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conveyance of existing cemetery sites or historical places pursuant to section 14(h) of the Act. The Secretary may give favorable consideration to these applications: *Provided*, That the Secretary determines that the criteria in these regulations are met: *And provided further*, That the regional corporation agrees to accept a covenant in the conveyance that these cemetery sites or historical places will be maintained and preserved solely as cemetery sites or historical places by the regional corporation, in accordance with the provisions for conveyance reservations in §2653.11.

(b) A historical place may be granted in a National Wildlife Refuge or National Forest unless, in the judgment of the Secretary, the events or the qualities of the site from which it derives its particular value and significance as a historical place can be commemorated or found in an alternative site outside the refuge or forest, or if the Secretary determines that the conveyance could have a substantial detrimental effect on (1) a fish or wildlife population, (2) its habitat, (3) the management of such population or habitat, or (4) access by a fish or wildlife population to a critical part of its habitat.

(c) Although the existence of a cemetery site or historical place and a proper application for its conveyance create no valid existing right, they operate to segregate the land from all other forms of appropriation under the public land laws. Conveyances of lands reserved for the National Wildlife Refuge System made pursuant to this subpart are subject to the provisions of section 22(g) of the Act and §2650.4-6 as though they were conveyances to a village corporation.

(d) For purposes of evaluating and determining the eligibility of properties as historical places, the quality of significance in Native history or culture shall be considered to be present in places that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or

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(2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or

(3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or

(4) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or

(5) That have yielded, or are demonstrably likely to yield information important in prehistory or history.

(e) Criteria considerations for historic places: Ordinarily, cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible as a historical place unless they fall within one of the following categories:

(1) A religious property deriving primary significance from architectural or artistic distinction or historical importance;

(2) A building or structure removed from its original location but which is the surviving structure most importantly associated with a historic person or event;

(3) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;

(4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

(5) A reconstructed building when accurately executed in a suitable environment and preserved in a dignified manner as part of a restoration master plan and when no other building or structure with the same association has survived;

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(6) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

(7) A property achieving significance within the past 50 years if it is of exceptional importance.

(f) Applications by a regional corporation under section 14(h)(1) of the Act for conveyance of existing cemetery sites or historical places within its boundaries shall be filed with the proper office of the Bureau of Land Management in accordance with §2650.2(a) of this chapter. The regional corporation shall include as an attachment to its application for a historical place a statement describing the events that took place and the qualities of the site from which it derives its particular value and significance as a historical place. In making the application, the regional corporation should identify accurately and with sufficient specificity the size and location of the site for which the application is made as an existing cemetery site or historical place to enable the Bureau of Land Management to segregate the proper lands. The land shall be described in accordance with §2650.2(e) of this chapter, except that if the site under application is less than 2.50 acres or if it cannot be described by a protracted survey description, it shall be described by a metes and bounds description.

(g) Upon receipt of an application for an existing cemetery site or historical place, the Bureau of Land Management shall segregate from all other appropriation under the public land laws the land which it determines, adequately encompasses the site described in the application.

(h) Notice of filing of such application specifying the regional corporation, the size and location of the segregated lands encompassing the site for which application has been made, the date of filing, and the date by which any protest of the application must be filed shall be published once in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. The Bureau of Land Management shall then forward the application to the Director, Juneau Area Of-

fice, Bureau of Indian Affairs, for investigation, report, and certification and supply a copy to the National Park Service. When an application pertains to lands within a National Wildlife Refuge or National Forest, the Bureau of Land Management shall also forward informational copies of the application and the size and location of segregated lands to the agency or agencies involved.

(i) If, during its investigation, the Bureau of Indian Affairs finds that the location of the site as described in the application is in error, it shall notify the applicant, the Bureau of Land Management, and other affected Federal agencies, of such error. The applicant shall have 60 days from receipt of such notice to file with the Bureau of Land Management an amendment to its application with respect to the location of the site. Upon acceptance of such amendment the Bureau of Land Management shall reprocess the application, including segregation of lands and publication of notice.

(j) The Bureau of Indian Affairs shall identify on a map and mark on the ground, including gravesites or other important items, the location and size of the site or place with sufficient clarity to enable the Bureau of Land Management to locate on the ground said site or place. The Bureau of Indian Affairs, after consultation with the National Park Service and, in the case of refuges and forests, the agency or agencies involved, shall certify as to the existence of the site or place and that it meets the criteria in this subpart.

(1) *Cemetery sites.* The Bureau of Indian Affairs shall certify specifically that the site is the burial place of one or more Natives. The Bureau of Indian Affairs shall determine whether the cemetery site is in active or inactive use, and if active, it shall estimate the degree of use by Native groups and villages in the area which it shall identify.

(2) *Historical places.* The Bureau of Indian Affairs shall describe the events that took place and qualities of the site which give it particular value and significance as a historical place.

(k) The Bureau of Indian Affairs shall submit its report and certification along with the written comments and

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recommendations of the National Park Service and any other Federal agency, to the Bureau of Land Management. If the land is available, the Bureau of Land Management shall issue a decision to convey. However, where the issues in § 2653.5(b) are raised by the reports of the Fish and Wildlife Service or the Forest Service, the State Director, Bureau of Land Management shall submit the record including a land status report, to the Secretary for a resolution of any conflicts. If the land is available for that purpose, the Secretary shall make his determination to convey or not to convey the site to the applicant.

(l) The decision of the Bureau of Land Management or the Secretary shall be served on the applicant and all parties of record in accordance with the provisions of 43 CFR part 4, subpart E and shall be published in accordance with § 2650.7 of this part. The decision of the Bureau of Land Management shall become final unless appealed to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E. Any agency adversely affected by the certification of BIA or the decision of the Bureau of Land Management may also appeal the matter to the Board of Land Appeals. After a decision to convey an existing cemetery site or historical place has become final, the Bureau of Land Management shall adjust the segregation of the lands to conform with said conveyance.

(m) For inactive cemeteries, the boundaries of such cemetery sites shall include an area encompassing all actual gravesites including a reasonable buffer zone of not more than 66 feet. For active cemeteries, the boundaries of such sites shall include an area of actual use and reasonable future expansion of not more than 10 acres, but the BLM in consultation with any affected Federal agency may include more than 10 acres upon a determination that special circumstances warrant it. For historical places, the boundaries shall include an area encompassing the actual site with a reasonable buffer zone of not more than 330 feet.

[41 FR 14738, Apr. 7, 1976; 41 FR 17909, Apr. 29, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

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§ 2653.6 Native groups.

(a) *Eligibility.* (1) The head or any authorized representative of a Native group incorporated pursuant to section 14(h)(2) of the Act may file on behalf of the group an application for a determination of its eligibility under said section of the Act. Such application shall be filed in duplicate with the appropriate officer, Bureau of Land Management, prior to April 16, 1976, in accordance with § 2650.2(a) of this chapter. Upon serialization of the application, the Bureau of Land Management office will forward a copy of such application to the Director, Juneau Area Office, Bureau of Indian Affairs, who shall investigate and report the findings of fact required to be made herein to the Bureau of Land Management with a certification thereof. A copy of an application by a group located within a National Wildlife Refuge or a National Forest will be furnished to the appropriate agency administering the area.

(2) Each application must identify the section, township, and range in which the Native group is located, and must be accompanied by a list of the names of the Native members of the group, a listing of permanent improvements and periods of use of the locality by members, a conformed copy of the group's article of incorporation, and the regional corporation's concurrence and recommendation under § 2653.2(b).

