DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2800

[WO 300–1430–PQ]

RIN 1004–AE19

Segregation of Lands—Renewable Energy

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing this rule to amend the BLM's regulations found in 43 CFR parts 2090 and 2800 by adding 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 or future wind or solar energy generation right-of-way (ROW) application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization under the BLM's ROW regulations, in order to promote the orderly administration of the public lands. If segregated under this rule, such lands would not be subject to appropriation under the public land laws, including location under the Mining Law of 1872 (Mining Law), but not the Mineral Leasing Act of 1920 (Mineral Leasing Act) or the Materials Act of 1947 (Materials Act), subject to valid existing rights, for a period of up to 2 years. The BLM is also publishing in today's **Federal Register** an interim temporary final rule (Interim Rule) that is substantively similar to this proposed rule. The Interim Rule is effective immediately upon publication in the **Federal Register** for a period not to exceed 2 years after publication, or the completion of the notice and comment rulemaking process for this proposed rule whichever occurs first.

DATES: You should submit your comments on the proposed rule on or before June 27, 2011. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (*see* **ADDRESSES**).

ADDRESSES: Mail: Director (630) Bureau of Land Management, U.S. Department of the Interior, Mail Stop 2143LM, 1849 C St., NW., Washington, DC 20240, *Attention:* 1004–AE19. Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Ray Brady at (202) 912–7312 or the Division of Lands, Realty, and Cadastral Survey at (202) 912–7350 for information relating to the BLM's renewable energy program or the substance of the proposed rule, or Ian Senio at (202) 912–7440 for information relating to the rulemaking process generally. Persons who use a telecommunications 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:

I. Public Comment Procedures

If you wish to comment, you may submit your comments by one of several methods:

You may mail comments to Director (630) Bureau of Land Management, U.S. Department of the Interior, Mail Stop 2143LM, 1849 C St., NW., Washington, DC 20240, *Attention:* 1004–AE19. You may deliver comments to U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, *Attention:* Regulatory Affairs, Washington, DC 20003; or

You may access and comment on the proposed rule at the Federal eRulemaking Portal by following the instructions at that site (*see* **ADDRESSES**).

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposed rule that the comment is addressing.

The BLM need not consider or include in the Administrative Record for the proposed rule comments that we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Washington, DC 20003 during regular hours (7:45 a.m. to 4:15 p.m.) Monday through Friday, except holidays. They will also be available at the Federal eRulemaking Portal *http://www.regulations.gov*. Follow the instructions at this Web site.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment for the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

Congress has directed the Department of the Interior (Department) to facilitate the development of renewable energy resources. Promoting renewable energy is one of this Administration's and this Department's highest priorities. 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 (solar, wind, and geothermal) on public lands with a generation capacity of at least 10,000 megawatts (MW) of electricity. Even before the EPAct was enacted by Congress, President Bush issued Executive Order 13212, "Actions to Expedite Energy-Related Projects" (May 18, 2001), which requires Federal agencies to expedite the production, transmission, or conservation of energy.

After passage of the EPAct, the Secretary of the Interior issued several orders emphasizing the importance of renewable energy development on public lands. On January 16, 2009, 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 * * * [EPAct] 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."

Approximately 1 year later, Secretary Salazar issued Secretarial Order 3285A1, "Renewable Energy Development by the Department of the Interior" (Feb. 22, 2010), which reemphasized the development of

renewable energy as a priority for the Department. The 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." As a result of these and other initiatives, the interest in renewable energy development on public lands has increased significantly.

In addition to these specific directives, the BLM is charged generally with managing the public lands for multiple uses under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701, *et seq.,* including for mining and energy development. In some instances, different 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 the Federal government's use of the surface cannot endanger or materially interfere with a properly located mining claim. In order to help avoid such conflicts while carrying out the Congressional and Executive mandates and direction to prioritize the development of renewable energy, the BLM is proposing this rule. This rule will help promote the orderly administration of the public lands by giving the BLM a tool to minimize potential resource conflicts between ROWs for proposed solar and wind energy generation facilities and other uses of the public lands. Under existing regulations, lands within a solar or wind energy generation ROW application or within an area identified by the BLM for such ROWs, unlike lands proposed for exchange or sale, remain open to appropriation under the public land laws, including location and entry under the Mining Law, while BLM is considering the ROW.

