulations found in 43 CFR subpart 2091, Segregation and Opening of Lands, and 43 CFR part 2800, Rights-of-Way Under the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) (FLPMA), to allow for the temporary segregation of public lands from the operation of the public land laws, including the Mining Law, within the application area of a pending solar or wind renewable energy generation project, or for public lands identified by the BLM under the ROW regulations for potential future wind or solar energy generation projects. Such segregations would be for a period of up to two years, subject to valid existing rights, but the affected public lands would remain open under the MLA and the Materials Act. Concurrently with the proposed rule, the BLM published an interim temporary final rule (ITFR) (76 FR 23198) that was substantively identical to the proposed rule except that the ITFR expires two years after its publication, or after the completion of the notice and comment rulemaking process for the proposed rule, whichever occurs first. As published, the ITFR is effective April 26, 2011 through April 26, 2013. Today's action will replace the ITFR with this final rule on May 30, 2013.

The purpose of the proposed rule, the ITFR, and today's final rule is to allow for the orderly administration of the public lands associated with the BLM's consideration of renewable energy ROWs. As explained below, the BLM seeks to avoid the delays and uncertainty that could result from encumbrances placed on lands after a wind or solar energy generation ROW application has been filed or after the BLM has identified an area for such applications, but before the BLM is able to make a decision on any such ROW. While such situations are not common, they can be disruptive to the processing of a wind or solar energy ROW application. Today's action eliminates the potential for these conflicts and brings a higher level of certainty to the BLM's management of the lands in question. The BLM requested public comments on the proposed and ITFR rulemakings during a 60-day comment period. Those comment periods closed on June 27, 2011. You can find the discussion of comments and the BLM's responses in the Discussion of Public Comments section of this rule.

Segregations under this rule take effect immediately upon the BLM's publication of a notice in the **Federal Register** announcing the segregation. The rule provides for a segregation period (1) of up to two years, (2) until the BLM makes a final decision on the ROW application, or (3) until the BLM publishes a notice terminating the segregation, whichever occurs first. Under this rule, a BLM State Director may extend the segregation period for up to an additional two years by issuing a **Federal Register** notice explaining the reasons for such extension. The State Director may extend a segregation period for a ROW application only once, for a total segregation of no longer than four years. The rule does not authorize the BLM to continue the segregation after a final decision on a ROW has been made. Segregations under this rule do not affect valid existing rights in mining claims located before any such segregation, and this rule does not allow the BLM to segregate lands covered by ROW applications for purposes other than wind or solar energy generation. Finally, not all wind or solar ROW applications would lead to a segregation under this rule, as the BLM may reject some applications and others may not require segregation because conflicts between uses are not anticipated.

Segregations have been held to be ''reasonably related'' to the BLM's broad authority to issue rules related to ''the orderly administration of the public land laws,'' *see Byron* v. *United States,* 259 F. 371, 376 (9th Cir. 1919); *Hopkins* v. *United States,* 414 F. 2d 464, 472 (9th Cir. 1969), because they allow the BLM to protect an applicant for an interest in such lands from ''the assertion by others of rights to the lands while the applicant is prevented from taking any steps to protect'' its interests because it has to wait for the BLM to act on its application. *Marian Q. Kaiser,* 65 I.D. 485 (Nov. 25, 1958). It is for this purpose that existing regulations at 43 CFR subpart 2091 provide the BLM with the discretion to segregate lands that are proposed for various types of land disposals, such as land sales, land exchanges, and transfers of public land to local governments and other entities under the Recreation and Public Purposes Act of 1926. These regulatory provisions allowing segregations were put in place over the years to prevent resource conflicts, including conflicts arising from the location of new mining claims that could create encumbrances on the title of public lands identified for transfer out of Federal ownership under the applicable authorities during the BLM's consideration of such transfers prior to their consummation. Segregations under this final rule will serve a similar purpose.

This rule is necessitated by the Administration's priority efforts to facilitate and promote the development of renewable energy on public lands and the potential for the location of mining claims to impede the BLM's ability to carry out its congressional and Executive mandates. In Section 211 of the Energy Policy Act of 2005 (119 Stat. 660, Aug. 8, 2005) (EPAct), Congress declared that before 2015, the Secretary of the Interior should seek to have approved non-hydropower renewable energy projects on public lands with a capacity of at least 10,000 megawatts (MW) of electricity.

After passage of the EPAct, then Secretary of the Interior Dirk Kempthorne issued several orders emphasizing the importance of renewable energy development on public lands. On January 16, 2009, then Secretary Kempthorne issued Secretarial Order 3283, ''Enhancing Renewable Energy Development on the Public Lands,'' which states that its purpose is to ''facilitate the Department's efforts to achieve the goal Congress established in Section 211 of the Energy Policy Act of 2005 to approve non-hydropower renewable energy projects on the public lands with a generation capacity of at least 10,000 megawatts of electricity by 2015.'' The Order also declared that ''the development of renewable energy resources on the public lands will increase domestic energy production, provide alternatives to traditional energy resources, and enhance the energy security of the United States.''

Shortly thereafter, then Secretary Ken Salazar issued Secretarial Order 3285, ''Renewable Energy Development by the Department of the Interior'' (Mar. 11, 2009), as amended by Order 3285A1 (Feb. 22, 2010), which reemphasized the development of renewable energy as a priority for the Department of the Interior (Department). This Order states: ''Encouraging the production, development, and delivery of renewable energy is one of the Department's highest priorities. Agencies and bureaus within the Department will work collaboratively with each other, and with other Federal agencies, departments, states, local communities, and private landowners to encourage the timely and responsible development of renewable energy and associated transmission while protecting and enhancing the Nation's water, wildlife, and other natural resources.''