(3) Notice of the filing of such application specifying the date of such filing, the identity and location of the Native group, and the date by which any protest of the application must be filed shall be prepared by the Bureau of Indian Affairs and shall be published once in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. Any protest to the application shall be filed with the Bureau of Indian Affairs within the time specified in the notice.

(4) The Bureau of Indian Affairs shall investigate and determine whether each member of a Native group formed pursuant to section 14(h)(2) of the Act is enrolled pursuant to section 5 of the Act. The Bureau of Indian Affairs shall determine whether the members of the

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Native group actually reside in and are enrolled to the locality specified in its application. The Bureau of Indian Affairs shall specify the number and names of Natives who actually reside in and are enrolled to the locality, including children who are members of the group and who are temporarily elsewhere for purposes of education, and it shall further determine whether the members of the Native group constitute the majority of the residents of the locality where the group resides. The Bureau of Indian Affairs shall determine and identify the exterior boundaries of the Native group's locality and the location of all those permanent structures of the Native group used as dwelling houses.

(5) The Native group must have an identifiable physical location. The members of the group must use the group locality as a place where they actually live in permanent structures used as dwelling houses. The group must have the character of a separate community, distinguishable from nearby communities, and must be composed of more than a single family or household. Members of a group must have enrolled to the group's locality pursuant to section 5 of the Act, must actually have resided there as of the 1970 census enumeration date, and must have lived there as their principal place of residence since that date.

(6) The Bureau of Indian Affairs shall issue its certification, containing its findings of fact required to be made herein and its determination of the eligibility of the Native group, except it shall issue a certification of ineligibility when it is notified by the Bureau of Land Management that the land is unavailable for selection by such Native group. It shall send a copy thereof by certified mail to the Bureau of Land Management, the Native group, its regional corporation and any party of record.

(7) Appeals concerning the eligibility of a Native group may be made to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E.

(b) *Selections.* (1) Native group selections shall not exceed the amount recommended by the regional corporation or 320 acres for each Native member of a group, or 7,680 acres for each Native

group, whichever is less. Any acreage selected in excess of that number shall be identified as alternate selections and shall be numerically ordered to indicate selection preference. Native groups will not receive land benefits unless the land which is occupied by their permanent structures used as dwelling houses is available, or in the case where such land is not State or federally owned, the land which is contiguous to and immediately surrounds the land occupied by their permanent structures used as dwelling houses is available, and is not within a wildlife refuge or forest, pursuant to section 14(h) of the Act. Public lands which may be available for this purpose are set forth in §2653.3 (a) and (c). Conveyances of lands reserved for the National Wildlife Refuge System made pursuant to this part are subject to the provisions of section 22(g) of the Act and §2650.4-6 of this chapter as though they were conveyances to a village corporation.

(2) Upon receipt of the applications of a Native group for a determination of its eligibility under section 14(h)(2) of the Act, the Bureau of Land Management shall segregate the land encompassed within the group locality from land available for that purpose pursuant to §2653.6(b)(1). However, segregation of land for Native groups whose dwelling structures are located outside but adjacent to a National Wildlife Refuge or National Forest shall not include such reserved land, unless the Native group's dwelling structures are located on land excepted from the Kodiak National Wildlife Refuge pursuant to Public Land Order 1634 (FR Doc. 58-3696, filed May 16, 1958).

(3) The Bureau of Indian Affairs shall visit the locality of the group and shall recommend to the Bureau of Land Management the manner in which the segregation should be modified to encompass the residences of as many members as possible while allowing for the inclusion of the land most intensively used by members of the Native group. The recommended segregation must be contiguous and as compact as possible. The Bureau of Land Management may segregate the land accordingly provided such lands are otherwise available in accordance with paragraph

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(b)(1) and (b)(2). If the Bureau of Land Management finds the lands are unavailable for selection by a Native group, it shall notify the Bureau of Indian Affairs.

(4) Selections shall be made from lands segregated for that purpose and shall be filed prior to July 1, 1976. Selections shall be contiguous and taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact except where separated by lands which are unavailable for selection. The total area selected will not be considered to be reasonably compact if (i) it excludes other lands available for selection within its exterior boundaries; or (ii) an isolated tract of public land of less than 640 acres remains after selection. The lands selected shall be in quarter sections where they are available unless the exhaustion of the acreage which the group may be entitled to select does not permit the selection of a quarter section and shall include all available lands in less than quarter sections. Lands selected shall conform as nearly as practicable to the United States land survey system.

(5) A Native group whose eligibility has not been finally determined may file its land selections as if it were determined to be eligible. The Bureau of Land Management shall release from segregation the lands not selected and shall continue segregation of the selected land until the lands are conveyed or the group is finally determined to be ineligible. However, in the case of a group determined to be ineligible by the Board of Land Appeals, the segregation shall be continued for a period of 60 days from the date of such decision.

(6) Where any conflict in land selection occurs between any eligible Native groups, the Bureau of Land Management shall request the appropriate regional corporation to recommend the manner in which such conflict should be resolved.

(7) The Bureau of Land Management shall issue a decision on the selection of a Native group determined to be eligible and shall serve a copy of such decision by certified mail on the Native group, its regional corporation and any party of record and the decision shall

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be published in accordance with § 2650.7 of this part.

(8) Appeals from the Bureau of Land Management decision on the selection by a Native group under this section shall be made to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E.

[41 FR 14739, Apr. 7, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

§ 2653.7 Sitka-Kenai-Juneau-Kodiak selections.

(a) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, who incorporate under the laws of the State of Alaska, may each select the surface estate of up to 23,040 acres of lands of similar character located in reasonable proximity to those municipalities.

(b) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, shall nominate not less than 92,160 acres of lands within 50 miles of each of the four named cities which are similar in character to the lands in which each of the cities is located. After review and public hearings, the Secretary shall withdraw up to 46,080 acres near each of the cities from the lands nominated. Each corporation representing the Native residents of the four named cities may select not more than one-half the area withdrawn for selection by that corporation. The Secretary shall convey the area selected.

§ 2653.8 Primary place of residence.

(a) An application under this subpart may be made by a Native who occupied land as a primary place of residence on August 31, 1971.

(b) Applications for a primary place of residence must be filed not later than December 18, 1973.

§ 2653.8-1 Acreage to be conveyed.

A Native may secure title to the surface estate of only a single tract not to exceed 160 acres under the provisions of this subpart, and shall be limited to the acreage actually occupied and used. An application for title under this subpart shall be accompanied by a certification by the applicant that he will not receive title to any other tract of land

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pursuant to sections 14 (c)(2), (h)(2), or 18 of the Act.

§ 2653.8-2 Primary place of residence criteria.

(a) *Periods of occupancy.* Casual or occasional use will not be considered as occupancy sufficient to make the tract applied for a primary place of residence.

(b) *Improvements constructed on the land.* (1) Must have a dwelling.

(2) May include associated structures such as food cellars, drying racks, caches etc.

(c) *Evidence of occupancy.* Must have evidence of permanent or seasonal occupancy for substantial periods of time.

§ 2653.8-3 Appeals.

Appeals from decisions made by the Bureau of Land Management on applications filed pursuant to section 14(h)(5) of the Act shall be made to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E.

[41 FR 14740, Apr. 7, 1976]

§ 2653.9 Regional selections.

(a) Applications by a regional corporation for selection of land within its boundaries under section 14(h)(8) of the Act shall be filed with the proper office of the Bureau of Land Management in accordance with § 2650.2(a). Selections made under section 14(h)(1), (2), (3), and (5) of the Act will take priority over selections made pursuant to section 14(h)(8). Lands available for section 14(h)(8) selections are those lands originally withdrawn under section 11(a)(1), (3), or 16(a) of the Act and not conveyed pursuant to selections made under sections 12(a), (b), or (c), 16(b) or 19 of the Act.