Over the past 5 years, the BLM has processed 24 solar and wind energy development ROW applications. New mining claims were located on the public lands described in two of these proposed ROWs during the BLM's consideration of the applications. Many of the mining claims in the two proposed ROWs were not located until after the existence of the wind or solar ROW application or the identification of an area by the BLM for such ROWs became publicly known. In addition, over the past 2 years, 437 new mining claims were located within wind energy ROW application areas in Arizona, California, Idaho, Nevada, Oregon, Utah, and Wyoming and 216 new mining claims were located within solar energy ROW application areas. In the BLM's experience, some of these claims are likely to be valid, but others are likely to be speculative and not located for true mining purposes. As such, the latter are likely filed for no other purpose than to provide a means for the mining claimant to compel some kind of payment from the ROW applicant to relinquish the mining claim. The potential for such a situation exists because, while it is relatively easy and inexpensive to file a mining claim, it can be difficult, time-consuming, and costly to prove that the mining claim was not properly filed or does not contain a valid discovery. Regardless of the merits of a particular claim, the location of a mining claim in an area covered by a ROW application (or identified for such an application) creates uncertainty that interferes with the orderly administration of the public lands. This uncertainty makes it difficult for the BLM, energy project developers, and institutions that finance such development to proceed with such projects because a subsequently located mining claim potentially precludes final issuance of the ROW and increases project costs, jeopardizing the planned energy development.

For example, the location of a new mining claim during the pendency of the BLM's review process for a ROW application could preclude the applicant from providing a concrete proposal for their use and occupancy of the public lands. This is because under the Mining Law, a ROW cannot materially interfere with a previously located mining claim. Since all properly located claims are treated as valid until proven otherwise, the filing of any mining claim can substantially delay the processing of a ROW application. As a result, a ROW applicant could either wait for the BLM to determine the validity of a claim, or the applicant could choose to modify or relocate its proposed surface use to avoid conflicts with the newly located mining claim, leading to additional expense, which could jeopardize the renewable energy project.[1] The BLM's processing time for the ROW application could be significantly increased if any changes necessitated by the newly located mining claim require the BLM to undertake any additional analyses, such as those required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA). Under these circumstances, the BLM's ability to administer the public lands in an orderly manner is impeded.

This proposed rule is needed to provide the BLM with the necessary authority to ensure the orderly administration of the public lands and to prevent conflicts between competing uses of those lands. By allowing for temporary segregation, it would enable the BLM to prevent new resource conflicts from arising as a result of new mining claims that may be located within land covered by any pending or future wind or solar energy generation facility ROW applications, or public lands identified by the BLM for potential future wind or solar energy generation ROWs pursuant to its ROW regulations. Temporary segregation is generally sufficient because once a ROW has been authorized, subsequently located mining claims would be subject to the previously authorized use, and any future mining claimant would have notice of such use.

The proposed rule would supplement the authority contained in 43 CFR subpart 2091 to allow the BLM to segregate from appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, public lands included in a pending or future wind or solar energy generation ROW application or public lands identified by the BLM for a wind or solar energy generation ROW authorization under 43 CFR subpart 2804, subject to valid existing rights.[2] This proposed rule would not affect valid existing rights in mining claims located before any segregation made pursuant to the final rule. The proposed rule also would not affect ROW applications for uses other than wind or solar energy generation facilities.

Segregations under the proposed rule would be accomplished by publishing a notice in the **Federal Register** and would be effective upon the date of publication. The BLM considered a rule that would allow for segregation through notation to the public land records, but it rejected this approach because it would not provide the public

[1] This uncertainty may also discourage banks from financing such projects.

[2] The existing regulations define segregation as "the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands." 43 CFR 2091.0–5(b).

with the same level of notice that a **Federal Register** notice would accomplish. The proposed rule would provide for segregation periods of up to 2 years, with the option, if deemed necessary by the appropriate BLM State Director, to extend the segregation of the lands for up to an additional 2 years. The proposed rule would not authorize the BLM to continue the segregation after a final decision on a ROW has been made. Finally, not all wind or solar ROW applications would lead to a segregation, as the BLM may reject some applications and others may not require segregation because conflicts with mining claims are not anticipated.

Segregation rules, like this proposed rule, 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," [3] 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.[4] 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, which could create encumbrances on the title of the public lands identified for transfer out of Federal ownership under the applicable authorities.