Separate from these specific directives related to renewable energy, FLPMA directs the BLM to manage the public lands for multiple uses, which means giving consideration to a combination of balanced and diverse resource uses that account for long-term needs of future generations for renewable and non-renewable resources, such as recreation, range, timber, minerals, watershed, wildlife, fish, and natural, scenic, scientific, and historic values. In some instances, various uses may present conflicts. For example, a mining claim located within a proposed ROW for a utility-scale solar energy generation facility could impede the BLM's ability to process the ROW application because under the Surface Resources Act (30 U.S.C. 601 *et seq.*), the Federal Government's (or its grantee's) use of the surface cannot endanger or materially interfere with a mining claim. However, FLPMA provides the BLM with broad authority and discretion to allow some uses to the exclusion of others. This final rule is consistent with FLPMA's multiple use mandate because it helps reduce the potential for resource use conflicts.

The BLM previously lacked regulations specifically authorizing segregation in order to maintain the status quo on lands during the period between when it first publicly announced the receipt of a wind or solar energy generation ROW application or identified an area for such applications, and when it made a final decision on a wind or solar energy ROW. As a result, and unless there was another withdrawal or segregation, the public lands subject to or identified for such applications remained open to appropriation under the public land laws, including location and entry under the Mining Law. This situation creates the potential for resource use conflicts. In comparison, the BLM does not permit new encumbrances on lands proposed for exchange or sale after the exchange or sale is publicly announced, but before it is completed.

For example, over the past five years, the BLM has processed 21 solar and wind energy development ROW applications (13 solar and 8 wind). New mining claims were located on the public lands described in two of these applications after they were publicly announced, but prior to any final decision by the BLM. Similarly, over the past two years, based on mining claim filings with the BLM, 437 new mining claims were located within wind energy ROW application areas in Arizona, California, Idaho, Nevada, Oregon, Utah, and Wyoming after those areas, consisting of approximately 20.6 million acres, were identified by the BLM in the 2005 Final Programmatic Environmental Impact Statement for Wind Energy Development (Wind PEIS) (70 FR 36651). Also, 216 new mining claims were located within solar energy ROW application areas after those areas were identified as Solar Energy Zones in the 2012 Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Solar PEIS) (77 FR 44267). In the BLM's experience, some of these mining claims are likely to be valid and/or filed without consideration of the pending ROW application, but others are likely to be speculative and not located for mining purposes. The latter are likely filed for no purpose other than to provide a means for the mining claimant to compel payment from the ROW applicant or grantee in exchange for relinquishing the mining claim. While it is relatively easy and inexpensive to locate a mining claim because a mining claim location requires no prior approval from the BLM, it can be difficult, time-consuming, and costly to extinguish a claim.

The location of a new mining claim during the BLM's review of a ROW application could interfere with the administration of the public lands because it could, on a case-by-case basis, result in applicants' modifying their proposals for their use and occupancy of the public lands. This is because under the Surface Resources Act a ROW grantee cannot materially interfere with prospecting, mining, or processing operations, or reasonably incidental use on a mining claim. Therefore, a ROW applicant may choose to modify its application in response to subsequently-located mining claims or relocate its proposed surface use to avoid potential conflicts with the claims. Such modifications or relocations could increase the BLM's processing time and costs for the ROW application if those changes require the BLM to undertake any additional or supplemental analyses under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). For these reasons, leaving areas covered by a ROW application (which can take over a year to process) or areas identified for such an application, open to mining claim location creates uncertainty that could complicate the financing for energy project developers and institutions that finance such development, which ultimately interferes with the BLM's administration of the public lands.

By allowing the BLM to temporarily segregate public lands subject to a wind or solar energy generation facility ROW application or identified for such applications, this final rule provides the BLM with the necessary regulatory authority to minimize conflicts between new mining claims and future wind or solar energy generation facility ROW

applications before the BLM has taken action on those applications. This rule also facilitates the BLM's implementation of the congressional and executive mandates and direction to prioritize the development of renewable energy resources on public lands. The temporary segregation provided for under this rule is sufficient to achieve these objectives because after the BLM authorizes a ROW, any new mining claims in the area covered by the ROW would be subject to the authorized ROW use, and the mining claimant would know the location and nature of the authorized use before staking a new claim.

II. Discussion of Public Comments

The BLM received nine comments on the proposed rule. Four comments came from mining associations and opposed the rule; three comments came from power associations or companies and supported the rule, and the State of Alaska sent comments from two different program offices, neither of which supported the rule as proposed and suggested changes. Below is a discussion of the significant issues raised by commenters.

Intent of the rule. One commenter stated that the BLM is placing a higher value on solar and wind uses than on other uses of the public land in violation of FLPMA. This is incorrect. FLPMA provides the BLM with the discretion to manage public lands for multiple uses. The solar and wind energy generation ROWs that are the subject of this rule fit squarely within FLPMA's multiple use mandate. Moreover, the BLM's emphasis on such projects is consistent with applicable statutes, directives and policy. The EPAct directs the BLM to expedite energy related projects on public lands. Executive Order 13212 directs the BLM to accelerate the completion of projects that will increase the production of energy. Secretarial Order 3285A1 establishes renewable energy development as a priority for the Department. Therefore, the BLM did not revise the rule in response to this comment.

Another commenter stated that the rule presumes the existence of land use conflicts where none may exist. This is incorrect. The rule does not presume conflicts exist, but rather the purpose of the rule is to prevent land use conflicts from arising. If there is no potential for conflict, the segregation authority available under this rule will not be exercised. The commenter points out that the BLM has other tools to address nuisance mining claims located after the filing of a ROW application (i.e., those located for the sole purpose of extracting something from the ROW applicant). The commenter contends that existing regulations permit BLM to address such claims through validity examinations, which would permit BLM to declare a claim invalid under certain circumstances. However, validity examinations take considerable time and expense and could delay important energy projects if they were the tool used to address all of the claims located after a proposed wind or solar energy ROW application is publicly announced by the BLM, but before the BLM is able to complete its review and take action on that application. The purpose of segregations under this rule is to allow the BLM to maintain the status quo while it processes a ROW application, in order to try to avoid delays in energy development that has been prioritized by both Congress and the Department.

Finally, one commenter proposed amending section 2091.3–1(e)(1), as proposed by the BLM, to read as follows:

> In addition, the Bureau of Land Management may also segregate public lands that it identifies, in conjunction with the preparation or revision of a resource management plan or other planning process, for potential rights of way for electrical generation from wind or solar sources. The identification of such land will involve consultation with the public and opportunity for public comment.