(b) A regional corporation may select a total area in excess of its entitlement to ensure that it will obtain its entitlement in the event of any conflicts. Any acreage in excess of its entitlement shall be identified as alternate selections and shall be numerically ordered on a section by section basis to indicate selection preference.

(c) Selections need not be contiguous but must be made along section lines in reasonably compact tracts of at least 5,760 acres, not including any un-

available land contained therein. The exterior boundaries of such tracts shall be in linear segments of not less than two miles in length, except where adjoining unavailable lands or where shorter segments are necessary to follow section lines where township lines are offset along standard parallels caused by the convergence of the meridians. However, selected tracts may contain less than 5,760 acres where there is good cause shown for such selection, taking into consideration good land management planning and principles for the potentially remaining public lands, and which would not leave unduly fragmented tracts of such public lands. Each tract selected shall not be considered to be reasonably compact if (1) it excludes other lands for selection within its exterior boundaries, or (2) an isolated tract of public land of less than 1,280 acres remains after selection of the total entitlement. Regional corporations shall not be precluded from selecting less than 5,760 acres where the entire tract available for selection constitutes less than 5,760 acres. Selection shall conform as nearly as practicable to the United States land survey system.

(d) Notice of the filing of such selections, including the date by which any protest of the selection should be filed, shall be published once in the FEDERAL REGISTER and one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. Any protest to the application should be filed in the Bureau of Land Management office in which such selections were filed within the time specified in the notice.

(e) Appeals from decisions made by the Bureau of Land Management with respect to such selections shall be made to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E.

[41 FR 14740, Apr. 7, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

§ 2653.10 Excess selections.

Where land selections by a regional corporation, Native group, any of the four named cities, or a Native pursuant to section 14(h) (1), (2), (3), or (5) exceed the land entitlement, the Bureau of

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Land Management may request such corporation to indicate its preference among lands selected.

[41 FR 14740, Apr. 7, 1976]

§ 2653.11 Conveyance reservations.

(a) Conveyances issued pursuant to this subpart are subject to the conveyance reservations described in § 2650.4 of this chapter.

(b) In addition to the reservations provided in paragraph (a) of this section, conveyance for cemetery sites or historical places will contain a covenant running with the land providing that (1) the regional corporation shall not authorize mining or mineral activity of any type; nor shall it authorize any use which is incompatible with or is in derogation of the values of the area as a cemetery site or historical place (standards for determining uses which are incompatible with or in derogation of the values of the area are found in relevant portions of 36 CFR 800.9 (1974); and (2) that the United States reserves the right to seek enforcement of the covenant in an action in equity. The covenant placed in this subsection may be released by the Secretary, in his discretion, upon application of the regional corporation grantee showing that extraordinary circumstances of a nature to warrant the release have arisen subsequent to the conveyance.

(c) Conveyances for cemetery sites and historical places shall also contain the covenant required by § 2650.4-6 of this chapter.

[38 FR 14218, May 30, 1973. Redesignated and amended at 41 FR 14740, Apr. 7, 1976]

Subpart 2654—Native Reserves

§ 2654.0-3 Authority.

Section 19(b) of the Act authorizes any village corporation(s) located within a reserve defined in the act to acquire title to the surface and subsurface estates in any reserve set aside for the use and benefit of its stockholders or members prior to December 18, 1971. Such acquisition precludes any other benefits under the Act.

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§ 2654.0-5 Definitions.

Reserve lands means any lands reserved prior to the date of enactment of the act which are subject to being taken in lieu of other benefits under the act pursuant to section 19(b) of the Act.

§ 2654.1 Exercise of option.

(a) Any village corporation which has not, by December 18, 1973, elected to acquire title to the reserve lands will be deemed to have elected to receive for itself and its members the other benefits under the Act.

(b) The election of a village to acquire title to the reserve lands shall be exercised in the manner provided by its articles of incorporation. However when two or more villages are located on the same reserve there must be a special election to acquire title to the reserve lands. A majority vote of all the stockholders or members of all corporations located on the reserve is required to acquire title to the reserve lands. For the purpose of this paragraph the stockholders or members shall be determined on the basis of the roll of village residents proposed to be promulgated under 25 CFR 43h.7.¹ The regional corporation or village corporations or any member or stockholder of the village corporations involved may request that the election be observed by the Bureau of Indian Affairs.

(c) The results of any election by a village corporation or corporations to acquire title to the reserve lands shall be certified by such village corporation or corporations as being in conformity with the articles of incorporation and by-laws of the village corporation or corporations.

§ 2654.2 Application procedures.

(a) If the corporation or corporations elect to take title to the reserve lands, submission to the Secretary of the certificate of election will constitute an application to acquire title to those lands.

(b) If the village corporation or corporations do not elect to take the reserve lands, they shall apply for their

¹At 47 FR 13327, Mar. 30, 1982, § 43h.7 of Title 25 was redesignated as § 69.7.

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land selections pursuant to subpart 2651 of this chapter.

§ 2654.3 Conveyances.

(a) Conveyances under this subpart are subject to the provisions of section 14(g) of the Act, as provided by § 2650.4 of this chapter.

(b) Conveyances under this subpart to two or more village corporations will be made to them as tenants-in-common, having undivided interests proportionate to the number of their respective members or stockholders determined on the basis of the final roll promulgated by the Secretary pursuant to section 5 of the Act.

Subpart 2655—Federal Installations

AUTHORITY: Alaska Claims Settlement Act of 1971 (43 U.S.C. 1601 *et seq.*).

SOURCE: 45 FR 70206, Oct. 22, 1980, unless otherwise noted.

§ 2655.0-3 Authority.

Section 3(e)(1) of the Act provides that the Secretary shall determine the smallest practicable tract enclosing land actually used in connection with the administration of Federal installations in Alaska.

§ 2655.0-5 Definitions.

As used in this subpart, the term:

(a) *Holding agency* means any Federal agency claiming use of a tract of land subject to these regulations.

(b) *Appropriate selection period* means the statutory or regulatory period within which the lands were available for Native selection under the act.

(c) *State Director* means the Director, Alaska State Office, Bureau of Land Management.

§ 2655.1 Lands subject to determination.

(a) Holding agency lands located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) of the Act and subsequently selected by a village or regional corporation under sections 12 or 16, or selected by the regional corporation under sections 12 or 16, or selected by the regional corporation for southeast Alaska in accordance with

section 14(h)(8)(B) are subject to a determination made under this subpart.

(b) Lands in the National Park System, lands withdrawn or reserved for national defense purposes and those former Indian reserves elected under section 19 of the Act are not subject to a determination under section 3(e)(1) of the Act or this subpart. Lands withdrawn under section 11(a)(3) or 14(h), except 14(h)(8)(B), of the Act do not include lands withdrawn or otherwise appropriated by a Federal agency and, therefore, are not subject to a determination under section 3(e)(1) of the Act or this subpart.

§ 2655.2 Criteria for determinations.

Land subject to determination under section 3(e)(1) of the Act will be subject to conveyance to Native corporations if they are determined to be public lands under this subpart. If the lands are determined not to be public lands, they will be retained by the holding agency. The Bureau of Land Management shall determine:

(a) Nature and time of use.

(1) If the holding agency used the lands for a purpose directly and necessarily connected with the Federal agency as of December 18, 1971; and

(2) If use was continuous, taking into account the type of use, throughout the appropriate selection period; and

(3) If the function of the holding agency is similar to that of the Federal agency using the lands as of December 18, 1971.

(b) Specifications for area to be retained by Federal agency.

