AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

PART I

FEDERAL REGISTER

VOLUME 19 NUMBER 248

Washington, Thursday, December 23, 1954

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 27—EXCLUSION FROM PROVISIONS OF THE FEDERAL EMPLOYEES PAY ACT OF 1945, AS AMENDED, AND THE CLASSIFICATION ACT OF 1949, AS AMENDED, AND ESTABLISHMENT OF MAXIMUM STIPENDS FOR POSITIONS IN GOVERNMENT HOSPITALS FILLED BY STUDENT OR RESIDENT TRAINEES

MISCELLANEOUS AMENDMENTS

1. Effective December 1, 1954, the items under § 27.1 for student medical interns in the U. S. Public Health Service, St. Elizabeths Hospital, Gallinger Municipal Hospital, and student medical intern (clinical clerk) in the Department of the Army are revoked, and items for medical student intern positions are added to § 27.1 as follows:

§ 27.1 *Exclusions from provisions of Federal Employees Pay Act and Classification Act.* * * *

Medical student interns, approved training during third and fourth years of medical school.

2. Effective December 1, 1954, the maximum stipends prescribed under § 27.2 for positions of student medical interns in the U. S. Public Health Service, St. Elizabeths Hospital, Gallinger Municipal Hospital, and of student medical intern (clinical clerk) in the Department of the Army are revoked, and maximum stipends are prescribed for medical student intern positions as follows:

§ 27.2 *Maximum stipends prescribed.* * * *

Medical student interns—Approved training during third year of medical school:	
Full-time, per month	$200
Half-time, per month	100
Approved training during fourth year of medical school:	
Full-time, per month	$216
Half-time, per month	108

(61 Stat. 727; 5 U. S. C. 1051–1058)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 54-10176; Filed, Dec. 22, 1954; 8:52 a. m.]

This issue is divided into two parts, Part II of which contains an editorial revision of the regulations of the Office of the Secretary of the Interior and the Bureau of Land Management, Department of the Interior, 43 CFR Subtitle A and Chapter I.

TITLE 6—AGRICULTURAL CREDIT

Chapter V—Agricultural Marketing Service, Department of Agriculture

Subchapter B—Export and Domestic Consumption Programs

PART 518—FRUITS AND BERRIES, DRIED AND PROCESSED

SUBPART—DATE DIVERSION PAYMENT PROGRAM VMD 29A (1954 MARKETING SEASON)

Sec.
518.500 General statement.
518.501 Rate of payment.
518.502 Eligibility for payment.
518.503 Disposition of Grade D.
518.504 Claims for payment supported by evidence of compliance.
518.505 Records and accounts.
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518.507 Persons not eligible for payment.
518.508 Set-off.
518.509 Joint payee or assignment.
518.510 Good faith.
518.511 Definitions.

AUTHORITY: §§ 518.500 to 518.511 issued under sec. 32, 49 Stat. 774, as amended; 7 U. S. C. 612c.

§ 518.500 *General statement.* (a) In order to encourage the domestic consumption of dates produced in the continental United States by diverting them from normal channels of trade and commerce, the Secretary of Agriculture, pursuant to the authority conferred by section 32 of Public Law 320, 74th Congress, as amended, offers to make payments on Grade C dates upon the terms and conditions set forth in this subpart.

(b) Information pertaining to this program and forms prescribed for use under this subpart may be obtained from the following:

Warren C. Noland Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture,

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FEDERAL REGISTER

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1031 South Broadway, Los Angeles 15, California.

E. M. Graham, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington 25, D. C.

§ 518.501 *Rate of payment.* The rate of payment applicable to dates of U. S. Grade C diverted in accordance with the terms and conditions contained in this subpart shall be 4.0 cents per net pound of dates whose moisture content does not exceed an average of 25 percent. A deduction of 0.05 cent per pound shall be made for each whole or fractional percent by which the moisture content exceeds 25 percent.

§ 518.502 *Eligibility for payment—*(a) *Program participation.* Payments will be made to any individual, partnership, association of growers or packers, or corporation located in the continental United States (1) who executes and files with the Administrator no later than June 30, 1955, in triplicate, an application to divert as set forth on forms set forth below, (2) whose application is approved by the Administrator, (3) who diverts, as defined in § 518.511 (c), Grade C dates produced in the continental United States, whether directly or through an agent or subcontractor, (4) who disposes of Grade D dates in accordance with § 518.503, (5) who files claim as provided in § 518.504 and (6) who otherwise complies with all the terms and conditions of this subpart. Applications will be considered in the order submitted and in accordance with the availability of funds. An application must be submitted for each new product or additional poundage and must be approved before diversion of the dates. The Administrator will give notice to the diverter of the approval or nonapproval of each application. Approved applications may be modified or amended with consent of the Administrator.

(b) *Grade and inspection.* Dates diverted under this subpart shall meet the requirements of U. S. Grade C of the United States Standards for Grades of Dates, effective October 20, 1949 except for such character as is associated with adequate moisture content. The dates diverted shall have been inspected, check weighed and the moisture content determined prior to diversion. The inspection, check weighing and the observation of diversion shall be performed by an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. The cost of the inspection, issuance of certificates and observation of diversion shall be borne by the diverter.

(c) *Period of diversion.* No payment under this subpart will be made in connection with any dates diverted unless the diversion was accomplished by the diverter after the date of approval of his application and prior to 12 o'clock midnight, P. s. t., October 31, 1955.

Exhibit A

CONTRACT COVERING THE DISPOSITION OF U. S. GRADE D (SUBSTANDARD) DATES

_____ (hereinafter referred to as the Buyer), hereby purchases, and _____ (hereinafter referred to as the Seller), hereby sells the following quantity of U. S. Grade D (substandard) dates at the following price, subject to the terms and conditions hereinafter set forth.

Description	Unit or container	Quantity	Price per ton

Delivery f. o. b. _____
Time of delivery _____
For shipment to _____

Whereas, the Seller has entered into an agreement with the Federal Government under which the Seller will receive payment from the Federal Government in connection with the diversion of U. S. Grade C dates from normal channels of trade when accompanied by the withholding of U. S. Grade D dates from sale for use as whole or pitted dates and their disposal in approved outlets, said agreement being under a program operating for the benefit of producers of dates; and

Whereas, this contract between Buyer and Seller has been entered into pursuant to the agreement by the Seller and the Federal Government as a part of such program; and

Whereas, if the Buyer uses the dates other than as prescribed in this contract the Buyer will cause serious and substantial damage to the program which the Seller and the Federal Government are attempting to effectuate:

Now therefore, the Buyer expressly agrees:

(1) that he is purchasing these dates to be utilized only in the manufacture of _____, such manufacture to be completed on or about _____, 19__;

(2) that he shall furnish to the Seller an affidavit that these dates were utilized as specified in (1) above, such affidavit to be furnished not later than ten calendar days after such utilization;

(3) that upon failure to use the U. S. Grade D dates as herein specified he shall pay to Seller the full amount which Seller is required to refund to, or fails to receive from, the U. S. Department of Agriculture because of such failure;

(4) that he shall maintain for a period of two years subsequent to the date of this contract, accurate records on the acquisition and usage of dates hereunder and shall permit the Administrator, Agricultural Marketing Service, U. S. Department of Agriculture, or any designee of said Administrator, to inspect and audit said records during the usual hours of business; and

(5) that this contract shall not be assignable.

Dated _____

_____ (Buyer) By _____

_____ (Seller) By _____

Form FV-488
11-29-54

Budget Bureau No. 40-R2743

Approval Expires December 31, 1955

APPLICATION FOR PARTICIPATION IN DATE DIVERSION PAYMENT PROGRAM VMD 298 AND FOR APPROVAL OF DIVERSION PRODUCT

The undersigned hereby applies for payments to be made in accordance with the terms and conditions of the above-named program and for approval of the use of _____ pounds of U. S. Grade C dates to be used in (describe product in detail):

_____

_____

Diversion of the dates into the above named product is to begin on or about _____, 19__, and be completed on or about _____, 19__. The amount to be invoiced the Secretary of Agriculture will not exceed $_____.

The undersigned states that since December 23, 1954, he has withheld from sale for use as whole or pitted dates, the U. S. Grade D (Sub-standard) dates contained in his acquisitions of 1954 crop. The U. S. Grade D dates on hand and unsold on December 23, 1954, totaling _____ pounds, plus those acquired thereafter, have been or will be utilized, or sold under firm contract for utilization into approved outlets as provided in the terms and conditions.

Date _____, 19__. Application No. _____
Name of applicant _____
Address _____
By _____
Title _____

Date Received by USDA _____ USDA Serial No. _____
Approved this _____ day of _____, 19__.
By _____
Representative of the Secretary of Agriculture

§ 518.503 *Disposition of Grade D.* (a) U. S. Grade D (Substandard) dates unsold by the diverter on December 23, 1954, whether on hand or acquired thereafter, shall be withheld from the normal whole or pitted date market and shall be disposed of in feed, non-table syrup, alcohol, brandy, macerated dates for use west of the Mississippi River, and such other outlets as the Administrator may approve. Disposition will have occurred if applicant has used such dates in one or more of the foregoing outlets or has sold them under a contract providing that their sole usage shall be in such outlets.

(b) If the diverter, or a buyer under contract to diverter pursuant to this subpart, disposes of U. S. Grade D dates into whole or pitted date outlets, payment for diversion of U. S. Grade C dates will be withheld or, if payment has already been made, the diverter shall make refund on demand. Such withholding of payment or refund shall be of an amount computed at the rate of 4 cents per pound on a poundage bearing the same relationship to the Grade D improperly disposed of as the total Grade C dates diverted hereunder bears to the total Grade D subject to the requirements of this section, but such amount shall not exceed the amount of the diversion payment.

§ 518.504 *Claims for payment supported by evidence of compliance.* (a) Diverters shall file claims for payment not later than November 30, 1955, with the Director, Portland CSS Commodity Office, USDA, 515 Southwest Tenth St., Portland 5, Oregon. Each claim for payment shall be filed in an original and two copies on Form CSS-21 (Public Voucher—Commodity Program), and shall show the number assigned by the USDA to the related approved application, and shall be supported by:

(1) The original or one signed copy of the inspection certificate or certificates required in § 518.502 (b) accompanied by

a signed statement of a USDA inspector that he observed the diversion of the dates covered by the certificate into the approved product.

(2) The original or signed copy of a certification of the diverter (i) that he has diverted an indicated number of pounds of U. S. Grade C dates in the manner specified in § 518.511 (c); (ii) that the U. S. Grade D dates on hand and unsold by the diverter on December 23, 1954, totaled an indicated number of pounds, and this poundage plus the poundage to be indicated of all unsold Grade D dates acquired subsequent thereto and up to the date of the claim, has been utilized or sold to persons contracting to utilize them in approved outlets; and (iii) that all dates diverted and disposed of were produced in the continental United States.

(3) A signed or certified copy of each sales contract covering utilization of Grade D dates by other than diverter. (See Exhibit A for minimum requirements to be included in a contract (§ 518.502).)

(4) Such other documents as may be required by the Secretary as evidence of the diversion of Grade C dates or the disposition of Grade D dates.

§ 518.505 *Records and accounts.* Each diverter shall maintain accurate records on the diversion or disposition of Grade C and Grade D dates. Such records, accounts, and other documents relating to dates diverted or disposed of under this subpart shall be available during regular business hours for inspection and audit by authorized employees of the United States Department of Agriculture and shall be preserved until at least October 31, 1957.

§ 518.506 *Amendment and termination.* This subpart may be amended or terminated by the Administrator at any time, but the amendment or termination shall not be effective earlier than the date of filing with the Federal Register Division. No amendment or termination shall be applicable to any dates covered by an application approved before the effective time of such amendment or termination.

§ 518.507 *Persons not eligible for payment.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of any contract resulting from this subpart or to any benefits that may arise therefrom, but this provision shall not be construed to extend to such a contract if made with a corporation for its general benefit, or to any such person acting in his capacity as a date producer.

§ 518.508 *Set-off.* The Secretary may set off, against any amount owed to any diverter under this subpart, any amount owed by such diverter to the Commodity Credit Corporation, the United States Department of Agriculture, or any other agency of the United States.

§ 518.509 *Joint payee or assignment.* A diverter may name a joint payee on claim for payment or may assign, in accordance with the provisions of the Assignment of Claims Act of 1940, Public Law 811, 76th Congress, as amended (31 U. S. C. 203, 41 U. S. C. 15), the proceeds of any claim to a bank, trust company, Federal lending agency, or other recognized financing institution: *Provided*, That, such assignment shall be recognized only if and when the assignee thereof files written notice of the assignment with the Administrator, together with a true copy of the instrument of assignment, in accordance with the instructions on Form CSS–66 "Notice of Assignment," which form must be used in giving notice of assignment to the Administrator. The "Instrument of Assignment" may be executed on Form CSS–347 or the assignee may use his own form of assignment. The CSS forms may be obtained from the Administrator or the Portland CSS Commodity Office.

§ 518.510 *Good faith.* If the Administrator determines that any diverter has not acted in good faith in connection with any transaction under this program, or has failed to discharge fully any obligation assumed by him under this program, such diverter may be denied the right to continue participating in this program or the right to receive payment under this program in connection with any diversion previously made under this program, or both.

§ 518.511 *Definitions.* As used in § 518.500 through § 518.510, the following terms have the following meanings:

(a) "Secretary" means the Secretary of the United States Department of Agriculture, or any authorized Representative of the Secretary.

(b) "Administrator" means the Administrator, Agricultural Marketing Service, USDA, or any Representative of the Secretary to whom said Administrator has delegated authority to perform functions vested in him.

(c) "Diversion" means (1) the processing of domestically produced dates into rings, chunks, pieces, butter, or other products approved by the Administrator, wherein the dates lose their form as whole or pitted dates or (2) the production at diverter's plant and sale for use east of the Mississippi River of dates in macerated or paste form. Approval of diversion products shall be limited to those for which there has been no commercial sale other than on an experimental basis prior to the effective date of this program. Butter as distinguished from macerated dates or paste, shall mean finely ground dates of near powder consistency, stabilized by additives such as sugar or citric acid, having a full bodied date flavor and odor, having a uniform color and containing moisture sufficient to permit easy spreading.

(d) "Application" means Form FV–488, "Application For Participation in Date Diversion Payment Program VMD 29a and For Approval of Diversion Product" (§ 518.502).

(e) "Filed". Applications, claims and related documents are deemed to be filed on the date postmarked by a U. S. Post Office if mailed or when received by the appropriate USDA office if otherwise delivered.

(f) "Certified" means a written, signed declaration, contained in or attached to any document, stating that the document is a true and correct copy of the original of such document.

Effective date. This program shall become effective at 12:01 a. m., e. s. t., December 23, 1954.

NOTE: The record-keeping and reporting requirements contained herein have been approved by, and subsequent requirements will be subject to the approval of, the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Dated this 20th day of December 1954.

[SEAL] S. R. SMITH,
Representative of the Secretary of Agriculture.

[F. R. Doc. 54–10192; Filed, Dec. 22, 1954; 8:57 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

CHANGES IN REFERENCES TO COTTON FUTURES PROVISIONS OF INTERNAL REVENUE CODE

Effective January 1, 1955, provisions in the Internal Revenue Code of 1954 (Chapter 736, Pub. Law 591, 83d Cong., 68A Stat. 580–586) relating to cotton futures supersede similar provisions of the Internal Revenue Code of 1939 (53 Stat. 210; 26 U. S. C. 1920–1935) derived from the United States Cotton Futures Act (39 Stat. 476) as amended. The present regulations under the latter provisions contain numerous references to applicable sections of the Internal Revenue Code of 1939. It is necessary therefore to change such references to applicable sections of the Internal Revenue Code of 1954.

Accordingly, pursuant to authority contained in provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954 (53 Stat. 210; 26 U. S. C. 1920–1935; 68A Stat. 580–586) derived from the United States Cotton Futures Act (39 Stat. 476) as amended, the regulations under said provisions (7 CFR 27.1–27.107) are hereby amended as follows:

1. Section 27.2 (a) is amended to read:

(a) *The act.* The provisions of the Internal Revenue Code of 1954 (68A Stat. 580–586) derived from the United States Cotton Futures Act (39 Stat. 476) as amended and the Internal Revenue Code of 1939 (53 Stat. 210; 26 U. S. C. 1920–1935).

2. Section 27.7 is amended by striking out the phrase "section 1923" and substituting therefor the phrase "section 4864."

3. Section 27.86 is amended by striking out the phrase "section 1922 (a)" and substituting therefor the phrase "paragraph 4863 (a)."

4. Section 27.95 is amended by striking out the phrase "paragraphs 1922 (c) and 1929 (c) and section 1927" and substituting therefor the phrase "section 4862 and paragraph 4863 (c)."

5. Sections 27.2, 27.3, 27.4, 27.5, 27.7, 27.31, 27.42, 27.43, 27.44, 27.45, 27.47, 27.52, 27.53, 27.62, 27.63, 27.65, 27.71, 27.73, 27.84, 27.94, 27.97, and 27.99 are amended by striking out the phrase "Section 1922" or "section 1922" wherever it appears and substituting therefor the phrase "Section 4863" or "section 4863" respectively.

6. Sections 27.94 and 27.99 are amended by striking out the phrase "paragraph 1922 (c)" wherever it appears and substituting therefor the phrase "paragraph 4863 (c)."

Since the sole purpose of the foregoing amendments is to change the references in such regulations from the applicable sections of the Internal Revenue Code of 1939 to the corresponding sections of the Internal Revenue Code of 1954 it is hereby found that notice and other public procedures in connection with such amendments would be impracticable, unnecessary, and contrary to the public interest and that such amendments may be made effective in less than 30 days after their publication in the FEDERAL REGISTER.

(53 Stat. 210, 68A Stat. 580–586; 26 U. S. C. 1920–1935)

The foregoing amendments shall become effective on January 1, 1955.

Done at Washington, D. C., this 21st day of December 1954.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[F. R. Doc. 54–10230; Filed, Dec. 22, 1954; 8:58 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

DETERMINATION RELATIVE TO EXPENSES AND FIXING OF RATE OF ASSESSMENT FOR 1954–55 FISCAL YEAR

On December 1, 1954, notice of proposed rule making was published in the FEDERAL REGISTER (19 F. R. 7895) regarding the expenses and rate of assessment for the 1954–55 fiscal year under Marketing Agreement No. 117, as amended, and Order No. 14, as amended (19 F. R. 2941), regulating the handling of navel oranges grown in Arizona and designated part of California, effective September 22, 1953, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which were submitted by the Navel Orange Administrative Committee (established pursuant to the amended marketing agreement and order), it is hereby found and determined that:

§ 914.202 *Expenses and rate of assessment for the 1954–55 fiscal year.* (a) The expenses necessary to be incurred by the Navel Orange Administrative Committee, established pursuant to the provisions of the aforesaid amended marketing agreement and order, for its maintenance and functioning during the fiscal year November 1, 1954, through October 31, 1955, will amount to $147,820.13; and the rate of assessment to be paid by each handler who first handles oranges shall be one and one-tenth cents ($0.011) per box of oranges handled by such handler as the first handler thereof during the 1954–55 fiscal year. Such rate of assessment is hereby fixed as each such handler's pro rata share of the aforesaid expenses.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective time hereof until 30 days after publication in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that (1) in accordance with the provisions of said amended marketing agreement and order, the rate of assessment is applicable to all fresh oranges handled during the aforesaid fiscal year; (2) shipments of navel oranges are now being made; and (3) it is essential that the specification of the assessment rate be issued immediately so that the aforesaid assessments may be collected and thereby enable the Navel Orange Administrative Committee to perform its duties and functions in accordance with said amended marketing agreement and order.

As used in this section, "handle," "handler," "oranges," "fiscal year" and "box" shall have the same meaning as is given to each such term in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: December 20, 1954.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 54–10141; Filed, Dec. 22, 1954; 8:45 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 101]

PART 608—RESTRICTED AREAS

CAMP HALE, COLO.

The restricted area alteration appearing hereinafter has been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Airspace Subcommittee, and is adopted to become effective when indicated in order to promote safety of the flying public. Since a military function of the United States is involved, compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act is not required.

Part 608 is amended as follows:

In § 608.15, a Camp Hale, Colorado, temporary area (R–482), is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
CAMP HALE (R–482) (Denver).	North boundary: Latitude 39°40'00"; east boundary: longitude 106°03'00"; south boundary: latitude 39°21'00"; west boundary: longitude 106°26'00".	Surface to 20,000 feet mean sea level.	Unlimited Jan. 4, 1955, to Apr. 3, 1955.	Fort Carson, Colo.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interprets or applies sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

This amendment shall become effective on January 4, 1955.

[SEAL] F. B. LEE,
Administrator of Civil Aeronautics.

[F. R. Doc. 54–10189; Filed, Dec. 22, 1954; 8:56 a. m.]

[Amdt. 79]

PART 610—MINIMUM EN ROUTE IFR ALTITUDES

MISCELLANEOUS AMENDMENTS

The minimum en route IFR altitudes appearing hereinafter have been coordinated with interested members of the industry in the regions concerned insofar as practicable. The altitudes are adopted without delay in order to provide for safety in air commerce. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required.

Part 610 is amended as follows: (Listed items to be placed in appropriate sequence in the sections indicated).

1. Section 610.263 *Red Civil Airway No. 63* is amended to read in part:

From—	To—	Minimum altitude
Int. N crs. Detroit, (LFR), and 265–085 mag brg. Sarnia, Ont. Canada (LF/RBN).	Sarnia, Ont. Canada [1] (LF/RBN).	2,400

[1] For that airspace over U. S. Territory.

2. Section 610.603 *Blue Civil Airway No. 3* is amended to read in part:

From—	To—	Minimum altitude
White Cloud (INT), Mich.	Cadillac, Mich. (LF/RBN).	4,000

3. Section 610.613 *Blue Civil Airway No. 13* is amended to read in part:

From—	To—	Minimum altitude
Liberty (INT), Mo.....	Des Moines, Iowa (LFR).	2,300

4. Section 610.646 *Blue Civil Airway No. 46* is amended to read in part:

From—	To—	Minimum altitude
Memphis, Tenn. (LFR)	Cuba (INT), Tenn.	2,300
Cuba (INT), Tenn.	Dyersburg, Tenn. (LF/RBN).	2,000

5. Section 610.681 *Blue Civil Airway No. 81* is amended to delete:

From—	To—	Minimum altitude
Int. SE crs. Sarnia, Ontario, Canada (LFR), and E crs. Cleveland, Ohio (LFR).	U. S.-Canadian Border.	2,600

6. Section 610.6006 *VOR Civil Airway No. 6* is amended to read in part:

From—	To—	Minimum altitude
Sacramento, Calif. (VOR), via S alter.	Folsom (INT), Calif.[1] via S alter.	3,000
Folsom (INT), Calif., via S alter.	Reno, Nev.[2] (VOR), via S alter.	13,000
Tahoe (INT), Calif., via S alter.	Coloma (INT), Calif., via S alter (westbound only).	9,500
Coloma (INT), Calif., via S alter.	Folsom (INT), Calif., via S alter (westbound only).	5,000

[1] 8,500'—Minimum crossing altitude at Folsom (INT), northeastbound.
[2] 12,000'—Minimum crossing altitue at Reno (VOR), southwestbound.

7. Section 610.6008 *VOR Civil Airway No. 8* is amended by adding:

From—	To—	Minimum altitude
Denver, Colo. (VOR), via S alter.	Bennett (INT), Colo., via S alter.	6,600
Bennett (INT), Colo., via S alter.	Akron, Colo. (VOR), via S alter.	[1] 8,500

[1] 6,600'—Minimum terrain clearance altitude.

8. Section 610.6008 *VOR Civil Airway No. 8* is amended to read in part:

From—	To—	Minimum altitude
Akron, Colo. (VOR), via S alter.	Int. 077° rad. Akron and 225° rad. Imperial, via S alter.	8,600
Int. 077° rad. Akron and 225° rad. Imperial, via S alter.	Imperial; Colo. (VOR), via S alter.	[1] 5,900

[1] 4,900'—Minimum terrain clearance altitude.

9. Section 610.6009 *VOR Civil Airway No. 9* is amended to read in part:

From—	To—	Minimum altitude
New Orleans, La. (VOR).	Madisonville (INT), La.[1]	1,700
Madisonville (INT), La.[1]	McComb, Miss. (VOR).	1,700
New Orleans, La. (VOR), via W alter.	McComb, Miss. (VOR), via W alter.	1,700

[1] 2,300'—Minimum reception altitude.

10. Section 610.6010 *VOR Civil Airway No. 10* is amended to read in part:

From—	To—	Minimum altitude
Hutchinson, Kans. (VOR), via alter.	Emporia, Kans. (VOR), via N alter.	3,300
Hutchinson, Kans. (VOR).	Florence (INT), Kans.	3,300
Florence (INT), Kans.	Emporia, Kans. (VOR).	3,000

11. Section 610.6014 *VOR Civil Airway No. 14* is amended to read in part:

From—	To—	Minimum altitude
Tulsa, Okla. (VOR)	Chelsea (INT), Okla.[1]	2,200
Chelsea (INT), Okla.[1]	Neosho, Mo. (VOR)	2,200

[1] 2,600—Minimum reception altitude.

12. Section 610.6020 *VOR Civil Airway No. 20* is amended to read in part:

From—	To—	Minimum altitude
Greensboro, N. C. (VOR).	Reid (INT), N. C.[1]	2,300
Reid (INT), N. C.[1]	Danville, Va. (VOR)	2,300

[1] 3,500'—Minimum reception altitude.

13. Section 610.6023 *VOR Civil Airway No. 23* is amended by adding:

From—	To—	Minimum altitude
Wheeler Ridge (INT), Calif.	Bakersfield, Calif.[1] (VOR): Northbound	6,000
	Southbound	10,000

[1] 7,000'—Minimum crossing altitude at Bakersfield (VOR), southbound.

14. Section 610.6026 *VOR Civil Airway No. 26* is amended to read in part:

From—	To—	Minimum altitude
Eau Claire, Wisc. (VOR).	Cadott (INT), Wis.[1]	2,400
Cadott (INT), Wis.[1]	Wausau, Wis.[2] (VOR)	3,200
Eau Claire, Wis. (VOR), via S alter.	Wausau, Wis. (VOR), via S alter.	3,200

[1] 2,400'—Minimum reception altitude.
[2] 3,200'—Minimum crossing altitude at Wausau (VOR) westbound.

15. Section 610.6066 *VOR Civil Airway No. 66* is amended to read in part:

From—	To—	Minimum altitude
San Diego, Calif. (VOR).	Seeley (INT), Calif.	[1] 10,000
Seeley (INT), Calif.[2]	Yuma, Ariz. (VOR)	4,000
Barrett Lake, Calif. (FM).	Jamul, Calif. (LF/RBN) (westbound only).	6,000
Jamul, Calif. (LF/RBN).	San Diego, Calif. (VOR) (westbound only).	4,500

[1] 7,000'—Minimum terrain clearance altitude.
[2] 9,000'—Minimum crossing altitude at Seeley (INT), westbound.

16. Section 610.6068 *VOR Civil Airway No. 68* is amended to read in part:

From—	To—	Minimum altitude
Corpus Christi, Tex. (VOR).	Losoya (INT), Tex.[1]	2,200
Losoya (INT), Tex.[1]	San Antonio, Tex. (VOR).	2,200

[1] 4,000'—Minimum reception altitude.

17. Section 610.6092 *VOR Civil Airway No. 92* is amended to read in part:

From—	To—	Minimum altitude
Mansfield, Ohio (VOR).	Bowerstown (INT), Ohio.	2,300
Bowerstown (INT), Ohio.	Wheeling, W. Va. (VOR).	3,000

18. Section 610.6114 *VOR Civil Airway No. 114* is amended to read in part:

From—	To—	Minimum altitude
Alexandria, La. (VOR).	Morganza (INT), La.[1]	1,300
Morganza (INT), La.[1]	Baton Route, La. (VOR).	1,300

[1] 1,500'—Minimum reception altitude.

19. Section 610.6114 *VOR Civil Airway No. 114* is amended by adding:

From—	To—	Minimum altitude
Baton Rouge, La. (VOR), via N alter.	Madisonville (INT), La.[1] via N alter.	2,300
Madisonville (INT), La.[1] via N alter.	New Orleans, La. (VOR), via N alter.	1,700

[1] 2,300'—Minimum reception altitude.

20. Section 610.6122 *VOR Civil Airway No. 122* is amended by adding:

From—	To—	Minimum altitude
Crescent City, Calif. (VOR).	Medford, Oreg. (VOR)	8,000

21. Section 610.6132 *VOR Civil Airway No. 132* is amended by adding:

From—	To—	Minimum altitude
Akron, Colo. (VOR)	Goodland, Kans. (VOR).	5,800

22. Section 610.6148 *VOR Civil Airway No. 148* is amended by adding:

From—	To—	Minimum altitude
Thurman, Colo. (VOR).	Imperial, Nebr. (VOR).	[1] 5,900

[1] 4,900'—Minimum terrain clearance altitude.

23. Section 610.6165 *VOR Civil Airway No. 165* is amended to read in part:

From—	To—	Minimum altitude
Berry (INT), Calif.[1]...	Palmdale, Calif.[2] (VOR).	9,000

[1] 9,000'—Minimum crossing altitude at Berry (INT), northbound.
[2] 9,000'— Minimum crossing altitude at Palmdale (VOR), southbound.

24. Section 610.6152 *VOR Civil Airway No. 152* is amended to read in part:

From—	To—	Minimum altitude
Tampa, Fla. (VOR)...	Plant City, (INT), Fla.	1,300
Plant City (INT), Fla.	Orlando, Fla. (VOR).	1,700

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

These rules shall become effective January 4, 1955.

[SEAL] F. B. LEE,
Administrator of Civil Aeronautics.

[F. R. Doc. 54-10044; Filed, Dec. 22, 1954; 8:45 a. m.]

TITLE 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

[Docket Nos. R-137, 138; Order 174-B]

PART 154—RATE SCHEDULES AND TARIFFS

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY UNDER SECTION 7 OF THE NATURAL GAS ACT AS AMENDED

COMPLIANCE BY NATURAL-GAS PRODUCERS AND GATHERERS WITH CERTIFICATE AND RATE REQUIREMENTS; AUTOMATIC ESCALATION AND FAVORED NATION CLAUSES

In the matters of compliance by natural-gas producers and gatherers with certificate and rate requirements, Docket No. R-138; and consideration of the desirability of rules concerning automatic escalation and favored nation clauses in contracts by interstate natural-gas companies with producing companies, Docket No. R-137.

Order amending order prescribing regulations governing the filing of rate schedules and applications for certificates of public convenience and necessity by producers and gatherers of natural gas which are also natural gas companies, waiving accounting requirements, and relating to automatic escalation and favored nation clauses in contracts for the sale of natural gas by such producers and gatherers; Order No. 174-B.

DOCKET NO. R-138

1. By Order No. 174-A (superseding Order No. 174) issued August 6, 1954 (19 F. R. 5081), the Commission amended Part 154—Rate Schedules and Tariffs, and Part 157—Applications for Certificates of Public Convenience and Necessity, Subchapter E—Regulations under the Natural Gas Act, Chapter I, Title 18, Code of Federal Regulations, by prescribing regulations governing the filing of rate schedules and applications for certificates of public convenience and necessity by persons engaged in the production and gathering of natural gas and held by the Supreme Court to be subject to all the requirements of the Natural Gas Act in Phillips Petroleum Company v. Wisconsin, et al., 347 U. S. 672.

2. Numerous petitions for rehearing were filed and rehearing of Order No. 174-A was granted by order issued September 8, 1954 (19 F. R. 5952) for the purpose of receiving briefs and arguments in order that the Commission might determine whether to revoke, rescind or modify that order in any respect. Briefs and comments were filed and oral argument thereon was had on September 22 and 23, 1954. As a consequence, Order No. 174-A was modified by order issued September 24, 1954 (19 F. R. 6301) by which the filing dates prescribed in that order for some purposes were extended from October 1 to December 1, 1954. At the same time a clarifying change was made in the third paragraph of Section 154.94.

3. Upon consideration of the briefs and arguments made herein together with the experience gained in its operations to date under the existing provisions of Order No. 174-A, the Commission is of the opinion that it is necessary and desirable in the public interest and for its own convenience that those portions of its general rules and regulations embodied in Order No. 174-A be further amended to read as set out below.

4. Many of the petitions for rehearing, although objecting to the lack of notice when the rules were originally adopted, recommended changes which would be of a distinctively substantive nature. Substantive rules, however, do not appear desirable in connection with the filings with which these rules are concerned and it is the intention of the Commission to relate these rules strictly to procedural matters. A number of petitions for rehearing urge that the Commission redefine independent producers so as to make more precise the applicability of the statute and rules to those persons brought within the scope of the act by the decision of the United States Supreme Court in Phillips Petroleum Company v. Wisconsin, et al., 347 U. S. 672. We recognize the desirability for clarification of jurisdiction in the light of the Phillips decision. This is of serious concern to many independent producers and clarification is desirable not only to prevent unnecessary filings, but to assist those persons having honest doubt as to whether they come under statute. We have no desire to extend our jurisdiction beyond statutory limits. This problem is substantive and not procedural and cannot be dealt with here. Hearings are scheduled and will be concluded at the earliest practicable time in order to facilitate prompt determination of jurisdictional questions.

5. Some of the petitions urged that the regulations be amended to relieve small producers from the requirements of the statute. The act does not provide for exemptions from its requirements, but the regulations for producers are herein revised in §§ 154.91, 154.92, 154.94 and 157.23 to further simplify the filings by small producers.

6. It was also urged that the Commission limit the applicability of the act to those operators selling gas in interstate commerce after processing or gathering and acting for other working interests. The rules are here revised by the addition of a paragraph in § 154.91 under which operators may file in those situations where the purposes of the statute as to certificate requirements and rate fixing may be made fully effective, without calling for separate filings by those having working interests, although such interests may also file if they care to do so. It is expected that by this paragraph a large number of parties having working interests may be relieved of the filing requirements, although, of course, they are not and cannot be exempted from the statute, if, by reason of their activities, they come within its terms.

7. The map required in § 157.25 as an exhibit in support of a certificate application is not intended to be a topographic survey map but a general sketch. A further exhibit is also required as set forth in paragraph 10 below.

8. The statement in the rules with respect to the abandonment of service has been misconstrued and for that reason is being revised to quote section 7 (b) of the act. A proviso is added, however, that nothing in the rules shall be construed as interfering with or intended to interfere with or prevent compliance by a natural-gas company with valid conservation orders of a State agency relating to the production of natural gas.

9. There has been some confusion as to the notices or copies to be furnished to State commissions and the references thereto in the rules are eliminated. Other minor revisions of a technical or clarifying nature are also made in some of the sections below.

DOCKET NO. R-137

10. In Docket No. R-137 the Commission has under consideration the desirability of adopting rules within the terms of the Natural Gas Act either in connection with the issuance of certificates of public convenience and necessity whereby contracts between producers and interstate pipe-line companies containing automatic escalation and favored nation clauses would be declared not to be admissible as evidence of gas supply, or in connection with rate-making whereby increased payments made under escalation provisions but having no relation to additional or improved service or gas supplies to an interstate transporter could be disallowed, or in some other connection whereby effective action can be taken in the premises pursuant to the terms of the act.

11. General public notice of proposed rule-making in Docket No. R-137 was given by publication in the FEDERAL REGISTER on May 13, 1954 (19 F. R. 2768) and mailing notices to interested parties, in-

cluding State and Federal regulatory agencies. This notice invited data, views, comments, and suggestions concerning the contract provisions mentioned and set oral arguments thereon for September 9, 1954. By notice similarly published on July 22, 1954 (19 F. R. 4543) the date for oral argument was continued to November 4, and the argument was heard on November 4 and 5, 1954.

12. Views, comments and suggestions were filed by numerous persons, including the representatives of State regulatory agencies, companies engaged in local distribution of natural gas, interstate pipe-line companies, and independent producers and gatherers. Representatives of all of these diverse interests took part in the oral argument.

13. As a result of the representations submitted both orally and in writing in Docket No. R–137 and in view of the desirability of clarifying the showing to be made in this connection by natural-gas companies seeking certificates of public convenience and necessity, the contracts of sale are hereinafter required as an exhibit in support of an application under §§ 157.24 and 157.25 for a certificate of public convenience and necessity. Escalation clauses of the type rereferred to in § 157.25, Exhibit B, below, in the sales contracts of independent producers so submitted should not be considered in support of any application nor given effect by the Commission.

Upon further consideration of the matter, the Commission finds:

(1) Sections 154.91, 154.92, 154.94, 154.95, 154.97, 154.98, 157.23, 157.24, 157.25 and 157.28 of the regulations under the Natural Gas Act prescribed by Order No. 174–A, as amended by the order issued September 24, 1954 herein, should be further revised for the reasons and in the manner set forth above.

(2) Adoption and promulgation of the proposed revisions are necessary and appropriate to carry out the provisions of the Natural Gas Act.

(3) For convenience, it is appropriate that those sections of Order No. 174–A which are not revised hereby be published together with the revised sections referred to above and that the order as so revised be designated as Order No. 174–B.

(4) The points and issues raised by the petitions for rehearing which are not covered by the revisions hereinafter made should be denied.

(5) From the circumstances referred to in the recitals above set forth, it appears that good cause exists for immediate issuance of the following regulations and it is unnecessary in the public interest that notice or further public proceedings be had prior to the adoption of such revised regulations.

(6) Upon full consideration of the representations made in Docket No. R–137; escalation clauses of the types referred to in § 157.25, Exhibit B, below are not in the public interest and such clauses will not be considered as evidence in support of any application for a certificate of public convenience and necessity or for other purposes nor given effect by the Commission.

(7) Further proceedings in Docket No. R–137 are not necessary.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, particularly sections 4, 7 and 16 thereof (52 Stat. 822, 824, 830; 15 U. S. C. 717c, 717f and 717o), and subject to the provisions of sections 3 and 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1002, 1003), orders:

(A) Part 154, Rate Schedules and Tariffs, of Subchapter E, Regulations under the Natural Gas Act, Chapter I of Title 18, Code of Federal Regulations, is amended by adding thereto new sections reading as follows:

COMPLIANCE BY NATURAL GAS PRODUCERS AND GATHERERS WITH CERTIFICATE AND RATE REQUIREMENTS

Sec.

154.91 Applicability.
154.92 Filing of rate schedules by independent producer.
154.93 Rate schedule defined.
154.94 Changes in rate schedule.
154.95 Oral agreements.
154.96 Filing date.
154.97 Cancellation or termination.
154.98 Waiver of notice requirements.
154.99 Number of copies.
154.100 Rejection of rate schedules and material submitted for filing.
154.101 Acceptance for filing not approval.
154.102 Applicability of §§ 154.92 through 154.101.