Such a situation occurred in Nevada, and the proposed land purchaser chose to pay the mining claimant to relinquish his claims in order to enable the sale to go forward. In fact, in the land sales context, the segregative period was increased from 270 days to a maximum term of 4 years, as it was found that the original segregative period was insufficient and that conflicting mining claims were being located before sales could be completed. This proposed rule would provide the BLM the same flexibility it currently has for land disposals by allowing the BLM to temporarily segregate lands that are included in pending or future applications for solar and wind facility ROWs or on lands identified by the BLM for such ROWs. This would allow for the orderly administration of the public lands by eliminating the potential for conflicts with mining claims located after the BLM publishes a **Federal Register** notice of such ROW applications or areas.

As noted above, the development of renewable energy is a high priority for the Department of the Interior and the BLM. The location of mining claims, however, under certain circumstances, may impede the BLM's ability to administer the public lands in an orderly manner and to carry out its Congressional and Executive mandate to facilitate renewable energy development on those lands because the BLM currently lacks the ability to maintain the status quo on such lands while it is processing a ROW application for a wind or solar energy generation facility. This proposed rule would help the BLM maintain the status quo and prevent potential resource use conflicts by allowing the BLM to temporarily segregate lands being considered for a wind or solar energy generation facility.

III. Section-by-Section Analysis

This proposed rule would revise 43 CFR sections 2091.3–1 and 2804.25 by adding language that would allow the BLM to segregate lands, if the BLM determines it to be necessary for the orderly administration of the public lands. This authority to segregate lands would be limited to lands included in a pending or future wind or solar energy ROW application, or public lands identified by the BLM for a wind or solar energy generation ROW authorization under the BLM's ROW regulations. If segregated under this rule, such lands, during the limited segregation period, would not be subject to appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, subject to valid existing rights.

The new language also specifies that the segregative effect terminates and the lands would automatically reopen to appropriation under the public land laws, including the mining laws: (1) Upon the BLM's issuance of a decision regarding whether to issue a ROW authorization for the solar or wind energy generation proposal; (2) Upon publication of a **Federal Register** notice of termination of the segregation; or (3) Without further administrative action at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, whichever occurs first. The segregation would be effective for a period of up to 2 years; however, the rule provides that the segregation may be extended for an additional 2 years if the appropriate 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. The BLM would publish an extension notice in the **Federal Register**, if it determines that an extension of the segregation is necessary. The extension of the segregation would not be for more than 2 years. The maximum total segregation period would not exceed 4 years.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action [5] and is not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed rule would provide 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 Mineral Leasing Act 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 must first make some assumptions concerning when and how often this segregation authority may be exercised. The purpose of any segregation would be to allow for the orderly administration of the public lands to facilitate the development of renewable energy resources by avoiding conflicts between renewable energy development and the location of mining claims.

Wind—Wind energy ROW site testing and development applications are widely scattered in many western states. Most of the public lands with pending

[3] *See Bryon* v. *United States,* 259 F. 371, 376 (9th Cir. 1919); *Hopkins* v. *United States,* 414 F.2d 464, 472 (9th Cir. 1969).

[4] *See, e.g., Marian Q. Kaiser,* 65 I.D. 485 (Nov. 25, 1958).

[5] "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 effect 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).

wind energy ROW applications are currently managed for multiple resource use, including being open to mineral entry under the mining laws. Over the past 2 fiscal years, 437 new mining claims were located within wind energy ROW application areas in Arizona, California, Idaho, Nevada, Oregon, Utah, and Wyoming. 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. Without trying to identify specific locations of new mining claims located within those application areas, we assume a quarter of those new mining claims, or 109 new mining claims, would be located within wind application areas that would be segregated under this new regulation.

The actual number of claimants affected will likely be less than this estimate since a single claimant typically files and holds multiple mining claims. Of the 437 new mining claims filed within the wind energy ROW application areas in fiscal year (FY) 2009 and 2010, 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 FY 2009 and 2010, we estimate that 14 entities would be potentially precluded from filing new mining claims on lands that would be segregated 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 approved ROW issued during the segregative period. However, a meaningful estimate of the value of such delays is hard to quantify given the available data because it depends on the validity and 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 eventually result in revenue generating activity for the claimant.

The other situation where entities might be affected by the segregation provision is if a new Plan of Operations or Notice is filed with the BLM during the 2-year segregation period. 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 to determine if the mining claims were valid before the lands were segregated before it processes the Plan of Operations or accepts the filed Notice. If required, the operator is responsible to pay the cost of the examination and report.