(1) Area shall be no larger than reasonably necessary to support the agency's use.

(2) Tracts shall be described by U.S. Survey (or portion thereof), smallest aliquot part, metes and bounds or protraction diagram, as appropriate.

(3) Tracts may include:

(i) Improved lands;

(ii) Buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage;

(iii) Unimproved lands used for storage;

(iv) Lands containing gravel or other materials used in direct connection

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with the agency's purpose and not used simply as a source of revenue or services. The extent of the areas reserved as a source of materials will be the area disturbed but not depleted as of the date of the end of the appropriate selection period; and

(v) Lands used by a non-governmental entity or private person for a use that has a direct, necessary and substantial connection to the purpose of the holding agency but shall not include lands from which proceeds of the lease, permit, contract, or other means are used primarily to derive revenue.

(c) Interest to be retained by Federal agency.

(1) Generally, full fee title to the tract shall be retained; however, where the tract is used primarily for access, electronic, light or visibility clear zones or right-of-way, an easement may be reserved in lieu of full fee title where the State Director determines that an easement affords sufficient protection, that an easement is customary for the particular use and that it would further the objectives of the act.

(2) Easements reserved in lieu of full fee title shall be reserved under the provisions of section 17(b) of the Act and § 2650.4-7 of this title.

§ 2655.3 Determination procedures.

(a) The State Director shall make the determination pursuant to the provisions in this subpart. Where sufficient information has not already been provided, the State Director shall issue written notice to any Federal agency which the Bureau of Land Management has reason to believe might be a holding agency. The written notice shall provide that the information requested be furnished in triplicate to the State Director within 90 days from the receipt of the notice. Upon receipt of information the State Director will promptly provide affected Native corporations with copies of the documents. Upon adequate and justifiable showing as to the need for an extension by the holding agency, the State Director may grant a time extension up to 60 days to provide the information requested in this subpart.

(b) The information to be provided by the holding agency shall include the

following for each tract which is subject to determination:

(1) The function and scope of the installation;

(2) A plottable legal description of the lands used;

(3) A list of structures or other alterations to the character of lands and their function, their location on the tract, and date of construction;

(4) A description of the use and function of any unaltered lands;

(5) A list of any rights, interests or permitted uses the agency has granted to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the installation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in paragraph (a) of this section, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the Act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

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§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a determination pursuant to section 3(e)(1) of the Act, the matter shall be remanded by the Board of Land Appeals to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the Act and these regulations: *Provided*, That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

Group 2700—Disposition; Sales

NOTE: The information collection requirements contained in parts 2720 and 2740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0153 and 1004-0012, respectively. The information is being collected to permit the authorized officer to determine if disposition of Federally-owned mineral interests should be made and to determine if disposition of public lands should be made for recreation and public purposes. This information will be used to make these determinations. A response is required to obtain a benefit.

(See 51 FR 9657, Mar. 20, 1986)

PART 2710—SALES: FEDERAL LAND POLICY AND MANAGEMENT ACT

Subpart 2710—Sales: General Provisions

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AUTHORITY: 43 U.S.C. 1713, 1740.

SOURCE: 45 FR 39418, June 10, 1980, unless otherwise noted.

Subpart 2710—Sales: General Provisions

§ 2710.0-1 Purpose.

The regulations in this part implement the sale authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713).

§ 2710.0-2 Objective.

The objective is to provide for the orderly disposition at not less than fair market value of public lands identified for sale as part of the land use planning process.

§ 2710.0-3 Authority.

(a) The Secretary of the Interior is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C.

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1701, 1713), to sell public lands where, as a result of land use planning, it is determined that the sale of such tract meets any or all of the following disposal criteria:

(1) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(2) Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership; or

(3) Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

(b) The Secretary of the Interior is authorized by section 310 of the Federal Land Policy and Management Act (43 U.S.C. 1740) to promulgate rules and regulations to carry out the purpose of the Act.

§ 2710.0-5 Definitions.

As used in this part, the term

(a) *Public lands* means any lands and interest in lands owned by the United States and administered by the Secretary through the Bureau of Land Management except:

(1) Lands located on the Outer Continental Shelf;

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(b) *Secretary* means the Secretary of the Interior.

(c) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(d) *Act* means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

(e) *Family sized farm* means the unit of public lands determined to be chiefly valuable for agriculture, and that is of sufficient size, based on land use capa-

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bilities, development requirements and economic capability, to provide a level of net income, after payment of expenses and taxes, which will sustain a family sized agribusiness operation above the poverty level for a rural farm family of 4 as determined by the Bureau of Labor Statistics, U.S. Department of Labor, for the calendar year immediately preceding the year of the proposed sale under the regulations of this part. The determination of the practical size is an economic decision to be made on a local area basis considering, but not limited to, factors such as: Climatic conditions, soil character, availability of irrigation water, topography, usual crop(s) of the locale, marketability of the crop(s), production and development costs, and other physical characteristics which shall give reasonable assurance of continued production under proper conservation management.

§ 2710.0-6 Policy.

(a) Sales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with part 1600 of this title.

(b) Public lands determined to be suitable for sale shall be offered only on the initiative of the Bureau of Land Management. Indications of interest to have specific tracts of public lands offered for sale shall be accomplished through public input to the land use planning process. (See §§ 1601.1-1 and 1601.8 of this title). Nominations or requests to have specific tracts of public lands offered for sale may also be made by direct request to the authorized officer.

(c)(1) The Federal Land Policy and Management Act (43 U.S.C. 1713(f)) provides that sales of public lands under this section shall be conducted under competitive bidding procedures established by the Secretary. However, where the Secretary determines it necessary and proper in order to assure equitable distribution among purchasers of lands, or to recognize equitable considerations or public policies, including, but not limited to, a preference to users, lands may be sold by modified competitive bidding or without competitive bidding. In recognizing public

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policies, the Secretary shall give consideration to the following potential purchasers:

- (i) The State in which the lands are located;
- (ii) The local government entities in such State which are in vicinity of the lands;
- (iii) Adjoining landowners;
- (iv) Individuals; and
- (v) Any other person.

(2) When a parcel of land meets the sale criteria of section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713), several factors shall be considered in determining the method of sale. These factors include, but are not limited to: Competitive interest; needs of State and local governments; adjoining landowners; historical uses; and equitable distribution of land ownership.

(3) Three methods of sale are provided for in §2711.3 of this title: competitive; modified competitive; and direct (non-competitive). The policy for selecting the method of sale is:

(i) Competitive sale as provided in §2711.3-1 of this title is the general procedure for sales of public lands and may be used where there would be a number of interested parties bidding for the lands and (A) wherever in the judgment of the authorized officer the lands are accessible and usable regardless of adjoining land ownership and (B) wherever the lands are within a developing or urbanizing area and land values are increasing due to their location and interest on the competitive market.

(ii) Modified competitive sales as provided in §2711.3-2 of this title may be used to permit the existing grazing user or adjoining landowner to meet the high bid at the public sale. This procedure will allow for limited competitive sales to protect on-going uses, to assure compatibility of the possible uses with adjacent lands, and avoid dislocation of existing users. Lands offered under this procedure would normally be public lands not located near urban expansion areas, or with rapidly increasing land values, and existing use of adjacent lands would be jeopardized by sale under competitive bidding procedures.

(iii) Direct sale as provided in §2711.3-3 of this title may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by State or local governments or non-profit corporations, or where necessary to protect existing equities in the lands or resolve inadvertent unauthorized use or occupancy of said lands.

(4) When lands have been offered for sale by one method of sale and the lands remain unsold, then the lands may be reoffered by another method of sale.

(5) In no case shall lands be sold for less than fair market value.