The comment suggests that this would clarify the rule by showing that:

(1) The intent of the rule is narrow;

(2) Public participation is part of the process; and

(3) Planning is part of the process.

While the BLM agrees with these three points, the BLM made no changes in the final rule in response to this comment. As drafted, the rule is narrow; it applies only to public lands either covered by a ROW application or lands that the BLM specifically identifies for such applications. In addition, the suggested revisions are already part of the BLM's planning regulations (43 CFR subpart 1610) and thus would be duplicative if added to today's final rule. Public lands available for wind and solar energy generation are identified through the BLM's land use planning process, which includes a robust public participation process.

Excessive impact of the rule. Several commenters stated that the proposed rule would authorize BLM managers to segregate land even if there is no known interest in developing renewable energy. The commenters cite the statement ''or public lands identified by the BLM for a pending or future wind or solar energy ROW authorization'' (76 FR 23232) as establishing this potential for arbitrary segregations. The scenario outlined by these commenters is contrary to the language of the rule, which limits segregations to those circumstances where there is an express interest in such development (e.g., when there is a site-specific solar or wind energy ROW application pending), or where the BLM has identified an area as having the potential for such applications (e.g., when the BLM initiates a competitive process for solar or wind development on particular lands). For this reason, the final rule has not been revised in response to these comments.

One commenter asserted that the rule is an over-reaction to a few bad actors. As explained below, the final rule is narrow. It only limits the location of mining claims after the segregation under this rule is announced and does not affect previously located claims. Moreover, segregations under this rule are not automatic; the BLM will only effect segregations on a case-by-case basis when it determines segregation to be necessary for the orderly administration of the public lands.

One commenter stated that the BLM implies that it will use significant resources in its planning process for wind and solar to support ''sweeping withdrawals using wind and solar as an excuse.'' The BLM does not intend to conduct sweeping withdrawals related to wind and solar energy ROW grants. First, the BLM's withdrawal authority and regulations are not affected by this rule. Second, as explained above in response to the comment regarding extending the segregations, the temporary segregations authorized by the rule achieve the BLM's objectives related to the orderly processing of such applications, thereby making withdrawals unnecessary. History indicates that the BLM has not proposed sweeping withdrawals. Also, as noted above, the BLM will exercise its authority under this rule on a case-by-case basis. For example, if the BLM determines that the potential for conflict associated with a particular ROW is low, then the BLM will not segregate the land. Moreover, the 2005 Wind PEIS and the 2012 Solar PEIS already contain a comprehensive analysis of areas with potential for wind or solar energy development, contrary to the commenter's suggestion that significant additional planning resources will need to be devoted to such efforts in the near term.

Another commenter voiced a concern that the segregations would take place without any opportunity for public input and that the rule should require the BLM to explain, in writing, why

there is a need for a segregation. As explained in the proposed rule and the ITFR, the purpose of the temporary segregations under the rule is narrow. Segregations are intended to maintain the status quo after a wind or solar energy ROW application has been filed or the BLM has identified an area as appropriate for such applications. The status quo can only be maintained if the segregations are effective immediately; otherwise, actions could be taken that interfere with the underlying purposes of the segregation, the orderly administration of the public lands. This is why all of the BLM's existing segregation authorities make the segregation effective immediately (i.e., none are subject to public comment).

Finally, one commenter pointed out that solar panel fields will prevent other land uses and that this would conflict with the FLPMA's mandate to manage public lands for multiple use. The commenter goes on to say that the proposed rule improperly singles out locatable minerals. The BLM agrees that solar panels may prevent some uses of the same piece of land during the same period of time, but the BLM has discretion as to what activities it allows on any parcel of land at any particular time. FLPMA's multiple use mandate does not require all uses to be permitted on every acre. Thus, the final rule does not impermissibly single out locatable minerals; it simply gives the BLM the ability to temporarily segregate lands identified for or covered by a wind or solar energy ROW application from the operation of the Mining Law because the location of a mining claim does not require BLM approval and could interfere with the BLM's processing of such ROW application. The final rule was not revised as a result of this comment.

Length of Segregations. One commenter stated that segregations under the rule will become permanent. It cited the BLM-managed withdrawals in Alaska, which the Alaska Native Claims Settlement Act authorized, as well as other closures to mineral entry pending designation of conservation system units. The situation for these long term closures is unique to Alaska pursuant to other statutory and regulatory authority. The segregations permitted by this rule, on the other hand, are temporary; lands would not be closed to the location of mining claims beyond the maximum timeframes established in this rule. The two-year timeframe, with a possible one time extension of up to two years, under this rule is consistent with other segregation authorities.

Another commenter believes the four-year limit for a segregation is too short. It cited its own application which is currently the subject of an environmental impact statement (EIS) having a current schedule lasting four years and two months. The commenter asked that the final rule extend the time period to three years and allow an additional three-year extension. It based its timeframe on the BLM's Wind Energy Development Policy (IM 2009–043), which establishes an initial three-year time period for energy site testing and monitoring. The commenter goes on to say that the segregations should continue for the term of the ROW grant if the BLM approves the project. In addition, it urges the BLM to not approve discretionary mineral activities on public lands overlain by a renewable energy ROW and to continue the segregation so as to prohibit entry under the Mining Law after the ROW grant is issued.

The BLM believes that the two-year timeframe, with the possibility of a one-time extension, for segregations under this rule provides sufficient time for the agency to make decisions on most applications. With respect to the commenter's suggestion that the rule allow for segregations to continue after the ROW grant is issued, the BLM notes two responses. First, after the BLM issues a solar or wind energy ROW grant, the ROW grant holder has a priority right over any subsequently located mining claim(s), which makes continuing the segregation during the term of a ROW grant unnecessary. With respect to discretionary mineral activities under the MLA or Materials Act, after issuance of a wind or solar ROW grant, the BLM would not authorize such activities for lands covered by such a ROW grant unless the activities will not have an adverse impact on the pre-existing ROW grant. Second, segregations are by definition temporary. The continuation of the segregation urged by the commenter would be tantamount to a withdrawal, which is beyond the scope of this rule and subject to other legal authorities and requirements.