AUTHORITY: §§ 154.91 to 154.102 issued under sec. 16, 52 Stat. 830, 15 U. S. C. 717o.

COMPLIANCE BY NATURAL GAS PRODUCERS AND GATHERERS WITH CERTIFICATE AND RATE REQUIREMENTS

§ 154.91 *Applicability.* (a) An "independent producer" as that term is used in this part means any person as defined in the Natural Gas Act who is engaged in the production or gathering of natural gas and who transports natural gas in interstate commerce or sells natural gas in interstate commerce for resale, but who is not primarily engaged in the operation of an interstate pipeline.

(b) The filings with regard to all sales required under §§ 154.92, 154.94 and 157.23 may be made by (1) an operator of one or more wells under co-ownership, (2) an operator where a group of producers are unitized for production and sale, or (3) an operator of a plant processing natural gas and located in the producing area of the gas which it processes and the payments by such operator to the producers represent a percentage of the proceeds of the sale thereof by the operator. Where filings are made by an operator under this paragraph, the parties to the operating arrangement, and those producers who sell to the processing plant described in subparagraph (3) of this paragraph, need not file hereunder. When a filing is made by an operator under subparagraph (1) or (2) of this paragraph, he shall submit therewith (i) a list of all persons having working interests involved in the sale of natural gas covered by his filing, (ii) a list of the parties to the operating arrangement, and (iii) a statement of their percentage of their interests. When a filing is made under subparagraph (3) of this paragraph, the operator shall file a list of the producers from whom the natural gas is purchased, showing the percentage received by each from the sales. The operator filing hereunder shall submit every twelve months thereafter a statement showing any changes in the several respects since the list was previously submitted.

§ 154.92 *Filing of rate schedules by independent producer.* (a) Every independent producer who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission shall on or before December 1, 1954, file with the Commission rate schedules, as defined in § 154.93, setting forth the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954. To each such rate schedule there shall be attached a statement showing actual billing for a recent month in sufficient detail to show how the billing amount is determined.

(b) Every independent producer who, subsequent to the effective date of this part, proposes to initiate an interstate transportation or sale of natural gas subject to the jurisdiction of the Commission to an existing or new customer shall file with the Commission not less than 30 days nor more than 90 days prior to the date such transportation or sale is proposed to be initiated a rate schedule, as defined in § 154.93, setting forth the terms and conditions of service and all rates and charges for such transportation or sale. To each such rate schedule there shall be attached a statement showing estimated sales and billing for the first month of service, in sufficient detail to show method of billing and prices used. The statement shall also give the proposed date of commencement of service. A complete copy of all material shall be furnished to each purchaser under the rate schedule. With each such filing there shall be submitted a list of parties to whom such material has been mailed.

(c) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of paragraphs (a) and (b) of this section file a statement showing (1) the approximate annual volume involved, (2) the rate charged therefor, (3) the name of the purchaser, and (4) the geographical location (field, county, and State) at which delivery is made.

§ 154.93 *Rate schedule defined.* For the purpose of §§ 154.92 through 154.101 "rate schedule" shall mean the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954, showing the service to be provided and the rates and charges, terms, conditions, classifications, practices, rules and regulations affecting or relating to such rates or charges, applicable to the transportation of natural gas in interstate commerce or the sale of natural gas in interstate

commerce for resale subject to the jurisdiction of the Commission.

§ 154.94 *Changes in rate schedules.* (a) No change shall be made in any rate, charge, or service in effect on and after June 7, 1954, for the interstate transportation or sale of natural gas in interstate commerce subject to the jurisdiction of the Commission by any independent producer required to file rate schedules pursuant to § 154.92, without first filing a change in rates pursuant to section 4 (d) of the Natural Gas Act and in accordance with this section.

(b) Every change in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission as of June 7, 1954, and on file with the Commission, or required to be filed pursuant to § 154.92, or in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission initiated subsequent to June 7, 1954, on file with the Commission, or required to be filed with the Commission pursuant to § 154.92 shall be filed with the Commission in duplicate not less than 30 days nor more than 90 days prior to the date such change in rate schedule is proposed to be made effective.

(c) The operation of any provision of the rate schedule providing for future or periodic changes in the rate, charge, classification, or service after June 7, 1954, or the operation of any like provision in any initial rate schedule filed after June 7, 1954, shall constitute a change in rate schedule.

(d) Any change in any rate schedule, rate, charge, classification, or service provided in a rate schedule in effect on June 7, 1954, which by the terms of said rate schedule is to be operative after June 7, 1954 and prior to September 15, 1954, may be filed on less than thirty days' prior notice, subject nevertheless to the right of the Commission to suspend any such proposed change, if the Commission in any case shall, within thirty days after the date of filing, find it necessary to suspend such proposed change. If any such proposed change is suspended, the suspension period will begin with the designated effective date of such change.

(e) With each change in rate schedule there shall be submitted reasons, nature, and basis for the proposed change, and the following information and data: (i) The date on which such filing is proposed to be made effective; (ii) a comparative statement of sales made and revenues therefrom by months under the then effective rate schedule and under the proposed changed rate schedule, or rate, charge, classification or service contained therein for the 12 months immediately preceding and for the 12 months immediately succeeding the proposed effective date of the rate schedule tendered for filing. Actual data shall be used wherever possible and any estimates shall be so designated and explained. The statement shall be subdivided by customers and delivery points when more than one is involved.

(f) If the proposed change in a rate schedule will result in an increase in a rate or charge, there shall also be submitted a full statement in support of such increase. A complete copy of all material shall be furnished to each party to the rate schedule. With each such filing there shall be submitted a list of the parties to whom such material has been mailed.

(g) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of the paragraphs (a) to (f) in this section, file a statement showing (1) the approximate annual volume involved; (2) the rate charged therefor; (3) the name of the purchaser; and (4) the geographical location (field, county and State) at which delivery is made.

§ 154.95 *Oral agreements.* If any rate schedule or change in a rate schedule is not in writing, its terms shall be reduced to writing and filed with the Commission. If the parties are not able to agree to the precise terms within a reasonable time, the applicant shall file, in duplicate, a statement of his understanding of the agreement, serving a copy thereof on the other parties to the agreement. Such other parties, in the latter event, may subsequently file, in duplicate, their understanding of the agreement.

§ 154.96 *Filing date.* Filing date means the day on which a rate schedule, or a change in rate schedule, is received in the office of the Secretary of the Commission in compliance with the requirements of §§ 154.92 through 154.99.

§ 154.97 *Cancellation or termination.* When a rate schedule or part thereof is proposed to be cancelled or is to terminate by its own terms and no new rate schedule or part thereof is to be filed in its place, the filing company shall notify the Commission of the proposed cancellation or termination at least 30 days prior to the proposed effective date of such cancellation or termination. With such notice the company shall submit a statement showing the reasons for the cancellation or termination and a certification that such notice of cancellation or termination has been served on the affected party or parties, together with names of parties to whom the notice has been mailed.

§ 154.98 *Waiver of notice requirements.* Upon application and for good cause shown, the Commission may by order provide that a rate schedule or a change in rate schedule shall be effective on less than 30 days' notice. The Commission upon request and for good cause shown may permit a rate schedule or a change in rate schedule to be filed prior to 90 days before the effective date.

§ 154.99 *Number of copies.* (a) Two copies of any rate schedule or part thereof, and material required by § 154.95 to be filed therewith, and Notices of Cancellation or Termination submitted for filing, must be supplied to the Commission. The Commission reserves the right to request additional copies. All copies are to be included in a single package, insofar as possible, together with a letter of transmittal and other material and information required by this part, addressed to the Secretary of the Federal Power Commission, Washington 25, D. C.

(b) Such letter of transmittal shall contain a complete list of all material being filed, properly designated so that each item is easily identifiable.

§ 154.100 *Rejection of rate schedules and material submitted for filing.* The Commission reserves the right to reject any rate schedule or material submitted for filing which fails to comply with the requirements of §§ 154.92 through 154.99.

§ 154.101 *Acceptance for filing not approval.* Acceptance for filing of any rate schedule or part thereof, or of a Notice of Cancellation or Termination, is not to be construed as approval by the Commission, nor to serve in lieu of any requirements under section 7 of the Natural Gas Act.

154.102 *Applicability of §§ 154.92 through 154.101.* Sections 154.92 through 154.101 shall be applicable only to those persons specified in § 154.91.

(B) Part 157, Applications for Certificates of Public Convenience and Necessity under Section 7 of the Natural Gas Act, as amended, Subchapter E, Regulations under the Natural Gas Act, Chapter I of Title 18, Code of Federal Regulations, is amended by adding thereto new sections reading as follows:

CONSIDERATION OF DESIRABILITY OF RULES CONCERNING AUTOMATIC ESCALATION AND FAVORED NATION CLAUSES IN CONTRACTS BY INTERSTATE NATURAL-GAS COMPANIES WITH PRODUCING COMPANIES

Sec.
157.23 Applications for certificates of public convenience and necessity by independent producer.
157.24 Contents of applications.
157.25 Necessary exhibits.
157.26 Form of filing.
157.27 Other information.
157.28 Abandonment of service.
157.29 Applicability of §§ 157.23 to 157.28.

AUTHORITY: §§ 157.23 to 157.29 issued under sec. 16, 52 Stat. 830; 15 U. S. C. 717o.

CONSIDERATION OF DESIRABILITY OF RULES CONCERNING AUTOMATIC ESCALATION AND FAVORED NATION CLAUSES IN CONTRACTS BY INTERSTATE NATURAL-GAS COMPANIES WITH PRODUCING COMPANIES

§ 157.23 *Applications for certificates of public convenience and necessity by independent producer.* (a) Every independent producer of natural gas as that term is defined in § 154.91 of this chapter, who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission, and who has not heretofore obtained from the Commission a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, shall, on or before December 1, 1954, file with the Commission an application (original and 14 copies) in accordance with §§ 157.24 through 157.27. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission amount in the aggregate to less than 1,000,000 Mcf annually, may,

in lieu of the foregoing, file by December 1, 1954 an application (original and five copies) containing the information called for by Exhibit A set forth below. Pending action by the Commission on an application hereunder, the service for which authorization is sought shall be continued.

(b) No independent producer of natural gas shall, subsequent to the issuance of this part, engage in any new service with respect to the transportation of natural gas in interstate commerce or sale of such natural gas for resale in interstate commerce subject to the jurisdiction of the Commission without approval of the Commission, evidenced by a certificate of public convenience and necessity authorizing such transportation or sale upon application (original and 14 copies) pursuant to §§ 157.24 through 157.27. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission will amount in the aggregate to less than 1,000,000 Mcf annually may, in lieu of the foregoing, file an application (original and five copies) containing the information called for by Exhibit A set forth below. Where the economic feasibility of a new pipe line or important extension or expansion of an existing pipe line depends upon proof of an adequate gas supply, all related applications necessary to effectuate the service shall be filed within time to enable the Commission to consider all related matters concurrently.

(c) Filings under this section may be made by an operator as provided in § 154.91.

Exhibit A
(§ 157.23)

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY CLASS B INDEPENDENT PRODUCER [1] (FILE ORIGINAL AND FIVE COPIES)

(1) Name of applicant _____
(2) State of organization _____
(3) Location of principal place of business _____
(4) Names of States in which authorized to do business _____
(5) Person responsible for application:
  (a) Name and title _____
  (b) Mailing address _____
(6) Description of facilities used for operations for which certificate is requested (where applicable):
  (a) Pipelines:
    (i) Location _____
    (ii) Length and diameter _____
    (iii) Capacity (Mcf daily) _____
  (b) Compressor stations:
    (i) Location _____
    (ii) Horsepower _____
    (iii) Capacity (Mcf daily) _____
  (c) Gasoline plants:
    (i) Location _____
    (ii) Capacity (Mcf daily) _____
  (d) Dehydration plants:
    (i) Location _____
    (ii) Capacity (Mcf daily) _____
  (e) Purification plants:
    (i) Location _____
    (ii) Capacity (daily) _____
  (f) Storage projects:
    (i) Location _____
    (ii) Maximum volumes that can be stored Mcf _____
(7) Gas supply:
  (a) Own production:
    (i) Name and location of field _____
    (ii) Acreage controlled _____
  (b) Gas purchased:
    (i) Name of seller _____
    (ii) Name and location of field _____
    (iii) Point of delivery to applicant _____
(8) Gas sales or transportation contracts (for each contract): [2]
  (a) Name of purchaser _____
  (b) Point of delivery _____
  (c) Contract volumes Mcf (daily or annually), indicating pressure base _____
  (d) Price at time of filing _____
  (e) Date of contract _____
  (f) Term of contract _____
  (g) Special conditions (if any) _____

§ 157.24 *Contents of applications.* (a) Every application for a certificate of public convenience and necessity required under § 157.23 shall be filed with the Commission and shall set forth in the order indicated the following:

(1) The exact legal name of the applicant; if the applicant is a corporation, the State or territory under the laws of which the applicant is organized, the location of applicant's principal place of business, and the names of all States where applicant is authorized to do business.

(2) The same data required by subparagraph (1) of this paragraph with respect to any predecessor in interest of the applicant bona fide engaged in the transportation or sale of natural gas subject to the jurisdiction of the Commission on June 7, 1954.

(3) The name, title, and post office address of the person to whom correspondence or communications in regard to the application is to be addressed. Unless advised to the contrary, the Commission will serve all notices, orders, and other papers, service of which is required, upon the person so named.

(4) A statement of pertinent facts showing that applicant or a predecessor in interest of applicant was a natural-gas company within the meaning of the Natural Gas Act and was bona fide engaged in transportation of natural gas in interstate commerce or sale of natural gas in interstate commerce for resale on June 7, 1954, or upon commencement of the proposed transportation or sale of natural gas would be a natural-gas company. Without limitation upon the requirements of this paragraph, such statement shall include a showing of:

(i) The sources of the gas (*a*) produced by applicant or predecessor and (*b*) purchased by applicant or predecessor. In case of gas produced, give the approximate location of the fields and the points of delivery, and in the case of gas purchased, the names of the sellers and points of delivery.

(ii) The route or routes of the pipe lines over which such transportation or sale of natural gas was or will be accomplished.

(iii) Any communities served on June 7, 1954 or proposed to be served (*a*) at wholesale or (*b*) at retail.

(iv) The names of, and points of delivery to, any main line industrial customers (i. e., not located within communities under subdivision (iii) of this subparagraph) purchasing or proposing to purchase 25,000 Mcf or more per year. Such main line industrial customers purchasing 100,000 Mcf or more per year, shall be given the identifying designations I–1, I–2, etc., which designations shall be used in lieu of names on Exhibit A of the application (§ 157.23).

(v) Any major appurtenant properties and facilities, such as compressor stations, gasoline plants, dehydration plants, purification plants, and gas storage projects.

(b) Any information required which is already on file with the Commission may be incorporated by reference. If an applicant is unable to secure required information in time for filing with his application, a statement setting forth the reasons for his failure to file the missing information should be submitted with a request for further time, which may be granted up to 90 days.

§ 157.25 *Necessary exhibits.* There shall be filed with the application as a part thereof the following exhibits:

Exhibit A. Map. Each applicant under § 157.24 shall file as a part of his application a general map or sketch of applicant's facilities for the production, transportation, or sale of natural gas as Exhibit A (§ 157.23). The map need be only of sufficient scale and in sufficient detail to show the general geographical location of the properties.

(a) The location of gas fields from which gas is or will be produced by applicant or affiliated companies or at which gas is or will be purchased by applicant.

(b) The location of applicant's principal pipe lines and the diameters thereof.

(c) The points of connection with the facilities or pipe-line systems of other companies.

(d) The designation of points of delivery of gas to applicant's system.

(e) The communities served or proposed to be served at wholesale and at retail, indicating wholesale by a small square and retail by a small circle.

(f) The designation of points of delivery of gas from applicant's system, including points of delivery to main line industrial customers purchasing 100,000 Mcf or more per year. Such main line industrial customers are to be designated I–1, I–2, etc., as indicated in § 157.24 (a) (4) (iv).

Exhibit B. Contracts. Conformed copy of each contract for sale or transportation of gas for which a certificate is requested: *Provided, however,* That contracts on file with the Commission in other proceedings may be included by reference as heretofore provided in § 157.24 (b); *And provided further,* That acceptance of contracts hereunder shall not be construed as approval of the rates therein contained under Part 154 hereof or under the Natural Gas Act. Escalation clauses in contracts submitted hereunder on or after May 1, 1955, will not be considered in support of any certificate application or otherwise given effect by the Commission if under such clauses: (a) Provision is made for adjustment of the price of the seller by reason of changes in the prices received by the purchaser upon resale; or (b) if provision is made for adjustment of the price of the seller by reason of the payment of higher prices by other purchasers in the same or other producing areas.

§ 157.26 *Form of filing.* An application under § 157.24 and § 157.25 shall be in compliance with §§ 1.15 and 1.17 of this chapter, and in addition the original of the application (which shall

[1] Independent producers defined in § 154.91 of this chapter as transporting in interstate commerce or selling in interstate commerce for resale a total of less than 1,000,000 Mcf per year of natural gas.

[2] Contracts on file as rate schedules may be incorporated by reference.

include the originals of all exhibits accompanying said application) shall be verified under oath by a person having knowledge of the matters therein set forth.

§ 157.27 *Other information.* The applicant may be required to furnish such additional information as the Commission may deem pertinent.

§ 157.28 *Abandonment of service.* No independent producer as herein defined shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. *Provided, however,* That nothing herein shall be construed as interfering or as intended to interfere with or to prevent compliance by a natural-gas company with valid conservation orders of a State agency relating to the production or gathering of natural gas.

§ 157.29 *Applicability of §§ 157.23 to 157.28.* Sections 157.23 through 157.28 shall be applicable only to an independent producer as defined in § 154.91 of this chapter.

(C) The amendments of rules and regulations herein prescribed are hereby made effective immediately upon issuance hereof.

(D) Until the further order of the Commission, the rules and regulations requiring natural-gas companies to keep and maintain their accounts in accordance with the Commission's Uniform System of Accounts for Natural Gas Companies (18 CFR Chapter I, Subchapter F) and to submit reports thereon shall not apply to independent producers as defined in § 154.91.

(E) Order No. 174–A issued August 6, 1954 is hereby revised and as revised herein shall be designated as Order No. 174–B.

(F) The petitions for rehearing filed herein are denied with respect to all other points and issues raised in such petitions.

(G) The proceedings in Docket No. R–137 are hereby terminated.

(H) The Secretary of the Commission shall cause publication of this order to be made in the FEDERAL REGISTER.

Adopted: December 16, 1954.

Issued: December 17, 1954.

By the Commission. Commissioner Digby dissenting and Commissioners Smith and Stueck concurring.[1]

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 54–10160; Filed Dec. 22, 1954; 8:49 a. m.]

[1] Opinions filed as part of original document.

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter E—Alcohol, Tobacco, and Other Excise Taxes

PART 186—GAUGING MANUAL

Preamble. 1. The regulations in this part shall, as to facts and circumstances arising on and after January 1, 1955, supersede the 1950 edition of the Gauging Manual (26 CFR (1939) Part 186; 15 F. R. 4787) as amended by Treasury Decision 6005 (18 F. R. 2139).

2. These regulations, except for the delegation to the Director, Alcohol and Tobacco Tax Division, of authority to approve apparatus and methods for determining the alcoholic strength of liquors to which blending materials have been added, consist only of previously approved material. The citations of authority have been conformed to the Internal Revenue Code of 1954.

3. These regulations shall not affect any act done or any liability or right accruing or accrued, or any suit or proceeding had or commenced, before the effective date of these regulations.

4. It is found that compliance with the notice and public rule-making procedure of section 4 (a) and the effective date limitations of section 4 (c) of the Administrative Procedure Act (5 U. S. C. 1001, et seq.) is unnecessary in connection with the republication of the regulations in this part for the reason that the changes made are of a technical and administrative nature and do not affect the industry.

Subpart A—Scope of Regulations

Sec.
186.1 Gauging of distilled spirits.

Subpart B—Definitions

186.5 Distilled spirits.
186.6 Gallon.
186.7 Proof.
186.8 Proof gallon.
186.9 Proof spirits.

Subpart C—Gauging Instruments

186.10 General requirements.
186.11 Hydrometers and thermometers.

Subpart D—Use of Gauging Instruments

186.15 Use of hydrometers and thermometers.

Subpart E—Prescribed Tables

186.20 Table 1, showing the true percent of proof spirits for any indication of the hydrometer at temperatures between zero and 100 degrees Fahrenheit.
186.21 Table 2, showing wine gallons and proof gallons by weight.
186.22 Table 3, for determining the number of proof gallons from the weight and proof of spirituous liquor.
186.23 Table 4, showing the fractional part of a gallon per pound at each percent and each tenth percent of proof of spirituous liquor.
186.24 Table 5, showing the weight per wine gallon (at 60 degrees Fahrenheit) and proof gallon at each percent of proof of spirituous liquor.
186.25 Table 6, showing respective volumes of alcohol and water and the specific gravity in both air and vacuum of spirituous liquor.
186.26 Table 7, for correction of volume of spirituous liquors to 60 degrees Fahrenheit.

AUTHORITY: §§ 186.1 to 186.26 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Statutory provisions interpreted or applied are cited to text in parentheses.

SUBPART A—SCOPE OF REGULATIONS

§ 186.1 *Gauging of distilled spirits.* This part, the "Gauging Manual," relates to the measuring of distilled spirits. Tables 1–7 are provided as a part hereof showing the true percent of proof spirits for any indication of the hydrometer at temperatures between zero and 100 degrees Fahrenheit; wine gallons and proof gallons by weight; the number of proof gallons from the weight and proof of spirituous liquor; the fractional part of a gallon per pound at each percent of proof of spirituous liquor; weight per wine gallon and proof gallon at each percent of proof of spirituous liquor; respective volumes of alcohol and water and the specific gravity in both air and vacuum of spirituous liquor; and the correction of volume of spirituous liquors to 60 degrees Fahrenheit.

SUBPART B—DEFINITIONS

§ 186.5 *Distilled spirits.* Distilled spirits, spirits, alcohol and alcoholic spirits shall mean that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar including all dilutions and mixtures of this substance.

(68A Stat. 597; 26 U. S. C. 5002)

§ 186.6 *Gallon.* "Gallon" or "wine gallon" shall mean a United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

§ 186.7 *Proof.* "Proof" shall mean the ethyl alcohol content of a liquid at 60° Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

§ 186.8 *Proof gallon.* "Proof gallon" shall mean the alcoholic equivalent of a United States gallon at 60° Fahrenheit, containing 50 percent of ethyl alcohol by volume.

§ 186.9 *Proof spirits.* "Proof spirits" shall mean that alcoholic liquor which contains one-half its volume of alcohol of a specific gravity of 0.7939 at 60 degrees Fahrenheit, referred to water at 60 degrees Fahrenheit as unity. Proof spirits has at 60 degrees Fahrenheit a specific gravity of 0.93418 in air (0.93426 in vacuum), 100 parts by volume consisting of 50 parts of absolute alcohol and 53.73 parts of water.

(68A Stat. 597; 26 U. S. C. 5002)

SUBPART C—GAUGING INSTRUMENTS

§ 186.10 *General requirements.* Hydrometers and thermometers furnished at Government expense shall be used by internal revenue officers for determining the alcoholic strength of distilled spirits where the solid content is negligible. The alcoholic strength of liquors to which blending materials have been added, or which contain solids in solution in excess of 0.6 gram per 100 milliliters will be determined by use of an

approved ebulliometer, small still, or other instrument or method authorized by the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, in accordance with provisions of Part 230 or Part 235 of this chapter.

(68A Stat. 639; 26 U. S. C. 5212)

§ 186.11 *Hydrometers and thermometers.* The hydrometers furnished to internal revenue officers are so graduated as to indicate the number of parts by volume of proof spirits equivalent to 100 parts of the liquor at the standard temperature of 60 degrees Fahrenheit; thus, they read, 0 for water, 100 for proof spirits, and 200 for absolute alcohol. Since the density of any liquor varies inversely with the temperature, the hydrometer reading will be less than the true percent of proof at temperatures below 60 degrees Fahrenheit and will be greater than the true percent of proof at temperatures above 60 degrees Fahrenheit. Hence corrections are necessary for hydrometer readings at temperatures other than 60 degrees Fahrenheit. Precision hydrometers will be used for gauging large quantities of spirits, such as bulk gauging for tax payment, gauging for entry, etc. Hydrometers and thermometers shall be used and the true percent of proof shall be determined in accordance with § 186.15. Hydrometers are designated by letter according to range of proof and are provided in ranges as follows:

U. S. Standard:	
A	0 to 100
B	80 to 120
C	100 to 140
D	130 to 170
E	160 to 206
Precision:	
F	0 to 20
G	20 to 40
H	40 to 60
I	60 to 80
K	75 to 95
L	90 to 110
M	105 to 125
N	125 to 145
P	145 to 165
Q	165 to 185
R	185 to 206

(68A Stat. 639, 26 U. S. C. 5212)

SUBPART D—USE OF GAUGING INSTRUMENTS

§ 186.15 *Use of hydrometers and thermometers.* Care must be exercised to obtain an accurate temperature reading. The hydrometer cup or glass cylinder containing the thermometer will be filled and refilled with the spirits to be gauged until the mercury in the thermometer ceases to move upward or downward, and the cup or cylinder shall not be exposed to wind, or any other condition which will influence it unduly against the temperature of the spirits while the readings are being ascertained. The hydrometer stem will be immediately inserted into the spirits and the indications of the stem and thermometer read instantly and as nearly simultaneously as possible. The hydrometer shall be clean and shall be carefully immersed only to the point where it will be sustained by the spirits. Special care must be taken to ascertain the exact point at which the level of the surface of the liquid intersects the scale of proof in the stem of the hydrometer. When the correct readings of the hydrometer and thermometer have been determined, the true percent of proof shall be ascertained from table 1. The first line designating whole degrees of proof below the general surface of the liquid will be read and the fraction of the degree of proof between the submerged line and the general surface of the spirits noted; e. g., if the 178 line on the stem is the first line indicating a whole degree of proof below the general surface of the spirits at 75 degrees Fahrenheit, the proof corrected to 60 degrees Fahrenheit would be 173.5, plus the fraction of a degree of proof the 178 line is below the general surface of the liquid. If this fraction is 0.7 of a degree of proof, the true proof would be 173.5, plus 0.7 or 174.2.

(68A Stat. 639; 26 U. S. C. 5212)

SUBPART E—PRESCRIBED TABLES

§ 186.20 *Table 1, showing the true percent of proof spirits for any indication of the hydrometer at temperatures between zero and 100° F.* This table shows the true percent of proof of distilled spirits for indications of the hydrometer likely to occur in practice at temperatures between zero and 100° F. The left-hand column contains the reading of the hydrometer and on the same horizontal line, in the body of the table, in the "Temperature" column corresponding to the reading of the thermometer is the corrected reading or "True percent of proof." The table is computed for tenths of a percent. Where distilled spirits or alcohol are gauged in packages, if the decimal is less than five it will be dropped; if it is five or over a unit will be added. Thus column 69°, indication 114, the true percent, 110.4, is called 110; column 69°, indication 117, the true percent of proof 113.5, is called 114. Where distilled spirits or alcohol are gauged for taxpayment in bulk for removal by pipe line, tank car, tank truck, tank ship, or tank barge without adjustment of the proof to a whole or complete degree, the proof shall be determined to the nearest tenth of a degree and such fractional proof will be used in determining the taxable gallons. Thus column 71°, indication 193, the true percent, 190.4, will be recorded and used to calculate the taxable gallons. The proof of distilled spirits or alcohol withdrawn in tank cars, tank trucks, tank ships, tank barges, and by pipe line, for purposes other than taxpayment, shall be determined to the nearest tenth of a degree; however, except where the proprietor or consignee desires to remove distilled spirits or alcohol at a fractional degree, if the decimal is less than five it will be dropped; if it is five or over, a unit will be added. Thus column 71°, indication 193, the true percent, 190.4, is called 190; column 71°, indication 194, the true percent of proof, 191.5, is called 192. Where fractional readings are ascertained, the proper interpolations will be made, e. g., for a hydrometer reading of 151, temperature 71½°, the true percent of proof would be 147.0, or for a hydrometer reading 179.4, temperature 75°, the true percent of proof would be 175.0.

(68A Stat. 633, 634, 639; 26 U. S. C. 5193, 5194, 5212)

§ 186.21 *Table 2, showing wine gallons and proof gallons by weight.* The wine and proof gallon content by weight and proof of packages of distilled spirits usually found in actual practice will be ascertained from this table. The left-hand column contains the weights. The true percent of proof is shown on the heading of each page in a range from 90 degrees to 200 degrees. Under the true percent of proof and on the same horizontal line with the weight will be found the wine gallons (at 60 degrees Fahrenheit) and the proof gallons respectively. Weights or proofs not shown in Table 2 will be ascertained by reference to table 3.

(68A Stat. 639; 26 U. S. C. 5212)

§ 186.22 *Table 3, for determining the number of proof gallons from the weight and proof of spirituous liquor.* Where the weight or proof of a quantity of distilled spirits is not found in Table 2 the proof gallons may be ascertained from Table 3. The wine gallons (at 60 degrees Fahrenheit) may be ascertained by dividing the proof gallons by the proof.

Example. A tank car of spirits of 190 degrees of proof weighed 60,378 pounds net. We find—

	Proof gallons
60,000 pounds equal to	16,778.4
300 pounds equal to	83.9
70 pounds equal to	19.6
8 pounds equal to	2.2
	16,884.1

That is, 60,378 pounds of spirits at 190 proof is equal to 16,884.1 proof gallons. The equivalent gallons for 70 pounds are found from the column 700 pounds by moving the decimal point one place to the left; those for 8 pounds from the column 800 pounds by moving the decimal point two places to the left.

Example. A package of spirits of 86 proof weighed 321½ pounds net. We find—

	Proof gallons
300 pounds equal to	32.7
20 pounds equal to	2.2
1 pound equal to	.1
½ pound equal to	.1
	35.1

That is, 321½ pounds of spirits at 86 proof is equal to 35.1 proof gallons. The equivalent gallons for 20 pounds are found from the column 200 pounds by moving the decimal point one place to the left; those for 1 pound from the column 100 pounds by moving the decimal point two places to the left; that for the ½ pound from the column 500 pounds by moving the decimal point three places to the left. Fractional gallons beyond the first decimal ascertained through use of this table will be dropped if less than 0.05 or will be added as 0.1 if 0.05 or more. The wine gallons (at 60 degrees Fahrenheit) may be determined by dividing the proof gallons by the proof. For example: 35.1 divided by 86 equals 40.8 wine gallons.

(68A Stat. 639; 26 U. S. C. 5212)

§ 186.23 *Table 4, showing the fractional part of a gallon per pound at each percent and each tenth percent of proof*

of spirituous liquor. This table provides a method for use in ascertaining the wine gallon (at 60° F.) and/or proof gallon contents of containers of spirits by multiplying the net weight of the spirits by the fractional part of a gallon per pound shown in the table for spirits of the same proof. Fractional gallons beyond the first decimal will be dropped if less than 0.05 or will be added as 0.1 if 0.05 or more. This table may also be used for ascertaining the quantity of water required to reduce to a given proof. To do this, divide the proof gallons of spirits to be reduced by the fractional part of a proof gallon per pound of spirits at the proof to which the spirits are to be reduced, and subtract from the quotient the net weight of the spirits before reduction. The remainder will be the pounds of water needed to reduce the spirits to the desired proof.

Example. It is desired to ascertain the quantity of water needed to reduce 1,000 pounds of 200 proof spirits, 302.6 proof gallons, to 190 proof:

302.6 divided by 0.27964 equals 1,082.11 pounds, weight of spirits after reduction.

1,082.11 minus 1,000 equals 82.11 pounds, weight of water required to reduce to desired proof.

The slight variation between this table and tables 2, 3, and 5 on some calculations is due to the dropping or adding of fractions beyond the first decimal on those tables.

(68A Stat. 633, 634, 639; 26 U. S. C. 5193, 5194, 5212)

§ 186.24 *Table 5, showing the weight per wine gallon (at 60 degrees Fahrenheit) and proof gallon at each percent of proof of spirituous liquor.* This table may be used to ascertain the weight of any given number of wine gallons (at 60 degrees Fahrenheit) or proof gallons of spirits by multiplying the pounds per gallon by the given number of gallons of the spirits. The table should be especially useful where it is desired to weigh a precise quantity of spirits.

Example. It is desired to ascertain the weight of 100 wine gallons of 190 proof spirits:

6.79434×100 equals 679.43 pounds, net weight of 100 wine gallons of 190 proof spirits.

Example. It is desired to ascertain the weight of 100 proof gallons of 190 proof spirits:

3.57597×100 equals 357.60 pounds, net weight of 100 proof gallons of 190 proof spirits.

The slight variation between this table and Tables 2 and 3 on some calculations is due to dropping or adding of fractions beyond the first decimal on those tables.

(68 A Stat. 639; 26 U. S. C. 5212)

§ 186.25 *Table 6, showing respective volumes of alcohol and water and the specific gravity in both air and vacuum of spirituous liquor.* This table provides an alternate method for use in ascertaining the quantity of water needed to reduce the strength of distilled spirits by a definite amount. To do this, divide the alcohol in the given strength by the alcohol in the required strength, multiply the quotient by the water in the required strength, and subtract the water in the given strength from the product. The remainder is the number of gallons of water to be added to 100 gallons of spirits of the given strength to produce a spirit of a required strength.

Examples. It is desired to reduce spirits of 191 proof to 188 proof. We find that 191 proof spirits contains 95.5 parts alcohol and 5.59 parts water, and 188 proof spirits contains 94.0 parts alcohol and 7.36 parts water.

95.5 (the strength of 100 wine gallons of spirits at 191 proof) divided by 94.0 (the strength of 100 wine gallons of spirits at 188 proof) equals 1.01. 7.36 (the water in 188 proof) multiplied by 1.01 equals 7.43. 7.43 less 5.59 (the water in 191 proof spirits) equals 1.84 gallons of water to be added to each 100 wine-gallons of 191 proof spirits to be reduced.

This rule is applicable for reducing to any proof; but when it is desired to reduce to 100 proof, it is sufficient to point off two decimals in the given proof, multiply by 53.73, and deduct the water in the given strength. Thus, to reduce 112 proof spirits to 100 proof:

1.12×53.73−47.75 equals 12.42 gallons of water to be added to each 100 wine gallons of spirits to be reduced.

(68A Stat. 639; 26 U. S. C. 5212)

§ 186.26 *Table 7, for correction of volume of spirituous liquors to 60 degrees Fahrenheit.* This table provides correction factors prescribed for ascertaining volume at 60 degrees Fahrenheit of spirits at various other temperatures ranging from 18 degrees through 100 degrees Fahrenheit. The wine gallons to be corrected should be multiplied by the factor shown in the table at the percent of proof and temperature of the spirits. The product will be the corrected gallonage of 60 degrees Fahrenheit. This table is also prescribed for use in ascertaining the capacity of containers where the wine gallon capacity at 60 degrees Fahrenheit is determined by weight in accordance with Tables 2, 3, 4, or 5. This is accomplished by dividing the wine gallons at 60 degrees Fahrenheit by the factor shown in the table at the percent of proof and temperature of the spirits. The quotient will be the true capacity of the container.

Example. It is desired to ascertain the volume at 60 degrees Fahrenheit of 1,000 wine gallons of 190 proof spirits at 76 degrees Fahrenheit:

1,000×0.991 equals 991 wine gallons, the corrected gallonage at 60 degrees Fahrenheit.

Example. It is desired to ascertain the capacity of a tank which, when filled to capacity with 190 proof spirits at 100 degrees Fahrenheit, contains 2,500 wine gallons as determined by weight:

2,500 divided by 0.976 equals 2,561.5 the capacity of the tank in wine gallons at 60 degrees Fahrenheit.

It will be noted that the table is prepared in multiples of 5 percent of proof and 2 degrees temperature. Where the spirits to be corrected are of an odd temperature, one-half of the difference, if any, between the factors for the next higher and lower temperature, should be added to the factor for the next higher temperature. For example, the correction factor for spirits of 180 proof at 53 degrees temperature should be taken as 1.004, and for the same proof spirits at 51 degrees temperature the correction factor should be taken as 1.0055. Likewise, where the percent of proof is other than a multiple of five, the difference, if any, between the next higher and lower proof should be divided by five and multiplied by the degrees of proof beyond the next lower proof, and the fractional product added to the factor for the next lower proof, or if such factor has been corrected because of odd temperature, to such corrected factor. For example, to ascertain the correction factor for spirits of 112 proof at 47 degrees temperature, we find the difference in the table of 0.001 between 46 degrees and 48 degrees temperature; accordingly, 0.0005 should be added to the factor (1.005) for the next higher temperature (48 degrees), giving a factor of 1.0055 for 47 degrees Fahrenheit; then we find also a difference of 0.001 between 110 proof and 115 proof, or 0.0002 for each percent of proof. Accordingly, for 112 proof we multiply 0.0002 by 2 and get 0.0004 to be added to the factor for the next lower proof, or in this case, to the corrected factor of 1.0055, making the factor to be used 1.0059.

(68A Stat. 639; 26 U. S. C. 5212)

These regulations shall be effective January 1, 1955.

[SEAL] T. COLEMAN ANDREWS,
Commissioner of Internal Revenue.

Approved:

M. B. FOLSOM,
Acting Secretary of the Treasury.

[F. R. Doc. 54-10159; Filed, Dec. 22, 1954; 8:49 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix C—Public Land Orders

[Public Land Order 1037]

ALASKA

WITHDRAWING PUBLIC LAND FOR USE OF THE DEPARTMENT OF TERRITORIAL POLICE AS A HEADQUARTERS SITE; PARTIALLY REVOKING PUBLIC LAND ORDER NO. 738 OF JULY 28, 1951

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public land in Alaska is hereby withdrawn from all forms of appropriation under the public-land laws, including the mining laws but not the mineral-leasing laws, and reserved and set apart under the jurisdiction of the Department of the Interior for use by the Department of Territorial Police as a headquarters site:

SEWARD MERIDIAN

T. 1 S., R. 1 W.,
Sec. 14, that portion of the SW¼SW¼SW¼ lying southwest of the right-of-way of the Richardson Highway.

The area described contains approximately five acres.

Public Land Order No. 738 of July 28, 1951, reserving certain lands for use of the Department of the Air Force for military purposes, is hereby revoked so far as it affects the above-described land.