(d) Sales of public lands determined to be chiefly valuable for agriculture shall be no larger than necessary to support a family-sized farm.

(e) The sale of family-sized farm units, at any given sale, shall be limited to one unit per bidder and one unit per family. The limit of one unit per family is not to be construed as limiting children eighteen years or older from bidding in their own right.

(f) Sales under this part shall not be made at less than fair market value. Such value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions*. The value of authorized improvements owned by anyone other than the United States upon lands being sold shall not be included in the determination of fair market value. Technical review and approval for conformance with appraisal standards shall be conducted by the authorized officer.

(g) Constraint and discretion shall be used with regard to the terms, covenants, conditions and reservations authorized by section 208 of the Act that are to be in sales patents and other conveyance documents, except where inclusion of such provisions is required by law or for protection of valid existing rights.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29014, July 17, 1984; 49 FR 29795, July 24, 1984]

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§ 2710.0-8 Lands subject to sale.

(a) All public lands, as defined by § 2710.0-5 of this title, and, which meet the disposal criteria specified under § 2710.0-3 of this title, are subject to sale pursuant to this part, except:

(1) Those public lands within the re-vested Oregon California Railroad and reconveyed Coos Bay Wagon Road grants which are more suitable for management and administration for permanent forest protection and other purposes as provided for in the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181(a)); May 24, 1939 (53 Stat. 753); and section 701(b) of the Act.

(2) Public lands in units of the National Wilderness Preservation System, National Wild and Scenic Rivers System and National System of Trails.

(3) Public lands classified, withdrawn, reserved or otherwise designated as not available or subject to sale shall not be sold under the regulations of this part until issuance of an order or notice which either opens or provides for such disposition.

(b) Unsurveyed public lands shall not be sold under the regulations of this part until they are officially surveyed under the public land survey system of the United States. Such survey shall be completed and approved by the Secretary prior to any sale.

Subpart 2711—Sales: Procedures

§ 2711.1 Initiation of sale.

§ 2711.1-1 Identification of tracts by land use planning.

(a) Tracts of public lands shall only be offered for sale in implementation of land use planning prepared and/or approved in accordance with subpart 1601 of this title.

(b) Public input proposing tracts of public lands for disposal through sale as part of the land use planning process may be made in accordance with §§ 1601.3, 1601.6-3 or § 1601.8 of this title.

(c) Nominations or requests for sales of public lands may be made to the District office of the Bureau of Land Management for the District in which the public lands are located and shall specifically identify the tract being nomi-

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nated or requested and the reason for proposing sale of the specific tract.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984]

§ 2711.1-2 Notice of realty action.

(a) A notice of realty action offering for sale a tract or tracts of public lands identified for disposal by sale shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the sale. The notice shall include the terms, covenants, conditions and reservations which are to be included in the conveyance document and the method of sale. The notice shall also provide 45 days after the date of issuance for the right of comment by the public and interested parties.

(b) Not less than 60 days prior to sale, notice shall be sent to the Member of the U.S. House of Representatives in whose district the public lands proposed for sale are located and the U.S. Senators for the State in which the public lands proposed for sale are located, the Senate and House of Representatives, as required by paragraph (f) of this section, to Governor of the State within which the public lands are located, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands are located. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current land users.

(c) The notice shall be published once in the FEDERAL REGISTER and once a week for 3 weeks thereafter in a newspaper of general circulation in the general vicinity of the public lands being proposed to be offered for sale.

(d) The publication of the notice of realty action in the FEDERAL REGISTER shall segregate 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

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subsequent application, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the FEDERAL REGISTER of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

(e) The notice published under § 1610.5 of this title may, if so designated in the notice and is the functional equivalent of a notice of realty action required by this section, serve as the notice of realty action required by paragraph (a) of this section and may segregate the public lands covered by the sale proposal to the same extent that they would have been segregated under a notice of realty action issued under paragraph (a) of this section.

(f) For tracts of public lands in excess of 2,500 acres, the notice shall be submitted to the Senate and the House of Representatives not less than the 90 days prescribed by section 203 of the Act (43 U.S.C. 1713(c)) prior to the date of sale. The sale may not be held prior to the completion of the congressional notice period unless such period is waived by Congress.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984]

§ 2711.1-3 Sales requiring grazing permit or lease cancellations.

When lands are identified for disposal and such disposal will preclude livestock grazing, the sale shall not be made until the permittees and lessees are given 2 years prior notification, except in cases of emergency, that their grazing permit or grazing lease and grazing preference may be cancelled in accordance with § 4110.4-2(b) of this title. A sale may be made of such identified lands if the sale is conditioned upon continued grazing by the current permittee/lessee until such time as the current grazing permit or lease would have expired or terminated. A permittee or lessee may unconditionally waive the 2-year prior notification. The publication of a notice of realty action as provided in § 2711.1-2(c) of this title

shall constitute notice to the grazing permittee or lessee if such notice has not been previously given.

[49 FR 29015, July 17, 1984]

§ 2711.2 Qualified conveyees.

Tracts sold under this part may only be conveyed to:

(a) A citizen of the United States 18 years of age or over;

(b) A corporation subject to the laws of any State or of the United States;

(c) A State, State instrumentality or political subdivision authorized to hold property; and

(d) An entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. Where applicable, the entity shall also meet the requirements of paragraphs (a) and (b) of this section.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984]

§ 2711.3 Procedures for sale.

§ 2711.3-1 Competitive bidding.

When public lands are offered through competitive bidding:

(a) The date, time, place, and manner for submitting bids shall be specified in the notice required by § 2711.1-2 of this title.

(b) Bids may be made by a principal or a duly qualified agent.

(c) Sealed bids shall be considered only if received at the place of sale prior to the hour fixed in the notice and are made for at least the fair market value. Each bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management for the amount required in the notice of realty action which shall be not less than 10 percent or more than 30 percent of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental biddings. The designated high bidders shall be allowed to submit oral

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or sealed bids as designated by the authorized officer.

(d) The highest qualifying sealed bid received shall be publicly declared by the authorized officer. If the notice published pursuant to §2711.1-2 of this title provides for oral bids, such bids, in increments specified by the authorized officer, shall then be invited. After oral bids, if any, are received, the highest qualifying bid, designated by type, whether sealed or oral, shall be declared by the authorized officer. The person declared to have entered the highest qualifying oral bid shall submit payment by cash, personal check, bank draft, money order, or any combination for not less than one-fifth of the amount of the bid immediately following the close of the sale. The successful bidder, whether such bid is a sealed or oral bid, shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale. Failure to submit the full bid price prior to, but not including the 180th day following the day of the sale, shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale. In the event the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer shall determine whether the public lands shall be withdrawn from the market or be reoffered.

(e) If the public lands are not sold pursuant to the notice issued under §2711.1-2 of this subpart, they may remain available for sale on a continuing basis until sold as specified in the notice.

(f) The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after receipt of such offer unless the offerer waives his right to a decision within such 30-day period. In case of a tract of land in excess of 2,500 acres, such acceptance or rejection shall not be given until the expiration of 30 days after the end of the notice to the Congress provided for in §2711.1-2(d) of this subpart. Prior to the expiration of such periods the authorized officer may refuse to accept any offer or may withdraw any tract from sale if he determines that:

(1) Consummation of the sale would be inconsistent with the provisions of any existing law; or

(2) Collusive or other activities have hindered or restrained free and open bidding; or

(3) Consummation of the sale would encourage or promote speculation in public lands.

(g) Until the acceptance of the offer and payment of the purchase price, the bidder has no contractual or other rights against the United States, and no action taken shall create any contractual or other obligations of the United States.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984; 49 FR 29795, July 24, 1984]

§2711.3-2 Modified bidding.

