

Bureau of Land Management
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Contact: Jill Moran (202-452-5068)
Chris Paolino (202-208-6416)

BLM Announces Final Rule for Land Withdrawals

The Bureau of Land Management (BLM) will publish tomorrow, December 5, in the Federal Register a Final Rule eliminating the portion of existing regulations providing for committee-directed emergency withdrawal of lands from the operation of various public land laws.

Under Section 204(e) of the 1976 Federal Land Policy and Management Act (FLPMA) and current BLM regulations providing for emergency withdrawals, 43 CFR 2310.5, the Secretary of the Interior (Secretary) must withdraw lands immediately upon determining that an emergency exists and that extraordinary measures need to be taken to protect natural resources or resource values that otherwise would be lost. The statute and regulations also provide that the Secretary must follow the same course if a similar determination is made by either of two congressional committees specified in Section 204(e) and appropriate notification is made by that committee to the Secretary.

Since at least 1981, questions have been raised concerning the constitutionality of the congressional committee notification provision of Section 204(e).

In one instance, a District Court found it unnecessary to opine on the constitutionality of this portion of section 204(e) of FLPMA because the Secretary had bound himself through the regulations at 43 C.F.R. 2310.5. The final rule, by removing the regulations, would remove a potential impediment to judicial resolution of the constitutionality of the statutory provision. The statutory language in FLPMA Section 204(e) providing for a committee-directed emergency withdrawal remains unchanged under the final rule.

The BLM published a proposed rule to remove both committee-directed and Secretary-initiated emergency withdrawals on October 10, 2008 (73 FR 60212 (2008)), initiating a 15-day public comment period. The rationale for the proposed rule was twofold; one, the existing regulations for emergency withdrawals are redundant, as the segregation of lands provided for in the conventional withdrawal process is equally as effective at protecting resources as are emergency withdrawals and provide for a public process in the decision-making; and two, the committee-directed withdrawal presents constitutional issues.

While the BLM continues to believe that the regulations for Secretary-initiated emergency withdrawals is redundant, the BLM decided not to remove the emergency withdrawal regulations in their entirety in response to public comments. The Final Rule removes only the congressional committee-directed withdrawal provision of the regulation, but retains a procedure whereby the Secretary can initiate an emergency withdrawal.

The BLM manages more land – 258 million acres – than any other Federal agency. Most of this public land is located in 12 Western states, including Alaska. The BLM, with a budget of about \$1 billion, also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM's multiple-use mission is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations. The BLM accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

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