FRED G. AANDAHL,
Assistant Secretary of the Interior.

DECEMBER 16, 1954.

[F. R. Doc. 54-10143; Filed, Dec. 22, 1954; 8:46 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 54-1541; Docket No. 11206]

[Rules Amdt. 3-32]

PART 3—RADIO BROADCAST SERVICES

TABLE OF ASSIGNMENTS, TELEVISION BROADCAST STATIONS

By the Commission: Commissioners McConnaughey, Chairman; and Hyde not participating; Commissioner Hennock dissenting; Commissioner Bartley dissenting and issuing a statement.[1]

1. The Commission has before it for consideration its Notice of Proposed Rule Making and Order to Show Cause issued in this proceeding on October 21, 1954 (FCC 54-1316) and published in the FEDERAL REGISTER on October 26, 1954 (19 F. R. 6861). By that Notice it was proposed to assign Channel 39 to Miami, Florida, in place of Channel 27, and Channel 27 in Belle Glade, Florida, in place of Channel 25, in response to a petition filed by Tri-County Broadcasting Company, permittee of television station WFTL-TV on Channel 23 in Fort Lauderdale, Florida. Since WMIE-TV, Inc., was authorized to operate on Channel 27 in Miami, WMIE-TV was Ordered to Show Cause why its outstanding authorization should not be modified to specify operation on Channel 39 instead of Channel 27.

2. The Civil Aeronautics Authority requires that high antennas in the order of 600-1,000 feet in the Miami area be placed within an "antenna farm" located 14 miles north of Miami and 10 miles south of Fort Lauderdale. However, Channel 23 at Fort Lauderdale and Channel 27 at Miami, as presently assigned, must be separated by 20 miles in order to limit the effects of intermodulation. Accordingly, the permittees are limited in the selection of suitable sites in the area that will permit tall antennas. In an effort to alleviate this situation, and to permit both the Fort Lauderdale station and the Miami station to locate their sites in the "antenna farm", Tri-County Broadcasting Company initially proposed that Channel 39 be assigned to Miami in place of Channel 27 and that WMIE-TV be Ordered to Show Cause why its authorization should not be modified accordingly. The requested amendment also necessitated the assignment of Channel 27 to Belle Glade, Florida, in place of Channel 25. There are no applications presently on file for the Belle Glade frequency.

3. WMIE-TV, Inc., opposed the modification of its construction permit and also initially submitted a counterproposal in the proceeding suggesting that the authorization for Station WFTL-TV in Fort Lauderdale rather than its own authorization be modified to specify Channel 39 in order to solve the technical problem involved in the use of the "antenna farm" in the Fort Lauderdale-Miami area.[2] However, on November 19, 1954, a joint petition was filed by Tri-County Broadcasting Company, WMIE-TV, Inc., and Storer Broadcasting Company advancing a new counterproposal. The petitioners point out that in light of the conflict between the Fort Lauderdale and Miami stations, numerous conferences were held looking towards a possible solution and that a solution to their difficulties has been worked out on the basis of the entry of Storer Broadcasting Company into the Miami UHF field. The joint petitioners now propose the following channel changes in the Table of Assignments in order that the stations in both Fort Lauderdale and Miami can employ a site in the "antenna farm":

City	Present proposal	New counterproposal
Miami, Fla.	27, 33	23, 33
Fort Lauderdale, Fla.	17, 23	17, 39
Belle Glade, Fla.	25	27

The new counterproposal differs from the previous one only in the fact that Channel 23 is now suggested for Miami and Channel 39 for Fort Lauderdale. The proponents of the instant counterproposal include both permittees whose authorizations would be modified in the event the proposal is adopted. Petitioners note that the time for filing comments and replies in this proceeding expired on November 8 and 15, 1954, respectively, but assert that good cause exists for the acceptance and consideration of their late counterproposal since the agreement now reached among the parties offers an effective solution to the antenna site problem in the Fort Lauderdale-Miami area.[3]

4. An Opposition to the joint counterproposal was filed on December 1, 1954, by Hollywood Broadcasting Company, licensee of AM Station WINZ in Miami-Hollywood, Florida, and Miami-Biscayne Television Corporation, permittee of television station WMFL on Channel 33 in Miami. They urge that the purpose of the requested channel change is to permit the carrying out of various contractual arrangements among the proponents whereby a Fort Lauderdale station, WFTL-TV, would be taken off the air, and the construction permit for a Miami station, WMIE-TV, would be transferred and modified to specify, among other things, operation in Miami on Channel 23 rather than Channel 27. The opponents to the counterproposal contend that petitioners have not demonstrated a clear showing that the public interest requires the amendments requested. They assert that the coverage that will be provided as a result of the change in channels will not exceed, to any appreciable extent, the coverage capable of being provided by the four UHF channels presently authorized for Fort Lauderdale and Miami. They also contend that good cause has not been established for the acceptance of the late counterproposal, but state that if the Commission does accept the late filing, that its Opposition also be accepted and considered in the proceeding.

5. The Commission is of the view that the joint counterproposal now submitted by Tri-County Broadcasting Company, WMIE-TV, Inc., and Storer Broadcasting Company represents an effective solution to the antenna site problem presently existing in the Fort Lauderdale-Miami area; and we believe that good cause has been established for the acceptance of the late counterproposal in this proceeding. The channel assignments now requested by the proponents will permit both a station on Channel 39 in Fort Lauderdale and a station on Channel 23 in Miami to operate from the "antenna farm" established for the location of tall antennas in this area. In our view, the channel assignments now requested will serve the public interest in expediting the establishment of additional and more effective television service in the Miami area. We believe the contentions advanced by Hollywood Broadcasting Company and Miami-Biscayne Television Corporation are without merit and we have concluded that the proposed channel shifts would serve the public interest, convenience and necessity.

6. The proposed channel changes requested in this proceeding, as noted above, involve outstanding authorizations. The Commission believes that the public interest would be served, therefore, by making the channel changes in this proceeding effective immediately. Such a change will expedite the establishment of additional television service in this area.

7. Since stations are presently authorized on Channels 23 in Fort Lauderdale and 27 in Miami, the requested channel changes will necessitate a modification of the outstanding authorizations. Tri-County Broadcasting Company, and WMIE-TV, Inc., as well as Storer Broadcasting Company, the proposed assignee of the Miami station, have indicated that they would consent to a modification of the outstanding authorizations necessary to accomplish the re-

[1] Statement of Commissioner Bartley filed as part of the original document.

[2] Since the initial proposal of Tri-County Broadcasting Company is no longer being considered, the oppositions to it will not be discussed.

[3] There is also pending before the Commission an application for consent to the assignment of the construction permit of Station WMIE-TV to Storer Broadcasting Company and an application by Storer Broadcasting Company, contingent upon the grant of the assignment application and the instant rule-making proceeding, for a modification of the outstanding construction permit for Channel 27 in Miami to specify operation from a site located within the "antenna farm". The petitioners also advise the Commission that Storer proposes to acquire the physical assets of Station WFTL-TV in Fort Lauderdale.

quested channel shifts. Accordingly, the Commission is modifying the outstanding authorization of Station WFTL–TV in Fort Lauderdale, Florida, to specify operation on Channel 39 in lieu of Channel 23 and is modifying the outstanding authorization of Station WMIE–TV in Miami, Florida, to specify operation on Channel 23 in lieu of Channel 27. Appropriate modified authorizations will be issued.

8. Authority for the adoption of the amendments herein is contained in sections 4 (i), 301, 303 (c), (d), (f) and (r), and 307 (b) of the Communications Act of 1934, as amended.

9. In view of the foregoing, *It is ordered*, That, effective immediately, the Table of Assignments contained in § 3.606 of the Commission's Rules and Regulations is amended, insofar as the communities named below are concerned as follows:

City:	Channel No.
Belle Glade, Fla	27+
Fort Lauderdale, Fla	17−, 39
Miami, Fla	*2, 4, 7−, 10+, 23−, 33

(Sec. 4, 48 Stat. 1066 as amended; 47 U. S. C. 154. Interprets or applies secs. 301, 303, 307, 48 Stat. 1081, 1082, 1084; 47 U. S. C. 301, 303, 307)

Adopted: December 16, 1954.

Released: December 17, 1954.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 54–10183; Filed, Dec. 22, 1954; 8:54 a. m.]

PROPOSED RULE MAKING

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[FCC 54–1544; Docket No. 11218]

TABLE OF ASSIGNMENTS, RULES GOVERNING TELEVISION BROADCAST STATIONS

NOTICE OF FURTHER PROPOSED RULE MAKING

1. On November 4, 1954, the Commission issued a Notice of Proposed Rule Making (FCC 54–1384) published in the FEDERAL REGISTER on November 9, 1954 (19 F. R. 7272), relating to a petition to amend the television Table of Assignments contained in § 3.606 of the Commission's Rules and Regulations. The petition of Jack Rose, Albert S. Rose, and S. A. Rosenbaum, d/b as Laurel Television Company, requested the assignment of Channel 7 to Laurel, Mississippi.

2. The Commission now has before it for consideration two conflicting petitions. The first was filed on November 26, 1954, by Mississippi Broadcasting Company (WCOC–TV), Meridian, Mississippi, and requests the assignment of Channel 7 to Pachuta, Mississippi, a community not now listed in the Table of Assignments. The second petition was filed on November 30, 1954, by WGCM Television Corporation, Gulfport, Mississippi, and requests the assignment of Channel 9 to Gulfport by substituting Channel 7 for Channel 9 at Hattiesburg, Mississippi, as follows:

City	Channel No.	
	Delete	Add
Gulfport, Miss		9
Hattiesburg, Miss	9	7

Both of the above proposals would require a change in the offset requirements of the Channel 7 assignment to Munford, Alabama, from 7 even to 7 minus.

3. In support of its proposal to assign Channel 7 to Pachuta, Mississippi, Broadcasting Company urges that it would conform to the Commission's rules; that it would provide television service to a large area and population; that Pachuta is the center of a prosperous agricultural and industrial area; and that the proposed amendment would permit Station WCOC–TV to provide an improved service.

4. In support of its proposal to assign Channel 9 to Gulfport, WGCM urges that the proposal conforms to the Commission's rules; that it would provide a second VHF service to the area and a choice of programs; and that an application for a new station will be filed in the event the proposal is adopted.

5. In light of the conflicting proposals, the above-mentioned Notice of Proposed Rule Making issued on November 4, 1954, is hereby amended to include the petitions of Mississippi Broadcasting Company and WGCM Television Corporation.

6. Authority for the adoption of the proposed amendment is contained in sections 4 (i), 301, 303 (c), (d), (f), and (r), and 307 (b) of the Communications Act of 1934, as amended.

7. Any interested party who is of the opinion that the amendment proposed by the petitioner, by Mississippi Broadcasting Company, or by WGCM Television Corporation should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before January 14, 1955, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments that are submitted before taking action in this matter, and if any comments appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

8. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: December 16, 1954.

Released: December 17, 1954.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 54–10184; Filed, Dec. 22, 1954; 8:54 a. m.]

[47 CFR Part 3]

[FCC 54–1540; Docket No. 11236]

TABLE OF ASSIGNMENTS, RULES GOVERNING TELEVISION BROADCAST STATIONS

NOTICE OF PROPOSED RULE MAKING

1. Notice is hereby given that the Commission has received a proposal for rule making in the above-entitled matter.

2. United Broadcasting Company, Inc., permittee of television Station WOOK–TV, authorized to operate on Channel 50 at Washington, D. C., filed a petition on November 1, 1954, requesting that the Table of Assignments contained in § 3.606, Rules Governing Television Broadcast Stations, be amended as follows:

City	Channel No.	
	Delete	Add
Washington, D. C	50−	14−
Annapolis, Md	14−	50−

Petitioner further requests that the Commission issue an Order to Show Cause why its outstanding authorization should not be modified to specify operation on Channel 14 in lieu of Channel 50.

3. In support of its requested amendment, petitioner urges that the proposal complies with the Rules and standards; that there is no application on file with the Commission for Channel 14 at Annapolis; that the proposed use of Channel 14 at Washington would result in closer frequency spacings on the UHF assignments in Washington and would

result in a more effective UHF service in the area from the point of view of transmission and reception; and that the Commission has recognized the temporary differences among the UHF channels from an equipment standpoint even though it adheres to the basic policy of not making any distinctions for assignment purposes.

4. We are of the view that rule-making proceedings should be instituted with respect to the request for the assignment of Channel 14 to Washington by deleting that assignment from Annapolis. However, we do not believe that a Show Cause Order should be issued to petitioner in order that Station WOOK-TV may be assigned this channel. Rather, we are of the view that Channel 14, if assigned to Washington, should be available for application by all interested parties. It appears that Channel 53 may be substituted for Channel 14 in Annapolis in conformance with the Commission's Rules. Accordingly, it is proposed to amend the Commission's Table of Television Channel Assignments as follows:

City	Channel No.	
	Delete	Add
Washington, D. C.		14-
Annapolis, Md.	14-	53-

5. Authority for the adoption of the proposed amendment is contained in sections 4 (i), 301, 303 (c), (d), (f), and (r), and 307 (b) of the Communications Act of 1934, as amended.

6. Any interested party who is of the opinion that the amendment proposed herein shcuild not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before January 14, 1955, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments before taking final action in this matter, and if any comment appears to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

7. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: December 16, 1954.

Released: December 17, 1954.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 54-10185; Filed, Dec. 22, 1954; 8:55 a. m.]

[47 CFR Part 3]

[FCC 54-1545; Docket No. 11238]

TABLE OF ASSIGNMENTS, RULES GOVERNING TELEVISION BROADCAST STATIONS

NOTICE OF PROPOSED RULE MAKING AND ORDERS TO SHOW CAUSE

1. Notice is hereby given that the Commission has received a proposal for rule making in the above-entitled matter.

2. The Commission has before it for consideration a petition filed on November 5, 1954, by Hudson Valley Broadcasting Company, Inc. (WROW-TV), Albany, New York, requesting an amendment of § 3.606, Table of Assignments, Rules Governing Television Broadcast Stations, so as to assign Channel 10— to Vail Mills, New York. The Commission also has before it the Comments and Counter-Proposal of Van Curler Broadcasting Company (WTRI), filed on November 16, 1954, and Supplement thereto filed on November 17, 1954, and an Opposition to the instant petition filed on November 29, 1954, by Greylock Broadcasting Company (WMGT-TV), North Adams, Massachusetts.

3. In support of the requested amendment, petitioner urges that it is the permittee of television station WROW-TV operating on UHF Channel 41 at Albany, New York; that the proposed assignment to Vail Mills would conform to the Commission's Rules and standards; that it would permit the rendition of a second primary VHF service to the Albany-Schenectady-Troy area; that it would conform to the mandate of section 307 (b) of the Communications Act; and that an application will be filed by petitioner for a station on this assignment in the event it is adopted.

4. In its counter-proposal, Van Curler Broadcasting Company proposes de-intermixture of VHF and UHF commercial assignments in the Albany-Schenectady-Troy area to be accomplished by switching the educational reservation at Albany from UHF Channel 17 to VHF Channel 6. Van Curler urges that the area is ideal for de-intermixture since, other than the VHF signal of Station WRGB on Channel 6, no other Grade A VHF signals are receivable, the nearest other VHF station being over 70 miles distant. Van Curler submits that its counter-proposal would place all commercial television stations in the area on an equal competitive basis; that it would better enable stations in the area to obtain network affiliations and advertising revenue; and that it would provide a ready-made and large audience for an educational station in the area.

5. On December 6, 1954, Van Curler Broadcasting Company, permittee of Station WTRI, Albany, New York, filed a petition in connection with the transfer application for consent to the transfer of control of Hudson Valley Broadcasting Company (File No. BTC-1828). The petition protests pursuant to section 309 (c) of the Communications Act, the grant of the above transfer application. As a part of the relief sought in this petition, Van Curler requests that the Commission defer action upon Hudson Valley's petition for rule making to assign Channel 10 to Vail Mills, New York, pending action upon its protest petition, and that the petition for rule making be designated for hearing in a consolidated proceeding with the transfer application to determine whether the proposed rule changes would serve the public interest, convenience and necessity. The Commission is of the view that withholding action on Hudson Valley's petition for rule making for the reasons advanced in the Van Curler petition would not be appropriate. Van Curler, as an interested party, will have adequate opportunity in the rule-making proceeding instituted by this Notice to present its views and arguments to the Commission. We see no basis for delaying the institution of rule making pending our action on the protest petition; nor do we see any basis for consolidating the rule-making proceeding with the protest matter.

6. The Commission is of the view that rule-making proceedings should be instituted in this matter in order that all interested parties may submit their views to the Commission and the Commission may be apprised of such views prior to taking final action. The petition of Hudson Valley Broadcasting Company and the Oppositions of Van Curler Broadcasting Company and Greylock Broadcasting Company are made part of this docket.

7. Since Station WRGB is operating on Channel 6 in Schenectady and the State Education Department of the University of the State of New York holds a construction permit for an educational station on Channel 17 in Albany, Van Curler, in order to effectuate its counter-proposal, requests that General Electric Company be ordered to show cause why its authorization for Station WRGB should not be modified to specify operation on Channel 17 in lieu of Channel 6, and that the State Education Department, University of the State of New York, be ordered to show cause why its authorization for Station WTVZ should not be modified to specify operation on Channel 6 in lieu of Channel 17. The above stations are Ordered to Show Cause in this proceeding why their authorizations should not be modified as requested in the counter-proposal of Van Curler. Replies to the Orders to Show Cause should be filed by the same date for filing comments in the proceeding.

8. Authority for the adoption of the proposed amendment is contained in sections 4 (i), 301, 303 (c), (d), (f), and (r), 307 (b), and 316 of the Communications Act of 1934, as amended.

9. Any interested party who is of the opinion that the amendment proposed by petitioner should not be adopted or should not be adopted in the form set forth herein may file with the Commission on or before January 31, 1955, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day of filing said original comments or briefs. No additional

comment may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments that are submitted before taking action in this matter, and if any comments appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

10. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: December 16, 1954.

Released: December 17, 1954.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 54-10187; Filed, Dec. 22, 1954; 8:55 a. m.]

[47 CFR Part 3]

[FCC 54-1542; Docket No. 11237]

OPERATION OF LOW POWER TELEVISION BROADCAST STATIONS

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of Part 3 of the Commission's Rules and Regulations concerning television broadcast service to authorize the operation of low power television broadcast stations.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission has been concerned with methods for obtaining the maximum utilization of its television broadcast frequencies and is desirous of stimulating the growth of television in the smaller communities situated in the remote areas presently beyond the service areas of television stations on the air. As a step in this direction, the Commission recently announced in its Public Notice of August 5, 1954 (FCC 54-991), that it would consider applications for stations in the UHF band which do not propose to originate any local programs where it appears that this type of operation would permit the flexibility in operation and the necessary economy to make the operation of a station feasible in a community where one might not otherwise be constructed. The Commission also recently authorized the operation of a VHF station in Lufkin, Texas, which did not propose to originate local programs.

3. As noted above, the Commission has announced that it will, under certain circumstances, authorize the operation of television stations which do not propose to originate local programs. However, under the Commission's present policy, such stations are required to meet the technical requirements prescribed by the rules, including the provisions relating to minimum height and power. The Commission is of the view, however, that a reduction in the minimum power requirement for stations in small communities would offer a further inducement to prospective television operators to construct stations in towns where operation might not otherwise be economically feasible; and the Commission believes that a reduction in the minimum power requirement for cities with populations under 50,000 can be undertaken while still affording such communities adequate coverage.

4. The Commission's Rules and Regulations presently prescribe the minimum effective radiated power for television broadcast stations. The minimum power specified varies in accordance with the size of the city, with cities under 50,000 population required to operate with a minimum of 1 kw effective radiated power at antenna heights of 300 feet above average terrain. For antenna heights below 300 feet power must be increased to provide approximately equivalent coverage as computed in accordance with Figure 1, Appendix III of the rules. The Commission proposes in this proceeding to determine whether the minimum requirement for cities under 50,000 population should be reduced.

5. The Commission is proposing to amend its rules to provide a minimum visual effective radiated power of −10 dbk (100 watts) for stations in communities of under 50,000 population. This figure would obtain for any antenna height. The Commission is therefore proposing to amend its rules as follows:

I. It is proposed to delete paragraph (a) of § 3.614 and to substitute the following:

(a) *Minimum requirements.* Applications filed for television broadcast stations in cities in the population groupings set forth below will not be accepted for filing if they fail to comply with the following requirements as to power and the specified antenna heights above average terrain:

Population of city (excludes adjacent areas) (1950 census):	*Minimum visual effective radiated power in db above 1 kilowatt (dbk) for the antenna height shown.*
1,000,000 and above	17 dbk (50 kw)/500 ft. antenna.
250,000 to 1,000,000	10 dbk (10 kw)/500 ft. antenna.
50,000 to 250,000	3 dbk (2 kw)/300 ft. antenna.
Under 50,000	−10 dbk (100 watts).

No minimum antenna height is specified. For cities under 50,000 population, the −10 dbk (100 watts) minimum requirement applies at any antenna height. For cities with populations over 50,000 where antenna heights differ from those listed above, the Grade A field intensity coverage shall not be less than that resulting from the use of the minimum powers with the antenna heights shown above. Equivalent coverage shall be based on the chart designated as Appendix III, Figure 1; however, the effective radiated power may not exceed the figures specified in Subparagraph (b) of this Section. In no event shall less than 0 dbk effective radiated power be authorized for any station in cities with populations over 50,000.

II. It is proposed to amend Figure 1, Appendix III of Subpart E to Part 3 of the Rules by deleting the "0 dbk/300 ft. (population under 50,000)" line portion of the Figure.

6. Sylvania Electric Products, Inc., filed a petition on September 16, 1953, requesting the institution of rule making to authorize the operation of what it terms independently operated satellite television stations. During the past 2 years, Sylvania has conducted an extensive experimental program in order to achieve a satisfactory method of furnishing television service to isolated communities located in hilly or mountainous terrain, and Sylvania submits that the results of its tests indicate that a system of satellite broadcast stations would constitute a practical means for affording television service to such communities.

7. Sylvania urges that employing the technical information and operating techniques derived from its experimentation will permit the operation of innumerable low power, independently operated, satellite television broadcast stations without requiring any changes in the present television assignment table. Sylvania contends that such operation will afford a relatively inexpensive and rapid solution to the vexatious problem of furnishing television broadcast service to the residents of many small, isolated communities, particularly to such communities located in hilly or mountainous areas. It is pointed out that no interference to existing or potential television broadcast stations would result from the operation as proposed by Sylvania, since it is contemplated that the regular television broadcast channels assigned to the communities would be employed where available. Sylvania submits, further, that the proposed authorization of satellite stations will in no way prevent the licensing of regular, independent broadcast stations in the same community upon application by qualified applicants, and that provision may be made for the termination of a satellite station operation where the public interest requires, upon the establishment of a regular television broadcast station in the same community. By the same token, Sylvania points out that satellite stations may be expanded into regular broadcast stations at any time upon proper application.

8. In light of the Commission's proposal herein to reduce minimum height and power requirements, and in light of the Commission's policy with respect to the authorization of stations which do not propose to originate local programs, the Commission desires that interested parties filing comments in this proceeding direct their attention, among other things, to the following aspects of such operation:

(a) Information relating to the public need and demand for low power operation, including low power operation of stations without locally originated pro-

grams. Such information should include data with respect to:

(1) Interested parties who propose to engage in low power operation including the operation of stations without locally originated programs.

(2) Cost of construction and operation of such stations and the commercial feasibility of such operation.

(b) What technical standards must be changed in order to accommodate such low power operation?

(c) Should low power stations, including those stations not originating local programs, be limited to:

(1) Communities with populations of less than 50,000?

(2) Communities in which there are no operating or authorized stations, or in which no applications have been filed for television assignments?

(3) Communities located at least 50 miles from operating stations?

(4) Should the ownership of low power stations without locally originated programs be independent of the stations whose programs it is rebroadcating?

(5) If a parent station is permitted to own or operate such low power stations rebroadcasting its programs:

(a) Should the rules governing multiple ownership of television broadcast stations apply to the ownership of such low power stations?

(b) What rules, if any, should be adopted to prevent undue concentration of control of television facilities in a given area contrary to the public interest?

9. Authority for the adoption of the proposed amendments is contained in sections 4 (i), 303 (a), (b), (c), (d), (e), (f), (g), and (r), and 307 (b) of the Communications Act of 1934, as amended.

10. Any person desiring to file comments in the subject proceeding may file written data, views, or arguments on or before February 25, 1955. Comments or briefs in reply to the original comments filed in the proceeding may be filed within 15 days from the last day for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking further action in this matter, and if any comments appear to warrant the holding of an oral hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

11. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: December 16, 1954.

Released: December 17, 1954.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 54-10186; Filed, Dec. 22, 1954; 8:55 a. m.]

[1] Dissenting opinion of Commissioner Hennock filed as part of the original document.

[47 CFR Part 3]

[FCC 54-1546; Docket No. 11239]

REVISION OF FCC FORM 302, APPLICATION FOR NEW BROADCAST STATION LICENSE

NOTICE OF PROPOSED RULE MAKING

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. New requirements pertaining to television upper sideband measurements (§ 3.687 (a) (3)) and also to out-of-band television emissions (§ 3.687 (i) became effective October 1, 1954. Therefore, paragraphs 9 (a) and 10, appearing in Section II-C of FCC Form 302, must be revised to reflect the new requirements.

3. Section 3.687 of the Commission's Rules does not require a station to meet the performance requirements for color transmission if only monochrome signals are transmitted. However, stations receiving color programs from a network may not transmit the chrominance portion of such signals unless they are equipped to comply with the color requirements of § 3.687. Therefore, questions concerning color operation should be added to Section II-C of FCC Form 302.

4. The exception to filing the financial data requested in paragraph 5 of Section I of FCC Form 302 was predicated upon the information, including a balance sheet, which formerly was contained in FCC Form 324. Since Form 324 (revised December 1953) does not now include a balance sheet, the exception clause should be deleted.

5. In view of the above, it is proposed to amend FCC Form 302 as follows:

A. Delete the parenthetical expression appearing in paragraph 5, Section 1, which reads: "(If applicant is licensee of a broadcast station having on file with the Commission an Annual Financial Report (FCC Form 324) showing its financial position within the past 12 months and the request in this application is for a change in existing facilities, these exhibits need not be supplied provided that no substantial reduction in financial position has occurred.)"

B. Substitute the following for paragraph 9 (a), "Performance data—Visual Transmitter", appearing in Section II-C:

a. Attach as Exhibit No. ____ data showing the following:

1. Over-all attenuation versus modulating frequency of demodulated signal for modulating frequencies from zero to 4.5 mc;

2. Field strength or voltage of lower sideband for modulating frequencies of 200 kc to 5 mc and of the upper sideband for moduating frequencies of 200 kc to 8 mc;

3. Attenuation with respect to visual transmitter peak power of each r. f. harmonic up to and including the tenth, as measured at the transmitter output terminals (including harmonic filters), except harmonics of channels 2-13 above 1000 mc and harmonics of channels 14-83 above 3000 mc. In lieu of measurements on installed equipment, applicants on channels 14-83 may furnish a certificate from the manufacturer giving the required data for a transmitter of the same type and tuned to the same channel.

4. A description of the equipment and techniques used in making these measurements.

C. Add the following in paragraph 10, Performance data—Aural transmitter, in Section II-C:

e. Attenuation with respect to visual transmitter peak power of each r. f. harmonic up to and including the tenth, as measured at the transmitter output terminals (including harmonic filters), except harmonics of channels 2-13 above 1000 mc and harmonics of channels 14-83 above 3000 mc. In lieu of measurements on installed equipment, applicants on channels 14-83 may furnish a certificate from the manufacturer giving the required data for a transmitter of the same type and tuned to the same channel.

D. Redesignate paragraph II as paragraph 13, in Section II-C.

E. Add new paragraphs 11 and 12 to read as follows:

11. Does the equipment meet the color performance requirements of the Commission's Rules? If the answer is "No," describe in Exhibit No. ____ the provisions that have been made, if any, to attenuate the chrominance portion of color programs not originated by the station when such programs are broadcast in monochrome.

12. If equipment has been modified for color transmission, submit in Exhibit No. ____ data which indicate compliance with the performance requirements of the rules relating to visual/aural carrier frequency tolerance, subcarrier frequency tolerance if locally generated, and transfer characteristic.

6. Authority for the adoption of the proposed amendments herein is vested in the Commission by sections 4 (i), 301, 303 (c), (d), (f), and (r) of the Communications Act of 1934, as amended.

7. Any interested party who is of the opinion that the amendments proposed should not be adopted or should not be adopted in the form set forth herein may file with the Commission on or before January 21, 1955, a written statement or brief setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments that are submitted before taking action in this matter, and if any comments appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

8. In accordance with the provisions of § 1.764 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: December 16, 1954.

Released: December 17, 1954.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 54-10188; Filed, Dec. 22, 1954; 8:56 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Document 21]

ARIZONA

SMALL TRACT CLASSIFICATION ORDER NO. 30, MODIFIED

DECEMBER 15, 1954.

1. Pursuant to authority delegated to the State Supervisors by section 2.5 of Redelegation Order No. 541, dated April 21, 1954 (19 F. R. 2473) by the Director, Bureau of Land Management, I hereby modify Document No. 19, Arizona Small Tract Classification Order No. 30, published December 9, 1954 (19 F. R. 8109), by eliminating therefrom the following described lands:

GILA AND SALT RIVER MERIDIAN

T. 1 N., R. 8 E.,
Sec. 16: SW¼.

2. The lands remaining in Arizona Small Tract Classification Order No. 30 comprise 288 small tracts containing a total of 720 acres.

3. This order shall become effective upon the date it is signed.

4. All other terms and provisions of the original Arizona Small Tract Classification Order No. 30 shall remain in full force and effect and shall be applicable in all respects.

E. I. ROWLAND,
State Supervisor.

[F. R. Doc. 54-10145; Filed, Dec. 22, 1954; 8:46 a. m.]

ALASKA

SMALL TRACT CLASSIFICATION ORDER NO. 91

DECEMBER 16, 1954.

By virtue of the authority contained in the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a) as amended, and pursuant to Delegation of Authority contained in section 1.9 (o) Order No. 541 of April 21, 1954, Bureau of Land Management, it is ordered as follows:

1. Subject to valid existing rights, the public lands hereinafter described, which are situated in the Anchorage, Alaska, Land District, are hereby classified as chiefly valuable for residence purposes, as hereinafter indicated, for lease and sale under the Small Tract Act of June 1, 1938, supra:

HOFFMAN HARBOR GROUP

JUNEAU-DOUGLAS AREA

For Lease and Sale

For Residence Sites

U. S. Survey 3288:
Lot 1.
Lots 3-4, inclusive.
Lots 6-7, 7A, 8, 9 inclusive.
Lot 11.

Comprising 9 lots aggregating 9.39 acres.

SMUGGLERS COVE GROUP NO. 2

JUNEAU-DOUGLAS AREA

For Lease and Sale

For Residence Sites

U. S. Survey 3297: Lots 1-6, inclusive.

Comprising 6 lots aggregating 7.78 acres.

2. Subject to valid existing rights, the following described lands, which are located in the Anchorage, Alaska, Land District and which were classified in paragraph (1) appear from the Land Office records to be subject to valid existing rights based upon prior occupancy pursuant to permits issued heretofore by the Forest Service, U. S. Department of Agriculture: U. S. Survey 3297: Lot No. 2, comprising 1.26 acres.

As to this Lot 2, a preference right will be accorded to the occupant thereof (Anchorage 021798), who, prior to elimination of this tract from the Tongass National Forest, was a holder of a permit issued by the Forest Service. The claimant may file a preference right application for this lot during the period designated for priority Category 1, below.

These lots are located approximately 26 miles and 13 miles respectively northwest of Juneau, Alaska; the Hoffman Harbor Group being located near the end of the road leading to the Eagle River Harbor Landing and Public Service Site at the road's end and the Smugglers Cove Group is located on the extreme tip of the Mendenhall Peninsula. This latter group is not served by an existing road and access is gained via a trail located approximately one-half mile from the end of the Fritz Cove Road. In both areas the land contains considerable rock outcroppings and the soil is thin. Some spruce and hemlock trees are located on all lots. Climatically, the area is similar to most of Southeast Alaska, featuring cool, moist summers, moderate winters, and a heavy annual precipitation. Neither area is served by any form of electric energy and due to the area isolation from existing population centers it is unlikely that either area will be served in the near future. Neither area is served by telephones. Stores, schools, churches, and other public services are located at Auke Bay which is located 15 miles from Hoffman Harbor and 3½ miles from Smugglers Cove. Sewage disposal can be accomplished through septic tanks or cesspools and drinking water can be obtained from wells, streams, or by the use of some rain water storage device. Some of the Hoffman Harbor Group lots front on the beach and the remaining group front on a public beach which has been reserved for the use of all. All Smugglers Cove lots have frontage on Fritz Cove and are accessible by a well worn trail overland.

3. This classification order shall not otherwise become effective to change the status of any lands described herein or to permit the leasing of any such lands under the Small Tract Act of June 1, 1938 cited above until 10:00 a. m. on January 18, 1955, on which date application to lease said lands may be filed, received and acted upon in accordance with the following schedule of priorities:

Priority category	Preferred applicant	Types of application	Duration of priority period	How competing applications will be considered
1	Holders of individual preference rights based on valid settlement, statutory preference, or equitable claims.	Small tract	112 days from date of opening or until close of business on May 9, 1955.	Priority of right.
2	Veterans of World War II and of the Korean Conflict, and other beneficiaries of the act of Sept. 27, 1944, 58 Stat. 747 (43 U. S. C. 279-284), as amended.	do	21 days from date of this opening up to and including 10 a. m. on Feb. 8, 1955.	Simultaneous filing period, drawing at close of period, on date specified.
3	do	do	91 days from the end of the second priority period being the close of business on May 9, 1955.	Order of filing during the priority period.
4	Any other qualified person	do	21 days from Apr. 19, 1955, up to and including 10 a. m. on May 10, 1955.	Drawing at close of the priority period.
5	Any qualified person	do	Any time after the end of the fourth priority period.	Order of filing.

Persons claiming veterans' preference rights under Priority Categories 2 and 3 must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge.

Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations, Part 257.

Inquiries concerning these lands and applications for them shall be addressed to: Manager, Anchorage Land Office, Anchorage, Alaska.

4. Lessees under the Small Tract Act of June 1, 1938 will be required, within a reasonable time after execution of the lease, to construct upon the leased land, to the satisfaction of the appropriate officer of the Bureau of Land Management authorized to sign the lease, improvements which, under the circumstances,

are substantial, and are appropriate for the use for which the lease is issued. Leases will be issued for a period of two years, at an annual rental of $5 for residence sites, payable in advance for the entire lease period. Applications for extention for an additional period of one year shall be considered in appropriate cases. Every lease for land classified for lease and sale will contain an option to purchase clause and every such lessee may file an application to purchase at the sale price as provided in the lease.

5. All of the land will be leased in tracts varying in size from approximately 0.12 acre to approximately 2.22 acres, in accordance with the classification maps on file in the Land Office, Anchorage, Alaska. The tracts are appraised at prices ranging from $50 to $200.

6. Lessees must locate any wells or sewage disposal facilities in accordance with the laws and regulations of the Territory of Alaska.

7. All leases are to bear a clause stating "all lots are subject to a right-of-way for any existing trails". In most cases the trails have been constructed by the Forest Service and have been maintained by interested persons or have become well worn through constant use.

LOWELL M. PUCKETT,
Area Administrator.

[F. R. Doc. 54-10146; Filed, Dec. 22, 1954; 8:46 a. m.]

Bureau of Reclamation

[No. 63]

SHOSHONE PROJECT, WYOMING; HEART MOUNTAIN DIVISION

PUBLIC NOTICE OF ANNUAL WATER RENTAL CHARGES

DECEMBER 3, 1954.

1. *Water rental.* (a) The minimum water rental charge for lands of the Heart Mountain Division for the irrigation season of 1955 and thereafter, until further notice, will be $2.50 per irrigable acre, whether water is used or not, except that such minimum charge need not be paid in any year for any acreage which the Shoshone Project Superintendent certifies is temporarily nonirrigable during the year due to seepage or land subsidence. Payment of such minimum charge will entitle each water user to such amount of water per acre as may beneficially be used by him, such amounts being based on water-holding capacity soil groups and topography. Determination of the total amount of water allowable under the minimum charge payment will be made by the Shoshone Project Superintendent, whose decision will be final, in accordance with tables of water requirements for particular soil and topographic land factors. Such tables will be compiled by the Bureau of Reclamation and will be on file and available for inspection at the office of the Shoshone Project Superintendent. Water in addition to the determined requirements, if available, will be furnished during each irrigation season at the rate of $1.00 per acre-foot for the first acre-foot of water per acre, and for $1.50 per acre-foot for the second and succeeding acre-foot of water per acre.

(b) Upon approval of the Project Superintendent, water may be furnished for Class 5 and 6 lands. The determination of the total amount of water allowable, the minimum charge, and rates for additional water, will be in accordance with paragraph 1 (a) of this notice.

2. *Time of payment.* The minimum charge for water to be delivered for each irrigation season will be due and payable on March 31 preceding that season. Charges for water delivered in excess of the minimum for each irrigation season will be due and payable by the following January 1. No water will be delivered to a water user until all charges have been paid in full.

3. *Discounts and penalties.* If payment of the minimum charge and the charge for additional water furnished under this notice is made on or before January 1 of the year in which due, a discount of 5 percent of such charges will be allowed. To any payment of the charges which is made on and after April 1 of the year in which such payment is due, there shall be added a penalty of one-half of one percent of the unpaid amount for each month or fraction thereof after March 31, so long as such default shall continue, and no water will be delivered until all charges and penalties have been paid in full.

4. *Credit.* Where any water to which a farm unit is entitled upon payment of the minimum water charge is not furnished and used, such water, up to a maximum of 0.4 acre-feet per acre, will be determined. A credit for any such water which is not furnished and used, within a maximum of 0.4 acre-feet per acre, will then be computed at the rate of One Dollar ($1.00) per acre-foot. This credit will be applied on the water bill for the farm unit involved for the succeeding irrigation season.

5. *Place of payment.* All charges will be paid at the office of the Bureau of Reclamation, P. O. Box 822, Powell, Wyoming.

6. *Public Notices Nos. 53, 55, and 58 supplemented.* This notice supplements subparagraphs 5a (1) and (2) of Public Notices Nos. 53, 55, and subparagraph 24 (b) of Public Notice No. 58, Shoshone Project, Wyoming.