(a) Public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

(1) Modified competitive bidding includes, but is not limited to:

(i) Offering to designated bidders the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions; or

(ii) A limitation of persons permitted to bid on a specific tract of land offered for sale; or

(iii) Offering to designated bidders the right of first refusal to purchase the lands at fair market value. Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of his preference consideration.

(2) Factors that shall be considered in determining when modified competitive bidding procedures shall be used, include but are not limited to: Needs of State and/or local government, adjoining landowners, historical users, and other needs for the tract. A description of the method of modified competitive bidding to be used and a statement indicating the purpose or objective of the bidding procedure selected shall be

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specified in the notice of realty action required in §2711.1-2 of this subpart.

(b) Where 2 or more designated bidders exercise preference consideration awarded by the authorized officer in accordance with paragraph (a)(1) of this section, such bidders shall be offered the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the preference right bidders shall be allowed to continue bidding to determine the high bidder.

(c) Where designated bidders fail to exercise the preference consideration offered by the authorized officer in the allowed time, the sale shall proceed using the procedures specified in §2711.3-1 of this subpart; and

(d) Once the method of modified competitive or noncompetitive sale is determined and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be by the same instruments as authorized in §2711.3-1(c) of this subpart.

(e) Acceptance or rejection of any offer to purchase shall be in accordance with the procedures set forth in §2711.3-1 (f) and (g) of this subpart.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984]

§ 2711.3-3 Direct sales.

(a) Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to:

(1) A tract identified for transfer to State or local government or nonprofit organization; or

(2) A tract identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project; or

(3) There is a need to recognize an authorized use such as an existing business which could suffer a substantial economic loss if the tract were pur-

chased by other than the authorized user; or

(4) The adjoining ownership pattern and access indicate a direct sale is appropriate; or

(5) A need to resolve inadvertent unauthorized use or occupancy of the lands.

(b) Once the authorized officer has determined that the lands will be offered by direct sale and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be made by the same instruments as authorized in §2711.3-1(c) of this subpart.

(c) Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration.

(d) Acceptance or rejection of an offer to purchase the lands shall be in accordance with the procedures set forth in §2711.3-1 (f) and (g) of this subpart.

[49 FR 29015, July 17, 1984; 49 FR 29796, July 24, 1984]

§ 2711.4 Compensation for authorized improvements.

§ 2711.4-1 Grazing improvements.

No public lands in a grazing lease or permit may be conveyed until the provisions of part 4100 of this title concerning compensation for any authorized grazing improvements have been met.

§ 2711.4-2 Other private improvements.

Where public lands to be sold under this part contain authorized private improvements, other than those identified in §2711.4-1 of this subpart or those subject to a patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner has not been declared the purchaser of the lands sold, or the prospective purchaser may compensate the owner of such authorized private improvements and submit proof of compensation to the authorized officer.

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§ 2711.5 Conveyance documents.

§ 2711.5-1 Mineral reservation.

Patents and other conveyance documents issued under this part shall contain a reservation to the United States of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe. However, upon the filing of an application as provided in part 2720 of this title, the Secretary may convey the mineral interest if all requirements of the law are met. Where such application has been filed and meets the requirements for conveyance, the authorized officer may withhold issuance of a patent or other document of conveyance on lands sold under this part until processing of the mineral conveyance application is completed, at which time a single patent or document of conveyance for the entire estate or interest of the United States may be issued.

§ 2711.5-2 Terms, covenants, conditions, and reservations.

Patents or other conveyance documents issued under this part may contain such terms, covenants, conditions, and reservations as the authorized officer determines are necessary in the public interest to insure proper land use and protection of the public interest as authorized by section 208 of the Act.

§ 2711.5-3 Notice of conveyance.

The authorized officer shall immediately notify the Governor and the heads of local government of the issuance of conveyance documents for public lands within their respective jurisdiction.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29016, July 17, 1984]

PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

Sec.

2720.0-1 Purpose.

2720.0-2 Objectives.

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2720.1 Application to purchase federally-owned mineral interests.

2720.1-1 Filing of application.

2720.1-2 Form of application.

2720.1-3 Action on application.

2720.2 Determination that an exploratory program is not required.

2720.3 Action upon determination of the fair market value of the mineral interests.

2720.4 Issuance of document of conveyance.

2720.5 Appeals.

AUTHORITY: 43 U.S.C. 1719 and 1740.

SOURCE: 44 FR 1342, Jan. 4, 1979, unless otherwise noted.

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

§ 2720.0-1 Purpose.

The purpose of these regulations is to establish procedures under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, for conveyance of mineral interests owned by the United States where the surface is or will be in non-Federal ownership.

§ 2720.0-2 Objectives.

The objective is to allow consolidation of surface and subsurface or mineral ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

§ 2720.0-3 Authority.

(a) Section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), authorizes the Secretary of the Interior to convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, if certain specific conditions are met.

(b) Section 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1740, authorizes the Secretary of the Interior to promulgate rules and regulations to carry out the purposes of the Act.

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§ 2720.0-5 Definitions.

As used in this subpart, the term:

(a) *Prospective record owner* means a person who has a contract or other agreement to purchase a tract of land that is in non-Federal ownership with a reservation of minerals in the United States, or a person who is purchasing a tract of land under the provisions of the Federal Land Policy and Management Act of 1976 or other laws authorizing the conveyance of Federal lands subject to the reservation of a mineral interest.

(b) *Known mineral values* means mineral rights in lands containing geologic formations that are valuable in the monetary sense for exploring, developing, or producing natural mineral deposits. The presence of such mineral deposits with potential for mineral development may be known because of previous exploration, or may be inferred based on geologic information.

(c) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(d) Proof of ownership means evidence of title acceptable in local realty practice by attorneys and title examiners and may include a current title attorney's opinion, based on a current abstract of title prepared by a bonded title insurance or title abstract company doing business in the locale where the lands are located.

[44 FR 1342, Jan. 4, 1979, as amended at 51 FR 9657, Mar. 20, 1986; 60 FR 12711, Mar. 8, 1995]

§ 2720.0-6 Policy.

As required by the Federal Land Policy and Management Act, the Bureau of Land Management may convey a federally owned mineral interest only when the authorized officer determines that it has no known mineral value, or that the mineral reservation is interfering with or precluding appropriate nonmineral development of the lands and that nonmineral development is a more beneficial use than mineral development. Allegation, hypothesis or speculation that such conditions could or may exist at some future time shall not be sufficient basis for conveyance. Failure to establish by convincing fac-

tual evidence that the requisite conditions of interference or preclusion presently exist, and that nonmineral development is a more beneficial use, shall result in the rejection of an application.

[51 FR 9657, Mar. 20, 1986, as amended at 60 FR 12711, Mar. 8, 1995]

§ 2720.0-9 Information collection.

(a) The Office of Management and Budget has approved under 44 U.S.C. 3507 the information collection requirements contained in part 2720 and assigned clearance number 1004-0153. The Bureau of Land Management is collecting the information to permit the authorized officer to determine whether the Bureau of Land Management should dispose of Federally-owned mineral interests. The Bureau of Land Management will use the information collected to make these determinations. A response is required to obtain a benefit.

(b) The Bureau of Land Management estimates the public reporting burden for this information to average 8 hours per response, including the time for reviewing regulations, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, D.C. 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0153, Washington, D.C. 20503.

[60 FR 12711, Mar. 8, 1995]

§ 2720.1 Application to purchase federally-owned mineral interests.

§ 2720.1-1 Filing of application.