Authority. One commenter stated that the BLM lacks the authority to issue the rule. The BLM disagrees. FLPMA (43 U.S.C. 1740) states ''[t]he Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act.'' This section grants the Secretary broad regulatory powers to administer the public lands. As explained above, the orderly administration of the public lands includes the authority to segregate lands in order to avoid resource use conflicts. The commenter also stated that FLPMA does not allow segregation for the BLM's convenience. However, as explained above, the purpose of this rule is not administrative convenience, but rather to maintain the status quo and avoid land use conflicts that would restrict the efficient use of the public lands while the BLM is considering a wind or solar energy ROW application, but before it actually makes a decision on a grant. This is because, as explained above, the staking of a mining claim after the location of a wind or solar energy facility application is announced, but before a decision is made on the application, potentially interferes with or delays the BLM's evaluation of the proposed surface use. By preventing such conflicts, the rule facilitates the BLM's administration of the public lands. Moreover, after the temporary segregation period concludes under this rule, the covered lands would be open again to location under the Mining Law.

Make a quick decision. Another commenter stated that the rule should require the BLM to decide ''immediately upon receiving an application'' whether to segregate the land under application. In the commenter's view, this would prevent speculative mining claims. A provision in the rule stating that the BLM would make an immediate decision regarding segregation would also eliminate what the commenter believes is a lack of clarity in the proposed rule as to when, or if, the BLM would segregate lands after a renewable energy ROW application has been filed. The commenter acknowledged that the BLM might not segregate lands covered by an application if it considers the potential for conflicts with new mining claims to be small. As explained above, the purpose of the rule is not to segregate all lands subject to a wind or solar energy ROW application, but rather to temporarily segregate the lands covered by such applications when the BLM determines that it is necessary for the orderly administration of the public lands. The completed Wind and Solar PEISs give the BLM a good indication of whether and where the BLM needs to segregate lands when it receives a wind or solar energy ROW application. For many projects the BLM may very well determine that no segregation is necessary. For example, segregations associated with a solar or wind energy application would not be necessary in areas with relatively low mineral development potential. That said, given the analyses contained in the Wind PEIS and Solar PEIS and other information available, the BLM should be able to

identify areas where there is the potential for conflicts between solar and wind energy development and mining claims, mineral leases or sales, or other land disposals determine that a segregation is necessary, and issue the corresponding segregation notice quickly. The BLM has provided additional guidance to our field offices on the use of the segregation authority in the ITFR, and that guidance will be carried forward to implement this final rule.

Narrow the rule. One comment asked the BLM to narrow the rule to prevent ''anti-mining groups and others'' from filing renewable ROW applications over existing mining claims. The final rule was not revised as a result of this comment because such filings would have no impact. Valid existing mining claims could not be affected by segregations under the rule, as they would pre-date the wind or solar ROW application and any associated segregation. Moreover, the BLM's policies require wind and solar energy generation ROW applicants to show that their application represents a serious proposal before the BLM accepts the application, let alone consider segregating the land covered by it. Consistent with past practice and as currently outlined in Instruction Memorandum (IM) 2011–061 the BLM considers a number of criteria before processing an application, which include a requirement that proponents present a detailed plan of development for any proposed Project. Satisfaction of these requirements is a prerequisite to the BLM's acceptance of an application for processing, and by extension practically provides a threshold as to when the BLM will initiate segregation for a particular application. As a result, segregations would only occur for projects supported by substantial applications, thus the hypothetical applications identified by the commenter would be unlikely to meet BLM's criteria for acceptance, let alone be considered for segregations. In fact, since the effective date of the ITFR, the BLM has segregated only three areas with pending solar energy ROW applications and four areas with pending wind energy applications.

Another commenter asked the BLM to narrow the rule so that segregations are allowed only when mining claims are located after the application. Specifically, this group asked that there be no segregation for claims ''that were located prior to the submission of a[n] application * * *.'' In other words, the group requests that where mining claims had been filed prior to the filing of a ROW renewable energy application that segregations not be allowed. No changes to the final rule were necessary as a result of this comment because, as explained above, segregations under this rule would not affect valid mining claims located prior to the publication of a segregation notice in the **Federal Register**. Practically, this means that valid mining claims located prior to the submission of a wind or solar energy generation ROW application for a particular area or the identification of such area by the BLM for a ROW application would not be affected by segregation under this rule.

One commenter suggested that the BLM narrow the scope of the rule by using stipulations rather than segregations to prevent the filing of mining claims. As explained above, segregations under this rule would not affect valid existing mining claims. Moreover, the commenter did not identify a mechanism by which the BLM could impose stipulations that would address potential resource use conflicts created by mining claims that are located after a wind or solar energy application is announced, as the location of such claims occurs without BLM approval. The same commenter also views this rule as inconsistent with the BLM's 2006 Energy and Non-energy Mineral Policy. However, the 2006 policy simply expresses a preference that lands remain open to the location of mining claims unless actions closing lands are clearly justified.[1] The final rule is consistent with this preference.

Impact on some small-scale miners. One commenter stated that the cost of validity examinations would create a burden on small-scale miners. This rule does not affect valid existing mining claims or those claims located prior to the publication of a segregation notice under this rule, nor does it modify the surface management regulations or change the circumstances under which validity examinations are required.