L. W. BARTSCH,
Acting Regional Director.

[F. R. Doc. 54-10147; Filed, Dec. 22, 1954; 8:46 a. m.]

[Public Announcement No. 21]

COLUMBIA BASIN PROJECT, WASHINGTON; EAST COLUMBIA BASIN IRRIGATION DISTRICT

PUBLIC ANNOUNCEMENT OF THE SALE OF FULL-TIME FARM UNITS

LANDS COVERED

DECEMBER 1, 1954.

SECTION 1. *Offer of farm units for sale.* It is hereby announced that certain farm units in the East Columbia Basin Irrigation District, Columbia Basin Project, Washington, will be sold to qualified applicants in accordance with the provisions of this announcement. Applications to purchase farm units may be submitted beginning at 2 p. m., December 17, 1954.

In order to permit the continued orderly development and settlement of project lands, this public announcement is issued irrespective of there being pending applications for exchange pursuant to the act of August 13, 1953 (67 Stat. 566).

(a) *Farm units presently owned.* The farm units which are presently owned by the United States, and hereby offered for sale, are described as follows:

Irrigation block No.	Farm unit No.	Total acreage	Tentative irrigable acreage				Nonirrigable	Price
			Total	Class 1	Class 2	Class 3		
45	151	154.3	95.6	----	53.6	42.0	58.7	$2,665.10
	152	128.3	98.1	----	94.7	3.4	30.2	6,955.60
	153	102.8	88.8	----	88.3	.5	14.0	5,827.40
	154	83.3	69.8	----	68.6	1.2	13.5	4,574.60
	155	96.2	88.4	----	84.5	3.9	7.8	5,536.10
	156	96.4	78.9	----	62.3	16.6	17.5	1,223.50
	157	105.6	91.2	----	76.9	14.3	14.4	1,877.10
	158	163.1	116.1	----	60.0	56.1	47.0	2,301.20
	159	112.3	99.0	----	99.0	----	13.3	2,660.50
	160	78.8	63.9	----	60.8	3.1	14.9	1,637.90
	161	80.7	62.7	----	62.7	----	18.0	1,541.30
	169	134.4	99.9	----	91.2	8.7	34.5	6,957.70
	174	93.8	81.5	----	69.6	11.9	12.3	4,383.70
	178	107.2	93.9	----	93.9	----	13.3	2,914.00
	186	125.9	101.5	----	74.2	27.3	24.4	7,030.10
	187	117.2	100.1	----	71.4	28.7	17.1	6,580.30
	188	83.1	70.2	----	70.2	----	12.9	5,029.70
	189	138.6	113.9	----	103.8	10.1	24.7	7,479.40
	190	87.7	65.4	----	45.8	19.6	22.3	4,861.50
	191	102.3	74.2	----	64.8	9.4	28.1	5,248.30
	212	107.3	96.2	----	95.8	.4	11.1	3,197.15

b. *Additional farm units.* It is expected that, through the operation of its land acquisition program the United States may, within twelve (12) months following the date of this announcement, own additional farm units in Irrigation Block 45 and in other irrigation blocks in the East Columbia Basin District which are scheduled to receive water before the close of the 1956 irrigation season. Such farm units may be offered for sale under the provisions of this announcement.

The official plats of these irrigation blocks are on file in the office of the County Auditors of Grant County and Adams County at Ephrata, and Ritzville, Washington, and copies are on file in the

offices of the Bureau of Reclamation at Ephrata, Washington, and Boise, Idaho.

SEC. 2. *Limit of acreage which may be purchased.* The lands covered by this announcement have been divided into farm units. Each of the farm units represents the acreage which, in the opinion of the Regional Director, Region 1, Bureau of Reclamation, will support an average size family at a suitable level of living. The law provides that with certain minor exceptions not more than one farm unit in the entire project may be held by any one owner or family. A family is defined as comprising husband or wife, or both, together with their children under 18 years of age, or all of such children if both parents are dead.

PREFERENCE OF APPLICANTS

SEC. 3. *Nature of preference.* Except for a prior preference given applicants for exchange under the provisions of the act of August 13, 1953 (67 Stat. 566), preference right to purchase the farm units described above will be given to veterans (and in some cases to their husbands or wives or guardians of minor children) who submit applications during a 45-day period beginning at 2 p. m., December 17, 1954, and ending at 2 p. m., January 31, 1955, and who, at the time of making application, are in one of the following five classes:

(a) Persons, including those under 21 years of age, who have served in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States for a period of at least ninety (90) days at any time between September 16, 1940, and the official termination of the Korean conflict, and have been honorably discharged.

(b) Persons, including those under 21 years of age, who have served in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States during the period prescribed in subsection a, of this section regardless of length of service, and who have been discharged on account of wounds received or disability incurred during such period in the line of duty, or subsequent to a regular discharge, have been furnished hospitalization or awarded compensation by the Government on account of such wounds or disability.

(c) The spouse of any person in either of the first two classes listed in this section, if the spouse has the consent of such person to exercise his or her preference right. (See subsection 7 (c) of this announcement regarding the provision that a married woman must be head of a family.)

(d) The surviving spouse of any person in either of the first two classes listed in this section, or in the case of the death or marriage of such spouse, the minor child or children of such person by guardian duly appointed and qualified and who furnishes to the examining board acceptable evidence of such appointment and qualification.

(e) The surviving spouse of any person whose death has resulted from wounds received or disability incurred in the line of duty while serving in the Army, Navy, Marine Corps, Air Force, or Coast Guard during the period described in subsection a. of this section, or in the case of death or marriage of such spouse, the minor child or children of such person by a guardian duly appointed and qualified and who furnishes to the examining board acceptable evidence of such appointment and qualification.

SEC. 4. *Definition of honorable discharge.* An honorable discharge means:

(a) Separation from the service by means of an honorable discharge or by the acceptance of resignation or a discharge under honorable conditions.

(b) Release from active duty under honorable conditions to an inactive status, whether or not in a reserve component or retirement.

Any person who obtains an honorable discharge as herein defined shall be entitled to veterans preference even though such person thereafter resumes active military duty.

QUALIFICATIONS REQUIRED OF PURCHASERS

SEC. 5. *Examining board.* An examining board of three members has been appointed by the Regional Director, Region 1, Bureau of Reclamation, to determine the qualifications and fitness of applicants to undertake the purchase, development, and operation of a farm on the Columbia Basin Project. The board will make careful investigations to verify the statements and representations made by applicants. Any false statements may constitute grounds for rejection of an application and cancellation of the applicant's right to purchase a farm unit.

SEC. 6. *Minimum qualifications.* Certain minimum qualifications have been established which are considered necessary for the successful development of farm units. Applicants must meet these qualifications in order to be eligible for the purchase of farm units. Failure to meet them in any single respect will be sufficient cause for rejection of an application. No added credit will be given for qualifications in excess of the required minimum. The minimum qualifications are as follows:

(a) *Character and industry.* An applicant must be possessed of honesty, temperate habits, thrift, industry, seriousness of purpose, record of good moral conduct, and a bona fide intent to engage in farming as an occupation.

(b) *Farm experience.* Except as otherwise provided in this subsection, an applicant must have had a minimum of two years (24 months) of full-time farm experience, which shall consist of participation in actual farming operations, after attaining the age of 15 years. Time spent in agricultural courses in an accredited agricultural college or time spent in work closely associated with farming, such as teaching vocational agriculture, agricultural extension work, or field work in the production or marketing of farm products, which, in the opinion of the board will be of value to an applicant in operating a farm, may be substituted for full-time farm experience. Such substitution shall be on the basis of one year (academic year of at least nine months) of agricultural college courses or one year (twelve months) of work closely associated with farming for six months of full-time farm experience. Not more than one year of full-time farm experience of this type will be allowed. A farm youth who actually resided and worked on a farm after attaining the age of 15 and while attending school may credit such experience as full-time experience.

Applicants who have acquired their experience on an irrigated farm will not be given preference over those whose experience was acquired on a nonirrigated farm, but all applicants must have had farm experience of such nature as in the judgment of the examining board will qualify the applicant to undertake the development and operation of an irrigated farm by modern methods.

(c) *Health.* An applicant must be in such physical condition as will enable him to engage in normal farm labor.

(d) *Capital.* An applicant must possess assets worth at least $4,500 in excess of liabilities. Assets must consist of cash, property readily convertible into cash or property such as livestock, farm machinery and equipment, which, in the opinion of the board, will be useful in the development and operation of a new, irrigated farm. In considering the practical value of property which will be useful in the development of a farm, the board will not value household goods at more than $500 or a passenger car at more than $500. Assets not useful in the development of a farm will be considered if the applicant furnishes, at the board's request, evidence of the value of the property and proof of its conversion into useful form before execution of a purchase contract.

SEC. 7. *Other qualifications required.* Each applicant (except guardian) must meet the following requirements:

(a) Be a citizen of the United States or have declared an intention to become a citizen of the United States.

(b) Not own outright, or control under a contract to purchase, more than ten acres of crop land or a total of 160 acres of land at the time of execution of a purchase contract for a farm unit.

(c) If a married woman, or a person under 21 years of age who is not eligible for veterans preference, be the head of a family. The head of a family is ordinarily the husband, but a wife or a minor child who is obliged to assume major responsibility for the support of a family may be the head of a family.

WHERE AND HOW TO SUBMIT AN APPLICATION

SEC. 8. *Filing application blanks.* Any person desiring to purchase a farm unit offered for sale by this announcement must fill out the attached application blank and file it with the Land Settlement Branch, Bureau of Reclamation, Ephrata, Washington, in person or by mail. Additional application blanks may be obtained from the office of the Bureau of Reclamation at Ephrata, Washington; Post Office Box 937 Boise, Idaho; or Washington, D. C. No advantage will accrue to an applicant who presents an application in person. Each application submitted, including the evidence of qualification to be submitted following the public drawing, will become a part of

the records of the Bureau of Reclamation and cannot be returned to the applicant.

SELECTION OF QUALIFIED APPLICANTS

SEC. 9. *Priority of applications.* All applications except those received from qualified exchange applicants prior to 2 p. m., January 31, 1955, which shall be given prior preference, will be classified for priority purposes as follows:

(a) *First Priority Group.* All complete applications filed prior to 2 p. m., January 31, 1955, by applicants who claim veterans preference. All such applications will be treated as simultaneously filed.

(b) *Second Priority Group.* All complete applications filed prior to 2 p. m., January 31, 1955, by applicants who do not claim veterans preference. All such applications will be treated as simultaneously filed.

(c) *Third Group.* All complete applications filed after 2 p. m., January 31, 1955. Such applications will be considered in the order in which they are filed if any farm units are available for sale to applicants within this group.

SEC. 10. *Public drawing.* After the priority classification, the board will conduct a public drawing of the names of the applicants in the First Priority Group as defined in subsection 9 (a) of this announcement. Applicants need not be present at the drawing to participate therein. The names of a sufficient number of applicants (not less than four times the number of farm units to be offered for sale) shall be drawn and numbered consecutively in the order drawn for the purpose of establishing the order in which the applications drawn will be examined by the board to determine whether the applicants meet the minimum qualifications prescribed in this announcement, and to establish the priority of qualified applicants for the selection of farm units. After such drawing, the board shall notify each applicant of his respective standing as a result of the drawing.

SEC. 11. *Submission of evidence of qualification.* After the drawing, a sufficient number of applicants, in the order of their priority as established by the drawing, will be supplied with forms on which to submit evidence of qualification, showing that they meet the qualifications set forth in sections 6 and 7 of this announcement and, in case veterans preference is claimed, establishing proof of such preference, as set forth in section 3 of this announcement. Full and accurate answers must be made to all questions. The completed form must be mailed or delivered to the Land Settlement Branch, Bureau of Reclamation, Ephrata, Washington, within 20 days of the date the form is mailed to the last address furnished by the applicant. Failure of an applicant to furnish all of the information requested or to see that information is furnished by his references within the time period specified will subject his application to rejection.

SEC. 12. *Examination and interview.* After the information outlined in section 11 of this announcement has been received or the time for submitting such statements has expired, the board shall examine in the order drawn a sufficient number of applications together with the evidence of qualification submitted to determine the applicants who will be permitted to purchase farm units. This examination will determine the sufficiency, authenticity, and reliability of the information and evidence submitted by the applicants.

If the applicant fails to supply any of the information required or the board finds that the applicant's qualifications do not meet the requirements prescribed in this announcement, the applicant shall be disqualified and shall be notified by the board, by registered mail, of such disqualification and the reasons therefor and of the right to appeal to the Regional Director, Region 1, Bureau of Reclamation. All appeals must be received in the office of the Land Settlement Branch, Bureau of Reclamation, Ephrata, Washington, within 15 days of the applicant's receipt of such notice or, in any event, within 30 days from the date when the notice is mailed to the last address furnished by the applicant. The Land Settlement Branch will promptly forward the appeal to the Regional Director.

If the examination indicates that an applicant is qualified, the applicant may be required to appear for a personal interview with the board for the purpose of: (a) Affording the board any additional information it may desire relative to his qualifiactions; (b) affording the applicant any information desired relative to conditions in the area and the problems and obligations relative to development of a farm unit; and (c) affording the applicant an opportunity to examine the farm units.

If an applicant fails to appear before the board for a personal interview on the date requested, he will thereby forfeit his priority position as determined by the drawing.

If the board finds that an applicant's qualifications fulfill the requirements prescribed in this announcement, such applicant shall be notified, in person or by registered mail, that he is a qualified applicant and shall be given an opportunity to select one of the farm units available then for purchase. Such notice will require the applicant to make a field examination of the farm units available to him and in which he is interested, to select a farm unit, and to notify the board of such selection within the time specified in the notice.

SELECTION OF FARM UNITS

SEC. 13. *Order of selection.* The applicants who have been notified of their qualification for the purchase of a farm unit will successively exercise the right to select a farm unit in accordance with the priority established by the drawing. If a farm unit becomes available through failure of a qualified applicant to exercise his right of selection or failure to complete his purchase, it will be offered to the next qualified applicant who has not made a selection at the time the unit is again available. An applicant who is considered to be disqualified as a result of the personal interview will be permitted to exercise his right to select, notwithstanding his disqualification, unless he voluntarily surrenders this right in writing. If, on appeal, the action of the board in disqualifying an applicant as a result of the personal interview is reversed by the Regional Director, the applicant's selection shall be effective, but if such action of the board is upheld by the Regional Director, the farm unit selected by this applicant will become available for selection by qualified applicants who have not exercised their right to select.

If any of the farm units listed in this announcement remain unselected after all qualified applicants whose names were selected in the drawing have had an opportunity to select a farm unit, and if additional applicants remain in the First Priority Group, the board will follow the same procedure outlined in section 10 of this announcement in the selection of additional applicants from this group.

If any of the farm units remain unselected after all qualified applicants in the First Priority Group have had an opportunity to select a farm unit, the board will follow the same procedure to select applicants from the Second Priority Group, and they will be permitted to exercise their right to select a farm unit in the manner prescribed for the qualified applicants from the First Priority Group.

Any farm units remaining unselected after all qualified applicants in the Second Priority Group have had an opportunity to select a farm unit will be offered to applicants in the Third Group in the order in which their applications were filed, subject to the determination of the board, made in accordance with the procedure prescribed herein, that such applicants meet the minimum qualifications prescribed in this announcement.

If any farm units offered by or under this announcement remain unsold for a period of two years following the date of this announcement, the Project Manager, Columbia Basin Project, Bureau of Reclamation, may sell, lease, or otherwise dispose of such units to qualified applicants without regard to the provisions of section 10 of this announcement.

SEC. 14. *Failure to select.* If any applicant refuses to select a farm unit or fails to do so within the time specified by the board, such applicant shall forfeit his position in his priority group and his name shall be placed last in that group.

PURCHASE OF SELECTED UNIT

SEC. 15. *Execution of purchase contract.* When a farm unit is selected by an applicant as provided in section 13 of this announcement, the Project Manager will promptly give the applicant a written notice confirming the availability to him of the unit selected and will furnish the necessary purchase contract, together with instructions concerning its execution and return. In that notice the Project Manager will also inform the applicant of the amount of the irrigation charges assessed by the East Columbia Basin Irrigation District or, if such charges have not been assessed, of an estimate of the amount of the charges

for the first year of the development period, to be deposited with the Secretary, East Columbia Basin Irrigation District.

If the purchase is made subsequent to April 1 of any year during the development period, a deposit will be required to cover payment of water charges for the balance of that year as well as for the year following the purchase.

SEC. 16. *Terms of sale.* Contracts for the sale of farm units pursuant to this announcement will contain, among others, the following principal provisions:

(a) *Down payment.* An initial or down payment of not less than 20 percent of the purchase price of the lands being purchased from the United States will be required. Larger proportions, or the entire amount of the price, may be paid initially at the purchaser's option.

(b) *Schedule for payment of balance; interest rate.* If only a portion of the purchase price is paid initially, the remainder will be payable within a period of 20 years following the date of the contract. No payments on the principal, except the down payment, will be required during the first three years and the Project Manager may postpone such payments for as long as the first five years of the contract. Interest on the unpaid balance at the rate of three per cent per annum, however, will be payable annually. When payments on the principal are resumed, they will be payable each year. The schedule of principal payments, which will be established by the Project Manager, will provide for relatively small payments during the first years and larger payments during the later years of the contract period. Payment of any or all installments, or any portion thereof, may be made before their due dates at the purchaser's option.

(c) *Development requirements.* In order that the irrigable area of the entire farm unit shall be developed with reasonable dispatch, each purchaser will be required, as a minimum, to clear, level, irrigate, and plant to crops by the end of each of the calendar years indicated below, and to maintain in crops thereafter, the following percentages of irrigable land as tentatively or finally classified:

Size of farm unit in irrigable acres	Percentage of land classified tentatively or finally as irrigable to be developed by end of each year. (Period will begin with year of purchase if contract is executed and water is available on or before May 1 of that year; otherwise period will begin with the next calendar year.)			
	Second year	Third year	Fourth year	Fifth year
10 to 40	75	----------	----------	----------
41 to 60	50	75	----------	----------
61 to 80	50	65	75	----------
81 to 100	40	60	65	75
101 to 160	35	50	65	75

(d) *Residence requirements.* A major objective of the settlement program for the Columbia Basin Project is to assist and encourage the permanent settlement of farm families. In keeping with this objective, each purchaser will be required to do the following with respect to residence: (1) Within one year from the date of his contract, or within one year from the date that water is available to the irrigation block in which the farm unit is located, whichever is later, to initiate residence by actually moving onto the unit, such residence to be maintained by living thereon for not less than 12 months within an 18-month period following the initial date of residence, and (2) before receiving title to the unit under the purchase contract, to establish a permanent and habitable dwelling on the unit. The time for compliance with the initiation of residence may be extended by the Project Manager for periods of as long as six months, upon his determination that an extension is necessary to avoid undue hardship to the purchaser and that it will not be detrimental to the orderly development of the irrigation block. The latest permissible date for initiating residence, however, will not be extended for more than one year in addition to the one-year period specified above. In extraordinary situations, the requirements under (1) and (2) above may be waived entirely upon the determination by the Regional Director, after recommendation by the Project Manager, that such waiver will be in the interest of orderly development of the block. Any such waiver, however, shall be conditioned on the requirement that the purchaser reside close enough to his unit to permit him to develop it through his own efforts.

(e) *Speculation and landholding limitations.* Purchase contracts and deeds covering farm units offered by this announcement will include provisions governing (1) maximum permissible sizes of holdings of irrigable land; (2) continued conformance of land to the area and boundaries of the farm unit plat for the block; (3) prices at which land can be resold during a period of five years following the date on which water is made available to the irrigation block; (4) disposal of land should it become excess at any time; and (5) limitations as to total area that may be operated on the project whether as lessee or as owner or both.

(f) *Copies of contract form.* The terms listed above, and all other standard contract provisions, are contained in the purchase contract form, copies of which may be obtained by writing to the Bureau of Reclamation, Ephrata, Washington.

IRRIGATION CHARGES

SEC. 17. *Water rental charges.* During the irrigation season of 1956, while some construction activities will be continuing and the system is being tested, it is expected that the water will be furnished on a temporary rental basis to those desiring it. The terms of payment, which will be at a fixed rate per acre-foot of water used, will be announced by the Regional Director before the beginning of the irrigation season.

SEC. 18. *Development period charges.* Pursuant to the provisions of the repayment contract of October 9, 1945, between the United States and the East Columbia Basin Irrigation District in the Columbia Basin Project, the Secretary of the Interior will announce a development period of ten years during which time payment of construction charge installments will not be required. This period probably will commence with the calendar year 1957. During the development period, water rental charges will average an estimated $5.50 per year for each irrigable acre as tentatively or finally classified. This figure is preliminary and subject to change because all the data needed to fix the charges are not available nor can they be obtained now. In any event, there will be a minimum charge per farm unit each year whether or not water is used. A notice establishing the details of the plan to be followed and announcing charges and governing provisions for the first year of the development period will be issued prior to January 1 of that year, by the Regional Director, who has the responsibility for fixing charges.

The present plans of the Regional Director are (a) to vary the minimum charge according to the anticipated relative repayment ability of the various land classes; (b) to provide for a small minimum charge for the first year and to increase it each year thereafter so that the charge for the tenth year will be approximately equal to the combined construction and operation and maintenance charge for the following year; and (c) to charge for water in excess of the amount furnished for the minimum charge on an acre-foot basis. The minimum charge will entitle each user to a quantity of water to be specified by the Regional Director, varying with the water requirement classification of the land and the size of the farm unit.

In addition to the water rental charges, the Irrigation District will levy an additional charge to cover administrative costs and probably delinquencies in collections.

SEC. 19. *Construction period repayment charges*—(a) *Operation and maintenance charges.* After the development period has ended, water users will pay a charge for operation and maintenance of the project irrigation system which will be uniform for the irrigation blocks throughout the project. These charges may or may not be graduated among land classes. Assessment procedure will be left for the Irrigation District Board of Directors to determine, but, in any case, there will be an annual minimum charge per acre. In order to encourage careful use of water, this annual minimum charge will entitle the water user to one-half acre-foot of water per acre less than the amount of water normally required. The normal requirements for the various classes of land will be determined and announced as provided in the repayment contract with the East Columbia Basin Irrigation District. Water in excess of the quantity covered by the minimum charge will be paid for on an acre-foot basis in accordance with an ascending, graduated scale.

(b) *Construction charges.* The contract between the United States and the East Columbia Basin Irrigation District requires the payment of construction charges for the project irrigation system during the forty years following the de-

velopment period. The average construction charge per irrigable acre for the entire project will be $2.12 per year. Thus, the total construction charge payment will average $85 per irrigable acre, but that amount was predicated on an estimated total direct irrigation cost of not to exceed $280,782,180 as indicated by Article 6 of the repayment contract, an amount that it now appears is likely to be exceeded. The contract further provides that construction charges shall be graduated according to the relative repayment ability of the land; consequently, the charge per irrigable acre will be larger for the better lands than for the poorer lands. This allocation of construction charges by classes of land will be made as soon as practicable.

FRED G. AANDAHL,
Assistant Secretary of the Interior.

[F. R. Doc. 54-10148; Filed, Dec. 22, 1954; 8:47 a. m.]

National Park Service

[Order 14]

REGIONAL DIRECTORS

DELEGATIONS OF AUTHORITY

DECEMBER 1, 1954.

SECTION 1. The Regional Directors of the National Park Service, in the administration, operation, and development of the areas and offices in the Regions under their supervision, and the Superintendent, National Capital Parks, in the administration, operation, and development of the areas and offices under his supervision, are authorized to exercise all of the authority vested in the Director, except with respect to the following matters:

(a) Approval of changes in policies and establishment of new policies.

(b) Approval of construction programs and major changes therein.

(c) Location of new roads.

(d) Appointments and status changes involving personnel in grade GS-10 and higher grades, and Superintendents in all grades.

(e) Acquisition of lands, acceptance of donations of personal property valued in excess of $10,000, acceptance of donations of money in excess of $10,000, and acceptance of deeds or other instruments of title relating thereto.

(f) Acceptance of offers in settlement of timber trespasses.

(g) Sales of timber pursuant to section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U. S. C., 1952 ed., sec. 3), in excess of $10,000 for any one transaction.

(h) Functions relating to surplus land pursuant to the Surplus Property Act, as amended (50 U. S. C., App., 1952 ed., sec. 1622 (h)).

(i) Execution of concession contracts and permits in excess of 5 years and approval of transfers of corporate stock, except stock transfers which do not involve a change in ownership in more than 15 per cent of the outstanding stock and will not vest in the transferee more than 50 per cent of the outstanding stock of a bathhouse, or involve an interest in more than one bathhouse in Hot Springs National Park.

(j) Execution of permits for the use of national park lands, except revocable special use permits.

(k) Approval of programs for destruction and disposition of wild animals which are damaging the land or its vegetative cover, and of permits to collect rare or endangered species.

(l) Approval of contracts for construction, supplies, or services in excess of $50,000.

(m) Disposition of lands or interests therein.

(n) Approval of and signing of correspondence to the Attorney General concerning pleadings, awards, or judgments in condemnation proceedings.

(o) Requests to the Attorney General to render opinions concerning the validity of title pursuant to section 355, Revised Statutes (40 U. S. C., 1952 ed., sec. 255).

(p) Authorization or approval of the attendance of officers or employees at meetings or conventions of members of societies or associations concerned with the work of the National Park Service when such attendance involves payment of travel costs against appropriated funds.

(q) Approval of the use of a Government-owned motor vehicle between the domicile and place of employment of an officer or employee.

(r) Authorization or approval of the payment of dues for library membership in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members.

(s) Authority to issue general travel authorizations.

(t) Approval of master plans, preliminary plans for concessioners' projects, plans which establish the architectural theme in newly developed areas or a departure from previously established theme in established areas, and plans for LP-Gas installations which have not been recommended by the Safety Engineer of the Eastern or Western Office, Division of Design and Construction.

(u) Approval of museum prospectuses and exhibit plans.

(v) Approval of outstanding performance ratings of employees.

SEC. 2. *Redelegation.* The Regional Directors and the Superintendent, National Capital Parks, may, in writing, redelegate to any officer or employee the authority delegated in section 1, and may authorize written redelegations of such authority. Each redelegation shall be published in the FEDERAL REGISTER.

SEC. 3. *Appeal.* Any party aggrieved by any action or decision of a Regional Director or the Superintendent, National Capital Parks, shall have a right of appeal to the Director. Any such appeal shall be in writing and shall be submitted to the Director within 30 days after receipt by the aggrieved party of notice of the action taken or decision made by the Regional Director or the Superintendent, National Capital Parks, as the case may be.

SEC. 4. *Revocation.* This order supersedes National Park Service Delegation of Authority Order No. 10, as amended, and Orders Nos. 11, 12, and 13.

(Secretary's Orders Nos. 2586, 2587, 2590, 2621, and Secretary's Orders Nos. 2509, 2512, 2617, 2619, 2635, 2640, 2642, 2696, 2735, as amended; 39 Stat. 535, 16 U. S. C., 1952 ed., sec. 2)

[SEAL] CONRAD L. WIRTH,
Director.

[F. R. Doc. 54-10177; Filed, Dec. 22, 1954; 8:53 a. m.]

[Region I Order 2]

SUPERINTENDENTS AND REGIONAL ADMINISTRATIVE OFFICERS, REGION I

DELEGATIONS OF AUTHORITY

DECEMBER 1, 1954.

SECTION 1. The National Park Service Superintendents in Region One whose positions are allocated to Civil Service grades GS-14 and above, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director.

SEC. 2. The Superintendents whose positions are allocated to Civil Service grades GS-11 to GS-13, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director, except with respect to the following matter:

(a) Approval of contracts for construction, supplies, or services in excess of $25,000.

SEC. 3. The Superintendents whose positions are allocated to Civil Service grades GS-7 to GS-10, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director, except with respect to the following matters:

(a) Execution or approval of contracts for construction, supplies, or services in excess of $5,000.

(b) Appointments and status changes involving personnel in the same Civil Service grade as, or grades higher than, the Superintendent making appointment or status change.

(c) Issuance of revocable special use permits having a term of more than three years.

(d) Acceptance of donations of personal property valued in excess of $5,000, and acceptance of donations of money in excess of $5,000.

(e) Reimbursement of employees and other owners for property lost, damaged, or destroyed.

(f) Hire, rental, or purchase of personal property from employees.

(g) Sales of timber pursuant to section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U. S. C., 1952 ed., sec. 3), in excess of $1,000 for any one transaction.

(h) Issuance of concession permits and contracts having a term of more than three years.

SEC. 4. *Regional Administrative Officers.* The Regional Administrative Officers may execute and approve contracts not in excess of $25,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Regional Administrative Officers in behalf of any office or area for which they serve as the principal fiscal officer.

SEC. 5. *Redelegation.* The Superintendents may, in writing, redelegate to any officer or employee the authority delegated in sections 1 and 2. Each redelegation shall be published in the FEDERAL REGISTER.

SEC. 6. *Appeal.* Any party aggrieved by any action or decision of a Superintendent shall have a right of appeal to the Regional Director who has supervision of the area. Any such appeal shall be in writing and shall be submitted to the Regional Director within 30 days after receipt by the aggrieved party of notice of the action taken or decision made by the Superintendent.

SEC. 7. *Revocation.* This order supersedes Order No. 1 issued June 15, 1954 (19 F. R. 4364).

(National Park Service Order No. 14; 39 Stat. 535; 16 U. S. C., 1952 ed., sec. 2)

[SEAL] ELBERT COX,
Regional Director,
Region One.

[F. R. Doc. 54-10178; Filed, Dec. 22, 1954; 8:53 a. m.]

[Region II Order 2]

SUPERINTENDENTS AND REGIONAL ADMINISTRATIVE OFFICERS, REGION II

DELEGATIONS OF AUTHORITY

DECEMBER 1, 1954.

SECTION 1. The National Park Service Superintendents in Region Two whose positions are allocated to Civil Service grades GS-14 and above, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director.

SEC. 2. The Superintendents whose positions are allocated to Civil Service grades GS-11 to GS-13, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director, except with respect to the following matter:

(a) Approval of contracts for construction, supplies, or services in excess of $25,000.

SEC. 3. The Superintendents whose positions are allocated to Civil Service grades GS-7 to GS-10, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director, except with respect to the following matters:

(a) Execution or approval of contracts for construction, supplies, or services in excess of $5,000.

(b) Appointments and status changes involving personnel in the same Civil Service grade as, or grades higher than, the Superintendent making appointment or status change.

(c) Issuance of revocable special use permits having a term of more than three years.

(d) Acceptance of donations of personal property valued in excess of $5,000, and acceptance of donations of money in excess of $5,000.

(e) Reimbursement of employees and other owners for property lost, damaged, or destroyed.

(f) Hire, rental, or purchase of personal property from employees.

(g) Sales of timber pursuant to section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U. S. C., 1952 ed., sec. 3), in excess of $1,000 for any one transaction.

(h) Issuance of concession permits and contracts having a term of more than three years.

SEC. 4. *Regional Administrative Officers.* The Regional Administrative Officers may execute and approve contracts not in excess of $25,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Regional Administrative Officers in behalf of any office or area for which they serve as the principal fiscal officer.

SEC. 5. *Redelegation.* The Superintendents may, in writing, redelegate to any officer or employee the authority delegated in sections 1 and 2. Each redelegation shall be published in the FEDERAL REGISTER.

SEC. 6. *Appeal.* Any party aggrieved by any action or decision of the Superintendent shall have a right of appeal to the Regional Director who has supervision of the area. Any such appeal shall be in writing and shall be submitted to the Regional Director within 30 days after receipt by the aggrieved party of notice of the action taken or decision made by the Superintendent.

SEC. 7. *Revocation.* This order supersedes Order No. 1 issued June 15, 1954 (19 F. R. 4364).

(National Park Service Order No. 14; 39 Stat. 535; 16 U. S. C., 1952 ed., sec. 2)

[SEAL] HOWARD W. BAKER,
Regional Director,
Region Two.

[F. R. Doc. 54-10179; Filed, Dec. 22, 1954; 8:53 a. m.]

[Region III Order 2]

SUPERINTENDENTS AND REGIONAL ADMINISTRATIVE OFFICERS, REGION III

DELEGATIONS OF AUTHORITY

DECEMBER 1, 1954.

SECTION 1. The National Park Service Superintendents in Region Three whose positions are allocated to Civil Service grades GS-14 and above, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director.

SEC. 2. The Superintendents whose positions are allocated to Civil Service grades GS-11 to GS-13, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director, except with respect to the following matter:

(a) Approval of contracts for construction, supplies, or services in excess of $25,000.

SEC. 3. The Superintendents whose positions are allocated to Civil Service grades GS-7 to GS-10, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director, except with respect to the following matters:

(a) Execution or approval of contracts for construction, supplies, or services in excess of $5,000.

(b) Appointments and status changes involving personnel in the same Civil Service grade as, or grades higher than, the Superintendent making appointment or status change.

(c) Issuance of revocable special use permits having a term of more than three years.

(d) Acceptance of donations of personal property valued in excess of $5,000, and acceptance of donations of money in excess of $5,000.

(e) Reimbursement of employees and other owners for property lost, damaged, or destroyed.

(f) Hire, rental, or purchase of personal property from employees.

(g) Sales of timber pursuant to section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U. S. C., 1952 ed., sec. 3), in excess of $1,000 for any one transaction.

(h) Issuance of concession permits and contracts having a term of more than three years.

SEC. 4. *Regional Administrative Officers.* The Regional Administrative Officers may execute and approve contracts not in excess of $25,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Regional Administrative Officers in behalf of any office or area for which they serve as the principal fiscal officer.

SEC. 5. *Redelegation.* The Superintendents may, in writing, redelegate to any officer or employee the authority delegated in sections 1 and 2. Each redelegation shall be published in the FEDERAL REGISTER.

SEC. 6. *Appeal.* Any party aggrieved by any action or decision of a Superintendent shall have a right of appeal to the Regional Director who has super-

vision of the area. Any such appeal shall be in writing and shall be submitted to the Regional Director within 30 days after receipt by the aggrieved party of notice of the action taken or decision made by the Superintendent.

SEC. 7. *Revocation.* This order supersedes Order No. 1 issued July 13, 1954 (19 F. R. 4569)

(National Park Service Order No. 14; 39 Stat. 535; 16 U. S. C., 1952 ed., sec. 2)

[SEAL] M. R. TILLOTSON,
Regional Director, Region Three.

[F. R. Doc. 54-10180; Filed, Dec. 22, 1954; 8:53 a. m.]

[Region IV Order 2]

SUPERINTENDENTS AND REGIONAL ADMINISTRATIVE OFFICERS, REGION IV

DELEGATIONS OF AUTHORITY

DECEMBER 1, 1954.

SECTION 1. The National Park Service Superintendents in Region Four whose positions are allocated to Civil Service grades GS-14 and above, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director.

SEC. 2. The Superintendents whose positions are allocated to Civil Service grades GS-11 to GS-13, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director, except with respect to the following matter:

(a) Approval of contracts for construction, supplies, or services in excess of $25,000.

SEC. 3. The Superintendents whose positions are allocated to Civil Service grades GS-7 to GS-10, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority delegated to the Regional Director by the Director, except with respect to the following matters:

(a) Execution or approval of contracts for construction, supplies, or services in excess of $5,000.

(b) Appointments and status changes involving personnel in the same Civil Service grade as, or grades higher than, the Superintendent making appointment or status change.

(c) Issuance of revocable special use permits having a term of more than three years.

(d) Acceptance of donations of personal property valued in excess of $5,000, and acceptance of donations of money in excess of $5,000.

(e) Reimbursement of employees and other owners for property lost, damaged, or destroyed.

(f) Hire, rental, or purchase of personal property from employees.

(g) Sales of timber pursuant to section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U. S. C., 1952 ed., sec. 3), in excess of $1,000 for any one transaction.

(h) Issuance of concession permits and contracts having a term of more than three years.

SEC. 4. *Regional Administrative Officers.* The Regional Administrative Officers may execute and approve contracts not in excess of $25,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Regional Administrative Officers in behalf of any office or area for which they serve as the principal fiscal officer.

SEC. 5. *Redelegation.* The Superintendents may, in writing, redelegate to any officer or employee the authority delegated in sections 1 and 2. Each redelegation shall be published in the FEDERAL REGISTER.

SEC. 6. *Appeal.* Any party aggrieved by any action or decision of a Superintendent shall have a right of appeal to the Regional Director who has supervision of the area. Any such appeal shall be in writing and shall be submitted to the Regional Director within 30 days after receipt by the aggrieved party of notice of the action taken or decision made by the Superintendent.

SEC. 7. *Revocation.* This order supersedes Order No. 1 issued July 9, 1954 (19 F. R. 4569).

(National Park Service Order No. 14; 39 Stat. 535; 16 U. S. C., 1952 ed., sec. 2)

[SEAL] LAWRENCE C. MERRIAM,
Regional Director, Region Four.

[F. R. Doc. 54-10181; Filed, Dec. 22, 1954; 8:53 a. m.]

Office of the Secretary

[Order No. 2779]

VARIOUS OFFICIALS

EMERGENCY AUTHORITY IN THE BUREAU OF RECLAMATION

DECEMBER 16, 1954.

SECTION 1. *Delegation of authority.* (a) The Assistant Commissioner and Chief Engineer, Denver, may exercise the authority of the Commissioner of Reclamation if the Assistant Commissioner and Chief Engineer determines that a national defense emergency exists and that by reason of such emergency the Commissioner and Assistant Commissioners in Washington are unable to perform the duties of the Commissioner.

(b) Any Regional Director may exercise the authority of the Commissioner of Reclamation within his region if the Regional Director determines that a national defense emergency exists and that by reason of such emergency the Commissioner, Assistant Commissioner and Chief Engineer, and Assistant Commissioners are unable to exercise such authority with respect to his region.

(c) The District Manager, Alaska District, may exercise the authority of the Commissioner of Reclamation within the District if the District Manager determines that a national defense emergency exists and that by reason of such emergency the Commissioner, Assistant Commissioner and Chief Engineer, and Assistant Commissioners are unable to exercise such authority with respect to the District.

SEC. 2. *Title.* When exercising the authority granted in section 1 of this order, the Assistant Commissioner and Chief Engineer shall sign documents under the title "Acting Commissioner," a Regional Director and the District Manager, Alaska District, shall sign documents under their respective titles, followed by the words "For the Commissioner."

(Sec. 2, Reorganization Plan No. 3 of 1950; 5 U. S. C., 1952 ed., sec. 133z-15, note)

DOUGLAS MCKAY,
Secretary of the Interior.

DECEMBER 16, 1954.