(a) Any existing or prospective record owner of the surface of land in which mineral interests are reserved or otherwise owned by the United States may file an application to purchase such mineral interests if—

(1) He has reason to believe that there are no known mineral values in the land, or

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(2) The reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the land and such development would be a more beneficial use of the land than its mineral development.

(b) Publication in the FEDERAL REGISTER of a notice of the filing of an application under this part shall segregate the mineral interests owned by the United States in the public lands covered by the application to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or 2 years from the date of filing of the application which ever occurs first.

[44 FR 1342, Jan. 4, 1979, as amended at 51 FR 9657, Mar. 20, 1986]

§ 2720.1-2 Form of application.

(a) An application shall be filed with the proper BLM Office as listed in § 1821.2-1(d) of this title.

(b) No specific form is required.

(c) A non-refundable fee of \$50 shall accompany the application.

(d) Each application shall include:

(1) The name, legal mailing address, and telephone number of the existing or prospective record owner of the land included in the application;

(2) Proof of ownership of the land included in the application, and in the case of a prospective record owner, a copy of the contract of conveyance or a statement describing the method by which he will become the owner of record;

(3) In the case of non-Federal ownership of the surface, a certified copy of any patent or other instrument conveying the land included in the application and a showing of ownership in the applicant, with supporting survey evidence acceptable to the authorized officer, which may consist of a metes and bounds survey prepared and certified by a civil engineer or land surveyor licensed under the laws of the State in which the lands are located; and

(4) As complete a statement as possible concerning (i) the nature of federally-reserved or owned mineral values in the land, including explanatory information, (ii) the existing and proposed uses of the land, (iii) why the reservation of the mineral interests in the United States is interfering with or precluding appropriate non-mineral development of the land covered by the application (iv) how and why such development would be a more beneficial use of the land than its mineral development, and (v) a showing that the proposed use complies or will comply with State and local zoning and/or planning requirements.

[44 FR 1342, Jan. 4, 1979, as amended at 51 FR 9658, Mar. 20, 1986]

§ 2720.1-3 Action on application.

(a) Within 90 days of receipt of an application to purchase federally-owned mineral interests, the authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit required and so inform the applicant.

(b) No application filed under this subpart shall be processed until the applicant has either—

(1) Deposited with the authorized officer an amount of money that the authorized officer estimates is needed to cover administrative costs of processing, including, but not limited to, costs of conducting an exploratory program, if one is required, to determine the character of the mineral deposits in the land, evaluating the existing data [or the data obtained under an approved exploratory program] to aid in determining the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance, or

(2) Has obtained the consent of the authorized officer to conduct an exploratory program, such program to be conducted only under a plan of operations approved by the authorized officer and deposited with the authorized officer an amount of money the authorized officer estimates is needed to cover administrative costs of processing, including, but not limited to, costs of evaluating existing data and data submitted from an approved exploratory program to determine the

fair market value of the mineral interests to be conveyed and preparing and issuing the documents of conveyance.

The authorized officer, in reaching a determination as to whether there are any known mineral values in the land and, if so, the estimated costs of an exploratory program, if one is needed, will rely upon reports on minerals prepared by or reviewed and approved by the Bureau of Land Management.

(c) The authorized officer shall inform the applicant of his determination as to the need for an exploratory program, and where appropriate, the estimated cost of such a program. The applicant may request that the exploratory program be arranged by the authorized officer or request the consent of the authorized officer to accomplish any required exploratory program by other means, at his own expense, under a plan of operations approved by the authorized officer and to provide the results to the authorized officer for his use and approval. The applicant shall, within 60 days of receipt of such notice, or any extension thereof, respond to the authorized officer's notice, stating whether he wishes to have the authorized officer arrange to have conducted the required exploratory program or requests the consent of the authorized officer to accomplish any required exploratory program by other means. Failure to respond to said notice shall void the application.

(d) If the applicant requests that any required exploratory program be arranged by the authorized officer, he shall submit the sum of money required under paragraph (b) of this section and the authorized officer shall have the exploratory program accomplished so as to aid in determining the fair market value of the Federal mineral interests covered by the application.

(e) If the applicant requests the consent of the authorized officer to accomplish any required exploratory program by other means, at his own expense, he shall at the time of making his request for such consent, file a plan of operations to carry out any required exploratory program for approval by the authorized officer. Such plan of operations shall be sufficient to provide the resource and economic data needed to

aid in determining the fair market value of the Federal mineral interests to be conveyed. Said resource and economic data shall include, where appropriate, but not be limited to, geologic maps, geologic cross-sections, tables and descriptive information encompassing lithologic, geochemical, and geophysical data, assays of samples, drill logs and outcrop sections, which aid in establishing the location, nature, quantity, and grade, and which aid in determining the fair market value of the Federal mineral interests in the land covered by the application. The plan of operations shall conform to the laws, regulations and ordinances of all governmental bodies having jurisdiction over the lands covered by the application. The authorized officer shall decide within 90 days of receipt of said request whether he shall or shall not give his consent. The authorized officer shall not give his consent if he determines that the plan of operations is not adequate to supply the resource and economic data needed to aid him in determining the fair market value of the Federal mineral interests to be conveyed. If the authorized officer, in his discretion, approves the applicant's plan of operations, the applicant may proceed to execute the plan of operations, subject to the supervision of the authorized officer. If the authorized officer does not give his consent to the applicant's request, the applicant may, within 60 days of such refusal, avail himself of the provisions of paragraph (d) of this section. Failure to deposit the required sum within the 60 day period shall void the application. All resource and economic data obtained from the approved exploratory program shall be supplied the authorized officer. The authorized officer shall supply that data needed for determination of the economic value of mineral resources to the Bureau of Land Management. The authorized officer relying upon those determinations shall determine the fair market value of the Federal mineral interests in the land covered by the application. If the authorized officer determines that the resource and economic data supplied from an approved exploratory program is not adequate to aid in determining the fair market value of the Federal

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mineral interests to be conveyed, he shall so notify the applicant and state what additional data is needed.

(f) Notwithstanding the provisions of the preceding paragraphs of this section, an application may be rejected without the applicant meeting the requirements of paragraph (b) of this section if the authorized officer determines from an examination of the application or of data readily available to him relating to the land concerned that the application does not meet the requirements of the Act.

[44 FR 1342, Jan. 4, 1979, as amended at 51 FR 9658, Mar. 20, 1986; 60 FR 12711, Mar. 8, 1995]

§ 2720.2 Determination that an exploratory program is not required.

(a) In instances where available data indicate that there are no known mineral values in the land covered by the application, an exploratory program shall not be required.

(b) The authorized officer will not require an exploratory program to ascertain the presence of mineral values where the authorized officer determines that a reasonable person would not make exploration expenditures with expectations of deriving economic gain from the mineral production.

(c) The authorized officer will not require an exploratory program if the authorized officer determines that, for the mineral interests covered by the application, sufficient information is available to determine their fair market value.

[44 FR 1342, Jan. 4, 1979, as amended at 60 FR 12711, Mar. 8, 1995]

§ 2720.3 Action upon determination of the fair market value of the mineral interests.

(a) Upon the authorized officer's determination that all of the requirements of the Act for conveyance of mineral interests have been met by the applicant and all actions necessary to determine the fair market value of the Federal mineral interests in land covered by the application have been completed, the authorized officer shall notify the applicant in writing of the fair market value of the Federal mineral interests, including the administrative costs involved in development of and issuance of conveyance documents, and

give a full and complete statement of the costs incurred in reaching such determination including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs of determining the fair market value of the Federal mineral interests exceed the amount of the deposit required of the applicant under this subpart, he will be informed that he is required to pay the difference between the actual costs and the deposit. If the deposit exceeds the administrative costs of determining the fair market value of the Federal mineral interests, the applicant will be informed that he is entitled to a credit for or a refund of the excess. The notice must require the applicant to pay both the fair market value of the Federal mineral interests and the remaining administrative costs owed within 90 days after the date the authorized officer mails the notice. Failure to pay the required amount within the allotted time shall constitute a withdrawal of the application and the application will be dismissed and the case closed.

