

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Parts 2091 and 2710**

[WO-350-05 1430 PN]

RIN 1004-AD74

Public Sales**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

SUMMARY: The Bureau of Land Management (BLM) amends its procedural regulations pertaining to the time allowed for the segregation of public lands proposed for sale. Under existing regulations, the BLM may segregate these lands from the operation of the public land and mineral laws for a period up to 270 days following publication of a Notice of Realty Action in the **Federal Register**. The Department of the Interior has imposed this time constraint under its discretion and not as a requirement of law. The current segregation period compresses the time necessary to address comments or protests the BLM receives after publication of a Notice of Realty Action. In order to address comments or protests in the normal course of business, as to future proposed sales, this final rule allows the BLM to segregate lands initially for a period of up to two years with the option to extend, if necessary, the initial period of segregation up to two additional years on a case-by-case basis. The BLM also is amending its segregation regulation at 43 CFR 2091.2-1 so that it will be consistent with the changes made in the BLM's public sale regulations.

DATES: This rule is effective December 20, 2006.**ADDRESSES:** Further information or questions regarding this final rule should be addressed in writing to the Director (WO 300), Bureau of Land Management 1849 C Street, NW., Washington, DC, 20240.**FOR FURTHER INFORMATION CONTACT:** Jeff Holdren of the BLM's Lands and Realty Group at 202 452-7779 for information about the content of this final rule, or for information regarding BLM's regulatory process, Cynthia Ellis of the BLM's Regulatory Affairs Group at 202 452-5012. Persons who use a telecommunications device for the deaf may contact these named individuals through the Federal Information Relay Service at 1-800-877-8339.**SUPPLEMENTARY INFORMATION:**

I. Background

II. Discussion of the Final Rule
III. Procedural Matters**I. Background**

The Secretary of the Interior is authorized to sell public lands managed by the BLM pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) (FLPMA). Regulations implementing the Secretary of the Interior's authority to sell such lands are located in 43 CFR part 2710. These regulations, issued in 1980 and partially amended in 1984, explain the following:

- Policies pertaining to the BLM public land sale program (43 CFR 2710.0-6);
- Definitions of applicable terms (43 CFR 2710.0-5);
- The criteria and means by which lands are determined suitable for FLPMA section 203 sales (43 CFR 2710.0-3, 2710.0-8 and 2711.1);
- The criteria for a qualified conveyee or purchaser (43 CFR 2711.2);
- The procedure for sale, especially the notice, segregation provisions and the competitive, modified competitive, and non-competitive methods (43 CFR 2711.1-2, 2711.3); and
- Certain other procedural matters and requirements relating to conveyance documents (land patents) (43 CFR 2711.4 and 2711.5).

In regulations issued in 1987 and in part amended in 1993, the BLM collected and reiterated all of the segregation rules stated throughout the BLM regulations, including the 270-day segregation rules pertaining to the proposed BLM section 203 sales (43 CFR 2091.2-1(b)).

In general, the Administrative Procedure Act (APA) requires that federal agencies give notice and provide an opportunity for the public to comment whenever they propose a regulation or an amendment. However, unless precluded by statute, the APA allows exemptions from its notice and comment requirement for "interpretive rules, general statements of policy or rules of agency organization, procedure, or practice" (5 U.S.C. 553(b)(3)). The exception applies in this instance because this final rule amends the segregation rules that are part of the procedure for BLM sales (43 CFR 2711.1-2). Correspondingly, this final rule, being procedural in nature, likewise qualifies as a categorical exclusion, which exempts the rule from certain requirements of the National Environmental Policy Act (NEPA). See 42 U.S.C. 4332(C); 40 CFR 1508.4.

II. Discussion of the Final Rule

When public lands are to be offered for sale, pursuant to FLPMA section

203, the BLM must publish a Notice of Realty Action (NORA) in the **Federal Register** and send the NORA to interested parties within 60 days prior to the sale (43 CFR 2711.1-2(a)). The notice also provides for a 45-day comment period on the proposed public land sale. The existing regulation states that when the NORA is published in the **Federal Register**, the lands proposed for sale are segregated from appropriation under the public land and mineral laws for a term not to exceed 270 days (43 CFR 2711.1-2(d) and 2091.2-1(b)).

FLPMA does not provide expressly for a segregation period in conjunction with a FLPMA section 203 sale (43 U.S.C. 1713). However, when the sale regulations were amended in 1984, the BLM added a segregation provision, limited to maximum duration of 270 days. The 270-day period has continued in effect since that time.

The existing 270-day limit on segregation of public lands proposed for FLPMA section 203 sales makes it difficult for BLM to fulfill all steps associated with a sale in BLM's normal course of business. Providing the BLM additional time would allow, in the normal course of business: (i) The research and documentation needed to ensure that a proposed sale is in compliance with planning as well as a variety of other requirements; (ii) the opportunity to respond to the comments of the public and interested parties; and (iii) the leeway to consider and resolve any protests lodged by the public or interested parties regarding a proposed sale. The BLM is, therefore, publishing this final rule to enlarge the period of time needed for segregation to meet these objectives.

This final rule will allow a BLM State Director to extend, if deemed necessary in that official's judgment, the duration of a period of segregation for up to a maximum of two additional years on a case-by-case basis. Finally, the rule amends the BLM's segregation regulations in 43 CFR part 2091 to be consistent with the changes this rule makes relative to the FLPMA section 203 public land sale regulations in 43 CFR part 2710.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review: Clarity of the Regulations.