[F. R. Doc. 54-10149; Filed, Dec. 22, 1954; 8:47 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

COMMUNICABLE DISEASE OF SHEEP

TERMINATION OF FINDING OF EMERGENCY OUTBREAK

Whereas the emergency outbreak of an infectious virus disease of sheep known as scrapie referred to in the declaration dated October 31, 1952, has been eradicated to our best knowledge, I find that the emergency arising out of the existence of such sheep disease no longer exists. Provision has been made to handle future limited outbreaks of the disease without a declaration of an emergency.

Done at Washington, D. C., this 17th day of December 1954.

[SEAL] E. L. PETERSON,
Assistant Secretary of Agriculture.

[F. R. Doc. 54-10142; Filed, Dec. 22, 1954; 8:45 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 6594]

PAN AMERICAN WORLD AIRWAYS, INC.; ACQUISITION OF LINEAS AEREAS COSTARRICENSES, S. A.

NOTICE OF CHANGE OF PLACE OF HEARING

In the matter of the application of Pan American World Airways, Inc., under section 408 of the Civil Aeronautics Act of 1938, as amended, for a determination whether Pan American World Airways, Inc., has acquired control of Lineas Aereas Costarricenses, S. A., and, if so, for approval of such acquisition.

Notice is hereby given that the hearing in the above-entitled proceeding heretofore assigned to be held in Room E-206, Temporary Building No. 5 on January 18, 1955, is hereby reassigned to be held on January 18, 1955 at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No.

5, Sixteenth Street south of Constitution Avenue NW., Washington, D. C., before Examiner Barron Fredricks.

Dated at Washington, D. C., December 17, 1954.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F. R. Doc. 54-10191; Filed, Dec. 22, 1954; 8:57 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

[Docket No. S-53]

GRACE LINE, INC.

NOTICE OF APPLICATION

Notice is hereby given of the application of Grace Line, Inc. to the Federal Maritime Board under section 605 (c) of the Merchant Marine Act, 1936, 46 U. S. C. 1175 (c), for change in the description of its subsidized service and increase in maximum subsidized sailings by C2 Freight Vessels on Line C Service (Trade Route No. 4), as specified in the Applicant's Operating-Differential Subsidy Contract No. MCc-62428, presently reading:

(3) Not fewer than the minimum and not more than the maximum number of sailings specified herein with vessels of the respective types specified on the service designated Line C (Trade Route No. 4) and described as follows:

Between the United States North Atlantic Ports and ports in the Netherlands West Indies, Venezuela and North Coast of Colombia, with privilege of calling at U. S. South Atlantic ports northbound.

Combination passenger-freight:	*Minimum*	*Maximum*
Santa Rosa/Paula	48	52
C-2 Type	48	52
Cargo vessels:		
C-2 Type	36	42

Grace Line Inc. requests that the foregoing be amended to read as follows:

(3) Not fewer than the minimum and not more than the maximum number of sailings specified herein with vessels of the respective types specified on the service designated Line C (Trade Route No. 4) and described as follows:

Between U. S. North Atlantic ports and ports in the Netherlands West Indies, Venezuela and North Coast Colombia, with the privilege of calling at U. S. South Atlantic ports (south of Norfolk to Key West range) northbound and southbound as cargo offerings warrant, and homeward with the privilege of calling at one or two East Coast Central American ports.

Combination passenger-freight:	*Minimum*	*Maximum*
Santa Rosa/Paula	48	52
C-2 Type	48	52
Cargo vessels:		
C-2 Type	36	52

Under the provisions of section 605 (c) no contract may be made to pay subsidy with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service unless the Federal Maritime Board determines that the service already provided by vessels of United States registry in such service, route or line is inadequate, and that in the accomplishment of the purposes and policy of this act additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in a service, route, or line served by two or more citizens of the United States with vessels of United States registry if the Board determines the effect of such a contract would be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes or lines, unless the Board finds that it is necessary to enter into such contract to provide adequate service by vessels of United States registry.

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605 (c) shall notify the Secretary, Federal Maritime Board, on or before January 4, 1955, and should file petitions for leave to intervene in accordance with the Board's rules of practice and procedure.

In the absence of receipt of any such request for hearing and petition for leave to intervene, the Federal Maritime Board will take such action with respect to the application as may be deemed appropriate.

Dated: December 21, 1954.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN, *Assistant Secretary.*

[F. R. Doc. 54-10222; Filed, Dec. 22, 1954; 8:58 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-3258—G-3261, G-3574, G-3587—G-3623, G-3624]

C. F. CHRISMAN ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

DECEMBER 16, 1954.

In the matters of C. F. Chrisman, Docket No. G-3258; C. F. Chrisman and C. F. Chrisman, Attorney in Fact for Mrs. C. F. Engel et al., Docket No. G-3259; C. F. Chrisman, Docket No. G-3260; C. F. Chrisman and C. F. Chrisman Attorney in Fact for Mrs. C. F. Engel et al., Docket No. G-3261; J. Robert Horner, C. W. Teter, et al., Lease, Docket No. G-3574; Delaware Gas Company, Docket No. G-3587; Avon Ellyson Lease, Clyde D. and Carl D. Jackson dba Jackson Brothers, Docket No. G-3623; M. L. Fidler, et al. Lease, Clyde D. and Carl D. Jackson dba Jackson Brothers, Docket No. G-3624.

Take notice that there have been filed with the Federal Power Commission applications for certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the respective Applicants to render service to Equitable Gas Company, subject to the jurisdiction of the Commission, as hereinafter described, all as more fully described in the respective applications which are on file with the Commission and open for public inspection.

The respective applications were filed as hereinafter specified:

Docket No.	Applicant	Address	Date filed
G-3258	C. F. Chrisman	Gassaway, W. Va.	Sept. 27, 1954
G-3259	C. F. Chrisman and C. F. Chrisman, attorney in fact for Mrs. C. F. Engel.	do	Do.
G-3260	C. F. Chrisman	do	Do.
G-3261	C. F. Chrisman and C. F. Chrisman, attorney in fact for Mrs. C. F. Engel, et al.	do	Do.
G-3574	J. Robert Horner, C. W. Teter, et al. Lease	Clarksburg, W. Va.	Sept. 28, 1954
G-3587	Delaware Gas Co.	do	Do.
G-3623	Avon Ellyson Lease, Clyde D. and Carl D. Jackson, d. b. a. Jackson Bros.	Parkersburg, W. Va.	Sept. 29, 1954
G-3624	M. L. Fidler, et al. Lease; Clyde D. Jackson and Carl D. Jackson, d. b. a. Jackson Bros.	do	Do.

All Applicants, except J. Robert Horner produce natural gas in Gilmer, Braxton or Harrison Counties, West Virginia, which is sold and delivered to Equitable Gas Company.

J. Robert Horner purchases natural gas from Dr. R. B. Linger, produced in C. W. Teter, et al. Lease, Upshur and Lewis Counties, West Virginia, which is sold and delivered to Equitable Gas Company.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 26, 1955, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 17, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 54-10161; Filed, Dec. 22, 1954; 8:50 a. m.]

[Docket No. G-3608]

JONES-O'BRIEN, INC., AND R. J. O'BRIEN, OPERATOR

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 16, 1954.

Take notice that Jones-O'Brien, Inc., and R. J. O'Brien, Operator, hereinafter called Applicant, whose address is Shreveport, Louisiana, filed on September 29, 1954, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant produces natural gas in the Ruston Field, Lincoln Parish, Louisiana, which it sells to Texas Eastern Transmission Corporation in interstate commerce for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 19, 1955, at 9:40 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 5th day of January 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10162; Filed, Dec. 22, 1954; 8:50 a. m.]

[Docket No. G-3648]

TEXAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 15, 1954.

Take notice that the Texas Company (Applicant), a Delaware corporation whose address is Houston, Texas, filed as operator on September 29, 1954, and supplemented on November 8, 1954, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant produces natural gas in the Chocolate Bayou Field, Brazoria County, Texas, which it sells to Texas Illinois Natural Gas Pipeline Company in interstate commerce for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 20, 1955 at 9:40 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 6th day of January 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10163; Filed, Dec. 22, 1954; 8:50 a. m.]

[Docket Nos. G-3685, G-3686, G-3687, G-3688]

RIO BRAVO OIL CO.

NOTICE OF APPLICATIONS, CONSOLIDATION, AND DATE OF HEARING

DECEMBER 15, 1954.

Take notice that Rio Bravo Oil Company (Applicant), a Texas corporation whose address is Houston, Texas, filed on September 29, 1954, applications for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the applications, which are on file with the Commission and open for public inspection.

Applicant produces natural gas in the hereinafter specified fields, which it sells in interstate commerce for resale as follows:

Docket No.	Purchaser	Location of field
G-3685	Transcontinental Gas Pipe Line Corp.	La Gloria Field, Jim Wills County, Tex.
G-3686	United Gas Pipe Line Co.	North Pettus and Burnell Fields, Karnes, Bee, and Goliad Counties, Tex.
G-3687	Texas Illinois Natural Gas Pipeline Co.	La Gloria Field, Jim Wills, and Brooks Counties, Tex.
G-3688	Tennessee Gas Transmission Co.	Edinburg Field, Hidalgo County, Tex.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 19, 1955, at 9:50 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 5th day of January 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10164; Filed, Dec. 22, 1954; 8:50 a. m.]

J. R. OSBORNE ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

DECEMBER 15, 1954.

In the matters of J. R. Osborne & D. C. Osborne, Docket No. G-3764; Osborne Development Company, Docket No. G-3770; Turtle Lick Gas Company, Docket No. G-3771; Ray & Osborne, Docket No. G-3772.

Take notice that there have been filed with the Federal Power Commission on September 30, 1954, applications for certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing Applicants to render service to South Penn Natural Gas Company, as hereinafter described, subject to the jurisdiction of the Commis-

sion, all as more fully described in the applications which are on file with the Commission and open for public inspection.

Docket	Applicant	Location of field
G-3764	J. R. Osborne & D. C. Osborne	Curry District, Putnam County, W. Va.
G-3770	Osborne Development Co	Washington District, Boone County, W. Va.
G-3771	Turtle Lick Gas Co	Jefferson District, Lincoln County, W. Va.
G-3772	Ray & Osborne	Do.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 24, 1955, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 17th of January 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10165; Filed, Dec. 22, 1954; 8:51 a. m.]

[Docket No. G-3900]

FREMONT PETROLEUM CO.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 16, 1954.

Take notice that Fremont Petroleum Company (Applicant), a Wyoming corporation whose address is 824 Equitable Building, Denver, Colorado, filed on October 1, 1954, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commisison, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant sells natural gas produced in the South Sand Draw Unit, Fremont County, Wyoming, to Northern Utilities Company for resale in interstate commerce.

Each Applicant states that its address is Griffithsville, West Virginia, and that they respectively produce natural gas as hereinafter specified:

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 24, 1955, at 9:40 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 17, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10166; Filed, Dec. 22, 1954; 8:51 a. m.]

[Docket No. G-4138, G-4166]

A. W. SMITH, TRUSTEE, AND E. D. BLOCK, ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

DECEMBER 15, 1954.

Take notice that A. W. Smith, Trustee, and E. D. Block and others as listed in the application (Applicants), individuals, both of Harlingen, Texas, filed on September 30, 1954, applications for certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicants to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the applications which are on file with the Commission and open for public inspection.

Applicants produce natural gas in Lacy Field, Hidalgo and Cameron Counties, Texas, which they sell to Transcontinental Gas Pipe Line Corporation in interstate commerce for resale.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 20, 1955, at 9:50 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 6th day of January 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10167; Filed, Dec. 22, 1954; 8:51 a. m.]

[Docket No. G-4319]

TEXAS GULF PRODUCING CO. ET AL.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 16, 1954.

In the matter of Texas Gulf Producing Company, Bradley Streeter, Trustee, Carl G. Marquardt, Docket No. G-4319.

Take notice that Texas Gulf Producing Company, Bradley Streeter, Trustee, and Carl G. Marquardt (Applicant), a Delaware corporation whose address is Houston, Texas, filed on October 11, 1954, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant sells natural gas in the Columbus Field, Colorado County, Texas, to Trunkline Gas Company for resale in interstate commerce.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the

Commission's rules of practice and procedure, a hearing will be held on January 26, 1955, at 9:40 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 17th of January 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10168; Filed, Dec. 22, 1954; 8:51 a. m.]

[Docket No. G-4409]

H. L. HAWKINS ET AL.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 16, 1954.

Take notice that H. L. Hawkins and others as listed in the application, hereinafter called Applicant, an individual whose address is New Orleans, Louisiana, filed on October 13, 1954, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant produces natural gas in the Lewisberg Field, Acadia Parish, Louisiana, which he sells to Texas Northern Gas Corporation in interstate commerce for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 20, 1955 at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 6th day of January 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10169; Filed, Dec. 22, 1954; 8:51 a. m.]

[Docket No. G-4509]

ROBERT MOSBACHER

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 16, 1954.

Take notice that Robert Mosbacher (Applicant), an individual whose address is Houston, Texas, filed on October 21, 1954, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant produces natural gas in the Big Hill Field, Jefferson County, Texas, which he proposes to sell to Texas Eastern Transmission Corporation in interstate commerce for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 19, 1955, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 5th day of January 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 54-10170; Filed, Dec. 22, 1954; 8:51 a. m.]

HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

REGIONAL REPRESENTATIVES

DELEGATION OF AUTHORITY WITH RESPECT TO RESERVE OF PLANNED PUBLIC WORKS (THIRD ADVANCE PLANNING PROGRAM)

Each Regional Representative of the Office of the Administrator Field Service is hereby authorized to take the following actions, on behalf of the Housing and Home Finance Administrator, in connection with the program of maintaining a reserve of planned public works (third advance planning program) authorized by section 702 of the Housing Act of 1954, 68 Stat. 590, 641, 40 U. S. C., 1952 ed. Sup. II 462 (Pub. Law 560, 83d Congress, approved August 2, 1954):

1. Execute offers to public agencies for preliminary planning projects in amounts approved by the Commissioner, Community Facilities and Special Operations;

2. Amend or modify contracts resulting from acceptance of offers under paragraph 1 above (except that any amendment or modification involving a substantial change in the scope of a project or an increase in the amount of the Government advance shall not be executed until the prior approval thereof has been obtained from the Commissioner, Community Facilities and Special Operations);

3. Approve the preliminary planning data submitted by public agencies in accordance with contracts resulting from acceptance of offers under paragraphs 1 or 2 above;

4. Authorize payments upon completion and approval of the preliminary planning contemplated under any contracts resulting from acceptance of offers under paragraphs 1 or 2 above; and

5. Redelegate to such qualified officers and employees as he may select any of the authorities delegated in paragraphs 3 and 4 above.

(Reorg. Plan No. 3 of 1947, 61 Stat. 954; 62 Stat. 1268, 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U. S. C., 1952 ed. 1701c)

Effective this 23d day of December 1954.

ALBERT M. COLE,
Housing and Home Finance Administrator.

[F. R. Doc. 54-10190; Filed, Dec. 22, 1954; 8:56 a. m.]

NATIONAL LABOR RELATIONS BOARD

REVOCATION OF STATEMENT OF DESCRIPTION OF AUTHORITY AND ASSIGNMENT OF RESPONSIBILITIES TO THE GENERAL COUNSEL; ASSIGNMENT OF RESPONSIBILITIES TO THE ASSOCIATE GENERAL COUNSELS OF THE DIVISION OF OPERATIONS AND DIVISION OF LAW

Pursuant to the provisions of section 3 (a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently

publishes in the FEDERAL REGISTER notification that:

The Statement of Description of Authority and Assignment of Responsibilities to the General Counsel of the National Labor Relations Board, effective October 10, 1950 (15 F. R. 6924, October 14, 1950), was revoked effective at close of business December 20, 1954.

The Board has authorized the Associate General Counsel of the Division of Operations, on its behalf, to direct, in accordance with the Board's rules and regulations, the operations of the regional offices in the handling and processing of all petitions filed pursuant to section 9 of the National Labor Relations Act, as amended, and the performance of such other regional office functions as fall within the Board's control, as described in paragraph I C of the aforesaid Description.

The Associate General Counsel, Division of Operations, is authorized, on behalf of the Board, to perform all functions necessary to the accomplishment of the provisions of section 10 (k) of the act as described in paragraph I D of the aforesaid Description.

The Associate General Counsel, Division of Operations, is authorized, on behalf of the Board, to maintain appropriate and adequate liaison with other governmental departments and agencies as described in paragraph IV of the aforesaid Description.

The Board has authorized the Associate General Counsel of the Division of Law, on its behalf, to initiate and process proceedings for enforcement of Board orders under section 10 (e) of the act; to resist petitions to review Board orders under section 10 (f) of the act; and to conduct and handle other miscellaneous litigation affecting the Board's operations, as described in paragraphs I B and VI of the aforesaid Description.

The Associate General Counsel, Division of Law, is authorized to seek enforcement and to resist review in all instances, unless the Board otherwise directs.

Dated: Washington, D. C., December 21, 1954.

By direction of the Board:

FRANK M. KLEILER,
Executive Secretary.

[F. R. Doc. 54-10211; Filed, Dec. 21, 1954; 3:06 p. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3035]

KINGSPORT UTILITIES, INC.

NOTICE OF FILING OF AMENDMENT REQUESTING EXTENSION OF TIME TO MAKE BANK BORROWINGS

DECEMBER 16, 1954.

Notice is hereby given that Kingsport Utilities, Incorporated ("Kingsport"), an electric utility subsidiary of American Gas and Electric Company, a registered holding company, has filed an amendment to its declaration in the above-entitled matter under sections 6 (a) and 7 of the Public Utility Holding Company Act of 1935 ("act").

On April 24, 1953, the Commission issued its Order (Holding Company Act Release No. 11865), permitting to become effective Kingsport's declaration regarding its proposal to borrow from two New York banking institutions amounts not to exceed an aggregate of $1,250,000, from time to time, prior to December 31, 1954. Kingsport proposed to use the proceeds from such borrowings to finance, in part, the cost of its construction program for the years 1953 and 1954 which was estimated would amount to an aggregate of $1,437,000.

Kingsport represents that, because of a rescheduling of its construction program, it has borrowed, as of November 1, 1954, only $550,000 of the amount authorized, but it is expected that the remaining portion of the amount authorized will be required to finance its construction program during 1955.

Kingsport requests that the Commission issue an order supplemental to its order dated April 24, 1953, extending to December 31, 1955, the time within which it may make the borrowings authorized by the Commission's order dated April 24, 1953.

Notice is further given that any interested person may, not later than December 28, 1954, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on this matter, stating the nature of his interest, the reason for such request, and the issues of fact or law raised by said filing which he proposes to controvert, or he may request to be notified if the Commission should order a hearing thereon. Any such request shall bear the caption of this Notice and shall be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after December 28, 1954, said request for an extension of time, as filed or as hereafter amended, may be granted.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 54-10150; Filed, Dec. 22, 1954; 8:47 a. m.]

[File No. 70-3323]

OHIO POWER CO.

ORDER REGARDING SALE OF UTILITY ASSETS TO NON-AFFILIATED COMPANY

DECEMBER 17, 1954.

Ohio Power Company ("Ohio Power"), a public-utility subsidiary company of American Gas and Electric Company, a registered holding company, having filed a declaration pursuant to section 12 (d) of the Public Utility Holding Company Act of 1935 ("act") and Rule U-44 promulgated thereunder regarding a certain proposed transaction, which is summarized as follows:

Ohio Power proposes to sell to The Standard Oil Company ("Standard"), a non-affiliated company, certain substation facilities, located in Lima, Ohio, now located on property belonging to Standard and used exclusively to step down electric energy delivered by Ohio Power to the purchaser. The price which Standard will pay for such facilities is $228,700 which, it is stated, represents declarant's appraisal of the present fair value of such facilities. The depreciated book cost (original cost) of such facilities is $176,736.74 (representing original cost of $200,054.31, less calculated depreciation to December 31, 1954, of $23,317.57).

The declaration states that no State or Federal commission (other than this Commission) has jurisdiction over the proposed transaction.

Declarant requests that the Commission's order become effective forthwith upon issuance.

Due notice having been given of the filing of said declaration in the manner prescribed by Rule U-23 promulgated under said Act and no hearing having been requested of or ordered by the Commission; and the Commission finding that the applicable provisions of the act and the rules promulgated thereunder are satisfied, and that the declaration should be permitted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act that said declaration be, and the same hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 54-10151; Filed, Dec. 22, 1954; 8:48 a. m.]

UNITED STATES TARIFF COMMISSION

[Investigation 2]

MURIATE OF POTASH FROM FEDERAL REPUBLIC OF GERMANY AND FROM FRANCE

NOTICE OF INVESTIGATION AND PUBLIC HEARING

On December 15, 1954, the Tariff Commission received advice from the Treasury Department that muriate of potash from the Federal Republic of Germany and from France is being, or is likely to be, sold in the United States at less than its fair value. Accordingly, the Tariff Commission has instituted an investigation under section 201 (a) of the Antidumping Act, 1921, as amended, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with this investigation will be held on February 8, 1955, beginning at 10 a. m., in the Hearing Room of the United States Tariff Commission, 8th and E Streets, NW., Washington, D. C.

Request to appear. Interested parties desiring to appear and to be heard at such hearing should file requests in writing with the Secretary, United States Tariff Commission, Washington 25, D. C.,

not later than three days in advance of the date of the hearing.

Any interested party desiring to do so may submit to the Commission written information pertinent to the subject matter of the investigation, in lieu of appearance at the hearing. Fifteen clear copies of such statements should be submitted, and information which it is desired to submit in confidence should be on separate pages clearly marked "Submitted in Confidence."

Issued: December 20, 1954.

By order of the United States Tariff Commission.

[SEAL] DONN N. BENT, *Secretary.*

[F. R. Doc. 54-10162; Filed, Dec. 22, 1954; 8:54 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 30032]

APLITE ROCK FROM PINEY RIVER, VA., TO SOUTHWEST

APPLICATION FOR RELIEF

DECEMBER 20, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to tariffs listed below.

Commodities involved: Aplite rock, crushed or ground, carloads.

From: Piney River, Va.

To: Points in Missouri, Oklahoma, and Texas.

Grounds for relief: Competition with rail carriers, market competition, and circuity.

Schedules filed containing proposed rates: Agent Kratzmeir's I. C. C. No. 4090, Supp. No. 61; Agent Kratzmeir's I. C. C. No. 4109, Supp. No. 32; Agent Kratzmeir's I. C. C. No. 3923, Supp. No. 56.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD, *Secretary.*

[F. R. Doc. 54-10152; Filed, Dec. 22, 1954; 8:48 a. m.]

[4th Sec. Application 30033]

CAUSTIC SODA FROM ALABAMA TO BOGALUSA, LA.

APPLICATION FOR RELIEF

DECEMBER 20, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to Agent C. A. Spaninger's tariff I. C. C. No. 1295.

Commodities involved: Caustic soda (sodium hydroxide), liquid, tank-car loads.

From: Huntsville, McIntosh, and Redstone Arsenal, Ala.

To: Bogalusa, La.

Grounds for relief: Competition with rail carriers, market competition, and circuity.

Schedules filed containing proposed rates: Agent Spaninger's I. C. C. No. 1295, Supp. No. 88.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD, *Secretary.*

[F. R. Doc. 54-10153; Filed, Dec. 22, 1954; 8:48 a. m.]

[4th Sec. Application 30034]

CEMENT BETWEEN THE WEST AND SOUTHWEST

APPLICATION FOR RELIEF

DECEMBER 20, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to tariffs listed below.

Commodities involved: Cement, hydraulic, masonry, mortar, natural, or Portland, straight or mixed carloads.

From: Points in Kansas, Oklahoma, and Nebraska.

To: Points in Kansas, Oklahoma, and Missouri.

Grounds for relief: To apply over short tariff routes rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates: Agent Kratzmeir's I. C. C. No. 3934, Supp. No. 45; Agent W. J. Prueter's I. C. C. No. A-3850, Supp. No. 79; Agent W. J. Prueter's I. C. C. No. A-3815, Supp. No. 68.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD, *Secretary.*

[F. R. Doc. 54-10154; Filed, Dec. 22, 1954; 8:48 a. m.]

[4th Sec. Application 30035]

MERCHANDISE FROM SAVANNAH, GA., TO THE MIDWEST

APPLICATION FOR RELIEF

DECEMBER 20, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to Agent C. A. Spaninger's tariff I. C. C. No. 1458.

Commodities involved: Merchandise, mixed carloads.

From: Savannah, Ga.

To: Chicago, Ill., and group points, St. Louis, Mo., and East St. Louis, Ill.

Grounds for relief: Competition with rail carriers and circuity.

Schedules filed containing proposed rates: Agent Spaninger's I. C. C. No. 1458, Supp. No. 2.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing,

upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD, *Secretary.*

[F. R. Doc. 54-10155; Filed, Dec. 22, 1954, 8:48 a. m.]

[4th Sec. Application 30036]

WASTE NEUTRAL SALTS FROM TYNER, TENN., TO POINTS IN THE SOUTH

APPLICATION FOR RELIEF

DECEMBER 20, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for The Nashville, Chattanooga & St. Louis Railway and other carriers.

Commodities involved: Salts, waste neutral, carloads.

From: Tyner, Tenn.

To: Mobile, Tuscaloosa, Ala., Cantonment, Pensacola, Fla., and East Moss Point, Miss.

Grounds for relief: Circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD, *Secretary.*

[F. R. Doc. 54-10156; Filed, Dec. 22, 1954; 8:48 a. m.]

[4th Sec. Application 30037]

IRON BORINGS FROM BUFFALO, N. Y., TO CINCINNATI, OHIO

APPLICATION FOR RELIEF

DECEMBER 20, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: H. R. Hinsch, Agent, for The Baltimore and Ohio Railroad Company and other carriers, pursuant to fourth-section order No. 17220.

Commodities involved: Iron borings, ground, not powdered, carloads.

From: Buffalo, N. Y., and points taking the same rates.

To: Cincinnati, Ohio.

Grounds for relief: Competition with rail carriers, and circuity.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD, *Secretary.*

[F. R. Doc. 54-10157; Filed, Dec. 22, 1954; 8:49 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

PETE MINI AND THEODORA MINI LENZI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Pete Mini, Montese, Modena, Italy, $509.97 in the Treasury of the United States; Theodora Mini Lenzi, Montese, Modena, Italy, $509.97 in the Treasury of the United States; Claim No. 60979, Vesting Order No. 6882.

Executed at Washington, D. C., on December 16, 1954.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F. R. Doc. 54-10171; Filed, Dec. 22, 1954; 8:52 a. m.]

JOHANN FRIEDRICH KOHNKE

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Johann Friedrich Kohnke, Haarlem, Holland; Claim No. 42696; property described in Vesting Order No. 671 (8 F. R. 5004, April 17, 1943), relating to United States Letters Patent Nos. 2,017,626 and 2,152,891.

Executed at Washington, D. C., on December 16, 1954.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F. R. Doc. 54-10172; Filed, Dec. 22, 1954; 8:52 a. m.]

N. V. TRANSORMA BUNDEL-SLUIT MACHINE "B. S. M."

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

N. V. Transorma Bundel-Sluit Machine "B. S. M.", The Hague, The Netherlands; Claim No. 41861; property described in Vesting Order No. 671 (8 F. R. 5004, April 17, 1943), relating to United States Letters Patent No. 2,198,440.

Executed at Washington, D. C., on December 16, 1954.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F. R. Doc. 54-10173; Filed, Dec. 22, 1954; 8:52 a. m.]

AUSTRIA TABAKWERKE A. G. VORM OSTERREICHISCHE TABAKREGIE

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Austria Tabakwerke A. G. vorm Osterreichische Tabakregie, Vienna, Austria; Claim No. 58317, Vesting Order No. 10643; $2,297.04 in the Treasury of the United States.

Executed at Washington, D. C., on December 16, 1954.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 54-10175; Filed, Dec. 22, 1954; 8:52 a. m.]

LIZZY BARUCH

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Lizzy Baruch, 26, Windsor Road, Pinchley, London, N. 3, England; Claim No. 10872, Vesting Order No. 6711; $700.00 in the Treasury of the United States.

Executed at Washington, D. C., on December 16, 1954.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 54-10174; Filed, Dec. 22, 1954; 8:52 a. m.]

PART II

FEDERAL REGISTER

VOLUME 19 NUMBER 248

Washington, Thursday, December 23, 1954

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

EDITORIAL REVISION OF REGULATIONS

The following constitutes an editorial revision of the regulations in Subtitle A, and the regulations of the Bureau of Land Management, comprising Chapter I of Title 43 of the Code of Federal Regulations. The objectives of the revision have been so far as feasible to eliminate obsolete material and material relating solely to internal departmental procedure and to change the nomenclature of the various officers and offices referred to in the regulations so as either to conform to the present organization of the Department of the Interior or to recognize the flexibility of that organization. It is the Department's intent in this revision to make no substantive changes in the regulations, and it is made at this time in order to ensure that the bound 1954 edition of 43 CFR is as up to date as possible. The revision is hereby approved.

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

Part
1 Practitioners.
2 Records and testimony.
3 Preservation of American antiquities.
5 Filming of motion pictures.
6 Patent regulations.
7 Officers and employees: Lands and resources.
8 Joint policy for land acquisition on reservoir projects; Department of the Interior-Department of the Army.
12 Payments to school districts.

PART 1—PRACTITIONERS

Sec.
1.1 Purpose.
1.2 Definitions.
1.3 Committee on Practitioners.
1.4 Who may practice.
1.5 Disqualifications.
1.6 Former employees or their spouses.
1.7 Statement upon appearance.
1.8 Practitioner's signature to constitute a certificate.
1.9 Grounds for disciplinary proceedings.
1.10 Attorney for the Department.
1.11 Disciplinary proceedings.
1.12 Vacation or modification of orders of suspension or exclusion.

A numerical list of the parts of Subtitle A and Chapter I of Title 43, showing the pages on which they begin, appears at the end of this Part II.

Sec.
1.13 Appeals.
1.14 Short title.

AUTHORITY: §§ 1.1 to 1.14 issued under sec. 5, 23 Stat. 101; 5 U. S. C. 493.

§ 1.1 *Purpose.* This part is prescribed to govern practitioners representing parties in proceedings before the Department of the Interior.

§ 1.2 *Definitions.* As used in this part, unless the context or subject matter otherwise requires:

(a) "Committee" means the Committee on Practitioners.

(b) "Department" includes not only the Office of the Secretary of the Interior, but also any office of the Department of the Interior, in Washington, D. C., and elsewhere.

(c) "Party" includes applicant, claimant, or anyone whose interests are presented to this Department for adjudication.

(d) "Practitioner" means any individual who under this part may act in a representative capacity in practice before the Department; but no individual while acting exclusively on his own behalf shall be considered a practitioner.

(e) "Practice" relates only to action by practitioners with respect to the process of adjudication.

§ 1.3 *Committee on Practitioners.* A Committee on Practitioners composed of three members is hereby created. The Solicitor of the Department, ex officio, shall be a member of and chairman of the Committee. The other two members, ex officio, shall be the Associate Solicitor, Division of Appeals, and the Assistant Solicitor, Branch of Land Management. The Committee shall, by a majority of those present, act at such times as it may designate or at the call of the chairman, a quorum to consist of two members. Hearings may be held before such persons and at such places and times as the Committee may designate. In administering its functions, the Committee may call upon any agency of the Department for assistance. The Committee may delegate to one of its members or to any employee of the Department authority to pass upon applications for admission and routine matters generally. Except as otherwise specifically provided, the Committee shall administer all functions under this part.

§ 1.4 *Who may practice.* (a) Any individual who has been admitted to practice before the Department or any of its bureaus under any prior regulations and who is in good standing at the effective date of this part will be permitted to practice before the Department under this part.

(b) Any individual who is a member in good standing of the bar of the highest court of a State, Territory or the District of Columbia will be permitted to practice without filing an application for such privilege. However, in the discretion of the Committee, or any hearing officer of the Department as to a particular matter pending before him, an individual claiming such privilege may be required to file a written statement concerning his status as an attorney, his character and repute, and setting forth such other information as may be required of him. The Committee or the hearing officer may permit such individual to practice in a particular matter subject to his filing the required statement and to any subsequent action by the Committee or the Secretary.

(c) Any individual, not admitted to the bar, will be permitted to act as a practitioner in a particular matter if the party he represents is within one of the following groups: (1) a member of his family; (2) a partnership of which he is a member; (3) a receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (4) the lessee of a mineral lease which is subject to an operating agreement or sublease approved by the Department, which grants to such individual a power of attorney; (5) a Federal, State, district, territorial, or local government or an agency thereof, or a government corporation, or a district or advisory board established pursuant to statute. Where a corporation, business trust, or an association is a party, or a fiduciary within the meaning of subpara-

graph (3) of this paragraph, or an operator within the meaning of subparagraph (4) of this paragraph, any of its officers or regular full-time employees may act as the practitioner in the case.

§ 1.5 *Disqualifications.* (a) No individual who is an officer or a clerk or who is in regular full-time employment in any other place of trust or profit under the Government of the United States or of the District of Columbia, including any branch or any government corporation thereof, will be permitted to practice before this Department, except in the performance of his proper official duties, in relation to any proceeding or other matter or thing in which the United States is a party, or directly or indirectly interested: *Provided*, That, upon a proper showing that he is otherwise qualified to act as a practitioner and that his services are without compensation, the Committee may permit such an individual to appear in particular cases, in which event the Committee shall inform his client of its action. This paragraph shall not apply to any person or class of persons specifically declared by Congress to be exempt from the scope of section 1 of the act of June 25, 1948 (62 Stat. 697) as amended by section 6 of the act of May 24, 1949 (63 Stat. 90; 18 U. S. C. 281).

(b) No individual holding any such office or place of trust or profit will be permitted, while holding such position, to act as a practitioner to prosecute, or assist in the prosecution of, a claim against the United States, except in the performance of his proper official duties; nor will he be permitted to act as such, within two years next after he shall have ceased to hold such position, as to any such claim which was pending while he held such position. This paragraph shall not apply to any person or class of persons specifically declared by Congress to be exempt from the scope of section 1 of the act of June 25, 1948 (62 Stat. 597), as amended by section 2 (b) of the act of June 28, 1949 (63 Stat. 280; 18 U. S. C. 283) or R. S. 190 (5 U. S. C. 99).

(c) No officer, employee, or other individual holding any place of trust or profit under the Department of the Interior, nor the spouse residing with any such person, will be permitted to act as a practitioner in any case before the Department.

(d) No individual shall act with respect to any matter to which as an officer, employee, or holder of any place of trust or profit under the Government of the United States or of the District of Columbia, including any branch or any Government corporation thereof, he personally gave consideration or as to the facts of which he personally gained knowledge while in the Government service.

No person shall knowingly assist or accept assistance from or share fees with any person with respect to any matter before the Department to which either of them personally gave consideration or as to the facts of which either of them personally gained knowledge while in the Government service.

CROSS REFERENCE: For attorneys and other practitioners acting as notaries in same case, see § 221.89a of this title.

§ 1.6 *Former employees or their spouses.* (a) A former officer or employee of the Department of the Interior may not, without the prior approval of the Committee on Practitioners, appear before the Department in a representative capacity, or render any assistance to persons other than personnel of the Department, with respect to any matter which was pending before the Department during the period of his employment. In applying for such approval, he shall file a certificate or affidavit stating: (1) His former position with the Department; (2) the nature of the matter in connection with which he desires to act; (3) the extent, if any, to which he had knowledge of, or was responsible for, or gave personal consideration to, or performed work that was related in any way to, such matter during the period of his employment; and (4) the circumstances surrounding his employment to handle the matter.

(b) The Committee shall disapprove an application submitted pursuant to paragraph (a) of this section if the Committee concludes that the proposed representation or assistance would be unlawful, unethical, or contrary to the public interest.

(c) The limitations imposed in this section with respect to former officers or employees of the Department of the Interior are likewise applicable to the spouses of former officers or employees. In submitting a certificate or affidavit under paragraph (a) of this section, the spouse of a former officer or employee will supply, with respect to subparagraphs (1) and (3), data concerning the former officer or employee.

§ 1.7 *Statement upon appearance.* Except as otherwise provided in this part, upon the first appearance of a practitioner in any matter, he shall file a statement in the case setting forth (a) his name and address; (b) where admitted to the bar, or if he is not an attorney, the facts showing that he is within one of the categories of those who may also practice under these regulations; (c) the name and address and the interest of the party whom he is representing.

§ 1.8 *Practitioner's signature to constitute a certificate.* Every paper prepared or filed by a practitioner shall bear his signature unless it already bears the signature of a practitioner of record in the matter. Such signature shall constitute his certificate (a) that under this part and the law, he is authorized and qualified to represent the particular party in that matter; and (b) that he has read the paper, that to the best of his knowledge, information, and belief there is good ground to support its contents, that it contains no scandalous or indecent matter, and that it is not interposed for delay.

§ 1.9 *Grounds for disciplinary proceedings.* Disciplinary proceedings may be instituted against anyone acting as a practitioner under this part on grounds that he is incompetent, disreputable, unethical, or unprofessional, or that he is practicing without authority under this part, or that he has violated any provision of the laws or regulations governing practice before this Department or that he has been disbarred or suspended by any court or administrative agency.

§ 1.10 *Attorney for the Department.* Whenever in the discretion of the Committee, the circumstances warrant consideration of the question whether disciplinary proceedings should be initiated, it shall request the Secretary to designate a departmental lawyer, who is not a member of the Committee, to act as attorney for the Department in the matter. He shall thereupon investigate the facts and in doing so may call on any bureau of the Department for assistance and may require the practitioner involved to submit a written statement of facts or explanation. Upon completing his investigation, the Department attorney shall initiate a disciplinary proceeding or shall file a report with the Committee summarizing his investigations and stating the reasons why such a proceeding is unwarranted.

§ 1.11 *Disciplinary proceedings.* The Committee, after notice and an opportunity for a hearing upon the charges filed by the attorney for the Department against a practitioner, shall render its decision either; (a) dismissing the charges, or (b) censuring the defendant, or (c) ordering a rehearing, or (d) recommending to the Secretary the appropriate action to be taken.

§ 1.12 *Vacation or modification of orders of suspension or exclusion.* Any person who has been suspended or excluded from practice before this Department on charges brought against him, may file an application, in triplicate, for vacation or modification of the order of suspension or exclusion. The Committee, in its discretion, may hold a hearing on such application before disposing of it. The Committee shall either: (a) deny the application, or (b) recommend to the Secretary the appropriate action to be taken.

