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without the advice of the Attorney General.

### § 2203.5 Action on advice of the Attorney General.

(a) The authorized officer shall make any advice received from the Attorney General a part of the public record on the proposed exchange.

(b) Except as provided in § 2203.4(d) of this title, the authorized officer shall not make a final decision on the proposed exchange and whether it is in the public interest until the advice of the Attorney General has been considered. The authorized officer shall, in the record of decision on the proposed exchange, discuss the consideration given any advice received from the Attorney General in reaching the final decision on the proposed exchange.

## Group 2300—Withdrawals

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AUTHORITY: 43 U.S.C. 1201; 43 U.S.C. 1740; E.O. 10355 (17 FR 4831, 4833).

SOURCE: 46 FR 5796, Jan. 19, 1981, unless otherwise noted.

### Subpart 2300—Withdrawals, General

#### § 2300.0-1 Purpose.

(a) These regulations set forth procedures implementing the Secretary of the Interior's authority to process Federal land withdrawal applications and, where appropriate, to make, modify or extend Federal land withdrawals. Procedures for making emergency withdrawals are also included.

(b) The regulations do not apply to withdrawals that are made by the Secretary of the Interior pursuant to an act of Congress which directs the issuance of an order by the Secretary. Likewise, procedures applicable to withdrawals authorized under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b); 1281), and procedures relating to the Secretary's authority to establish Indian reservations or to add lands to the reservations pursuant to special legislation or in accordance with section 7 of the Act of June 18, 1934 (25 U.S.C. 467), as supplemented by section 1 of the Act of May 1, 1936 (25 U.S.C. 473a), are not included in these regulations.

(c) General procedures relating to the processing of revocation of withdrawals and relating to the relinquishment of reserved Federal land areas are not included in this part.

#### § 2300.0-3 Authority.

(a)(1) Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) gives the Secretary of the Interior general authority to make, modify, extend or revoke withdrawals,

but only in accordance with the provisions and limitations of that section. Among other limitations, the Federal Land Policy and Management Act of 1976 provides that the Secretary of the Interior does not have authority to:

(i) Make, modify or revoke any withdrawal created by an Act of Congress;

(ii) Make a withdrawal which can be made only by an Act of Congress;

(iii) Modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (16 U.S.C. 431-433), sometimes referred to as the Antiquities Act;

(iv) Modify or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to October 21, 1976, the date of approval of the Federal Land Policy and Management Act of 1976 or which thereafter adds lands to that System under the terms of that Act. In this connection, nothing in the Federal Land Policy and Management Act of 1976 is intended to modify or change any provision of the Act of February 27, 1976 (16 U.S.C. 668 dd(a)).

(2) Executive Order 10355 of May 26, 1952 (17 FR 4831), confers on the Secretary of the Interior all of the delegable authority of the President to make, modify and revoke withdrawals and reservations with respect to lands of the public domain and other lands owned and controlled by the United States in the continental United States or Alaska.

(3) The Act of February 28, 1958 (43 U.S.C. 155-158), sometimes referred to as the Engle Act, places on the Secretary of the Interior the responsibility to process Department of Defense applications for national defense withdrawals, reservations or restrictions aggregating 5,000 acres or more for any one project or facility. These withdrawals, reservations or restrictions may only be made by an act of Congress, except in time of war or national emergency declared by the President or the Congress and except as otherwise expressly provided in the Act of February 28, 1958.

(4) Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) authorizes the Secretary of the Interior to regulate the management of the public lands as defined in

the Act through instruments, such as memorandum of understanding, which the Secretary deems appropriate.

(5) Section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96-487), authorizes the President and the Secretary to make withdrawals exceeding 5,000 acres, in the aggregate, in the State of Alaska subject to the provisions that such withdrawals shall not become effective until notice is provided in the FEDERAL REGISTER and to both Houses of the Congress and such withdrawals shall terminate unless Congress passes a Joint Resolution of approval within one year after the notice of withdrawal has been submitted to the Congress.

(b) The following references do not afford either withdrawal application processing or withdrawal authority but are provided as background information.

(1) Executive Order 6910 of November 26, 1934, and E.O. 6964 of February 5, 1935, as modified, withdrew sizable portions of the public lands for classification and conservation. These lands and the grazing districts established under the Taylor Grazing Act of 1934, as amended, are subject to the classification and opening procedures of section 7 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315f); however, they are not closed to the operation of the mining or mineral leasing laws unless separately withdrawn or reserved, classified for retention from disposal, or precluded from mineral leasing or mining location under other authority.

(2) The Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411-1418), authorized the Secretary of the Interior through the Bureau of Land Management for retention or disposal under Federal ownership and management. Numerous classification decisions based upon this statutory authority were made by the Secretary of the Interior. For the effect of these classification with regard to the disposal and leasing laws of the United States, see subparts 2440 and 2461 of this title.

(3) Section 202 of the Federal Land Policy and Management Act of 1976 (43

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U.S.C. 1712) provides for land use planning and resultant management decisions which may operate to totally eliminate a particular land use, including one or more *principal or major uses*, as defined in the Act. Withdrawals made pursuant to section 204 of the Federal Land Policy and Management Act of 1976 may be used in appropriate cases, to carry out management decisions, except that *public lands*, as defined in the Act, can be removed from or restored to the operation of the Mining Law of 1872, as amended, or transferred to another department, agency or office, only by withdrawal action pursuant to section 204 of the Federal Land Policy and Management Act of 1976 or other action pursuant to applicable law.

(4) The first proviso of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) provides, in part, that unless otherwise provided for by law, the Secretary of the Interior may permit Federal departments and agencies to use, occupy and develop public lands *only* through rights-of-way under section 507 of the Act (43 U.S.C. 1767); withdrawals under section 204 of the Act (43 U.S.C. 1714); and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 307(b) of the Act (43 U.S.C. 1737(b)).

(5) Section 701(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 note) provides that all withdrawals, reservations, classifications and designations in effect on October 21, 1976, the effective date of the Act, shall remain in full force and effect until modified under the provisions of the Act or other applicable law.

§ 2300.0-5 Definitions.

As used in this part, the term:

(a) *Secretary* means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President by and with the advice and consent of the Senate and to whom has been delegated the authority of the Secretary to perform the duties described in this part to be performed by the *Secretary*.

(b) *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 to be performed by the *authorized officer*.

(c) *Act* means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), unless otherwise specified.

(d) *Lands* includes both upland and submerged land areas and any right or interest in such areas. To the extent provided in section 1 of the Act of February 28, 1958 (43 U.S.C. 155), the term also includes offshore waters.

(e) *Cultural resources* means those fragile and nonrenewable physical remains of human activity found in districts, sites, structures, burial mounds, petroglyphs, artifacts, objects, ruins, works of art, architecture or natural settings or features which were important to prehistoric, historic or other land and resource use events.

(f) *Archeological areas/resources* means sites or areas containing important evidence or the physical remains of former but now extinct cultural groups, their skeletons, settlements, implements, artifacts, monuments and inscriptions.

(g) *Resource use* means a land use having as its primary objective the preservation, conservation, enhancement or development of:

(1) Any renewable or nonrenewable natural resource indigenous to a particular land area, including, but not limited to, mineral, timber, forage, water, fish or wildlife resources, or

(2) Any resource value associated with a particular land area, including, but not limited to, watershed, power, scenic, wilderness, clean air or recreational values. The term does not include military or other governmental activities requiring land sites only as an incidental means to achieving an end not related primarily to the preservation, conservation, enhancement or development of natural resources or resource values indigenous to or associated with a particular land area.

(h) *Withdrawal* means withholding an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws, for the purpose of limiting activities under