This final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866. The final rule simply allows the BLM needed additional time to process FLPMA section 203 public land sale actions by extending the segregation period

relative to such sales. Therefore, this final rule does not require an assessment of potential benefits and costs, nor does it require an explanation pertaining to the manner in which the regulatory action is consistent with a statutory mandate. To the extent allowed by law, this final rule promotes the President's priorities and avoids undue interference with state, local, and tribal governments in the exercise of their governmental functions. This rule is not a "significant regulatory action"; therefore, the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612) as amended, 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 BLM has determined that this final rule, revising CFR 2091.2–1(b) and 2711.1–2(d) to provide for a longer segregation period of lands being considered for public sales under the FLPMA section 203, will not have a significant economic impact on a substantial number of small entities under the RFA.

As stated above in the preamble, this final rule only enlarges the segregation period so that the BLM has sufficient time to conduct the necessary reviews and other administrative actions in the normal course of business. Small entities could actually gain an advantage under this final rule because it allows additional time for their comments on proposed sales to be fully considered.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2) because it will not have an annual effect on the economy greater than \$100 million, nor will it result in major cost or price increases for consumers, industries, government agencies, or regions. This final rule will not increase the costs for any entities having an interest in the sale of the Federal land because new procedures are not being added. The BLM is only increasing the time provided for the segregation of lands being considered for sale to ensure that all applicable requirements and procedures are completed properly in the normal course of business. The new rule will not have significant adverse

effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The new rule may actually provide a reduction in costs to consumers and others because the BLM will have more time to provide input into a proposed sale decision, thus eliminating the need for extra staffing, or overtime that could otherwise be required to meet the deadlines under the existing (former) regulations.

Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532), the BLM must prepare a budgetary impact statement to accompany any proposed rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. We expect the estimated costs to States, local, or tribal governments will remain the same, and may be reduced in some instances by reducing potential overtime costs or other costs necessary to provide pertinent data within the existing timeframes. Therefore, this final rule is revising 43 CFR 2091.2–1(b) to provide a longer segregation period for lands being considered for public sales under section 203 of FLPMA and will not result in any unfunded mandates.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12630, the BLM has found that this final rule does not have significant takings implications. The revision of 43 CFR 2711.1–2(d) will merely provide a longer segregation period for lands being considered for public sales under FLPMA section 203. No takings of personal or real property will occur as a result of this final rule. A takings implication analysis is not required.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt state law.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM finds that this rule will not result in significant changes to BLM policy and that Tribal Governments will not be unduly affected by this rule. This rulemaking has no bearing on trust lands, or on lands for which title is held in fee status by Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The BLM has determined that this rulemaking does not contain any new information collection which the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

National Environmental Policy Act

The BLM has determined that this final rule addresses procedural matters, and the FLPMA section 203 sales themselves represent the culmination of a planning process that fulfills BLM's NEPA obligations (43 CFR 2710.0–6(a) and 43 CFR 1600—Planning). Therefore, this final rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, this final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior (516 DM 2.3 A(1)), the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that

this final rule is administrative in content, involving only procedural changes addressing time constraints. This final rule does not impede facilitating cooperative conservation; takes appropriate account of and considers 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.

Executive Order 13211, Effects on the Nation's Energy Supply (Executive Order 13211)

This final rule is a purely administrative regulatory action and has no implications under Executive Order 13211.

Executive Order 12866, Clarity of the Regulations

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 these regulations easier to understand, including answers to questions such as the following:

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

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

List of Subjects

43 CFR Part 2091

Administrative practices and procedures, Segregation and opening of lands

43 CFR Part 2710

Administrative practices and procedures, Public lands—mineral resources, and Public lands—sale.

Dated: November 3, 2006.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

■ Accordingly, for the reasons stated in the preamble and under the authority of the FLPMA (43 U.S.C. 1740), the BLM amends §§ 2091.2–1(b) and revises 2711.1–2(d), Title 43 of the Code of Federal Regulations as set forth below:

PART 2090—SPECIAL LAWS AND RULES

■ 1. Revise the authority citation for part 2090 to read as follows:

Authority: 43 U.S.C. 1740.

■ 2. Amend § 2091.2–1(b) by adding two sentences at the end of paragraph (b) to read as follows:

§ 2091.2–1 Segregation.

* * * * *

(b) * * * The sales provisions of section 43 CFR 2711.1–2(d) provide for a segregation period, not to exceed two years unless, on a case-by-case basis, the BLM State Director determines that the extension is necessary and documents, in writing, why the extension is needed. Such an extension will not be renewable and cannot be extended beyond the additional two years.

PART 2710—SALES; FEDERAL LAND POLICY AND MANAGEMENT ACT

■ 3. Revise the authority citation for part 2710 to read as follows:

Authority: 43 U.S.C. 1740.

■ 4. Revise § 2711.1–2(d) to read as follows:

§ 2711.1–2 Notice of realty action.

* * * * *

(d) The publication of the notice of realty action in the **Federal Register** segregates the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application will not be accepted, will not be considered as filed, and will be returned to the applicant if the notice segregates from the use applied for in the application. The segregative effect of the notice of realty action terminates: (i) Upon issuance of a patent or other document of conveyance to such lands; (ii) upon publication in the **Federal Register** of a termination of the segregation; or (iii) at the end of the specified segregation period, whichever occurs first. The segregation period may not exceed two years unless, on a case-by-case basis, the BLM State Director determines that the

extension is necessary and documents, in writing, why the extension is needed. Such an extension will not be renewable and cannot be extended beyond the additional two years. If an extension is deemed necessary, the BLM will publish a notice following the same procedure as that stated in paragraph (c) of this section.

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division