To the extent the commenter is referring to the circumstances where a new Plan of Operations or Notice for a prior mining claim in a segregated area is filed with the BLM during the two-year segregation period, the BLM has the discretion under the surface management regulations (43 CFR 3809.100(a)) to require the preparation of a mineral examination report before it processes the Plan of Operations or accepts the filed Notice. With respect to any particular Plan of Operation or Notice, the BLM would separately determine, on a case-by-case basis and consistent with the requirements of the surface management regulations, whether to require a validity determination for such Plan or Notice. If the BLM requires a validity examination, the operator is responsible for the cost of the examination and report. However, knowing this it possible that operators would choose not to file a Notice or Plan of Operations during the segregation period for existing claims in segregated areas in order to avoid facing a validity examination, which in fact appears to be what has happened: For FYs 2009 and 2010, 19 Plans of Operations (10 in solar application areas and 9 in wind application areas) and 50 Notices (12 in solar application areas and 38 in wind application areas) were filed with the BLM. No Plans of Operation or Notices were filed in FYs 2011 and 2012, after the ITFR was implemented. Moreover, the evaluation of a Plan of Operations or Notice for a mining claim filed before a segregation takes place would be no different from the evaluation of such a claim where a segregation did not exist. Therefore, the BLM has not modified the final rule in response to this comment.

Working collaboratively. One commenter suggested that instead of segregations, the BLM require parties to work collaboratively. The BLM agrees that in many cases this is a preferred and effective approach. If existing mining claims fall within the area of a proposed renewable energy project, the BLM intends to pursue collaboration among the parties to resolve any resource use conflicts. At the same time, this final rule provides a valuable tool for reducing the potential for resource use conflicts that could occur after the BLM announces the receipt of a wind or solar energy application, but before the BLM completes its processing of that application, and thereby promotes collaboration.

Alaska-specific issues. Commenters indicated concern with the way the rule would address State filings and withdrawals under the Alaska National Interest Lands Conservation Act (ANILCA). This rule does not create problems with respect to State filings and withdrawals under ANILCA. First, the rule permits segregations under certain circumstances, which simply provides a tool for the BLM's orderly administration of the public lands that can be invoked on a case-by-case basis in connection with wind or solar energy development. The authority provided by this rule would not affect or amend existing withdrawals or withdrawal

[1] **Note:** The 2006 Mineral Policy was superseded by the 2008 Bureau of Land Management Energy and Mineral Policy, signed by BLM Director Caswell. This rule is also consistent with the 2008 policy's expressed preference that the lands be open to mining claim filings.

authorities in Alaska or elsewhere. Second, and to the extent the commenter was also referring to lands selected under the Alaska Native Claims Settlement Act (ANCSA), the BLM does not anticipate that BLM lands selected for conveyance in Alaska are likely to be included in any renewable energy ROW applications. Part of the process of identifying appropriate locations for wind or solar projects includes an assessment of the land status of a project site under consideration. Therefore, theoretically, while there could be a solar or wind energy ROW application on lands previously selected where the selection has yet to be approved for conveyance, the BLM believes this is unlikely to occur. Put another way, the fact that a parcel had been selected under ANCSA could call into question the appropriateness of a proposed site for wind or solar energy development. Moreover, as noted above, segregations under this rule are not automatic and the authority will only be invoked when circumstances dictate as outlined above. Furthermore, the segregation of land under this rule would only be for a two-year period, with the potential for a one-time two-year extension. Finally, the BLM will follow ANILCA Section 906(k)(1), which requires state concurrence for any ROW filings made on lands selected by the State as part of the review process.

Two commenters pointed out that ANILCA withdrawals exceeding 5,000 acres require congressional approval within a year. One of the commenters added that segregation is the equivalent of a withdrawal and requires the same congressional action as a withdrawal. These assertions are incorrect. Segregations under this rule are not withdrawals. Temporary segregations are different from withdrawals in that segregations prevent certain uses of public lands for a short period of time, not to exceed four years for any type of segregation, while withdrawals are generally for longer terms (generally 20 years) and must be approved by an Assistant Secretary or a higher ranked position within the Department.

III. Discussion of the Final Rule

This rule revises 43 CFR 2091.3–1 and 2804.25 by adding language that allows the BLM to segregate lands if the BLM determines it is necessary for the orderly administration of the public lands. This authority to segregate lands is limited to lands included in a pending or future wind or solar energy ROW application, or public lands the BLM identifies for such applications. If segregated under this rule, such lands, during the limited segregation period, will not be subject to appropriation under the public land laws, including location under the Mining Law, but would remain open under the MLA and the Materials Act, subject to valid existing rights.

The final rule does not differ from the proposed rule or the ITFR in any substantive way. Some language in the final rule has been revised to shorten sentences to make the rule easier to read and understand and to cite statutes already discussed in the proposal and ITFR. Because today's rule replaces the ITFR, the ITFR's provisions limiting segregations to two years (see sections 2091.3–1(e)(3) and 2804.25(e)(3)) are no longer necessary and have been removed from the final rule. See the discussion below of the authority for a BLM State Director to extend a segregation, with sufficient justification, for an additional period not to exceed two years.

Segregations under this rule end after two years (unless extended for up to two additional years) and the lands automatically reopen to appropriation under the public land laws, including the mining laws. Segregations under this rule may end sooner if, prior to the end of the two-year period:

(1) The BLM issues a decision on the wind or solar energy ROW application associated with the segregation; or

(2) The BLM publishes a **Federal Register** notice terminating the segregation.

(3) This final rule allows a BLM State Director to extend the segregation for up to an additional two years if a BLM State Director determines and documents in writing, prior to the expiration of the segregation, that an extension of the segregation is necessary for the orderly administration of the public lands. If the State Director determines that an extension is necessary, the BLM will publish an extension notice in the **Federal Register**. The extension of the segregation would not be for more than two years. The maximum total segregation period under the rule may not exceed four years.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action [2] and is not subject to review by the Office of Management and Budget under Executive Order 12866. The rule provides the BLM with regulatory authority to segregate public lands included within a pending or future wind or solar energy generation ROW application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization, from appropriation under the public land laws, including location under the Mining Law, but not the MLA or the Materials Act, if the BLM determines that segregation is necessary for the orderly administration of the public lands. To assess the potential economic impacts, the BLM made some assumptions concerning when and how often this segregation authority may be exercised. The purpose of any segregation would be to facilitate the orderly administration of the public lands by avoiding potential resource use conflicts between renewable energy developments and mining claims located after the lands for such development have been identified.

