

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, DC 20240
<http://www.blm.gov>

September 21, 2011

In Reply Refer To:
2091/2800 (350) PEMS TRANSMISSION 09/27/2011
Instruction Memorandum No. 2011-183
Expires: 09/30/2012

To: All Field Offices

From: Assistant Director, Minerals and Realty Management

Subject: Implementation Procedures – Interim Temporary Final Rule for Segregating Renewable Energy Right-of-Way Applications

Program Areas: Lands, Realty, Segregations, and Rights-of-Way (ROW).

Purpose: This Instruction Memorandum (IM) provides guidance on implementing the recently published rulemaking that grants authority for the temporary segregation of public lands. The segregation lasts for a period of up to 2 years to protect applications for solar or wind energy ROWs. This Interim Temporary Final Rulemaking (ITFR) was published in the *Federal Register* on April 26, 2011, as was a Proposed Rule containing the same language. The rule is found in added sections 43 CFR 2091.3-1(e) and 43 CFR 2804.25(e), which comprise regulations for segregations in general and ROW protection through segregations respectively. The ITFR was effective upon the date of publication. The Bureau of Land Management (BLM) solicited comments until June 27, 2011, on both the ITFR and the Proposed Rule. The BLM is currently analyzing comments received as part of the final rulemaking process.

Policy/Action: The ITFR provides a means for authorized officers of the BLM to allow for the

orderly administration of public lands that have either solar or wind energy ROW applications. In

addition, it provides guidance to protect areas where lands having potential for the development of

such energies exist. The ITFR allows an authorized officer to close (segregate) public lands from

appropriation under the public land laws. This includes the mining law, but not the mineral leasing

or materials acts, for a period of up to 2 years. This segregation may not be extended under the

ITFR. By protecting such lands, a solar or wind energy ROW applicant has assurances that the

application will not be subject to adverse activities caused by either the filing of mining claims or

impacts from other proposed land uses. Any segregation issued under the authority of the ITFR

requires that a notice of such segregation be published in the *Federal Register*. Typically, the

notice of segregation would be included in the Notice of Intent (NOI) that initiates the National

Environmental Policy Act (NEPA) process for a specific solar or wind energy project. A separate

notice will be required for an environmental assessment level project that does not involve an NOI.

For those projects that may involve a phased development, the notice of segregation should identify

those lands addressed in the NEPA analysis for the project. If the NEPA analysis is limited to only

one phase of the project, the notice of segregation would be limited to only that phase. The ITFR

does not affect valid existing rights established before any segregation was made pursuant to this

rule. The ITFR also does not affect ROW applications for uses other than wind or solar energy

generation facilities. In addition, the ITFR only applies to wind development applications, not wind

site testing applications.

Segregations made under the ITFR would be created by publishing a notice, signed by an authorized officer, in the *Federal Register* that provides a legal description of the land. The

segregation would be effective upon the date of publication. If segregated under the ITFR, such

lands during the limited segregation period will not be subject to appropriation under the public land

laws. This includes location under the mining law, but not the mineral leasing or the materials acts,

subject to valid existing rights. The ITFR also specifies that the segregation's effect will terminate

and the lands will automatically reopen to application under the public land laws, including the

mining laws. Applications for reopened lands will be considered: (1) upon the issuance of a

decision by the authorized officer granting, granting with modifications, or denying the application

for a ROW; (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 provided for in the *Federal*

Register notice initiating the segregation, whichever occurs first. Any segregation made under this

authority would be effective only for a period of up to 2 years. This ITFR is only effective for a

period of 2 years commencing on the date of publication in the *Federal Register*. Note that the

ITFR should only be used in limited circumstances where it can be shown that mining could adversely impact the processing of a solar or wind energy ROW application. A sample notice of

segregation is included as Attachment 1.

Officials identified in BLM Manual 1203 as having this delegated authority may authorize segregations.

Timeframe: This IM is effective immediately.

Budget Impact: The impact on workload and budgets will be determined by the number of segregations made and the complexity of individual cases.

Background: On some solar and wind energy ROW applications, mining claims have been filed on the lands after these applications were made, but before a ROW was issued. In these instances the mining claimant has gained a prior right, and may proceed to develop his/her claim to extract minerals that may be present. Such uses may adversely impact the proposed solar or wind energy development of public lands. In order to address this potential conflict, the BLM would either contest the claim, or the ROW applicant may have to purchase the claimant's rights. This ITFR was developed to avoid such situations.

Manual/Handbook Sections Affected: None.

Coordination: This IM was coordinated with the Division of Lands, Realty and Cadastral Survey (WO-350), realty personnel in each state office, and the Department of the Interior Office of the Solicitor.

Contact: Please address any questions to me at 202-208-4201, or your staff may contact Kim Berns, Division Chief, Lands, Realty and Cadastral Survey at 202-912-7350; Lucas Lucero, Branch Chief, Rights-of-Way (WO-350) at 202-912-7324; or Ray Brady, Energy Team Leader, (WO-300) at 202-912-7312.

Signed by:
Michael Nedd
Assistant Director
Minerals and Realty Management

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

2 Attachments

- 1-Sample Federal Register Notice (3 pp)
- 2-Sample Segregation Rule Briefing Paper (2 pp)