§ 1.13 *Appeals.* Any applicant or practitioner aggrieved by a final determination of the Committee may appeal therefrom to the Secretary within 30 days from the receipt of such decision by filing a written statement setting forth in detail the grounds for such appeal.

§ 1.14 *Short title.* The regulations in this part may be cited as "Department of the Interior Regulations on Practitioners, 1943."

PART 2—RECORDS AND TESTIMONY

AVAILABILITY OF OFFICIAL RECORDS

Sec.
2.1 Inspection.
2.2 Determinations as to availability of records.
2.3 Applications
2.4 Charges; general rules.
2.4a Charges; specific rates.
2.5 Opinions and orders.
2.6 Compulsory process.

TESTIMONY OF EMPLOYEES

2.20 Testimony of employees.

AUTHORITY: §§ 2.1 to 2.20 issued under sec. 2, 37 Stat. 498; 5 U. S. C. 489. Interpret or apply sec. 1, 37 Stat. 497; 5 U. S. C. 488.

AVAILABILITY OF OFFICIAL RECORDS

§ 2.1 *Inspection.* Unless the disclosure of matters of official record would be prejudicial to the interests of the Government, they shall be made available for inspection or copying, and copies may be furnished, during regular business hours at the request of persons properly and directly concerned with such matters. Requests for permission to inspect official records or for copies will be handled with due regard for the dispatch of other public business.

§ 2.2 *Determinations as to availability of records.* (a) In the first instance, the person whose general duties include the responsibility for the custody of a record shall determine whether the disclosure of the record would be prejudicial to the interests of the Government and whether the person making the request is properly and directly concerned with the subject matter. If a request for permission to inspect records or for copies is denied, the applicant may submit his request to the head of the bureau or office.

(b) An appeal from an adverse decision of the head of a bureau or office may be taken by the applicant to the Secretary. The Solicitor of the Department of the Interior may exercise all the authority of the Secretary in disposing of such an appeal.

(c) In the exercise of the authority conferred in this section, no officer or employee of the Department may disclose a record (or its contents) which is classified as "Top Secret", "Secret", "Security Confidential", or "Restricted" to any person who has not been properly cleared for the receipt of such information; and no officer or employee other than the Secretary, the Under Secretary, an Assistant Secretary, the Administrative Assistant Secretary, or the head of a bureau or office may disclose to a person outside the Department a record (or its contents) which has a nonsecurity designation of "Confidential": *Provided, however,* That factual data contained in field reports of the Bureau of Land Management having only a nonsecurity designation of "Confidential" may be referred to in decisions and correspondence of the Bureau of Land Management without revealing sources of information, and copies of such field reports may be furnished to any Federal agency on behalf of which the investigations embodied in the field reports were made.

(R. S. 161; 5 U. S. C. 22)

§ 2.3 *Applications.* The head of a bureau or office may require that a request for permission to inspect or to obtain copies of official records shall be made in writing and in such form as he may prescribe. The head of a bureau or office may require the deposit in advance of an amount sufficient to pay the charges for furnishing copies.

§ 2.4 *Charges; general rules.* (a) The Chief Clerk of the Department shall establish charges, or prescribe the method of computing charges, to be collected by all bureaus and offices for furnishing copies of official records, except as otherwise provided in this section. Such charges shall be equal to the cost of producing the copies plus the cost of administrative services involved in handling the records for such purpose.

(b) A charge of 25 cents may be made for each certificate or verification attached to authenticated copies of official records furnished to the public.

(c) No charge shall be made for furnishing unauthenticated copies of any rules, regulations, or instructions printed by the Government for gratuitious distribution.

(d) No charge shall be made for the making or verifying of copies of official records which are required for official use by the officers of any branch of the Government.

(e) No charge shall be made for furnishing one copy of a personal document (e. g., a birth certificate) to a person who has been required to furnish it for retention by an agency of the Department.

(f) A copy of the transcript of a hearing before a security hearing board shall upon request be furnished without charge to the employee for whom the hearing was held or to his counsel.

(g) Money received from the collection of charges fixed under this section shall be deposited in the Treasury to the credit of the appropriation current and chargeable for the cost of furnishing the copies.

(h) At the discretion of the head of a bureau or office or his designee, copies of official records may be provided free:

(1) When requested by a court, if the copy will serve as a substitute for personal appearance in court of a Government witness.

(2) To press, radio, television, and newsreel representatives for dissemination to the general public.

(3) To donors with respect to the original of their gift, individuals or associations having an official voluntary or cooperative relationship to an agency in rendering assistance toward its work, or national governments and international agencies when furnishing the service without charge is an appropriate courtesy.

(4) To agencies of State and local governments which are carrying on a function related to that of the Federal agency involved, when furnishing the service will help to accomplish an objective of the Federal agency.

(5) When furnishing the service free saves costs or yields income equal to the direct costs of the agency providing the service. This category includes cases where the fee for the service would be included in a billing against the Government (for example, in cost-type contracts, or in the case of private physicians who are treating Government beneficiaries at Government expense).

(6) When furnishing the service free is in conformance with generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees.

(7) To the extent of one copy, to those who require copies of records or information from the records in order to obtain financial benefits to which they may be entitled (e. g., veterans or their dependents, employees with workmen's compensation claims, or persons insured by the Government).

(8) When a service is occasional and incidental, not a type that is requested often, and if it is administratively determined that a fee would be inappropriate in such an occasional case.

(i) The authority of the Chief Clerk to establish charges under paragraph (a) of this section does not extend to the establishment of fees or charges for copies of records pertaining to the enrollment of members of the Five Civilized Tribes, as authorized by section 9 of the act of April 26, 1906 (34 Stat. 136); or for copies of aerial or other photographs and mosaics sold by the Geological Survey; or with the exception of the charges for transcripts or copies of official records furnished by the managers of the land offices or the land and survey offices, to other charges specifically established by statute.

(Sec. 2 of act of August 24, 1912 (37 Stat. 498; 5 U. S. C. 489). Interprets or applies sec. 1 of act of March 4, 1909 (35 Stat. 989), as amended (43 U. S. C. 45); sec. 1 of act of August 24, 1912 (37 Stat. 497), as amended (5 U. S. C. 488); sec. 501 of act of August 31, 1951 (65 Stat. 290; 5 U. S. C. 140).

§ 2.4a *Charges; specific rates.* (a) Except as otherwise provided or permitted in § 2.4 and this section, on and after May 3, 1954, a basic charge of $1.00 per sheet shall be collected by all bureaus and offices of the Department of the Interior for furnishing copies of official records, including authentication thereof when required.

(b) If the request for copies of official records is of such an unusual nature that the basic charge established for them would be either excessive, or insufficient to cover the entire cost of searching for and reproducing the records, the charge shall be actual cost of search and reproduction plus 25 percent adjusted to the nearest 5 cents.

(Sec. 2 of act of August 24, 1912 (37 Stat. 498; 5 U. S. C. 489). Interprets or applies sec. 1 of the act of March 4, 1909 (35 Stat. 959), as amended (43 U. S. C. 45); sec. 1 of act of August 24, 1912 (37 Stat. 497), as amended (5 U. S. C. 488); sec. 501 of act of August 31, 1951 (65 Stat. 290; 5 U. S. C. 140).

§ 2.5 *Opinions and orders.* (a) Each bureau of the Department shall maintain, in the headquarters office of the bureau or in the field office in which final action is taken, a file containing copies of all final opinions and orders issued by the bureau (including those approved by the Secretary) in the adjudication of cases, except opinions and orders which the head of the bureau or the Secretary may for good cause require to be held confidential and which are not cited as precedents.

(b) The Office of the Solicitor shall maintain a file containing copies of all final opinions and orders issued by the Secretary or the Solicitor in the adjudication of cases, except opinions and orders which the Secretary or the Solicitor may for good cause require to be held confidential and which are not cited as precedents.

(c) The files mentioned in this section may be inspected by the public at any time during regular business hours.

§ 2.6 *Compulsory process.* (a) If the production of any record of the Department is sought by compulsory process, the record shall not be disclosed unless the person whose general duties include the responsibility for the custody of the record or the Secretary determines that such disclosure will not be prejudicial to the interests of the Government. If the person responsible for the custody of the record concludes that the record should not be produced, he shall immediately report the matter to the Secretary for a determination, and he shall appear in answer to the process and respectfully decline to produce the record on the ground that the disclosure, pending the receipt of instructions from the Secretary, is prohibited by this part.

(b) The Solicitor of the Department of the Interior may exercise all the authority of the Secretary under this section.

TESTIMONY OF EMPLOYEES

§ 2.20 *Testimony of employees.* (a) An officer or employee of the Department shall not testify in any judicial or administrative proceeding concerning matters related to the business of the Government or the contents of official records without the written permission of the head of the bureau or office, or his designee, or of the Secretary. If the head of a bureau or office, or his designee, concludes that permission should be withheld, he shall report the matter immediately to the Secretary for a determination, and the officer or employee shall appear in answer to process and respectfully decline to testify, pending the receipt of instructions from the Secretary, on the ground that testimony is prohibited by this part.

(b) Any person (including a public agency) wishing an officer or employee of the Department to testify in a judicial or administrative proceeding concerning a matter related to the business of the Government or the contents of official records must submit a statement in writing, setting forth the interest of the litigant and the information with respect to which the testimony of the officer or employee of the Department is desired, before permission to testify will be granted under this section. In the case of a private litigant, this written statement must be in the form of an affidavit. Permission to testify will be limited to the information mentioned in the written statement, or to such portions thereof as the official granting the permission deems proper.

(c) The Solicitor of the Department of the Interior may exercise all the authority of the Secretary of the Interior under this section.

PART 3—PRESERVATION OF AMERICAN ANTIQUITIES

Sec.
3.1 Jurisdiction.
3.2 Limitation on permits granted.
3.3 Permits; to whom granted.
3.4 No exclusive permits granted.
3.5 Application.
3.6 Time limit of permits granted.
3.7 Permit to become void.
3.8 Applications referred for recommendation.
3.9 Form and reference of permit.
3.10 Reports.
3.11 Restoration of lands.
3.12 Termination.
3.13 Report of field officer.
3.14 Examinations by field officer.
3.15 Persons who may apprehend or cause to be arrested.
3.16 Seizure.
3.17 Preservation of collection.

AUTHORITY: §§ 3.1 to 3.17 issued under secs. 3, 4, 34 Stat. 225; 16 U. S. C. 432.

§ 3.1 *Jurisdiction.* Jurisdiction over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic or scientific interest, shall be exercised under the act by the respective Departments as follows:

(a) By the Secretary of Agriculture over lands within the exterior limits of forest reserves;

(b) By the Secretary of the Army over lands within the exterior limits of military reservations;

(c) By the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, *Provided*, The Secretaries of the Army and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the act of June 8, 1906 (34 Stat. 225; 16 U. S. C. 431–433), as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

§ 3.2 *Limitation on permits granted.* No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States in situ, and remain an object of interest, shall be granted.

§ 3.3 *Permits; to whom granted.* Permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity will be granted, by the respective Secretaries having jurisdiction, to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

§ 3.4 *No exclusive permits granted.* No exclusive permits shall be granted for a larger area than the applicant can reasonably be expected to explore fully and systematically within the time limit named in the permit.

§ 3.5 *Application.* Each application for a permit should be filed with the Secretary having jurisdiction, and must be accompanied by a definite outline of the proposed work, indicating the name of the institution making the request, the date proposed for beginning the field work, the length of time proposed to be devoted to it, and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation, or gathering, and the public museum in which the collections made under the permit are to be permanently preserved. The application must be accompanied by a sketch plan or description of the particular site or area to be examined, excavated, or searched, so definite that it can be located on the map with reasonable accuracy.

§ 3.6 *Time limit of permits granted.* No permit will be granted for a period of more than 3 years, but if the work has been diligently prosecuted under the permit, the time may be extended for proper cause upon application.

§ 3.7 *Permit to become void.* Failure to begin work under a permit within 6 months after it is granted, or failure to diligently prosecute such work after it has been begun, shall make the permit void without any order or proceeding by the Secretary having jurisdiction.

§ 3.8 *Applications referred for recommendation.* Applications for permits shall be referred to the Smithsonian Institution for recommendation.

§ 3.9 *Form and reference of permit.* Every permit shall be in writing and copies shall be transmitted to the Smithsonian Institution and the field officer in charge of the land involved. The permittee will be furnished with a copy of this part.

§ 3.10 *Reports.* At the close of each season's field work the permittee shall report in duplicate to the Smithsonian Institution, in such form as its secretary may prescribe, and shall prepare in duplicate a catalogue of the collections and of the photographs made during the season, indicating therein such material, if any, as may be available for exchange.

§ 3.11 *Restoration of lands.* Institutions and persons receiving permits for excavation shall, after the completion of the work, restore the lands upon which they have worked to their customary condition, to the satisfaction of the field officer in charge.

§ 3.12 *Termination.* All permits shall be terminable at the discretion of the Secretary having jurisdiction.

§ 3.13 *Report of field officer.* The field officer in charge of land owned or controlled by the Government of the United States shall, from time to time, inquire and report as to the existence, on or near such lands, of ruins and archaeological sites, historic or prehistoric ruins or monuments, objects of antiquity, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

§ 3.14 *Examinations by field officer.* The field officer in charge may at all times examine the permit of any person or institution claiming privileges granted in accordance with the act and this part, and may fully examine all work done under such permit.

§ 3.15 *Persons who may apprehend or cause to be arrested.* All persons duly authorized by the Secretaries of Agriculture, Army and Interior may apprehend or cause to be arrested, as provided in the act of February 6, 1905 (33 Stat. 700) any person or persons who appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands under the

supervision of the Secretaries of Agriculture, Army and Interior, respectively.

§ 3.16 *Seizure.* Any object of antiquity taken, or collection made, on lands owned or controlled by the United States, without a permit, as prescribed by the act and this part, or there taken or made, contrary to the terms of the permit, or contrary to the act and this part, may be seized wherever found and at any time, by the proper field officer or by any person duly authorized by the Secretary having jurisdiction, and disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise.

§ 3.17 *Preservation of collection.* Every collection made under the authority of the act and of this part shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and this part, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository.

PART 5—FILMING OF MOTION PICTURES

Sec.
5.1 Filming motion or sound pictures.
5.2 Areas administered by Office of Indian Affairs.
5.3 Other areas.
5.4 Fees.
5.5 Issuance of permit.
5.6 Wildlife.
5.7 Report by field officials.
5.8 Form of application.

AUTHORITY: §§ 5.1 to 5.8 issued under R. S. 161, 453, 463, 2478, sec. 10, 32 Stat. 390, sec. 3, 39 Stat. 535, sec. 10, 45 Stat. 1224, sec. 2, 48 Stat. 1270; 5 U. S. C. 22, 16 U. S. C. 3, 715i, 25 U. S. C. 2, 43 U. S. C. 2, 1201, 373, 315a.

§ 5.1 *Filming motion or sound pictures.* The filming of any motion or sound picture on any area under the jurisdiction of the agencies of the Department of the Interior hereafter named shall be governed by the regulations of this part: *Provided, however,* That only § 5.2 shall apply to amateurs and bona fide newsreel photographers.

§ 5.2 *Areas administered by Office of Indian Affairs.* (a) Anyone taking pictures of Indians, their homes, plazas, kivas, churches, etc., is expected to observe the ordinary courtesy of obtaining proper permission from the persons involved. Some Indian groups prohibit the taking of pictures of ceremonies and sacred shrines. Others do not. Permission to take such pictures must be obtained beforehand from the proper official of the community.

(b) Before any picture is made for commercial purposes on lands under the jurisdiction of the Office of Indian Affairs, permission must be first obtained from the appropriate tribal officers. Limitations which they may impose must be scrupulously regarded.

(c) Any schedules of wages or salaries to be paid to any Indians who may be employed by the permittee must be approved by the Superintendent or other official in charge of the area or areas involved.

§ 5.3 *Other areas.* With respect to any area under the jurisdiction of the Bureau of Reclamation, the Fish and Wildlife Service, the Bureau of Land Management, or the National Park Service, no such picture may be filmed unless written permission is first obtained from the field official designated for that purpose by the head of such agency. Applications for permission should be submitted to that field official substantially in accordance with the form prescribed in § 5.8.

§ 5.4 *Fees.* In the areas described in § 5.3, there shall be charges for the taking of motion pictures (including sound pictures) involving professional casts, technical crews, livestock, or sets, as follows:

(a) *On areas administered by the Bureau of Reclamation, the Fish and Wildlife Service, and the Bureau of Land Management.* (1) For filming operations not involving the use of livestock, the charge shall be in accordance with the following schedule:

Charge per day or fraction thereof:	*Number of persons in cast*
$10	0
$10	1 to 5
$25	6 to 25
$50	26 to 75
$75	76 to 150
$100	More than 150

The charge prescribed in this subparagraph shall be made only for days or fractions thereof on which there are actual filming operations. The construction of sets in advance of filming, and cleaning up after the filming has been completed, shall not be regarded as actual filming operations for the purpose of such computation.

(2) In addition to the charge prescribed in subparagraph (1) of this paragraph, there shall be a charge of 25 cents per day per head for all horses, mules, cattle, sheep, and goats while on the land.

(b) *On areas administered by the National Park Service.* No fee will be imposed for filming operations, provided the permittee gives credit in an appropriate courtesy title to the National Park Service, Department of the Interior, and to the area in which the scenes are photographed, for any photographed scenes used. The regular general admission and other fees for each person, vehicle, etc., to any area administered by the National Park Service are not affected by this paragraph.

§ 5.5 *Issuance of permit.* Permission to take a motion or sound picture will be granted by the aforesaid field officials in their discretion and on the following conditions:

(a) The permittee shall exercise the utmost care to avoid injury to natural features, and after the filming has been completed the area shall, as required by the official in charge, either be cleaned up and restored to its prior condition or be left, after clean-up, in a condition satisfactory to the official in charge.

(b) The permittee shall refrain, in accordance with the act of the Congress approved on March 3, 1917 (39 Stat. 1106, 5 U. S. C. 66), from offering any gratuity of any nature whatsoever to any employee of the Government in connection with the exercise of the privilege granted.

(c) The permittee shall give credit to the Department of the Interior in an appropriate courtesy title if any of the scenes photographed are used in travelogs or motion pictures distributed for educational purposes.

(d) The permittee in any area administered by the National Park Service shall, in the discretion of the Superintendent, give appropriate courtesy credit in all motion pictures in which photographed scenes are used.

(e) The permittee shall furnish a bond, or make a deposit in cash or by certified check, in an amount to be set by the official in charge, to insure full compliance with all the conditions prescribed in this section or elsewhere in the regulations in this part or set forth in the permit.

(f) The permittee, upon the request of the Secretary of the Interior, shall furnish to the Division of Information, Department of the Interior, Washington, D. C., for administrative use a 16 mm. print on acetate film of the footage taken pursuant to the permission granted hereunder.

§ 5.6 *Wildlife.* Motion or sound pictures of wildlife on any area administered by the Department of the Interior shall be permitted only when such wildlife is shown in its natural state.

§ 5.7 *Report by field officials.* Every field official granting a permit shall, upon the conclusion of filming operations, report to the head of his bureau or office for transmittal through channels to the Secretary of the Interior, if in his judgment a print of the film footage should be requested for administrative use in accordance with § 5.5. The report shall be sufficiently descriptive to enable the Secretary to determine whether a print should be requested. No report will be required in other cases.

§ 5.8 *Form of application.* Application for permission to take a motion or a motion and sound picture.

Date _____

To the _____
(Title)

_____
(Area)

(a) Permission is requested to film a motion or a motion and sound picture in the area mentioned above under the conditions stated in the regulations of the Department of the Interior (43 CFR, Subtitle A, Part 5).

(b) The scope of the filming and the manner and extent thereof will be as follows: We will commence filming on or about _____, and estimate it will take approximately _____ days, weather conditions permitting.

(An additional sheet should be used if necessary.)

(c) If any of the scenes filmed are used in travelogs or for educational purposes, credit will be given to the Department of the Interior in an appropriate courtesy title. If any of the scenes filmed are in areas admin-

istered by the National Park Service, credit will be given in an appropriate courtesy title to the Department of the Interior, National Park Service, and to the area filmed, in any picture in which such scenes are used.

(d) The filming will be strictly in accordance with the applicable regulations of the Department of the Interior, and we will comply with any special instructions given to us by the official in charge of the area. In addition, we will exercise the utmost care to see that no natural features are injured, and after the filming has been completed we will, as required by the official in charge, either clean up and restore the area to its prior condition or leave the area, after clean-up, in a condition satisfactory to the official in charge.

(e) Upon the request of the Secretary of the Interior, we will furnish to the Division of Information, Department of the Interior, Washington, D. C., for administrative use a print of the film footage taken pursuant to this permit.

(f) We will refrain, in accordance with the provisions of the act of the Congress approved on March 3, 1917 (39 Stat. 1106, 5 U. S. C. 66), from offering any gratuity of any nature whatsoever to any employee of the Government in connection with the exercise of the privilege herein requested.

(g) We will furnish to the official in charge of the area, upon request, any additional information relating to the taking of the motion or motion and sound picture covered by this application.

_____
(Applicant)

For_____
(Company)

Bond Requirement $_____

_____
(Area)

Approved:_____
(Date)

Fee: $_____;

_____
(Title)

_____
(Address)

PART 6—PATENT REGULATIONS

Subpart A—Inventions by Employees

Sec.

6.1 Definitions.
6.2 Report of invention.
6.3 Action by supervisory officials.
6.4 Action by Solicitor.
6.5 Rights in inventions made before January 23, 1950.
6.6 Rights in inventions made on or after January 23, 1950.
6.7 Appeal by employee.
6.8 Domestic patent protection.
6.9 Foreign patent protection.
6.10 Publication and public use of invention before patent application is filed.
6.11 Publicity concerning the invention after patent application is filed.
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Subpart B—Licenses

6.51 Purpose.
6.52 Patents.
6.53 Unpatented inventions.
6.54 Use or manufacture by or for the Government.
6.55 Terms of licenses or sublicenses.
6.56 Issuance of licenses.
6.57 Evaluation Committee.

AUTHORITY: §§ 6.1 to 6.57 issued under R. S. 161, sec. 5, 58 Stat. 191; 5 U. S. C. 22, 30 U. S. C. 325.

SUBPART A—INVENTIONS BY EMPLOYEES

§ 6.1 *Definitions.* As used in this subpart:

(a) The term "Department" means the Department of the Interior.

(b) The term "Secretary" means the Secretary of the Interior.

(c) The term "Solicitor" means the Solicitor of the Department of the Interior.

(d) The term "Chairman" means the Chairman of the Government Patents Board.

(e) The term "invention" means any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

(f) The term "employee" includes a part-time consultant or a part-time employee of the Department in so far as inventions made during periods of official duty are concerned, except when special circumstances in a specific case require an exemption in order to meet the needs of the Department, each such exemption to be subject to the approval of the Chairman.

§ 6.2 *Report of invention.* (a) Every invention made by an employee of the Department shall be reported by such employee through his supervisor and the head of the bureau or office to the Solicitor, unless the invention obviously is unpatentable. If the invention is the result of group work, the report shall be made by the supervisor and shall be signed by all employees participating in the making of the invention. The original and three copies of the invention report shall be furnished to the Solicitor. The Solicitor may prescribe the form of the report.

(b) The report shall be made as promptly as possible, taking into consideration such factors as possible publication or public use, reduction to practice, and the necessity for protecting any rights of the Government in the invention. Although it is not necessary to withhold the report until the process or device is completely reduced to practice, reduction to practice assists in the preparation of a patent application and, if diligently pursued, protects the interests of the Government and of the inventor. If an invention is reduced to practice after the invention report is filed, the Solicitor must be notified forthwith.

(c) For the protection of the rights of the Government and of the inventor, invention reports and memoranda or correspondence concerning them are to be considered as confidential documents.

(d) An invention report shall contain the following information:

(1) The title of the invention;

(2) The full name, residence, office address, bureau or office and division, position or title, and official working place of the inventor;

(3) A statement of the evidence that is available as to the making of the invention, including information relative to conception, disclosure to others, and reduction to practice;

(4) Information concerning any publication or public use of the invention;

(5) The problems which led to the making of the invention;

(6) The objects, advantages, and uses of the invention;

(7) A description of the invention;

(8) Experimental data;

(9) Information which the inventor may have obtained as to the prior art;

(10) The inventor's opinion as to the foreign countries in which the invention would be most useful and would have the greatest commercial value;

(11) Either a statement that the employee is willing to assign the rights in the invention to the Government, or a request pursuant to paragraph (e) of this section for a determination of the respective rights of the Government and of the inventor.

(e) If the inventor believes that he is not required by the regulations in this subpart to assign to the Government the entire domestic right, title, and interest in and to the invention, and if he is unwilling to make such an assignment to the Goverment, he shall, in his invention report, request that the Solicitor determine the respective rights of the Government and of the inventor in the invention, and he shall include in his invention report information on the following points, in addition to the data called for in paragraph (d) of this section:

(1) The circumstances under which the invention was made and developed;

(2) The employee's official duties, as given on his job sheet or otherwise assigned, at the time of the making of the invention;

(3) Whether the employee wishes a patent application to be prosecuted under the act of March 3, 1883, as amended (35 U. S. C. 45), if it should be determined that he is not required to assign all domestic rights in the invention to the Government; and

(4) Whether the employee would be willing, upon request, voluntarily to assign foreign rights in the invention to the Government if it should be determined that an assignment of such rights to the Government is not required.

§ 6.3 *Action by supervisory officials.* (a) The preparation of an invention report and other official correspondence on patent matters is one of the regular duties of an employee who has made an invention, and the supervisor of such employee shall see that he is allowed sufficient time from his other duties to prepare such documents. The supervisor shall ascertain that the invention report and other papers are prepared in conformity with these regulations; and, before transmitting the invention report to the head of the bureau or office, shall check its accuracy and completeness, especially with respect to the circumstances in which the invention was developed, and shall add whatever comments he may deem to be necessary or desirable. The supervisor shall add to the file whatever information he may have concerning the governmental and commercial value of the invention, and the foreign countries in which it is likely that the invention would be most useful and would have the greatest commercial value.

(b) The head of the bureau or office shall make certain that the invention

report is as complete as circumstances permit. He shall provide whatever information may be available in his agency concerning the governmental and commercial value of the invention, and the foreign countries in which it is likely that the invention would be most useful and would have the greatest commercial value.

(c) If the employee inventor requests that the Solicitor determine his rights in the invention, the head of the bureau or office shall state his conclusions with respect to such rights.

(d) The head of the bureau or office shall indicate whether, in his judgment, the invention is liable to be used in the public interest, and he shall set out the facts supporting his conclusion whenever the employee's invention report does not contain sufficient information on this point.

§ 6.4 *Action by Solicitor.* (a) If an employee inventor requests, pursuant to paragraph (e) of § 6.2, that such determination be made, the Solicitor shall determine the respective rights of the employee and of the Government in and to the invention. The Solicitor's determination respecting an invention made before January 23, 1950, shall be final; but his determination respecting an invention made on or after January 23, 1950, shall be subject to review by the Chairman in proper cases under Executive Order 10096 and the rules and regulations issued by the Chairman with the approval of the President.

(b) If the Government is entitled to obtain the entire domestic right, title, and interest in and to an invention made by an employee of the Department, the Solicitor, subject to review by the Chairman in proper cases, may take such action respecting the invention as he deems necessary or advisable to protect the interests of the United States.

§ 6.5 *Rights in inventions made before January 23, 1950.* (a) The provisions of this section shall be applied in determining the respective rights of the Government and of an employee of the Department in and to any invention made by the employee prior to January 23, 1950.

(b) Each employee of the Department is required, upon request, to assign to the United States, as represented by the Secretary, all domestic and foreign rights to any invention made by the employee within the general scope of his governmental duties, unless such requirement is waived in writing by the Solicitor. An invention will be considered as having been made within the general scope of the governmental duties of an employee (1) whenever his duties include research or investigation, or the supervision of research or investigation, and the invention arose in the course of such research or investigation and is relevant to the general field of an inquiry to which the employee was assigned, or (2) whenever the invention was in a substantial degree made or developed through the use of Government facilities or financing, or on Government time, or through the aid of Government information not available to the public.

(c) An employee of the Department is entitled to all rights resulting from any invention which was made by him outside the general scope of his governmental duties, as defined in paragraph (b) of this section.

(d) If the Solicitor finds that an invention made by an employee of the Department outside the general scope of his governmental duties is used or liable to be used in the public interest, and executes a certificate to that effect, the employee may, if he wishes to do so, request that an application for a patent be filed and prosecuted at the expense of the Government under the act of March 3, 1883, as amended (35 U. S. C. 45). Under such circumstances, the invention may be manufactured and used by or for the Government for governmental purposes without the payment of any royalty.

(e) The requirement relative to the assignment of domestic patent rights to the United States, set forth in paragraph (b) of this section, may be waived in whole or in part, in writing, by the Solicitor in the case of any invention as to which he finds, upon grounds to be specified by him, that the interests of the United States do not require the full assignment of such rights.

(f) The requirement relative to the assignment of foreign patent rights to the United States, set forth in paragraph (b) of this section, may be waived in whole or in part, in writing, by the Solicitor if a determination is made by competent authority pursuant to section 3 of Executive Order No. 9865 (12 F. R. 3907) that no foreign patent protection shall be procured by the Government as to an invention or that foreign patent protection shall be procured by the Government only in specified foreign jurisdictions. An employee of the Department shall not file in any foreign jurisdiction any patent application relating to an invention made within the general scope of his governmental duties unless the Solicitor has waived in writing the requirement that foreign rights be assigned to the United States.

§ 6.6 *Rights in inventions made on or after January 23, 1950.* (a) The rules prescribed in this section shall be applied in determining the respective rights of the Government and of an employee of the Department in and to any invention made by the employee on or after January 23, 1950.

(b) (1) Except as indicated in the succeeding subparagraphs of this paragraph, the Government shall obtain the entire domestic right, title, and interest in and to any invention made by an employee of the Department (i) during working hours, or (ii) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (iii) which bears a direct relation to or is made in consequence of the official duties of the inventor.

(2) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in subparagraph (1) of this paragraph, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire domestic right, title, and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein (although the Government could obtain same under subparagraph (1) of this paragraph, the Solicitor, subject to the approval of the Chairman, shall leave title to such invention in the employee, subject, however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation, in the terms thereof, to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(3) In applying the provisions of subparagraphs (1) and (2) of this paragraph to the facts and circumstances relating to the making of any particular invention, it shall be presumed that any invention made by an employee who is employed or assigned (i) to invent or improve or perfect any art, machine, manufacture, or composition of matter, or (ii) to conduct or perform research, development work, or both, or (iii) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (iv) to act in a liaison capacity among governmental or nongovernmental agencies or individuals engaged in such work, falls within the provisions of subparagraph (1) of this paragraph, and it shall be presumed that any invention made by any other employee falls within the provisions of subparagraph (2) of this paragraph. Either presumption may be rebutted by the facts or circumstances attendant upon the conditions under which any particular invention is made and, notwithstanding the foregoing, shall not preclude a determination that the invention falls within the provisions of subparagraph (4) of this paragraph.

(4) In any case wherein the Government neither (i) obtains the entire domestic right, title, and interest in and to an invention pursuant to the provisions of subparagraph (1) of this paragraph, nor (ii) reserves a nonexclusive, irrevocable, royalty-free license in the invention, with power to grant licenses for all governmental purposes, pursuant to the provisions of subparagraph (2) of this paragraph, the Solicitor, subject to the approval of the Chairman, shall leave the entire right, title, and interest in and to the invention in the employee, subject to law.

(c) In the event that the Solicitor determines, pursuant to subparagraph (2) or subparagraph (4) of paragraph (b) of this section, that title to an invention will be left with an employee, the Solicitor shall, subject to considerations of national security, or public health, safety, or welfare, report to the Chairman, promptly upon making such determination, the following information concerning the invention:

(1) Description of the invention in sufficient detail to permit a satisfactory review;

(2) Name of inventor and his employment status; and

(3) Statement of the Solicitor's determination and reasons therefor.

The report in a case falling within the provisions of subparagraph (2) of paragraph (b) of this section shall be made after the expiration of the period prescribed in § 6.7 for the taking of an appeal, or it may be made prior to the expiration of such period if the employee acquiesces in the Solicitor's determination. The Chairman thereupon will review the determination of the Solicitor, and his decision respecting the matter shall be final, subject to the right of the inventor to submit to the Chairman, within 30 days (or such longer period as the Chairman may, for good cause, fix in any case) after receiving notice of such decision, a petition for the reconsideration of the decision if it gives to the Government greater rights than the Solicitor's determination. A copy of any such petition must also be filed by the inventor with the Solicitor within the prescribed period.

§ 6.7 *Appeal by employee.* (a) Any employee who is aggrieved by a determination of the Solicitor pursuant to subparagraph (1) or subparagraph (2) of paragraph (b) of § 6.6 may obtain a review of the determination by filing, within 30 days (or such longer period as the Chairman may, for good cause, fix in any case) after receiving notice of such determination, a written appeal with the Chairman and a copy of the appeal with the Solicitor.

(b) In the event of the filing of an appeal pursuant to this section, the Solicitor shall, subject to considerations of national security, or public health, safety, or welfare, furnish the Chairman in writing, promptly upon the filing of the appeal, the following information concerning the invention involved in the appeal:

(1) Description of the invention in sufficient detail to permit a satisfactory review;

(2) Name of the inventor and his employment status, including a detailed statement of his official duties and responsibilities at the time of making the invention; and

(3) Detailed statement of the nature of the dispute or controversy, together with copies of the Solicitor's determination, of any briefs or written arguments that may have been filed, of any statements or other evidence that may have been considered by the Solicitor, and of other relevant material.

(c) The decision of the Chairman upon any appeal taken pursuant to this section shall be final.

§ 6.8 *Domestic patent protection.* (a) The Solicitor, upon determining that an invention coming within the scope of subparagraph (1) or subparagraph (2) of paragraph (b) of § 6.6 has been made, shall thereupon determine whether patent protection will be sought in the United States by the Department for such invention. A controversy over the respective rights of the Government and of the inventor in any case shall not delay the taking of the actions provided for in this section. In cases coming within the scope of subparagraph (2) of paragraph (b) of § 6.6, action by the Department looking toward such patent protection shall be contingent upon the consent of the inventor.

(b) Where there is a dispute as to whether subparagraph (1) or subparagraph (2) of paragraph (b) of § 6.6 applies in determining the respective rights of the Government and of an employee in and to any invention, the Solicitor will determine whether patent protection will be sought in the United States pending the Chairman's decision on the dispute, and, if he determines that an application for patent should be filed, he will take such rights as are specified in subparagraph (2) of paragraph (b) of § 6.6, but this shall be without prejudice to acquiring the rights specified in subparagraph (1) of that paragraph should the Chairman so decide.

(c) Where the Solicitor has determined to leave title to an invention with an employee under subparagraph (2) of paragraph (b) of § 6.6, the Solicitor will, upon the filing of an application for patent and pending review of the determination by the Chairman, take the rights specified in that subparagraph, without prejudice to the subsequent acquisition by the Government of the rights specified in subparagraph (1) of paragraph (b) of § 6.6 should the Chairman so decide.

(d) In the event that patent protection is sought by the Department for an invention made by a Government employee, the Solicitor shall, subject to considerations of national security, or public health, safety, or welfare, report to the Chairman, promptly upon the filing of an application for patent, the following information concerning the invention:

(1) Brief description of the invention;

(2) Name of the inventor and his employment status; and

(3) Serial number, title of invention, and date on which the application was filed.

(e) In the event that the Solicitor determines that an application for patent will not be filed on an invention made under the circumstances specified in subparagraph (1) of paragraph (b) of § 6.6, giving the United States the right to title thereto, the Solicitor shall, subject to considerations of national security, or public health, safety, or welfare, report to the Chairman, promptly upon making such determination, the following information concerning the invention:

(1) Description of the invention in sufficient detail to permit a satisfactory review;

(2) Name of the inventor and his employment status; and

(3) Statement of the Solicitor's determination and reasons therefor.

The Chairman may, if he determines that the interest of the Government so requires and subject to considerations of national security, or public health, safety, or welfare, cause an application for patent to be filed or cause the invention to be fully disclosed by publication thereof.

(f) Whenever a patent hereafter issues on an invention made by an employee of the Department in respect to which the Government has any right, title, or interest, including a license, in and to the invention, the Solicitor shall, promptly upon the issuance of the patent, furnish to the Chairman:

(1) An abstract of the invention;

(2) Name of the inventor and his employment status;

(3) A copy of the patent; and

(4) Statement of the nature and extent of the right, title, or interest of the Government in the invention.

§ 6.9 *Foreign patent protection.* (a) Immediately upon the filing of an application for United States patent and receiving from the Commissioner of Patents the serial number of such application on an invention in and to which the Government, as represented by the Secretary, has obtained title or the right to file foreign patent applications thereon, or holds an option to obtain such right, the Solicitor shall, in accordance with the procedure prescribed by the Chairman, ascertain whether the United States will seek foreign patent protection for such invention, and, if so, in what foreign jurisdictions such patent protection will be sought. When the foreign patent rights in an invention made by a Department employee have not been assigned to the Government but the Government may, at its option or on request, acquire such rights, and a decision is made that the Government will not seek a foreign patent in any particular foreign country, the inventor may apply for patent in such country, subject to a nonexclusive, irrevocable, royalty-free license to the Government for governmental purposes.

§ 6.10 *Publication and public use of invention before patent application is filed.* (a) Publication or public use of an invention constitutes a statutory bar to the granting of a patent for the invention unless a patent application is filed within one year of the date of such publication or public use. In order to preserve rights in unpatented inventions, it shall be the duty of the inventor, or of his supervisor if the inventor is not available to make such report, to report forthwith to the Solicitor any publication or use (other than experimental) of an invention, irrespective of whether an invention report has previously been filed. If an invention report has not been filed, such a report, including information concerning the public use or publication, shall be filed at once. If an invention is disclosed to any person who is not employed by the Department or working in cooperation with the Department upon that invention, a record shall be kept of the date and extent of the disclosure, the name and address of the person to whom the disclosure was made, and the purpose of the disclosure.

(b) No description, specification, plan, or drawing of any unpatented invention upon which a patent application is likely to be filed shall be published, nor shall any written description, specification, plan, or drawing of such invention be furnished to anyone other than an employee of the Department or a person working in cooperation with the Department upon that invention, unless the Solicitor is of the opinion that the interests of the Government will not be preju-

diced by such action. If any publication disclosing the invention, not previously approved by the Solicitor, comes to the attention of the inventor or his supervisor, it shall be the duty of such person to report such publication to the Solicitor.