Within the past 2-year period, five Plans of Operations and two Notices were filed with the BLM within wind ROW application areas. Assuming (1) A quarter of those filings would be on lands segregated under this rule, (2) the number of Plan and Notice filings received in the past 2 years is somewhat reflective of what might occur within a 2-year segregation period, and (3) the BLM would require mineral examination reports to determine claim validity on all Plans and Notices filed within the segregation period, we estimate two entities might be affected by this rule change.[6]

Should the BLM require the preparation of mineral examination reports to determine 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, we assume 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, we estimate the total cost of this provision could be about $200,000 over the 2-year period.

Solar—As noted above, the primary purpose of any segregation under this proposed rule would be to allow for the orderly administration of the public lands to facilitate the development of valuable renewable resources and to avoid conflicts between renewable energy generation and mining claim location. The main resource conflict of concern involves mining claims that are located after the first public announcement that the BLM is evaluating a ROW application, and prior to when the BLM issues a final decision on the ROW application.

Most of the public lands with pending solar energy ROW applications are currently managed for multiple resource use, including mineral entry under the mining laws. Where the BLM segregates lands from mineral entry, claimants would not be allowed to locate any new mining claims during the 2-year segregation period. Over the past 2 years, 216 new mining claims were located within solar energy ROW application areas. Based on the BLM's recent experience processing solar energy ROW applications, it is anticipated that approximately 25 percent of the lands with current solar energy ROW applications would reach the processing stage where a NOI is issued. Without trying to identify which ROWs would be granted or the specific locations of new mining claims within those application areas, we assume a quarter of those new mining claims, or 54 new mining claims, would be located within solar ROW application areas that would be segregated under this rule.

The actual number of claimants affected will likely be less than this estimate since a single claimant typically locates and holds multiple mining claims. Of the 216 new mining claims located within solar energy ROW application areas in the past 2 years, 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 for the past 2 years, we estimate 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 can locate their mining claim and a potential delay in the development of such claim because such development would be subject to any approved ROW issued during the segregative period. However, a meaningful estimate of the value of such delays is hard to quantify given the available data because it depends on the validity and 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 eventually result in revenue generating activity for the claimant.

The other situation where entities might be affected by the proposed segregation provisions is where a new Plan of Operations or Notice is filed with the BLM during the 2-year segregation period. In such a situation, the BLM has the discretion under the Surface Management Regulations (43 CFR subpart 3809) to require a mineral examination to determine if the mining claims were valid before the lands were segregated 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.

Within the past 2-year period, two Plans of Operations and two Notices were filed with the BLM within solar

[6] 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.

ROW application areas. Assuming (1) a quarter of those filings would be on lands segregated under this rule, (2) the number of Plan and Notice filings received in the past 2 years is reflective of what might occur within a 2-year segregation period, and (3) the BLM would require mineral examination reports to determine claim validity on all Plans and Notices filed within the segregation period, we estimate one entity might be affected by this rule change.[7]

Should the BLM require a mineral examination to determine 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 would vary accordingly, we assume 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 2 years, we estimate the total cost of this provision could be about $100,000 over the 2-year period.

It is not possible to estimate the number of future rights-of-way 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 right-of-way 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 an 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.

Based on this analysis, the BLM concludes that this proposed rule would not have an annual effect of $100 million or more on the economy. It would 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 proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs or the rights or obligations of their recipients; nor would it raise novel legal or policy issues. The full economic analysis is available at the office listed under the **ADDRESSES** section of this preamble.

Clarity of the Regulation

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed rule clearly stated?
2. Does the proposed rule contain technical language or jargon that interferes with its clarity?
3. Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?
5. Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? How could this description be more helpful in making the proposed rule easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has determined that this proposed rule is administrative in nature and involves only procedural changes addressing segregation requirements. This proposed rule would result in no new surface disturbing activities and therefore would have no effect on ecological or cultural resources. Potential effects from associated wind and/or solar ROWs 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 having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205. The proposed rule does not meet any of the extraordinary circumstances criteria for categorical exclusions listed at 43 CFR 46.215. Pursuant to Council on Environmental Quality regulation (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 have 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. We anticipate that the proposed 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 application currently pending or filed in the future. We further anticipate that most of these entities would be small entities as defined by the Small Business Administration; however, we do not expect the potential impact to be significant. Therefore, the BLM has determined under the RFA that this proposed rule would 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 proposed rule is not a "major rule" as defined at 5 U.S.C. 804(2). That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not

[7] 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.

have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. A copy of the analysis that supports this determination is available at the office listed under the **ADDRESSES** section of this preamble.

Unfunded Mandates Reform Act

This proposed rule would 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 would it have a significant or unique effect on State, local, or Tribal governments. The rule would impose no 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.*).