Wind—Wind energy ROW site-testing and development applications are widely distributed across many western states. Based on the BLM's recent experience processing wind energy ROW applications, it is anticipated that approximately 25 percent of the lands with current wind energy ROW applications will reach the processing stage where a Notice of Intent (NOI) is issued. Most of the public lands with pending wind energy ROW applications are currently managed for multiple resource use, including being open to mineral entry under the Mining Law. In fiscal years (FY) 2009 and 2010, more than 400 new mining claims were located within wind energy ROW application areas in Arizona, California, Idaho, Nevada, Oregon, Utah, and Wyoming. There were about 50 claimants or an average of about eight claims per claimant. Without trying to identify specific locations of new mining claims located within those application areas, based on the economic analysis prepared in 2011 for the proposed rule, the BLM assumed a quarter of those new mining claims, or over 100 new mining claims, would be prevented from being located within wind application areas that would be segregated under this rule and that approximately 300 new claims would be filed. However, since implementing the ITFR to segregate lands where the BLM

[2] " 'Significant regulatory action' means any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy…; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs…; or (4) Raise novel legal and policy issues arising out of legal mandates, the President's priorities, or… this Executive Order.'' Exec. Order No. 12866, 58 FR 51738 (Oct. 4, 1993).

has reached the NOI stage of the applications for wind energy ROW authorizations, only 13 new mining claims have been filed in three states on the non-segregated areas with wind energy application areas.

The actual number of claimants affected will likely be less than the number of claims filed, because a single claimant typically files and holds multiple mining claims. Of the new mining claims filed within the wind energy ROW application areas in FYs 2009 through 2012, there was an average of about eight mining claims per claimant. Assuming that there was nothing unique about the number of claims and distribution of claims per claimant for those years, the BLM estimates that 14 entities would be potentially precluded from filing new mining claims on lands that would be segregated in the future within the identified wind energy ROW application areas under this rule. For these entities, the economic impacts of the segregation are the delay in when they could locate their mining claims and a potential delay in the development of such claims because such development would be subject to any ROW grants issued during the temporary segregation period. However, a meaningful estimate of the value of such delays is difficult to quantify given the available data as it depends on commercial viability of any individual claim. Also, the location of a mining claim is an early step in a long process that may or may not ultimately result in revenue generating activity for the claimant.

The other situation in which entities might be affected by the segregation provision is if a new Plan of Operations or Notice for a prior mining claim is filed with the BLM during a two-year segregation. In such a situation, the BLM has the discretion under the Surface Management Regulations (43 CFR subpart 3809) to require the preparation of a mineral examination report before it processes the Plan of Operations or accepts the filed Notice. If required, the operator is responsible for paying the cost of the examination and report. However, the evaluation of a plan of operations or notice for a mining claim filed before a segregation takes place would be no different than the evaluation of such a claim where a segregation did not exist.

In 2009 and 2010, nine Plans of Operations and 38 Notices were filed with the BLM on claims located within wind ROW application areas. No plans or notices were filed in 2011 or 2012. Assuming; (1) a quarter of those filings were on lands segregated under this rule, (2) the number of Plan and Notice filings received between FYs 2009 and 2012 is representative of the number of filings that might occur in the future on segregated lands, and (3) the BLM required mineral examination reports to determine claim validity on all Plans and Notices filed on lands that may be segregated, the BLM estimates that two entities might be affected by this rule over a two-year period.[3] However, it is also possible that operators would choose not to file a Notice or Plan of Operations during the segregation period in order to avoid facing a validity examination. Should the BLM require the preparation of mineral examination reports while the lands are segregated to determine mining claim validity, the entity filing the Plan or Notice would be responsible for the cost of making that validity determination. Understanding that every mineral examination report is unique and the costs vary accordingly, the BLM assumes an average cost of $100,000 to conduct the examination and prepare the report. Based on the number of Plans and Notices filed within the wind energy right-of-way application areas in FY 2009 and 2010, and the number of entities anticipated to be affected, the BLM estimates the total cost of this provision would be about $100,000 per year.

Solar—Like wind, most of the public lands with pending solar energy ROW applications are currently managed for multiple resource use, including mineral entry under the Mining Law. Where the BLM segregates lands from mineral entry, claimants would not be allowed to locate any new mining claims during the segregation period. Over the past two years, 26 new mining claims were located within solar energy ROW application areas that were not segregated by the ITFR. For the prior two years (2009 and 2010), over 200 new mining claims were filed. Based on the BLM's recent experience processing solar energy ROW applications, the BLM anticipates that approximately 25 percent of the lands with current solar energy ROW applications would reach the processing stage where an NOI is issued and therefore the BLM could segregate the areas. Without trying to identify which ROWs would be granted or the specific locations of new mining claims within those application areas, the BLM assumes based on the economic analysis prepared in connection with this rule that a quarter of those new mining claims, or about 50 new mining claims, would be prevented from being located within solar ROW application areas that could be segregated under this rule and that approximately 150 new claims would be located in the non-segregated solar energy application areas.

The actual number of claimants affected will likely be less than 50 because a single claimant typically locates and holds multiple mining claims. Of the existing mining claims located within solar energy ROW application areas, there was an average of about eight mining claims per claimant. Assuming that there was nothing unique about the number and distribution of claims per claimant, the BLM estimates six to seven entities would potentially be precluded from locating new mining claims on lands segregated within the identified solar energy ROW application areas under the rule change. For these entities, the economic impacts of the segregation would be the delay in when they could locate their mining claim and a potential delay in the development of such claim because such development would be subject to any ROW grants issued during the temporary segregation period. However, a meaningful estimate of the value of such delays is difficult to quantify given the available data as it depends on the commercial viability of any individual claim and the fact that the location of a mining claim is an early step in a long process that may or may not ultimately result in revenue generating activity for the claimant.

As with wind, the other situation in which entities might be affected by these segregation provisions is when a new Plan of Operations or Notice for an existing mining claim is filed with the BLM during a two-year segregation for a solar project. In such a situation, the BLM has the discretion under the Surface Management Regulations (43 CFR subpart 3809) to require a mineral examination report before it approves the Plan of Operations or accepts the filed Notice. If required, the operator is responsible to pay the cost of the examination and report. However, the evaluation of a plan of operations or notice for a mining claim filed before a segregation takes place would be no different than the evaluation of such a claim where a segregation did not exist.