§ 6.11 *Publicity concerning the invention after patent application is filed.* In order that the public may obtain the greatest possible benefit from inventions in which the Secretary has transferable interests, inventions assigned to the Secretary upon which patent applications have been filed shall be publicized as widely as possible, within limitations of authority, by the Department, by the originating agency, by the division in which the inventor is employed, and by the inventor himself in his contacts with industries in which the invention is or may be useful. Regular organs of publication shall be utilized to the greatest extent possible. In addition, it shall be the duty of the Solicitor, upon being advised of the issuance of any patent assigned to the Secretary, to take steps towards listing the patent, in the register in the Patent Office established for that purpose, as available for licensing.

§ 6.12 *Condition of employment.* (a) The regulations in this subpart, as were those of Departmental Orders Nos. 1763 (7 F. R. 10161) and 1871 (8 F. R. 12523), as amended (10 F. R. 9722), shall be a condition of employment of all employees of the Department and shall be effective as to all inventions made during any period of employment since November 17, 1942, except that the provisions relating to foreign patent rights and foreign patent applications shall not apply to inventions which, prior to the effective date of the regulations in this subpart, have been reported to the Solicitor and upon which foreign patent applications already have been filed in accordance with the provisions of Orders Nos. 1763 and 1871. The regulations in this subpart shall be effective without regard to any existing or future contracts to the contrary entered into by any employee of the Department with any person other than the Government.

(b) If a patent application is filed upon an invention which has been made by an employee of the Department under circumstances that entitle the Government to the entire domestic right, title, and interest in and to the invention, but which has not been reported to the Solicitor pursuant to the regulations in this subpart, title to such invention shall immediately vest in the Government, as represented by the Secretary, and the contract of employment shall be considered an assignment of such rights.

SUBPART B—LICENSES

§ 6.51 *Purpose.* It is the purpose of the regulations in this subpart to secure for the people of the United States the full benefits of Government research and investigation in the Department of the Interior (a) by providing a simple procedure under which the public may obtain licenses to use United States patents and inventions in which the Secretary of the Interior has transferable interests and which are available for licensing; and (b) by providing adequate protection for the inventions until such time as they may be made available for licensing without undue risk of losing patent protection to which the public is entitled.

§ 6.52 *Patents.* United States patents in which the Secretary of the Interior has transferable interests, and under which he may issue licenses or sublicenses, are classified as follows:

(a) *Class A.* Patents, other than those referred to in paragraph (c) of this section, which are owned by the United States, as represented by the Secretary of the Interior, free from restrictions on licensing except such as are inherent in Government ownership;

(b) *Class B.* Patents in which the interest of the United States, as represented by the Secretary of the Interior, is less than full ownership, or is subject to some express restriction upon licensing or sublicensing (including patents upon which the Secretary of the Interior holds a license, patents assigned to the Secretary of the Interior as trustee for the people of the United States, and patents assigned to the Secretary of the Interior upon such terms as to effect a dedication to the public);

(c) *Class C.* Patents and patent rights acquired by the Secretary of the Interior pursuant to the act of April 5, 1944 (58 Stat. 190; 30 U. S. C., Sup. 321–325), and any amendments thereof.

§ 6.53 *Unpatented inventions.* The Secretary of the Interior may also have transferable interests in inventions which are not yet patented. In order to protect the patent rights of the Department, for the eventual benefit of the public, a license may be granted with respect to such an invention only if (a) a patent application has been filed thereon; (b) the invention has been assigned to the United States, as represented by the Secretary of the Interior, and the assignment has been recorded in the Patent Office; and (c) the Solicitor of the Department is of the opinion that the issuance of a license will not prejudice the interests of the Government in the invention. Such licenses shall be upon the same terms as licenses relating to patents of the same class, as described in § 6.52.

§ 6.54 *Use or manufacture by or for the Government.* A license is not required with respect to the manufacture or use of any invention patented under the act of March 3, 1883, as amended (35 U. S. C. 45), or assigned or required to be assigned without restrictions or qualifications to the United States, as represented by the Secretary of the Interior, when such manufacture or use is by or for the Government for governmental purposes. A license or sublicense may be required, however, for such manufacture or use in the case of Class B patents or patent rights when the terms under which the Secretary of the Interior acquires interests therein necessitate the issuance of a license or sublicense in such circumstances.

§ 6.55 *Terms of licenses or sublicenses.* (a) The terms of licenses and sublicenses issued under this subpart shall not be unreasonably restrictive. All terms and conditions required by this subpart shall be expressly stated in licenses and sublicenses.

(b) To the extent that they do not conflict with any restrictions to which the licensing or sublicensing of Class B patents and unpatented inventions may be subject, all licenses and sublicenses relating to Class A and Class B patents and unpatented inventions shall be subject to the following terms and provisions, and to such other terms and conditions as the Solicitor may prescribe:

(1) The acceptance of a license or sublicense shall not be construed as a waiver of the right to contest the validity of the patent. A license or sublicense shall be revocable only upon a finding by the Solicitor of the Department that the terms of the license or sublicense have been violated and that the revocation of the license or sublicense is in the public interest. Such finding shall be made only after reasonable notice and an opportunity to be heard.

(2) Licenses and sublicenses shall be nontransferable. Upon a satisfactory showing that the public will be benefited thereby, they may be granted to properly qualified applicants royalty-free. If no such showing is made, they shall be granted only upon a reasonable royalty or other consideration, the amount or character of which is to be determined by the Solicitor. A cross-licensing agreement may be considered adequate consideration.

(3) Licensees and sublicensees may be required to submit annual or more frequent technical or statistical reports concerning practical experience acquired through the exercise of the license or sublicense, the extent of the production under the license or sublicense, and other related subjects.

(4) A licensee or sublicensee manufacturing a patented article pursuant to a license or sublicense shall give notice to the public that the article is patented by affixing thereon the word "patent," together with the number of the patent, or when, from the character of the article, this cannot be done, by fixing to it, or to the package in which it is enclosed, a label containing such notice.

(c) Licenses and sublicenses relating to Class C patents and patent rights shall be granted upon such terms and conditions as may be prescribed pursuant to sections 3 and 5 of the act of April 5, 1944, and any amendments thereof.

§ 6.56 *Issuance of licenses.* (a) Any person desiring a license relating to an invention upon which the Secretary of the Interior holds a patent or patent rights may file with the Solicitor of the Department of the Interior an application for a license, stating:

(1) The name, address, and citizenship of the applicant;

(2) The nature of his business;

(3) The patent or invention upon which he desires a license;

(4) The purpose for which he desires a license;

(5) His experience in the field of the desired license;

(6) Any patents, licenses, or other patent rights which he may have in the field of the desired license; and

(7) The benefits, if any, which the applicant expects the public to derive from his proposed use of the invention.

(b) It shall be the duty of the Solicitor, after consultation with the bureau most directly interested in the patent or invention involved in an application for a license, and with the Evaluation Committee if royalties are to be charged, to determine whether the license shall be granted. If he determines that a license is to be granted, he shall execute, on behalf of the Secretary, an appropriate license.

§ 6.57 *Evaluation Committee.* At the request of the Solicitor, an Evaluation Committee will be appointed by the Secretary to recommend royalty rates with respect to any patents or inventions for which royalties may be charged.

PART 7—OFFICERS AND EMPLOYEES: LANDS AND RESOURCES

LANDS AND RESOURCES OF BUREAU OF LAND MANAGEMENT

Sec.
7.1 Statutory authority.
7.2 Definitions.
7.3 Officers and employees of the Department of the Interior and their spouses prohibited from acquiring voluntarily, or retaining, an interest in any lands or resources administered by the Bureau of Land Management.
7.4 Exceptions.
7.5 Interests to be reported.
7.6 Penalty for violations.

AUTHORITY: §§ 7.1 to 7.6 issued under R. S. 161, 452; 5 U. S. C. 22, 43 U. S. C. 11.

§ 7.1 *Statutory authority.* The regulations in §§ 7.1 to 7.6, inclusive, are based, in part, on section 161 of the Revised Statutes (5 U. S. C. 22) which authorizes the Secretary of the Interior to prescribe regulations not inconsistent with the law for the government of his Department and the conduct of its officers and employees, and in part, on section 452 of the Revised Statutes (43 U. S. C. 11) which prohibits officers and employees of the Bureau of Land Management from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands, and which provides that any person who violates the section shall forthwith be removed from his office.

§ 7.2 *Definitions.* The following definitions apply to terms used in §§ 7.1 to 7.6, inclusive:

(a) "Officers and employees of the Department of the Interior" means every person employed by the Department of the Interior, or any of its bureaus or offices, on a full-time or part-time basis, other than members of advisory boards, councils or committees established under authority of the Secretary of the Interior. Mineral surveyors are employees of the Bureau of Land Management and within the prohibition contained in §§ 7.1 to 7.6, inclusive. Waskey v. Hammer, 223 U. S. 85 (1911).

(b) "Interest" means any direct or indirect ownership in whole or in part of the lands or resources in question, or any participation in the earnings therefrom, or the right to occupy or use the property or to take any benefits therefrom based upon a lease or rental agreement, or upon any formal or informal contract with a person who has such an interest. It includes membership in a firm, or ownership of stock or other securities in a corporation which has such an interest: *Provided,* That stock or securities listed for public trading on a stock exchange or securities market may be purchased by an employee if the acquisition thereof will not tend to interfere with the proper and impartial performance of the duties of the employee or bring discredit upon the Department.

§ 7.3 *Officers and employees of the Department of the Interior and their spouses prohibited from acquiring voluntarily, or retaining, an interest in any lands or resources administered by the Bureau of Land Management.* Every officer and employee of the Department of the Interior and the spouse of every such person, except as provided in § 7.4, is prohibited from acquiring voluntarily, or retaining, an interest of any kind in any of the public lands or other lands or resources administered by the Bureau of Land Management. This prohibition includes the buying, selling, or locating of any warrant, scrip, lieu land selection, soldier's additional right, or any other right or claim under which an interest in the public lands may be asserted. The prohibition also extends to the voluntary acquisition by purchase or otherwise of any land, water right, or livestock, or any interest in land, water right, or livestock, which in any manner is connected with or involves the use of the grazing resources or facilities of the public land, or other lands or resources administered by the Bureau of Land Management.

§ 7.4 *Exceptions.* (a) (1) The act of June 1, 1938 (52 Stat. 609) as amended by the act of July 14, 1945 (59 Stat. 467, 43 U. S. C. 682a) authorizes any officer or employee of the Department of the Interior stationed in Alaska to purchase or lease under that act one tract in Alaska for any purpose authorized by the act, except as a business site; section 1 of the act of March 3, 1879 (20 Stat. 394, 43 U. S. C. 31) provides that the Director and members of the Geological Survey shall have no personal or private interests in the lands or mineral wealth of the region under survey; and Revised Statute section 452 (43 U. S. C. 11) provides that all officers, clerks, and employees of the Bureau of Land Management are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land. Apart from such restrictions, and if otherwise qualified, (i) any officer or employee of the Department of the Interior stationed in Alaska (except an officer or employee of the Bureau of Land Management or the spouse of such person) shall not by reason of being such an officer or employee be precluded from retaining or acquiring any interest in the lands or resources in Alaska administered by the Bureau of Land Management, other than in a mineral lease or mining claim, and (ii) any temporary, limited, part-time, WAE (when actually employed) or WOC (without compensation) employee of the Department of the Interior (except an officer or employee of the Bureau of Land Management or the spouse of such person) shall not by reason of being such an employee be precluded from retaining or acquiring any interest in lands or resources administered by the Bureau of Land Management.

(2) Nothing contained in §§ 7.1 to 7.6, inclusive, shall disqualify local stockmen appointed pursuant to section 18 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269, 43 U. S. C. 315o–1), as amended, as members of advisory boards for grazing districts, from acquiring or retaining grazing permits issued pursuant to section 3 of the Taylor Grazing Act (43 U. S. C. 315b), or interests therein: *Provided,* That in no case shall the member of any such board participate in any advice or recommendation concerning such a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Nothing contained in §§ 7.1 to 7.6, inclusive, shall disqualify an employee of the Bureau of Reclamation from acquiring for residential purposes, and not for speculation, under any applicable public land law, a town lot or other area not exceeding 2 acres in size within a reclamation project, or prevent the part-time employment by that Bureau when in the public interest of a homestead entryman within a reclamation project, or a public land claimant as an appraiser of land or as a member of a reclamation project examining board.

(b) An exception similar to subparagraph (3) of paragraph (a) of this section will be made in the case of other employees of the Department of the Interior, other than employees of the Bureau of Land Management, upon the submission by the head of the bureau or office involved to the Secretary of the Interior, and the approval by the Secretary, of a statement justifying such exception.

(c) Any officer or employee of the Petroleum Administration for Defense may retain any interest, and may acquire and retain any rights or benefits accruing from the ownership of that interest, in an oil and gas lease (notwithstanding any provision thereof providing otherwise) if such interest was acquired by him more than one year prior to the commencement of his employment in the Government service.

§ 7.5 *Interests to be reported.* In any case where by operation of law an officer or employee of the Department of the Interior acquires an interest in the public lands, or other lands or resources administered by the Bureau of Land Management, and where an officer or employee is in doubt whether the acquisition of securities or other rights or interests involving such lands or resources would violate the provisions of §§ 7.1 to 7.6, inclusive, a statement of the facts should be submitted promptly by the individual involved to the head of his bureau or office for transmittal through proper channels to the Secretary of the Interior for a decision or other necessary action.

§ 7.6 *Penalty for violations.* The violation of §§ 7.1 to 7.6, inclusive, by an officer or employee shall be deemed suf-

ficient cause to warrant the removal of such individual from his office. The penalty for violations by the spouse of an officer or employee will be the removal from office of the employee.

PART 8—JOINT POLICY FOR LAND ACQUISITION ON RESERVOIR PROJECTS; DEPARTMENT OF THE INTERIOR-DEPARTMENT OF THE ARMY

Sec.
8.1 Lands to be acquired in fee.
8.2 Lands for which easements are to be acquired.
8.3 Blocking out.
8.4 Mineral rights.
8.5 Buildings.
8.6 Acquisition of lands for collateral purposes.
8.7 Application of policy.

AUTHORITY: §§ 8.1 to 8.7 issued under sec. 7, 32 Stat. 389, sec. 14, 53 Stat. 1197; 43 U. S. C. 421, 389.

§ 8.1 *Lands to be acquired in fee.* The fee title will be acquired to the following lands:

(a) Lands necessary for permanent structures.

(b) Lands below the top of the pool elevation for storing water for navigation, power, irrigation and other conservation purposes.

(c) Fee title in general will be acquired to all land 300 feet horizontally from the edge of the conservation pool described in paragraph (b) of this section. In those projects where the topography is precipitous, or where the topography is unusually flat, and where such discretionary action is desirable, fee title may be acquired to those lands which are included in the five-year flood frequency rather than 300 feet horizontally.

(d) Additional lands which may be needed to provide for limited public use and reasonable access in accordance with applicable laws, or for operation and maintenance of the project.

(e) Lands covered by the exception noted in § 8.2 (f).

§ 8.2 *Lands for which easements are to be acquired.* Easements will be acquired to the following lands:

(a) Additional reservoir lands needed for flowage in reservoir areas above those described in § 8.1 (c).

(b) Lands in reservoir areas of navigation only projects.

(c) Lands in reservoir areas of flood control only projects which do not provide conservation pools.

(d) Lands required for a relatively short time for temporary structures or for use during the construction period only.

(e) Easements may be acquired for lands in the zone as defined in § 8.1 (c) above the conservation pool, and which are in remote areas of the reservoir or which had previously been subject to frequent inundation, where it is determined that fee title is not required.

(f) Fee title may be taken as necessary where it is to the financial advantage of the Government to acquire fee rather than easement, and in special cases to prevent hardship.

§ 8.3 *Blocking out.* In land acquired in fee, blocking out will be accomplished in accordance with sound real estate practices, for example, on minor sectional subdivision lines; and, normally, land will not be acquired to avoid severance damage if the owner will waive such damage. For lands acquired in easement, close tangents may be used in the upper limit of the easement-held lands; the final easement taking line thereof should generally follow the upper flood line when elevation differences are not significant. Tangents will not be refined to the point they are economically disadvantageous. If more economical, easements may be secured on the basis of the right to flood to a prescribed elevation rather than to block out the upper flood line.

§ 8.4 *Mineral rights.* Mineral, oil and gas rights will not be acquired where the owner objects or where a substantial additional cost would be involved, except where mineral development would interfere with operation of the project or except where required by the provisions of the Atomic Energy Act. Mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes.

§ 8.5 *Buildings.* Buildings for human occupancy as well as other structures which would interfere with the operation of the project for its primary purposes would be prohibited in the reservoir areas on lands for which an easement is acquired.

§ 8.6 *Acquisition of lands for collateral purposes.* Except as authorized by law, no title to land will be acquired for purposes of preservation of wildlife or forests, restoration or replacement of such values destroyed by reservoirs or for creating additional values of like nature, or for recreational purposes.

§ 8.7 *Application of policy.* The policy set forth in this part will govern the determination as to acquisition of any tract on which title to the United States has not been vested or a final judgment in condemnation has not been entered except for projects on which the land acquisition program has progressed to the point where application of the policy would be unreasonable or to the distinct disadvantage of the United States or to the general public. The application of the principles and criteria outlined above to lands already acquired for reservoir projects by disposal of fee title to former owners will require Federal legislation. Flowage easements will be retained where necessary. All other lands rendered surplus by this policy will continue to be disposed of in accordance with existing laws.

PART 12—PAYMENTS TO SCHOOL DISTRICTS

SUBPART A—BOULDER CITY SCHOOL DISTRICT, NEVADA, BOULDER CANYON PROJECT

Sec.
12.1 Average cost of instruction.
12.2 Payment to school district.
12.3 Certified copy to school district.

AUTHORITY: §§ 12.1 to 12.3 issued under sec. 2, 54 Stat. 774 as amended; 43 U. S. C. and Sup., 618a.

§ 12.1 *Average cost of instruction.* The principal local officer of each employing agency of the United States at Boulder City, Nevada, upon written certification sworn to by the President of the Board of Trustees of the Boulder City School District or his duly authorized representative, of the following facts:

(a) The average cost of instruction per pupil per day of pupils enrolled in the high school and in the grade school of the Boulder City School District during the semester for which payment is claimed;

(b) The names of those pupils in the high school and in the grade school who are believed to be dependents of employees of that agency living in or in the immediate vicinity of Boulder City and, as to each of them, the number of days during that semester that he or she attended school, the first and last dates of attendance during that semester, and the name and address of the person upon whom she or he is dependent; shall promptly satisfy himself that the statements therein made are correct and particularly that each person therein listed as one upon whom a pupil was dependent was, in fact, an employee of his agency throughout the period of that pupil's school attendance and, upon so satisfying himself, shall certify to the Director of Power, Bureau of Reclamation, Boulder City, the cost of instruction per semester (which shall be taken, for each pupil, as (1) $65 or (2) the product of the number of days that pupil was in attendance at school and the average cost of instruction in that school per pupil per day, whichever of the two is the smaller) for which payment may lawfully be made pursuant to the terms of section 2 of the act of July 19, 1940, as amended (43 U. S. C. 618a). In the event that a person upon whom dependency of a pupil is claimed was employed by the agency concerned during only part of the period of school attendance, the principal local officer of that agency shall advise the President of the Board of Trustees of the Boulder City School District, or his duly authorized representative, of the date within the semester in question upon which he entered or left the employ of that agency and shall request a certification as above of the number of days' attendance at school by the dependent during the period of employment by that agency, and shall, in certifying to the Director of Power the cost of instruction as aforesaid, make his computations accordingly.

§ 12.2 *Payment to school district.* Upon receipt of the certification of the principal local officer of any agency as aforesaid, the Director of Power shall promptly pay to the appropriate officer of the Boulder City School District the amount so certified as due under the terms of section 2 of the act of July 19, 1940, as amended (43 U. S. C. 618a). However, such payment shall not prejudice the setting-off of overpayments, if any such be later discovered, against payments thereafter coming due under said act or their recoupment by other lawful means.

§ 12.3 *Certified copy to school district.* A certified copy of this part shall be furnished the Boulder City School District for its information and guidance.

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296 Classifications.
297 Executive orders and related public land orders referred to in Chapter I.

SUBCHAPTER A—ALASKA

CROSS REFERENCE: Annette Islands Reserve, Alaska; Metlakahtla Indians and other natives: See 25 CFR Part 1.

PART 51—PUBLIC LAND LAWS APPLICABLE TO ALASKA

§ 51.1 *Governing laws.* (a) The act of May 17, 1884 (23 Stat. 24), providing for a civil government for Alaska, in section 8, extended to Alaska "the laws of the United States relating to mining claims, and the rights incident thereto," but provided that "nothing contained in this act shall be construed to put in force in said district the general land laws of the United States." Similar provision is contained in sections 26 and 27 of the act of June 6, 1900 (31 Stat. 329, 330; 48 U. S. C. 381, 356), which act also made provision for a civil government for Alaska.

(b) However, in section 3 of the act of August 24, 1912 (37 Stat. 512; 48 U. S. C. 23), it was provided that "the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States."

(c) In an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), the Attorney General had occasion to consider the effect of the act of August 24, 1912, in respect to extending certain public-land statutes to Alaska, and, in this connec-

tion, he stated: "The express exception of the public land laws, found in the earlier organic acts, is here omitted; all the laws of the United States are to operate in Alaska save only such as may be locally inapplicable."

(d) It follows, therefore, that whether or not any particular public land statute is applicable in the Territory depends on whether or not it may operate therein consistently with special legislation and with local conditions.

(R. S. 2478; 43 U. S. C. 1201)

PART 52—OATHS, AFFIRMATIONS, AND ACKNOWLEDGMENTS

§ 52.1 *Officers qualified to administer oaths.* (a) Oaths in public land cases in Alaska may be executed before the manager or the acting manager of the land office for the district in which the lands sought are situated, or before any court, judge, or other officer in the Territory, or elsewhere in the United States, authorized by law to administer an oath, or before any postmaster in Alaska. (30 Stat. 409, 413, 53 Stat. 1219; 48 U. S. C. 359, 35a–35c)

(b) Except as otherwise provided by an act of Congress, the postmaster is authorized to charge and receive for his services the fees prescribed by law for a notary public for similar services in the Territory.

(c) The official character of any officer not using a seal of office, other than a manager, an acting manager, or a postmaster, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. Each certificate of oath, affirmation, or acknowledgment executed by a postmaster within the Territory as provided in this section must be signed by him, with a designation of his title, must have affixed thereto the cancellation stamp of the post office, and must state the name of the post office and the date on which the oath or affirmation is administered or the acknowledgment is taken.

(R. S. 2478; 43 U. S. C. 1201)

PART 60—APPLICATIONS AND ENTRIES

EXECUTION AND FILING OF APPLICATIONS

Sec.

60.1 Applications shall not be rejected because executed more than 10 days prior to filing.

ENTRIES SUBJECT TO SECTION 24 OF FEDERAL POWER ACT

60.2 Governing regulations.

HOW LAND SHOULD BE DESCRIBED IN PROOF NOTICES, WHEN COVERED BY SPECIAL SURVEYS

60.3 Metes and bounds description to be omitted.

PATENTS ON ENTRIES

60.4 Reservations in patents.

JOINT ACTION BY TEN OR MORE PERSONS TO ACQUIRE PUBLIC LANDS IN ALASKA

60.5 Joint action to acquire public lands in Alaska.

AUTHORITY: §§ 60.1 to 60.5 issued under R. S. 2478; 43 U. S. C. 1201. Statutory provisions interpreted or applied are cited to text in parentheses.

CROSS REFERENCE: For applications and entries, general regulations, see Parts 101–108 of this chapter.

EXECUTION AND FILING OF APPLICATIONS

§ 60.1 *Applications shall not be rejected because executed more than 10 days prior to filing.* Section 101.1 of this chapter directs managers to reject all applications to make entry which are executed more than 10 days prior to filing.

Until such time as the transportation facilities in Alaska are improved the provisions of said section will not be held applicable to applications filed in the district land offices of Alaska.

ENTRIES SUBJECT TO SECTION 24 OF FEDERAL POWER ACT

§ 60.2 *Governing regulations.* Applications involving lands in Alaska, for other than power purposes which conflict in whole or in part with lands reserved or classified as power sites, or covered by power applications under the act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791–823), known as "The Federal Power Act," will be acted upon and disposed of in accordance with §§ 103.1–103.4.

CROSS REFERENCE: For regulations of the Federal Power Commission, see 18 CFR Chapter I.

HOW LAND SHOULD BE DESCRIBED IN PROOF NOTICES, WHEN COVERED BY SPECIAL SURVEYS

§ 60.3 *Metes and bounds description to be omitted.* (a) The requirements with reference to publication of proof notices in homestead cases in Alaska, where a special survey has been made, are set forth in § 65.25. The requirements of the law with reference to publication are contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 359). These requirements are applicable to homestead entries, soldiers' additional entries, and trade and manufacturing sites.

(b) In Alaska, in the classes of entries mentioned, the important feature of proof notices is to inform all interested parties of the geographical location of the land, and the information should be given in such a way that the people who read the notice will be able to interpret it properly. The metes and bounds description is technical, and not generally understood. Hence, in these cases, it is not of much value to the general public as a means of identification of land. The metes and bounds description adds to the length of the notice and to the cost of the notice to the claimant. The statute does not require the inclusion of such description in the published notice.

(1) Adverse claimants may inform themselves as to the exact location of the land by the markings on the ground or from a copy of a plat of survey which must be filed in the land office and posted on the land.

(2) It is believed, therefore, that in the cases mentioned, and for the reasons stated, the inclusion of the metes and bounds descriptions in the published notices is objectionable and unnecessary. It is directed, therefore, that such descriptions be omitted.

(c) In the cases referred to, as a means of identification of the land, the manager will cause each notice issued to give the survey number and area of the claim, with a statement as to the general location of the land. If the survey is not tied to a corner of the rectangular system of the public-land surveys the notice should give the name and number of the location monument to which some corner of the survey is tied, and the course and distance from the location monument to such corner, with approximate latitude and longitude. If the survey is tied to a corner of the rectangular system of the public-land surveys, such corner should be identified by section, township, and range. The statement as to general location will identify the land as shown on the plat of survey or otherwise as the manager may deem best. The statement, where possible, should refer to the land in connection with some well-known topographical point or natural object or monument, river, trail, town, mining camp, etc.

PATENTS ON ENTRIES

§ 60.4 *Reservations in patents.* All patents for lands in Alaska will reserve a right-of-way thereon for ditches or canals constructed by the authority of the United States under the act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 945), and all patents for lands in the Territory taken up, entered, or located subsequent to the passage of the act of March 12, 1914 (38 Stat. 305; 48 U. S. C. 301–308), will reserve to the United States a right-of-way for the construction of railroads, telegraph, and telephone lines.

In addition to the reservations mentioned, other appropriate reservations will be inserted in the patents, if required by the special laws relating to the particular entries or selections.

CROSS REFERENCES: For mineral reservations, see Part 102 of this chapter; for rights-of-way for roadways, see § 74.27 of this chapter.

JOINT ACTION BY TEN OR MORE PERSONS TO ACQUIRE PUBLIC LANDS IN ALASKA

§ 60.5 *Joint action to acquire public lands in Alaska.* (a) Ten or more persons may file in the proper district land office applications in a single group under any one or more of the laws relating to the acquisition of lands in Alaska, including the Homestead Laws (30 Stat. 409; 32 Stat. 1028; 48 U. S. C. 371), Small Tract Laws (52 Stat. 609, 59 Stat. 467; 43 U. S. C. 682a), Home-Site Law (48 Stat. 809; 48 U. S. C. 461) and Town-Site Laws (R. S. 2380–2389, as amended, 43 U. S. C. 711–722; 26 Stat. 1099; 48 U. S. C. 355). Each application must be complete in itself except that information common to more than one application in a group need not be duplicated at length but may appear in or as an appendix to one such application and be adopted by reference made in the other applications.

(b) All claims to specified tracts of land must be initiated in the manner required by law. Where certain requirements must be met before an application to enter or purchase may be filed, a statement of intention to meet such requirements, signed by each prospective appli-

cant, must be submitted in lieu of an application. Upon compliance with applicable requirements as to residence or otherwise, each such person must file an actual application as required by law.

(c) Each group of applications filed hereunder should be accompanied by two copies of a diagram showing the plan of development contemplated by the applicants. Each such application may describe the land covered by it in terms of a lot or tract as set forth in such diagram or the preliminary diagram specified in this paragraph. The diagram should include specific information as to the relative location and areal extent of each tract or site which it is contemplated will be devoted to school and other municipal or common purposes, to stores or other commercial enterprises, to housing and to agriculture and grazing. Assistance in the preparation of a preliminary diagram, which need not pertain to a particular tract of land, may be obtained by communicating in person or by mail with the United States Department of the Interior, Washington 25, D. C. Such preliminary diagram may be used as the basis for the diagram to be filed with the group of applications and which must relate to specific land.

(d) Upon the filing of such a diagram by the applicants or their authorized representative, a petition or petitions may be filed requesting the withdrawal of the lands to be devoted to school and other municipal or common purposes.

(e) If any of the applications involve unsurveyed public lands, such applications may also be accompanied by a petition, either joint or several, for the withdrawal of the lands in behalf of specified applicants, the survey, and, in appropriate cases, the classification under the Small Tract Law, of such lands. The filing of such applications confers of itself no right upon the applicants. If the withdrawal is made, and the land classified, applicants shall have the first right to acquire the interests for which they have applied, to the extent permitted by statute. Any application, entry or withdrawal made pursuant to this section shall be subject to all valid prior claims.

(f) Persons who propose to file applications in a group under paragraph (a) of this section, by a writing to be filed in the land office, may designate a representative or representatives who may, at their direction and in their behalf, make the actual filing of the applications, previously executed by the applicants and accompanying and supporting documents; pay any or all fees and costs in connection therewith; and, in complete satisfaction of the requirements of § 166.1 of this chapter, personally examine the lands sought to be entered and make and file a statement setting forth the information otherwise required of each individual applicant by § 166.1 (a) and (b) of this chapter.

(g) Where ten or more settlers are entitled by statute to request and receive a free survey of the lands upon which they have settled, they may file a joint petition stating the facts as to compliance with law by each of them. Such petition must be corroborated by two witnesses having knowledge of the facts.

(h) Where the costs of any survey made under this section are required by statute to be borne by one who seeks the survey, the necessary deposit for costs must be made in accordance with § 78.6 of this chapter. The individual applicant is ultimately responsible in such instances for the costs entailed in satisfying his request for such a survey, but persons who file joint or group petitions for such surveys may share the costs thereof in any proportion they may determine.

(Sec. 11, 26 Stat. 1099, secs. 1, 10, 30 Stat. 409, 413, as amended; 48 U. S. C. 355, 371, 461)

PART 61—CERTIFICATES AND SCRIP

SOLDIERS' ADDITIONAL HOMESTEAD ENTRIES

Sec.

61.1 Statutory authority.
61.2 General information.
61.3 Coal, oil, and gas lands not locatable.
61.4 Form of application.
61.5 Application by association or corporation.
61.6 Description of land in application.
61.7 Statement to accompany application.
61.8 Execution and filing of application.
61.9 Evidence required of validity and ownership of right.
61.10 Area selected not to exceed right tendered.
61.11 Evidence of unused portion of certificate or recertified certificate.
61.12 Survey.
61.13 Publication and posting.
61.14 Adverse claim.
61.15 Proof of publication and posting.
61.16 Fees and commissions.
61.17 Entry and final certificate.

SCRIP

61.18 Scrip which may and may not be located in Alaska.

AUTHORITY: §§ 61.1 to 61.18 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For certificates and scrip, general regulations, see Parts 130–133 of this chapter. For homesteads, generally, see Part 166 of this chapter. For soldiers' additional homestead rights, see Part 132 of this chapter. For soldiers' and sailors' homestead and other rights under public land laws, see Part 181 of this chapter.

SOLDIERS' ADDITIONAL HOMESTEAD ENTRIES

§ 61.1 *Statutory authority.* The laws authorizing entries in Alaska under sections 2306 and 2307, Revised Statutes (43 U. S. C. 274, 278), known as soldiers' additional homestead entries, are incorporated as a part of the general homstead laws which are applicable in the Territory.

§ 61.2 *General information.* General information relative to soldiers' additional homestead rights is contained in Part 132 which contains information as to the inheritability and assignability of the rights.

§ 61.3 *Coal, oil, and gas lands not locatable.* Soldiers' additional rights are not locatable on lands in Alaska withdrawn or classified as coal, oil, or gas, or lands which are valuable for coal, oil, or gas.

CROSS REFERENCE: For homesteads on coal, oil and gas lands, see Part 66 of this chapter.

§ 61.4 *Form of application.* Application to locate soldiers' additional rights in Alaska must be presented on Form 4–008a. If presented by other than an assignee, the form may be appropriately modified.

§ 61.5 *Application by association or corporation.* An application by an association must show the qualifications of each member thereof, and an application by a corporation must be accompanied by proof of incorporation, established by the certificate of the officer having custody of the records of incorporation at the place of its formation, and it must be shown that the corporation is authorized to hold land in Alaska.

§ 61.6 *Description of land in application.* If the land be surveyed, it must be described in the application according to the legal subdivisions of the public land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey.

§ 61.7 *Statement to accompany application.*[1] An application on the prescribed form must be accompanied by a duly corroborated statement showing:

(a) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived, and that it is not within a distance of 80 rods along any navigable or other waters from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application or the lands have been restored from reservation.

(c) That the land does not adjoin any inland or water-front location made with soldiers' additional rights which, together with the land applied for, would constitute a single body of land exceeding 160 acres.

(d) That the land is not included within an area which is reserved, because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 292.8 of this chapter.

(e) The facts as to all waters upon the land other than springs, whether creek, pond, lagoon, or lake, their source, depth, width, outlet, and current (whether swift or sluggish) whether or not the same or any of them are navigable for skiffs, canoes, motor boats, launches, or

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

other small water craft, and whether or not the same or any of them constitute a passageway for salmon or other merchantable seagoing fish to spawning grounds.

(f) That no part of the land is valuable for coal, oil, gas or other valuable mineral deposits and that at the date of the application no part of the land was claimed under the mining law.

CROSS REFERENCES: See the following parts in this chapter: For homesteads, Part 65; for Indian and Eskimo allotments, Part 67; for mining claims, Part 69; for school indemnity selections, Part 76; for shore space, Part 77; for trade and manufacturing sites, Part 81.

§ 61.8 *Execution and filing of application.* The application must be executed in duplicate and it must be filed in the proper land office. It must be signed by the applicant, but need not be sworn to.

§ 61.9 *Evidence required of validity and ownership of right.* The applicant must furnish evidence of the prima facie validity of the additional right and of his ownership thereof.

§ 61.10 *Area selected not to exceed right tendered.* An applicant will not be permitted to select an area which is greater than the area of the additional right or rights tendered.

§ 61.11 *Evidence of unused portion of certificate or recertified certificate.* If the right used is a certificate or recertified certificate which exceeds the area of the land entered, evidence of the unused portion may be obtained by procuring a certified copy or photostat copy of the certificate bearing proper notation as to the amount used.

CROSS REFERENCE: For surveys, see Part 78 of this chapter.

§ 61.12 *Survey.* (a) Upon receipt of an application under the provisions of section 2 of the act of April 13, 1926 (44 Stat. 244; 48 U. S. C. 380), the area cadastral engineering officer will, if conditions make such procedure practicable and no objection is shown by his records, furnish the applicant with an estimate of the cost of field and office work, and upon receipt of the deposit required will issue appropriate instructions for the survey of the claim, such survey to be made not later than the next surveying season. The sum so deposited by the applicant for survey will be deemed an appropriation thereof and will be held to be expended in the payment of the cost of the survey, including field and office work, and upon the acceptance of the survey any excess over the cost shall be repaid to the depositor or his legal representative.

(b) In case it is decided that by reason of the inaccessibility of the locality embraced in an application for the survey, or by reason of other conditions, it will result to the advantage of the Government or claimant to have the survey executed by a deputy surveyor, an order will deliver to the applicant for such survey, which will be sufficient authority for any deputy surveyor to make a survey of the claim.

(c) In the latter contingency the survey must be made at the expense of the applicant, and no right will be recognized as initiated by such application unless actual work on the survey is begun and carried to completion without unnecesary delay. Further information as to the requirements and procedure in cases of this kind is given in §§ 78.6–78.9 of this chapter.

§ 61.13 *Publication and posting.* After a special survey of the land has been made, and upon receipt of the plat and field notes thereof, the manager will notify the applicant that within 60 days the applicant must furnish evidence of publication and posting, and that if he fails to do so the application will be rejected and the survey canceled. The publication and posting will be required as follows:

(a) The notice will be prepared by the manager, containing the information required under § 60.3, and it must be published once a week for a period of nine consecutive weeks, in accordance with § 106.14 of this chapter, at the expense of the applicant in a newspaper of established character and general circulation designated by the manager as being published nearest the land.

(b) The applicant must cause a copy of the plat showing the survey, together with a copy of the application, to be posted in a conspicuous place on the claim for 60 consecutive days during the period of publication.

(c) Where the land is located according to the public surveys, publication and posting will be required in accordance with §§ 130.1–130.4 of this chapter.

§ 61.14 *Adverse claim.* (a) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association having or asserting any adverse interest in or claim to the tract of land or any part thereof sought to be purchased may file in the land office where the application is pending, under oath, an adverse claim setting forth the nature and extent thereof; and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(b) Where such adverse claim is filed, action on the application will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(c) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title as stated and any contest which may be filed will be disposed of in accordance with the Rules of Practice, Part 221 of this chapter.

§ 61.15 *Proof of publication and posting.* The proof of publication must consist of the statement of the publisher or foreman of the designated newspaper, or some other employee authorized to act for the publisher, that the notice (a copy of which must be attached to the statement) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper, and not in a supplement. Proof of posting on the claim must consist of the statements of the applicant and one witness who of their own knowledge know that the plat of survey and application were posted as required and remained so posted during the required period. The manager must certify to the posting of the notice in a conspicuous place in his office during the period of publication.

§ 61.16 *Fees and commissions.* The same payments as fees and commissions, are required in connection with soldiers' additional homestead entries and proofs in Alaska as must be made in connection with ordinary homestead entries in the State of Oregon. The amounts are set forth in § 166.8. These payments are not required at the time the application is filed.

§ 61.17 *Entry and final certificate.* The application and proofs filed therewith will be carefully examined and, if all be found regular, the application will be allowed and final certificate issued upon the required payments being made and in the absence of objections shown by his records.