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

This proposed rule is not a government action that interferes with constitutionally protected property rights. This proposed rule would set out a process, by publication of a notice in the **Federal Register**, that could be used to segregate 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. This segregation would remove public lands from the operation of the public land laws, including the location of new mining claims under the Mining Law, but not the Mineral Leasing Act or the Materials Act for a period of up to 2 years, with the authority to extend the segregation for up to an additional 2-year period, in order to promote the orderly administration of the public lands. Because any segregation under this proposed rule would be subject to valid existing rights, it does not interfere with constitutionally protected property rights. Therefore, the Department has determined that this proposed 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 proposed rule would 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 would 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 proposed 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 proposed rule would 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 proposed rule does not include policies that have Tribal implications. This rule would apply exclusively to lands administered by the BLM. It would not be applicable to and would have 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 U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing this proposed rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 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 proposed 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 would be 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 proposed 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 proposed rule would 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 proposed 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.

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 a new paragraph (e) to read as follows:

§ 2091.3–1 Segregation

* * * * *

(e)(1) The Bureau of Land Management may segregate, if it finds it to be necessary for the orderly administration of the public lands, lands included in a right-of-way application for the generation of electrical energy under 43 CFR subpart 2804 from wind or solar sources. In addition, the Bureau of Land Management may also segregate public lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources. Upon segregation, such lands will not be subject to appropriation under the public lands laws, including location under the General Mining Law, but not 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 Bureau of Land Management will effect such segregation by publishing a **Federal Register** notice that includes a description of the lands covered by the segregation. The Bureau of Land Management may impose a segregation in this way on 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** and the date of termination of the segregation is the date that is the earliest of the following:

(i) Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, without further action by the authorized officer; or

(iii) Upon publication of a **Federal Register** notice of termination of the segregation.

(3) The segregation period may not exceed 2 years from the date of publication of the **Federal Register** notice initiating the segregation unless, on a case-by-case basis, the Bureau of Land Management 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 an extension is determined to be necessary, the Bureau of Land Management will publish a notice in the **Federal Register**, prior to expiration of the initial segregation period that the segregation is being extended for up to 2 years. Only one extension may be authorized; the total segregation period therefore cannot exceed 4 years.

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND 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 a new paragraph (e) to read as follows:

§ 2804.25 How will BLM process my application?

* * * * *

(e)(1) The BLM may segregate, if it finds it to be necessary for the orderly administration of the public lands, lands included within a right-of-way application under 43 CFR subpart 2804 for the generation of electricity from wind or solar sources. In addition, the BLM may segregate public lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources under the BLM's right-of-way regulations. Upon segregation, such lands will not be subject to appropriation under the public land laws, including location under the General Mining Law, but not from 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 such segregation by publishing a **Federal Register** notice that includes a description of the lands covered by the segregation. The Bureau of Land Management may impose a segregation in this way on both pending and new right-of-way applications.

(2) The segregative effect of the **Federal Register** notice terminates on the date that is the earliest of the following:

(i) Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, without further action by the authorized officer; or

(iii) Upon publication of a **Federal Register** notice of termination of the segregation.

(3) The segregation period may not exceed 2 years from the date of publication of the **Federal Register** notice initiating the segregation unless, on a case by case basis, the BLM 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 an extension is determined to be necessary, the BLM will publish a notice in the **Federal Register,** prior to expiration of the initial segregation period that the segregation is being extended for up to 2 years. Only one extension may be authorized; the total segregation period therefore cannot exceed 4 years.

Dated: April 6, 2011.

Wilma A. Lewis,

Assistant Secretary of the Interior, Land and Minerals Management.

[FR Doc. 2011–10017 Filed 4–25–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 18, 37, 42, 52, and 53

[FAR Case 2011–001; Docket 2011–0001; Sequence 1]

RIN 9000–AL82

Federal Acquisition Regulation; Organizational Conflicts of Interest

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide revised regulatory coverage on organizational conflicts of interest (OCIs), provide additional coverage regarding contractor access to nonpublic information, and add related provisions and clauses. Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 required a review of the FAR coverage on OCIs. This proposed rule was developed as a result of a review conducted in accordance with Section 841 by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) and the Office of Federal Procurement Policy (OFPP), in consultation with the Office of Government Ethics (OGE). This proposed rule was preceded by an Advance Notice of Proposed Rulemaking (ANPR), under FAR Case 2007–018 (73 FR 15962), to gather comments from the public with regard to whether and how to improve the FAR coverage on OCIs.