For FYs 2009 and 2010, 10 Plans of Operations and 12 Notices were filed with the BLM for existing claims within solar ROW application areas. No Plans of Operation or Notices were filed in FYs 2011 and 2012. Assuming: (1) A quarter of those filings in 2009 and 2010

[3] With respect to any particular Plan of Operation or Notice that might be filed in areas segregated under the rule, the BLM would separately determine, on a case-by-case basis and consistent with the requirements of 43 CFR 3809.100(a), whether to require a validity determination for such Plan or Notice.

were on lands now segregated under this rule; (2) the number of Plan and Notice filings received in FYs 2009 through 2012 is representative of the number of filings that might occur on lands that may be segregated; and (3) the BLM required mineral examination reports to determine claim validity on all Plans and Notices filed within segregated lands, the BLM estimates one entity might be affected by this rule.[4] However, it is also possible that operators would choose not to file a notice or plan of operations during the segregation period in order to avoid facing a validity examination. Should the BLM require a mineral examination while the lands are segregated to determine mining claim validity, the entity filing the Plan or Notice would be responsible for the cost of making that validity determination. As above, the BLM assumes an average cost of $100,000 to conduct the examination and prepare the report. Based on the number of Plans and Notices filed within the solar energy ROW application areas in the past four years, and the number of entities anticipated to be affected, the BLM estimates the total cost of this provision would average about $50,000 per year.

It is not possible to estimate the number of future ROWs for wind or solar energy developments that could be filed on areas identified as having potential for either of these sources of energy. This is because there are many variables that could have an impact on such filings. Such variables include: the quantity and sustainability of wind at any one site, the intensity and quantity of available sunlight, the capability of obtaining financing for either wind or solar energy projects, the proximity of transmission facilities that could be used to carry the power generated from a specific wind or solar energy project, and the topography of the property involved. The number of mining claims would also be based on speculation as to the mineral potential of a given area, access to markets, potential for profitability, and a host of other geologic factors, such as type of mineral, depth of the mineral beneath the surface, quantity and quality of the mineral, and other such considerations. We used an analysis of activity in 2009 and 2010 to predict the amount of activity that would occur or be prevented in 2011 and 2012. The actual activity in 2011 and 2012, when the ITFR was in effect, was much less than predicted. However, we consider our use of the 2009 and 2010 data to be a reasonable basis for the economic impacts of this rule.

Based on this analysis, the BLM concludes that this rule does not have an annual effect of $100 million or more on the economy. It does not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients; nor does it raise novel legal or policy issues.

National Environmental Policy Act

The BLM has determined that this rule is administrative in nature and involves only procedural changes addressing segregation requirements. Temporary segregations under this rule would result in no new surface disturbing activities and, therefore, would have no effect on ecological or cultural resources. Potential effects from the wind and/or solar ROWs associated with such segregations would be analyzed as part of the site-specific NEPA analysis for those activities. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature. As result, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205 and 46.210(f), (i). The rule does not meet any of the extraordinary circumstances criteria for categorical exclusions listed at 43 CFR 46.215. Under Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department, the term ''categorical exclusion'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which has been found to have no such effect on procedures adopted by a Federal agency and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

The Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, (5 U.S.C. 601–612), 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 detrimental or beneficial, on a substantial number of small entities. The RFA requires agencies to analyze the economic impact of regulations to determine the extent to which there is anticipated to be a significant economic impact on a substantial number of small entities. The BLM anticipates that this rule could potentially affect a few entities that might otherwise have located new mining claims on public lands covered by a wind or solar energy facility ROW applications either currently pending or filed in the future. Based on the economic analysis prepared for this rule, the BLM further anticipates that most of these entities would be small entities as defined by the Small Business Administration; however, as explained in this preamble and in the proposed rule, the BLM does not expect the potential impact to be significant. Therefore, the BLM has determined under the RFA that this rule will not have a significant economic impact on a substantial number of small entities. A copy of the analysis that supports this determination is available at the office listed under the **ADDRESSES** section of this preamble.

Small Business Regulatory Enforcement Fairness Act

For the same reasons as discussed under the Executive Order 12866, Regulatory Planning and Review section of this preamble, this rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). That is, it will not have an annual effect on the economy of $100 million or more; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments, in the aggregate, or the private sector of $100 million or more per year; nor will it have a significant or unique effect on State, local, or tribal governments. The rule will not impose requirements on any of these entities. Therefore, the BLM does not need to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

[4] With respect to any particular Plan of Operation or Notice that might be filed in areas segregated under the rule, the BLM would separately determine, on a case-by-case basis and consistent with the requirements of 43 CFR 3809.100(a), whether to require a validity determination for such Plan or Notice.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This rule is not a government action that interferes with constitutionally protected property rights. This rule sets out a process which could be used to temporarily segregate, by publication of a notice in the **Federal Register**, public lands included within a pending or future solar or wind energy generation ROW application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization. Such segregations would remove those public lands from the operation of the public land laws, including the location of new mining claims under the Mining Law, but not the MLA or the Materials Act, for a period of up to two years. The rule allows a BLM State Director to extend the segregation for up to an additional two-year period based on a written finding that such extension is necessary to promote the orderly administration of the public lands. Because any segregation under this rule would be subject to valid existing rights, it does not interfere with constitutionally protected property rights. Therefore, the Department has determined that this rule does not have significant takings implications and does not require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The rule will not have a substantial direct effect on the states, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the levels of government. It will not apply to states or local governments or state or local government entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that this rule does not include policies that have tribal implications. This rule applies exclusively to lands administered by the BLM. It is not applicable to and has no bearing on trust or Indian lands or resources, or on lands for which title is held in fee status by Indian tribes, or on lands held in trust for the benefit of tribes or individual Indians that are managed by the Bureau of Indian Affairs.