(b) The Bureau of Land Management will convey mineral rights on lands for which this part does not require an exploratory program upon payment by the applicant of fair market value for those mineral interests and all administrative costs of processing the application to acquire the mineral rights.

[44 FR 1342, Jan. 4, 1979, as amended at 60 FR 12711, Mar. 8, 1995]

§ 2720.4 Issuance of document of conveyance.

Upon receipt of the payment required by § 2720.3 of this subpart, if any is required, the authorized officer shall issue the necessary document conveying to the applicant the mineral interests of the United States in the land covered by the application.

§ 2720.5 Appeals.

An applicant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to part 4 of this title. Decisions of the authorized officer under this subpart shall be subject to reversal only if found to be arbitrary, capricious, and

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abuse of discretion or otherwise not in accordance with law.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

Subpart 2740—Recreation and Public Purposes Act: General

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- 2743.3-1 Patent provisions for leased disposal sites.
- 2743.4 Patented disposal sites.

AUTHORITY: 43 U.S.C. 869 *et seq.*, 43 U.S.C. 1701 *et seq.*, and 31 U.S.C. 9701.

Subpart 2740—Recreation and Public Purposes Act: General

SOURCE: 44 FR 43471, July 25, 1979, unless otherwise noted.

§ 2740.0-1 Purpose.

These regulations provide guidelines and procedures for transfer of certain public lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 *et seq.*), to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes.

§ 2740.0-2 Objective.

The objective is to meet the needs of certain State and local governmental agencies and other qualified organizations for public lands required for recreational and public purposes.

§ 2740.0-3 Authority.

(a) The Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), commonly known as the Recreation and Public Purposes Act, authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes under specified conditions.

(b) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the Secretary of the Interior to convey to States or their political subdivisions unsurveyed islands determined by the Secretary to be public lands of the United States and *omitted lands* under the Recreation and Public Purposes Act without regard to acreage limitations contained in the Act.

(c) Section 3 of the Act of June 14, 1926, as amended by the Recreation and Public Purposes Amendment Act of 1988, authorizes the Secretary of the Interior to convey public lands for the purpose of solid waste disposal or for any other purpose which may result in or include the disposal, placement, or release of any hazardous substance, with special provisions relating to reversion of such lands to the United States.

[44 FR 43471, July 25, 1979, as amended at 57 FR 32732, July 23, 1992]

§ 2740.0-5 Definitions.

As used in this part, the term:

(a) *Act* means the Recreation and Public Purposes Act as amended by section 212 of the Federal Land Policy and Management Act of 1976.

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(b) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(c) *Public lands* means any lands and interest in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(d) *Public purpose* means for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to, i.e., and essential part of, the public purpose.

(e) *Conveyance* means a transfer of legal title. Leases issued pursuant to subpart 2912 of this title are not conveyances.

(f) *Hazardous substance* means any substance designated pursuant to Environmental Protection Agency regulations at 40 CFR part 302.

(g) *Solid waste* means any material as defined under Environmental Protection Agency regulations at 40 CFR part 261.

[44 FR 43471, July 25, 1979, as amended at 50 FR 50300, Dec. 10, 1985; 57 FR 32732, July 23, 1992]

§ 2740.0-6 Policy.

(a) To assure development of public lands in accordance with a development plan and compliance with an approved management plan, the authorized officer may require that public lands first be leased under the provisions of subpart 2912 of this title for a period of time prior to issuance of a patent, except for conveyances under subpart 2743 of this title.

(b) Municipal corporations may not secure public lands under this act which are not within convenient access to the municipality and within the same State as the municipality. Other qualified governmental applicants may not secure public lands outside their political boundaries or other area of jurisdiction.

(c) Where lands are conveyed under the act with a reservation of the min-

eral estate to the United States, the Bureau of Land Management shall not thereafter convey that mineral estate to the surface owner under the provisions of section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(d) Lease or conveyance of lands for purposes other than recreational or public purposes is not authorized by the act. Uses which can be more appropriately authorized under other existing authorities shall not be authorized under the act. Approval of leases or conveyances under the act shall not be made unless the public lands shall be used for an established or definitely proposed project. A commitment by lessee(s) or conveyee(s) to a plan of physical development, management and use of the lands shall be required before a lease or conveyance is approved. Use of public lands for nonrecreational or nonpublic purposes, whether by lease or conveyance, may be applied for under sections 203 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1732) or other applicable authorities.

(e) The Bureau of Land Management shall not exercise the exchange authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for the purpose of acquiring lands for later conveyance under the act.

(f) The Bureau of Land Management shall not use Federal funds to undertake determinations of the validity of mining claims on public lands for the sole purpose of clearing title so that the lands may be leased or conveyed under the act.

[44 FR 43471, July 25, 1979, as amended at 50 FR 50300, Dec. 10, 1985; 57 FR 32732, July 23, 1992]

§ 2740.0-7 Cross references.

(a) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act are contained in subpart 2741 of this chapter.

(b) Requirements and procedures for leasing of land under the Recreation and Public Purposes Act are contained in subpart 2912 of this title.

(c) Requirements and procedures for conveyance of unsurveyed islands and omitted lands under section 211 of the

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Federal Land Policy and Management Act are contained in subpart 2742 of this chapter.

(d) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance are contained in subpart 2743 of this chapter.

[44 FR 43471, July 25, 1979, as amended at 57 FR 32732, July 23, 1992]

§ 2740.0-9 Information collection.

The collection of information contained in part 2740 of Group 2700 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0012. This information will be used to determine the suitability of public lands for lease and/or disposal to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes. Responses are required to obtain benefits in accordance with the Recreation and Public Purposes Act.

Public reporting burden for this information is estimated to average 47 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (770), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240; and the Paperwork Reduction Project (1004-0012), Office of Management and Budget, Washington, DC 20503.

[57 FR 32732, July 23, 1992]

Subpart 2741—Recreation and Public Purposes Act: Requirements

§ 2741.1 Lands subject to disposition.

(a) The act is applicable to any public lands except (1) lands withdrawn or reserved for national forests, national

parks and monuments, and national wildlife refuges, (2) Indian lands and lands set aside or held for use by or for the benefit of Indians, Aleuts and Eskimos, and (3) lands which have been acquired for specific purposes.

(b) Revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands may only be leased to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

(c) Section 211 of the Federal Land Policy and Management Act of 1976 does not apply to public lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System and the National Wild and Scenic Rivers System.

[44 FR 43472, July 25, 1979]

§ 2741.2 Qualified applicants.

Applications for any recreational or public purpose may be filed by States, Federal and State instrumentalities and political subdivisions, including counties and municipalities, and nonprofit associations and nonprofit corporations that, by their articles of incorporation or other authority, are authorized to acquire land.

[44 FR 43472, July 25, 1979]

§ 2741.3 Preapplication consultation.

(a) Potential applicants should contact the appropriate District Office of the Bureau of Land Management well in advance of the anticipated submission of an application. Early consultation is needed to familiarize a potential applicant with management responsibilities and terms and conditions which may be required in a lease or patent.

(b) Any information furnished by the applicant in connection with preapplication activity or use, which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) Dependent upon the magnitude and/or public interest associated with