Information Quality Act

In developing this final rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Public Law 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that this rule is not likely to have a significant adverse effect on energy supply, distribution, or use, including a shortfall in supply, price increase, or increased use of foreign supplies. The BLM's authority to segregate lands under this rule is of a temporary nature for the purpose of encouraging the orderly administration of public lands, including the generation of electricity from wind and solar resources on the public lands. Any increase in energy production as a result of this rule from wind or solar sources is not easily quantified, but the rule is expected to relieve obstacles and hindrances to energy development on public lands.

Executive Order 13352—Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this rule will not impede the facilitation of cooperative conservation. The rule takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

The rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

Author

The principal author of this rule is Jeff Holdren, Realty Specialist, Division of Lands and Realty, assisted by the Division of Regulatory Affairs, Washington Office, Bureau of Land Management, Department of the Interior, and the Office of the Solicitor, Department of the Interior.

List of Subjects

43 CFR Part 2090

Airports; Alaska; Coal; Grazing lands; Indian lands; Public lands; Public lands—classification; Public lands—mineral resources; Public lands—withdrawal; Seashores.

43 CFR Part 2800

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

For the reasons stated in the preamble and under the authorities stated below, the BLM proposes to amend 43 CFR parts 2090 and 2800 as follows:

Subchapter B—Land Resource Management (2000)

PART 2090—SPECIAL LAWS AND RULES

■ 1. The authority citation for part 2090 continues to read as follows:

Authority 43 U.S.C. 1740.

Subpart 2091—Segregation and Opening of Lands

■ 2. Amend § 2091.3–1 by adding paragraph (e) to read as follows:

§ 2091.3–1 Segregation.

* * * * *

(e)(1) The Bureau of Land Management may segregate, if it finds it necessary for the orderly administration of the public lands, lands included in a right-of-way application under 43 CFR subpart 2804 for the generation of electrical energy from wind or solar sources. In addition, the Bureau of Land Management may also segregate lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources when initiating a competitive process for solar or wind development on particular lands. Upon segregation, such lands will not be subject to appropriation under the public land laws, including location under the Mining Law of 1872, (30 U.S.C. 22 *et seq.*), but would remain open under the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et*

seq.). The BLM will effect a segregation by publishing a **Federal Register** notice that includes a description of the lands being segregated. The BLM may effect segregation in this way for both pending and new right-of-way applications.

(2) The effective date of segregation is the date of publication of the notice in the **Federal Register**. The segregation terminates consistent with subpart 2091.3–2 and the lands automatically open on the date that is the earliest of the following:

(i) When the BLM issues a decision granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period stated in the **Federal Register** notice initiating the segregation, or

(iii) Upon publication of a **Federal Register** notice terminating the segregation and opening the lands in question.

(3) The segregation period may not exceed 2 years from the date of publication in the **Federal Register** of the notice initiating the segregation, unless the State Director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the State Director determines an extension is necessary, the Bureau of Land Management will extend the segregation for up to 2 years by publishing a notice in the **Federal Register**, prior to the expiration of the initial segregation period. Segregations under this part may only be extended once and the total segregation period may not exceed 4 years.

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

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

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

Subpart 2804—Applying for FLPMA Grants

■ 4. Amend § 2804.25 by adding paragraph (e) to read as follows:

§ 2804.25 How will BLM process my application?

* * * * *

(e)(1) The BLM may segregate, if it finds it necessary for the orderly administration of the public lands, lands included in a right-of-way application under 43 CFR subpart 2804 for the generation of electrical energy from wind or solar sources. In addition, the Bureau of Land Management may also segregate lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources when initiating a competitive process for solar or wind development on particular lands. Upon segregation, such lands would not be subject to appropriation under the public land laws, including location under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*), but would remain open under the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The BLM would effect a segregation by publishing a **Federal Register** notice that includes a description of the lands being segregated. The BLM may effect segregation in this way for both pending and new right-of-way applications.

(2) The effective date of segregation is the date of publication of the notice in the **Federal Register**. Consistent with 43 CFR 2091–3.2, the segregation terminates and the lands automatically open on the date that is the earliest of the following:

(i) When the BLM issues a decision granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period stated in the **Federal Register** notice initiating the segregation; or

(iii) Upon publication of a **Federal Register** notice terminating the segregation and opening the lands.

(3) The segregation period may not exceed 2 years from the date of publication in the **Federal Register** of the notice initiating the segregation, unless the State Director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the State Director determines an extension is necessary, the BLM will extend the segregation for up to 2 years by publishing a notice in the **Federal Register**, prior to the expiration of the initial segregation period. Segregations under this part may only be extended once and the total segregation period may not exceed 4 years.

Dated: April 23, 2013.

Tommy P. Beaudreau,

Acting Assistant Secretary of the Interior, Land and Minerals Management.

[FR Doc. 2013–10087 Filed 4–29–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

Docket No. 120919471–2584–01]

RIN 0648–BC59

Temporary Rule To Extend the Increase of the Commercial Annual Catch Limit for South Atlantic Yellowtail Snapper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency measures extended.

SUMMARY: NMFS issues this temporary rule to extend the effectiveness of the increase of the commercial annual catch limit (ACL) for yellowtail snapper implemented by a temporary rule published by NMFS on November 7, 2012. The commercial ACL for yellowtail snapper of 1,596,510 lb (724,165 kg), round weight, will be extended for up to an additional 186 days, until permanent measures are implemented, as requested by the South Atlantic Fishery Management Council (Council). The intent of this temporary rule is to ensure the commercial ACL for yellowtail snapper is based on the best scientific information available and to help achieve optimum yield (OY) for the yellowtail snapper resource.

DATES: The effective period for the temporary rule published at 77 FR 66744, November 7, 2012, is extended from May 6, 2013, through November 28, 2013, unless NMFS publishes a superseding document in the **Federal Register**.

ADDRESSES: Electronic copies of documents supporting this temporary rule may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm.*

FOR FURTHER INFORMATION CONTACT: Kate Michie, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *Kate.Michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the snapper-grouper fishery, which includes yellowtail snapper, off the southern Atlantic states under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the