SCRIP

§ 61.18 *Scrip which may and may not be located in Alaska.* Aside from the right of the Territory of Alaska to select lands in lieu of tracts to which it may be entitled, under its grant in aid of public schools made by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354), and which have been lost, no scrip or lieu rights can be located in said Territory except soldier's additional homestead rights.

PART 62—FUR FARMING

Sec.

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62.12 Termination of lease; cancellation.
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AUTHORITY: §§ 62.1 to 62.14 issued under sec. 2, 44 Stat. 822; 48 U. S. C. 361.

FUR FARM LEASES

§ 62.1 *Statutory authority.* The act of July 3, 1926 (44 Stat. 821, 48 U. S. C. secs. 360, 361), authorizes the Secretary of the Interior to lease public lands on the mainland of or islands in Alaska, with the exception of the Pribilof Islands, for fur farming, for periods not exceeding ten years.

§ 62.2 *Policy.* (a) The authority to lease the public lands in Alaska for fur-farming purposes was granted in order to promote the development of the production of furs in Alaska.

(b) No lease for the purpose of raising beavers will be granted on any area already occupied by a beaver colony nor will any such lease be granted on streams or lakes where the activities of beavers may interfere with the run or spawning of salmon.

(c) In order to offer more people an opportunity to lease lands, and to avoid tying up large areas of land unnecessarily, fur-farming leases on public lands will not be granted for areas greater than are justified by the needs and experience of the applicant.

§ 62.3 *Area subject to lease.* (a) On the mainland such leases may be for an area not exceeding 640 acres. A lease may cover an entire island, provided the area thereof does not exceed 30 square miles, and provided the need for such entire island is clearly established. Islands so close together that animals can cross from one to the other, and whose combined area does not exceed 30 square miles, will be treated as one island. Islands having an area of more than 30 square miles will be treated as mainland.

(b) Where a lease is granted for an area in excess of 640 acres on an island, the manager may, after notice to the lessee, reduce the area to an amount not less than 640 acres, if he determines that the lessee cannot reasonably use all of the area for which the lease was granted.

§ 62.4 *Lands subject to lease.* (a) Vacant, unreserved, and unappropriated public lands are subject to lease.

(b) Except for lands under the jurisdiction of the Fish and Wildlife Service and the National Park Service, public lands withdrawn or reserved for any purpose are subject to lease, if the department or agency having jurisdiction thereof consents to the issuance of the lease.

§ 62.5 *Qualifications of applicants.* Any person who is a citizen of the United States, or any group or association composed of such persons, or any corporation organized under the laws of the United States, or of any State or Territory thereof, authorized to conduct business in Alaska may file an application.

§ 62.6 *Application for lease.*[1] An application for lease should be filed in duplicate in the proper land office. No specific form of application is required, but the application should contain or be accompanied by the following:

(a) Applicant's full name, post office address, the general nature of his present business, and the principal place of business.

(b) (1) A statement of the age and of the citizenship status, whether native-born or naturalized, of the applicant, if an individual, or of each partner or member of a partnership or association. A copartnership or an association applicant shall file a copy of whatever written articles of association its members have executed.

(2) A corporation shall file a certified copy of its articles of incorporation, evidence that it is authorized to transact business in the Territory of Alaska, and a copy of the corporate minutes or resolution authorizing the filing of the application and the execution of the lease.

(c) Description of the land for which the lease is desired, by legal subdivision, section, township, and range, if surveyed, and by metes and bounds, with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public-land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments.

(d) A statement as to the applicant's experience in and knowledge of fur farming.

(e) A statement as to the kind of fur-bearing animals to be raised, and, if foxes, the color type; the number of fur-bearing animals the applicant proposes to have on the leased land within one year from the date of the lease, and whether it is proposed to purchase or trap the stock; and that before commencing operations under any lease which may be issued the applicant will procure from the Alaska Game Commission, or its designated agents, whatever licenses are required under the Alaska Game Law (48 U. S. C. 191–213), and the act of April 30, 1946 (7 U. S. C. 433–434).

(f) A detailed statement of the reasons for the need for any area in excess of 640 acres but not exceeding 30 square miles, when the land applied for is comprised of an island, or islands.

(g) A statement of the nature and results of the investigation made by applicant as to whether the land and climate are suited to raising the kind of animals proposed to be stocked.

(h) A statement as to whether the land is occupied, claimed, or used by natives of Alaska or others; and, if so, the nature of the use and occupancy and the improvements thereon, if any.

(i) If beavers are to be raised, a statement as to (1) whether a beaver colony exists on the land, and (2) whether salmon streams or lakes are on or adjacent to the land proposed to be leased.

(j) A statement that the applicant is acting solely on his own account and not under any agreement or understanding with another.

(k) The serial numbers of all other applications filed or leases obtained under this act by applicant, or applicant's spouse or business associate, or in which applicant has a direct or indirect interest.

(l) The showing as to hot or medicinal springs required by § 292.8 of this chapter.

§ 62.7 *Form of lease; rental and royalty; report of annual operations.* (a) Leases will be issued on Form 4–230.

(b) Prior to the issuance of a lease and annually thereafter, the lessee shall pay an advance rental of $5 per annum if the lease embraces 10 acres or less, a rental of $25 per annum if the leased area is more than 10 acres but not more than 640 acres, and a rental of $50 per annum if the leased area exceeds 640 acres.

(c) Within 60 days after the end of each lease year the lessee shall file with the land office a report on Form 4–230a, in duplicate, showing his operations under the lease and his gross receipts thereunder from the sale of live animals and pelts for the preceding lease year. The lessee shall pay, at the time of filing the report, a royalty of 1 percent of such gross receipts deducting therefrom the amount of the advance rental payment made for such preceding lease year.

§ 62.8 *Assignments and subleases.* A proposed assignment of a lease, in whole or in part, or a sublease, must be filed in duplicate with the land office within 90 days from the date of its execution; must contain all of the terms and conditions agreed upon by the parties thereto; and must be supported by a statement that the assignee or sublessee agrees to be bound by the provisions of the lease. The assignee or sublessee must submit with the assignment or sublease the information or statements required by § 62.6 (a), (b), (d), (e), (j) and (k). No assignment or sublease will be recognized unless and until approved by the Manager.

§ 62.9 *Renewal of leases.* Upon an application filed in the proper land office within 90 days preceding the expiration date of the lease, if it is determined that a renewal lease should be granted, the lessee will be offered such lease by the Manager, upon such terms and conditions and for such duration as may be fixed, not exceeding 10 years. The filing of an application for renewal does not confer on the lessee any preference right to a renewal. The timely filing of an application will, however, authorize the exclusive fur-farming use of the lands by the lessee in accordance with the terms of the prior lease pending final action on the renewal application.

§ 62.10 *Commencement of operations; stocking lands.* The lessee shall, within one year from the date of issuance of the lease, commence operations by taking possession of the leased area, and by placing thereon within that period such improvements as may be needed for such operations and as will show good faith, and shall thereafter develop the fur-farming enterprise on the leased area with reasonable diligence. The lessee shall stock the leased area with the minimum of fur-bearing animals required by the lease within the periods specified in the lease.

§ 62.11 *Rights reserved; protection of improvements and roads.* Nothing in this part or any lease issued under this part shall interfere with or prevent:

[1] Title 18, U. S. C., sec. 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(a) The prospecting, locating, development, entering, leasing, or patenting of mineral resources in the leased area under laws applicable thereto.

(b) The use and disposal of timber or other resources on or in the leased area under applicable laws.

(c) The use and occupation of parts of leased areas for the taking, preparing, manufacturing, or storing of fish or fish products, or the utilization of the lands for purposes of trade or business, to the extent and in the manner provided by law, and as authorized by the Regional Administrator.

(d) The acquisition or granting of rights-of-way or easements under applicable laws and regulations.

(e) Hunting and fishing under applicable Federal and Territorial hunting and fishing laws and regulations, but the authorized officer may prohibit or restrict, or he may authorize the lessee to prohibit or restrict hunting or fishing on such parts of the leased area and for such periods as he may determine to be necessary in order to prevent any substantial interference with the purposes for which the lease is issued.

§ 62.12 *Termination of lease; cancellation.* (a) The manager may terminate a lease at the request of the lessee if the lessee shall make satisfactory showing that such termination will not adversely affect the public interest and that he has paid all charges due the Government thereunder.

(b) A lease may be canceled if the lessee shall fail to comply with any of the provisions of this part or of the lease, or shall devote the lease area primarily to any purpose other than the rearing of fur-bearing animals as authorized. No lease will be canceled until the lessee has been formally notified of such default and such default shall continue for 60 days after service of such notice.

§ 62.13 *Removal of improvements and personal property.* (a) Improvements or personal property may not be removed from the lands, except fur-bearing animals disposed of in the regular course of business, unless all moneys due the United States under the lease have been paid. The lessee shall be allowed 90 days from the date of expiration or termination of the lease within which to remove his personal property and such improvements as are not disposed of in the manner set forth in paragraph (b) of this section, which he has a right to remove; if not removed or otherwise disposed of within the said period, such improvements or personal property shall become the property of the United States.

(b) Upon the expiration of the lease or the earlier termination thereof, the manager may, in his discretion and upon a written petition filed by the lessee within 30 days from the date of such expiration or termination, require the subsequent lease applicant, prior to the execution of a new lease, to agree to compensate the lessee for any improvements of a permanent nature that he may have placed upon the leased area for fur-farming purposes during the period of the lease. If the interested parties are unable to reach an agreement as to the amount of compensation, the amount shall be fixed by the manager. All such agreements to be effective, must be approved by the manager. The failure of the subsequent lessee to pay the former lessee in accordance with such agreement will be just cause for cancellation of the lease.

§ 62.14 *Appeals.* An appeal pursuant to the rules of practice, Part 221 of this chapter, may be taken from the decision of the authorized officer of the Bureau of Land Management.

PART 63—GRAZING

ESTABLISHMENT OF DISTRICTS AND ISSUANCE OF LEASES

Sec.

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63.20 Termination of lease; cancellation.
63.21 Liens; removal of improvements, fixtures and personal property.
63.22 Appeals.

AUTHORITY: §§ 63.1 to 63.22 issued under sec. 15, 44 Stat. 1455; 48 U. S. C. 471n.

§ 63.1 *Statutory authority.*[1] The act of March 4, 1927 (44 Stat. 1452; 48 U. S. C. 471, 471a–471o) hereafter referred to as "the act" authorizes the Secretary of the Interior to establish grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease such lands for the grazing of livestock thereon. Section 7 of the act provides that all leases shall be made for a term of 20 years, except where the Secretary of the Interior determines that the land may be required for other than grazing purposes within the period of ten years; or where the applicant desires a shorter term, and in such cases leases may be made for a shorter period.

[1] In view of the provisions of section 14 of the act of September 1, 1937 (50 Stat. 902; 48 U. S. C. 250m), which authorizes the Secretary of the Interior to regulate the grazing of reindeer upon the public lands in Alaska, reindeer leases are no longer issued under the act of March 4, 1927 (44 Stat. 1452; 48 U. S. C. 471, et seq.). See 25 CFR, Part 2—Reindeer in Alaska.

§ 63.2 *Policy.* The beneficial utilization of the public land in Alaska for the purpose of livestock grazing shall be conducted in such manner as may be considered necessary and consistent with the purposes of the act but shall be subordinated to the development of their mineral resources, to the protection, development and utilization of their forests, their water resources, their use for agriculture, and such other resources as may be of greater benefit to the public.

§ 63.3 *Area subject to lease.* Pursuant to the act, three districts for the grazing of livestock were established on June 30, 1928, and the boundaries thereof were declared to be temporarily coincident with the boundaries of the three public land districts in Alaska. The Secretary of the Interior may add to such grazing district any public lands which, in his opinion, should be made a part of the district or, subject to valid existing rights of any lessee, may exclude from such district any lands which he determines are no longer valuable for grazing purposes or are more valuable for other purposes. Grazing leases will be granted only for such areas in a grazing district as may be deemed adequate and usable according to the needs of the lessee.

§ 63.4 *Lands subject to lease.* Vacant, unreserved and unappropriated public lands in a grazing district are subject to lease, provided they are not embraced in natural grazing grounds or routes of migration of wild animals, such as caribou or moose. Public lands within the boundaries of a grazing district which have been withdrawn for any purpose, are subject to lease if the Department or agency having jurisdiction thereof consents to the issuance of the grazing lease, provided the lands are outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Department of Agriculture, and outside of national parks and monuments.

§ 63.5 *Qualifications of applicants.* Any person who is the head of a family, or who has arrived at the age of 21 years, and is a citizen of the United States or a lawful resident of the Territory of Alaska, or any group or association composed of such persons, or any corporation organized under the laws of the United States or of any State or Territory thereof authorized to conduct business in Alaska, may file an application for a grazing lease.

§ 63.6 *No right acquired by applicant prior to lease.* The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public-land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for, pending the execution of a lease.

§ 63.7 *Classes of applicants; preference rights.* (a) So far as is consistent with the administration of the grazing districts, applicants for grazing leases shall be given preference in the following order:

(1) Natives.
(2) Persons occupying the range on March 4, 1927, and
(3) Settlers over all applicants other than in subparagraph (1) and (2) of this paragraph.

(b) Any person claiming a preference right to a lease must furnish a statement, duly corroborated, setting forth the facts on which such claim is made.

§ 63.8 *Application for lease.*[1] An application for lease should be filed in the proper land office. No specific form of application is required, but an application should contain or be accompanied by the following:

(a) Applicant's full name, post office address, the general nature of his business and the principal place of business.

(b) The age and a statement as to the citizenship status of the applicant, if an individual, or as to each partner or member of a partnership or association. Every applicant must be a lawful resident of Alaska, or a citizen of the United States, or one who has declared his intention to become such citizen. A copartnership or an association applicant shall file a certified copy of whatever written articles of association its members have executed. A corporation shall file a certified copy of its articles of incorporation, evidence that it is authorized to transact business in the Territory of Alaska, and a copy of the corporation minutes or resolution authorizing the filing of the application and the execution of the lease.

(c) Description of the land for which the lease is desired, by legal subdivision, section, township and range, if surveyed, and by metes and bounds, with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public-land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments.

(d) The names and post office addresses of two references as to the applicant's reputation and business standing.

(e) Description by legal subdivision, section, township and range, if surveyed, or by metes and bounds, with approximate area, if unsurveyed, of lands owned or controlled by the applicant which adjoin any of the tracts in the application.

(f) A statement as to the kind and number of animals or livestock proposed to be grazed on the land each year, and the period for which the grazing lease is desired.

(g) A statement as to whether the land is occupied, claimed, or used by natives of Alaska or others, and, if so, the nature of the use and occupancy and the improvements thereon, if any. Also the names and addresses of r il owners of the improvements and whether such owner or owners claim the right of occupancy under any of the public-land laws, if known or obtainable.

(h) A statement that the applicant is acting solely on his own account and not under an agreement or understanding with any other for joint operation.

(i) The serial numbers of all other applications filed or leases obtained under the act of March 4, 1927, by the applicant, or applicant's spouse or business associate, or in which the applicant has a direct or indirect interest.

(j) A statement as to the buildings and improvements which the applicant proposes to place on the land including their estimated cost and a description of the tracts desired for their site.

(k) The number of acres of privately owned lands that are used by the applicant for cultivation of crops and the number of acres of such lands that are used for grazing purposes, and the manner in which the applicant plans to graze the lands applied for in connection with his general operations.

(l) A statement as to the previous use by the applicant of the lands covered by the application, the number of years the lands were so used, the class of livestock and the number of livestock and the period of use such livestock grazed on the lands each year.

(m) A showing as to hot or medicinal springs required by § 292.8 of this chapter.

§ 63.9 *Filing of application; copies necessary.* An application for a lease should be filed in duplicate in the land office for the district in which the lands applied for are situated, except when it embraces lands within the jurisdiction of more than one land office, in which event it must be furnished in triplicate and may be filed in either office.

§ 63.10 *Annual rental.* Unless otherwise provided, each lessee shall pay to the proper land office such rental per head or per acre as may be determined to be a fair charge for the grazing of livestock on the leased land, the compensation to be fixed with due regard to the general economic value of the grazing lease. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for grazing animals under one year of age, provided they are the natural increase of the stock upon which rental fees are paid.

§ 63.11 *Free grazing; reduction in grazing fee; no annual rental charged for lease to native or half-breed.* Any person, including prospectors and miners, may graze free of charge not more than 10 animals upon any land included within any grazing district upon applying to the land office in person or by letter, stating the number and kind of stock to be thus grazed, the lands upon which the grazing will take place, and the approximate time such grazing will be continued. Any Eskimo or other native or half-breed, or association thereof, may apply for a grazing allotment on unallotted public lands, and a lease shall be issued to him or them as to other persons, except that no annual rental will be charged for such lease. Such applicant must show by a corroborated statement that the applicant is an Eskimo or other native or half-breed, or an association thereof, and entitled to such lease without charge. When an Eskimo, native, or half-breed, through cooperative agreement, grazes his livestock without payment of annual rental on an allotment held by other lessees, any grazing fee charged for such land on the basis of acreage will be reduced in proportion to the relative number of such native-owned livestock, as compared to the total number on said allotment.

§ 63.12 *Protests.* Protests against an application for a lease, or an allotment, should be in duplicate, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should be accompanied by an application for a grazing lease.

§ 63.13 *Transmittal of proposed lease and issuance of lease.* If the application is complete and in conformity with the law and regulations and it is determined that a proposed lease should be issued, Form 4–470 will be prepared and sent to the applicant. The proposed lease must be duly executed by the applicant in duplicate or triplicate or as may be proper, and returned promptly to the land office with such advance rental payments as may be required. When all requirements have been met and final action has been taken on any protests which may have been filed, the manager will execute the lease.

§ 63.14 *Recording of lease; posting notices.* (a) Immediately upon receipt of a copy of the executed lease, the lessee shall cause the same to be recorded with the recording officer for the judicial district within which the leased land is situated. Thereafter, the lessee shall return the recorded lease to the proper land office, which shall make due notation and report of recordation and return the lease to the lessee.

(b) The lessee shall, within one year after the date of issuance of the lease, mark the boundaries of the leased land by posting notices every one-half mile and in a conspicuous place at each boat landing in the leased area if the lease is for one or more islands, which notices should contain a description of the land, the name and address of the lessee and a statement that it is occupied for grazing purposes under grazing lease identified by serial number, date and tenure.

§ 63.15 *Assignments and subleases.* Proposed assignments of a lease, in whole or in part, or subleases, must be filed in triplicate with the land office within 90 days from the date of execution. Such assignments or subleases must contain all of the terms and conditions agreed upon by the parties thereto, must be accompanied by the same showing by the assignee or sublessee as is required by applicants for a lease; and must be supported by a showing that the assignee or sublessee agrees to be bound by the provisions of the lease. No assignment or sublease will be recognized unless and until approved by the manager.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 63.16 *Renewals of leases.* Applications for renewal of grazing leases should be filed within the ninety days preceding the expiration of the period for which a lease is granted. If it is determined that a renewal lease should be granted, the lessee will be offered such a lease upon such terms and conditions and for such duration as may be fixed by the authorized officer.

§ 63.17 *Driveways; quarantine regulations.* When it appears necessary for stock to regularly cross any portion of an established grazing district, and undue injury to other interests will not result, suitable driveways may be established. Such driveways will be as short and as easy of passage and access as the character of the country and the protection of the other interests will permit. They will be established with care for the interests of lessees using adjoining ranges. Where driveways are reserved along well-defined routes which must be traveled, all grazing on these areas will be prohibited except by stock in transit, unless the applicant can make available an alternate comparable route of no greater difficulty for stock driveway use across any other lands under his control, in which event a short term lease may be allowed for lands in reserved driveways, but all such leases will contain a special stipulation whereby the lessee will permit the public to use the reserved lands included in the lease for the purpose for which it was reserved. Persons driving or transporting stock from one point to another must comply with the quarantine regulations prescribed by the Territorial or other proper authorities, and unless they do so the privilege may be denied them. The condition of the stock as to contagious or infectious diseases will be determined by the proper Federal or Territorial authorities.

§ 63.18 *Crossing privileges and permits therefor.* Crossing permits will ordinarily not be required when the period for crossing is short, when the stock will be driven along a public highway and will not be grazed upon the leased land, or when such crossing will not interfere with the grazing district administration or other related interests.

(a) Free crossing permits will be issued by the authorized officer when good grazing administration or the protection of other related interests do not make the issuance of such permits objectionable. The application must show the number of stock to be driven, the date of starting, the approximate period required for crossing, and the lands to be traversed. Applicants for crossing privileges must file their applications with the land office, or such person as may be designated to supervise livestock management in the area involved. It must be filed sufficiently in advance of the date when such privilege is to begin so as to enable the proper officer to handle the details of the crossing and to give such sufficient notice of the proposed crossing privilege to the lessee thereof as will enable him to remove his animals from the line of crossing, if he so desires.

(b) Applications for crossing permits may be made either in person or by letter, and permits may be issued to either the owner or persons in charge of the stock.

(c) If the land to be crossed is unenclosed and the lessee thereof does not desire to waive the right to its exclusive use, the stock must be so handled that the animals will remain on the approved route of travel.

(d) If a shipping point within a grazing district is the only one reasonably accessible to persons grazing stock outside that grazing district, crossing privileges may be allowed over leased areas under such restrictions as are necessary to protect the interests of the lessee.

§ 63.19 *Rights reserved; public land laws applicable.* Grazing leases, permits, or allotments under this part shall be subordinated to, and shall be subject to modification or revocation by the manager to the extent necessary to permit:

(a) The development of the mineral resources of the lands.

(b) The protection, development and utilization of the forests and water resources on the lands.

(c) The use of such lands for agricultural purposes.

(d) The protection, development and utilization of such other resources as may be of greater benefit to the public.

(e) The allowance of applications or the granting of rights, permits, leases or uses pursuant to the public-land laws, where the same will either be in the public interest or will not unduly interfere with the use of the land for grazing purposes.

(f) The temporary closing of portions of the leased area to grazing whenever, because of improper handling of the stock, overgrazing, fire or other cause, such action is deemed necessary to restore the range to its normal condition.

§ 63.20 *Termination of lease; cancellation.* The Manager may terminate a lease at the request of the lessee, if the lessee shall make satisfactory showing that such termination will not adversely affect the public interest and has paid all charges due the Government thereunder. A lease may be canceled if the lessee shall fail to comply with any of the provisions of this part, or of the lease. No lease will be canceled for default until the lessee has been formally advised of the default in complying with the provisions of the lease and afforded an opportunity to make a showing as to why the lease should not be canceled.

§ 63.21 *Liens; removal of improvements, fixtures and personal property.* (a) A lien for all payments which become due under the lease is reserved to the United States on all improvements, fixtures, and personal property (including the livestock) of the lessee on the leased area. Such improvements, fixtures, or personal property (other than livestock) may not be removed from the lands unless all moneys due the United States under the lease have been paid.

(b) If the lessee on or before the termination of his lease notifies the land office of his determination to leave on the land improvements the construction or maintenance of which has been authorized, no other person shall use or occupy, under any grazing lease or entry under any public-land law, the land on which such improvements are located until there has been paid to the person entitled thereto the value of such improvements. If the interested parties are unable to reach an agreement as to such value, the amount may be fixed by the authorized officer. All such agreements, to be effective, must be approved by the authorized officer. The failure of the subsequent lessee to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the lease.

(c) The lessee shall be given 90 days from the date of the termination of this lease by expiration or forfeiture, in the absence of an agreement to the contrary and if all rental charges due the Government have been paid, to remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time mentioned shall become the property of the United States.

§ 63.22 *Appeals.* An appeal pursuant to the rules of practice Part 221 of this chapter, may be taken from the decision of the authorized officer of the Bureau of Land Management.

PART 64—HOMESITES OR HEADQUARTERS

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, ON SHOWING AS TO EMPLOYMENT OR BUSINESS

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PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, WITHOUT SHOWING AS TO EMPLOYMENT OR BUSINESS

64.7 Statutory authority.
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AUTHORITY: §§ 64.1 to 64.15 issued under sec. 10, 30 Stat. 413, as amended; 48 U. S. C. 461.

CROSS REFERENCES: For general homestead regulations, see Part 166 of this chapter; for homesteads in Alaska, see Part 65 of this chapter. For home and industrial sites in Alaska, see 36 CFR 251.7. For lease or sale of small tracts in Alaska for home, cabin, camp, health, convalescent, recreational or business sites, see Part 257 of this chapter.

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, ON SHOWING AS TO EMPLOYMENT OR BUSINESS

§ 64.1 *Statutory authority.* The act of March 3, 1927 (44 Stat. 1364; 48 U. S. C. 461) authorizes the sale as a homestead or headquarters of not to exceed 5 acres of unreserved public lands in Alaska, not including mineral, coal, oil or gas lands, at the rate of $2.50 per acre, to any citizen of the United States 21 years of age employed by citizens of the United States,

associations of such citizens, or by corporations organized under the laws of the United States, or of any State or Territory, whose employer is engaged in trade, manufacture, or other productive industry in Alaska, and to any such person who is himself engaged in trade, manufacture or other productive industry in Alaska.

§ 64.2 *Purpose of statute.* The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the Territory, not exceeding 5 acres, as homesteads or headquarters.

§ 64.3 *Notice of initiation of claim.* A notice of the initiation of a claim under the act of March 3, 1927, must designate the kind of trade, manufacture, or other productive industry in connection with which the claim is maintained or desired, and identify its ownership. The procedure as to notices will be governed in other respects by the provisions of §§ 64.8 to 64.11.

§ 64.4 *Use of lands.* Care will be taken in all cases before patent issues to see that the lands applied for are used for the purposes contemplated by the said act of March 3, 1927, and that they are not used for any purpose inconsistent therewith.

§ 64.5 *Form and contents of applications.*[1] Applications under the act of March 3, 1927, must be filed in duplicate in the land office for the district in which the land is situated, and the claim must be in reasonably compact form.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(a) The age and citizenship of applicant.

(b) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

(c) The date when the land was first occupied as a homestead or headquarters.

(d) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation, is engaged.

(e) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters.

(f) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any natives of Alaska, or occupied as a town site or missionary station or reserved from sale, and that the tract does not include improvements made by or in possession of another person, association, or corporation.

(g) That at the date of the initiation of the claim the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or from any trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where petition for restoration based on an equitable claim is filed with the application, or the land has been restored from reservation.

(h) That the land is not included within an area which is reserved because of springs thereon. All facts as to medicinal or other springs must be stated, in accordance with § 292.8 of this chapter.

(i) That no part of the land is valuable for coal, oil, gas, or other valuable mineral deposits and that at the date of location no part of the land was claimed under the mining laws.

(j) If the land desired for purchase is surveyed, the application must include a description of the tract by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing and the application will be amended accordingly. Where a supplemental plat is required, to provide a proper description, it will be prepared at the time of approval of the application.

(k) If the land is unsurveyed, the application must be accompanied by a petition for survey, describing the tract applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

CROSS REFERENCES: See the following parts in this subchapter: For soldiers' additional rights, Part 61; for Indian and Eskimo allotments, Part 67; for mining claims, Part 69; for school indemnity selections, Part 76; for shore space, Part 77; for trade and manufacturing sites, Part 81.

§ 64.6 *Time for filing application.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, WITHOUT SHOWING AS TO EMPLOYMENT OR BUSINESS

§ 64.7 *Statutory authority.* The act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461) amended section 10 of the act of May 14, 1898 (30 Stat. 413), as amended by the act of March 3, 1927 (44 Stat. 1364), so as to provide that any citizen, after occupying land of the character described in said section as a homestead or headquarters, in a habitable house not less than 5 months each year for 3 years, may purchase such tract, not exceeding 5 acres, in a reasonably compact form, without a showing as to his employment or business, upon the payment of $2.50 per acre, the minimum payment for any one tract to be $10.

§ 64.8 *Notice of initiation of claim.* Any qualified person initiating a claim on or after April 29, 1950, under the act of May 26, 1934, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, such person must file notice of the claim in the proper land office within 90 days from that date.

§ 64.9 *Form of notice.* The notice must be filed on Form 4–1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (a) The name and address of the claimant, (b) age and citizenship, (c) date of settlement and occupancy, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

§ 64.10 *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in § 64.8, no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

§ 64.11 *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to the form of disposition specified in the notice.

§ 64.12 *Form and contents of application.* Applications under the act of May 26, 1934, must be filed in duplicate, if for surveyed land, and in triplicate, if for unsurveyed land, in the land office for the district within which the land is situated.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(a) Full name, post office address and age of applicant.

(b) Whether the applicant is a native-born or naturalized citizen of the United States, and if naturalized, evidence of such naturalization must be furnished.

(c) A description of the habitable house on the land, the date when it was placed on the land, and the dates each year from which and to which the applicant has resided in such house.

(d) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any native of Alaska, or occupied as a townsite, or missionary station, or reserved from sale, and that the tract does not include improvements made by or in the possession of any other person, association, or corporation.

(e) That at the date of the initiation of the claim the land was not within a

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or from any trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from reservation.

(f) That the land is not included within an area which is reserved because of hot, medicinal or other springs, as explained in § 292.8 of this chapter. If there be any such springs upon or adjacent to the land, on account of which the land is reserved, the facts relative thereto must be set forth in full.

(g) That no part of the land is valuable for coal, oil, gas or other valuable mineral deposits, and that at the date of settlement no part of the land was claimed under the mining laws.

(h) That the applicant has not theretofore applied for land under said act, or if he has previously purchased a tract he should make a full showing as to the former purchase and the necessity for the second application.

(i) An application for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing, and the application will be amended accordingly. Where a supplemental plat is required to provide a proper description, it will be prepared at the time of approval of the application.

(j) All applications for unsurveyed land must be accompanied by a petition for survey, describing the land applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

NOTE: See cross references following § 64.5.

§ 64.13 *Applications by veterans of World War II or of the Korean conflict.* Upon the restoration or opening of surveyed public lands in Alaska with a preference right of application to veterans of World War II or of the Korean conflict, pursuant to section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U. S. C. 282), as amended, such veterans may file applications for home or headquarter sites on such lands under the act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461). Preference right applications filed by such veterans must describe the land desired in terms of the public land surveys and must give all of the information required by § 64.12, except as to the erection of a habitable house on the land and compliance with the law in the matter of residence. No payment will be required until proof of compliance with the residence requirements has been made. Such an applicant will be required to establish residence upon the land in a habitable house within 6 months from the date of the notice of the allowance of his application. An extension of time to establish residence may be granted under the conditions under which it may be granted to a homestead entryman. During the first year after establishing residence the claimant will be required to reside upon the land for a period of at least 5 months. He may claim credit on the period of residence required by the act of May 26, 1934, for military or naval service in like manner as is provided in the case of homestead entries.

§ 64.14 *Time for filing application.* Except as provided in § 64.13, application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

§ 64.15 *Publication and posting.* In the matter of publication and posting these applications will be governed by the instructions given in connection with applications for soldiers' additional homestead entries as set out in § 61.13 of this chapter.

PART 65—HOMESTEADS

HOMESTEADS UNDER THE ACT OF MAY 14, 1898, AS AMENDED

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NATIONAL FOREST HOMESTEADS

65.28 Procedure governing national forest homesteads.

HOMESTEADS SUBJECT TO MORTGAGE LOANS

65.29 Mortgage loans on existing homestead entries; allowance on homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.
65.30 Mortgage liens.

AUTHORITY: §§ 65.1 to 65.30 issued under R. S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U. S. C. 1201, 48 U. S. C. 371.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For applications and entries, general, see Parts 101–108 of this chapter. For home and industrial sites in Alaska, see 36 CFR 251.7. For home sites or headquarters, Alaska, see Part 64 of this chapter. For homestead regulations, general, see Part 166 of this chapter. For homesteads on coal, oil, and gas lands, Alaska, see Part 66 of this chapter.

HOMESTEADS UNDER THE ACT OF MAY 14, 1898, AS AMENDED [1]

§ 65.1 *Lands subject to settlement and homestead entry.*[1] All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

§ 65.2 *Form of settlement on unsurveyed land.* A settlement claim on unsurveyed land must be rectangular in form, not more than 1 mile in length, located by lines running north and south, according to the true meridian, the four corners being marked by permanent monuments, unless a departure from such restrictions is authorized by the act of April 13, 1926 (44 Stat. 243; 48 U. S. C. 379, 380, 380a). The said act permits a departure from the restrictions mentioned where by reason of local or topographic conditions it is not feasible or economical to include in rectangular form with cardinal boundaries the lands desired. Under the conditions recited in the law as justifying such departure, it will be sufficient that the claims shall be compact and approximately rectangular in form and where a departure from cardinal courses in the direction of boundary lines is necessary in order to include the lands desired there will be no restriction as to the amount of such departure. The modification of former practice in the matter of form and direction of boundaries is not to be construed, however, as authorizing the lines of the claims to be unduly extended in any such manner as will be productive of long narrow strips of land departing materially from the compactness of the tract as a whole.

§ 65.3 *Notice of settlement.* (a) A person making settlement on or after April 29, 1950 on unsurveyed land, in order to protect his rights, must file a notice of the settlement for recordation in the land office for the district in which the land is situated, and post a copy thereof on the land, within 90 days after the settlement. Where settlement is made on surveyed lands, the settler, in order to protect his rights, must file a notice of the settlement for recordation,

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[1] The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 371), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 48 U. S. C. 371), July 8, 1916 (39 Stat. 352; 48 U. S. C. 373–375, 378), June 28, 1918 (40 Stat. 632; 48 U. S. C. 373–375, 378) and April 13, 1926 (44 Stat. 243; 48 U. S. C. 379, 380, 380a).

or application to make homestead entry, in the land office for the district in which the land is located within 90 days after settlement.

(b) Any person maintaining a settlement claim on April 29, 1950, on surveyed or unsurveyed public land, shall file notice of the initiation of the claim in the land office for the district in which the land is situated, (1) within 90 days from that date, if the notice of location had not theretofore been filed in the recording district, or (2) within two years from April 29, 1950, if notice of the location had theretofore been filed in the recording district.

§ 65.3a *Form of notice.* The notice must be filed on Form 4–1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed and shall contain: (a) The name and address of the settler, (b) age and citizenship; (c) date of settlement, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

§ 65.3b *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in § 65.3, no credit shall be given for residence and cultivation had prior to the filing of notice, petition for free survey, or application to make entry, whichever is earliest.

§ 65.3c *Recordation fee.* The notice of settlement claim must be accompanied by a remittance of $10.00, which will be applied as a service charge for recording the notice and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to homestead settlement.

§ 65.4 *Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.* (a) A settler on unsurveyed land is required to mark the claim by permanent monuments at each corner, in order to establish the boundaries thereof.

(b) Settlement on any part of a surveyed quarter-section subject to homestead entry gives the right to enter all of the quarter section; but if a settler desires to initiate a claim to surveyed tracts which form part of more than one technical quarter-section, he should define the claim by placing some improvements on each of the smallest subdivisions claimed.

§ 65.5 *Form of application.*[1] Application to make homestead entry for lands in Alaska should be presented on Form 4–007, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U. S. C. 161, 171).

§ 65.6 *Showing to accompany application.* Each application on the prescribed form should be accompanied by a corroborated statement showing:

(a) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration based on an equitable claim is filed with the application, or the land has been restored from the reservation.

(b) That the land is not within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 292.8 of this chapter.

CROSS REFERENCES: For Indian and Eskimo allotments, Part 67; for school indemnity selections, Part 76; for shore space, Part 77; for soldiers' additional rights, Part 61; for trade and manufacturing sites, Part 81.

§ 65.8 *Description and contiguity of lands.* A homestead application must describe the lands desired according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

§ 65.9 *Area subject to appropriation.* A homestead settlement or entry in Alaska is restricted to 160 acres, except in the case of a settlement made before July 8, 1916, or an entry based thereon, which may include as much as 320 acres, provided notice of the settlement was filed for record in the recording district in which the land is situated within 90 days after the settlement was made and the settlement was duly maintained until the filing of the application for entry and provided the applicant has not exhausted his homestead right in whole or in part in the United States.

§ 65.10 *Limitation of acreage.* The act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 212), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

§ 65.11 *Qualifications required.* Any person who is qualified to make an ordinary homestead entry in the United States under section 2289, Revised Statutes (43 U. S. C. 161, 171), is qualified to make homestead entry in Alaska, and a former homestead entry outside of Alaska does not bar the claimant's right to make entry in that Territory for not exceeding 160 acres.

§ 65.12 *Second entries.* No showing is required of an applicant for 160 acres in the Territory as to a former homestead entry outside of the Territory, but if the applicant has made homestead entry or filed a location notice of a settlement in the Territory and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the Territory, make the showing required by the act of September 5, 1914 (38 Stat. 712; 43 U. S. C. 182), explained in §§ 166.54–166.77 of this chapter.

§ 65.13 *Additional entries.* Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 214) for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 166.67–166.73 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

§ 65.14 *Law under which homestead must be perfected.* All homestead claims in Alaska must be perfected under and in accordance with the provisions of the 3-year homestead law of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218), and regulations thereunder.

§ 65.15 *Establishment of residence.* Residence must be established upon the claim within 6 months after the date of the entry or the recording of the location notice, as the case may be; but an extension of not more than 6 months may be allowed upon application duly filed, in which the entryman shows by his own statement, and that of two witnesses, that residence could not be established within the first 6 months, for climatic reasons, or on account of sickness, or other unavoidable cause.

§ 65.16 *Leave of absence.* A leave of absence for 1 year or less may be granted by the manager to a homesteader who has established actual residence on the land where failure or destruction of crops, sickness, or other unavoidable casualty has prevented him from supporting himself and those dependent upon him by cultivation of the land.

§ 65.17 *Period of residence and amount of cultivation required.* (a) A homestead entryman must show residence upon his claim for at least 3 years; how-

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

ever, he is entitled to absent himself during each year for not more than two periods making up an aggregate of 5 months, giving written notice to the district land office of the time of leaving the homestead and returning thereto.

(b) There must be shown also cultivation of one-sixteenth of the area of the claim during the second year of the entry and of one-eighth during the third year and until the submission of proof, unless the requirements in this respect be reduced upon application duly filed. The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

§ 65.18 *Effect of transfer of land before proof.* In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the Territory transfers for church, cemetery, or school purposes to the extent of 5 acres and for railroad rights of way across the land having an extreme width of 200 feet are permitted.

§ 65.19 *Commutation of entries.* To the extent of not more than 160 acres an entry may be "commuted" after not less than 14 months' residence upon the land, cultivation of the area commuted to the extent required under the ordinary homestead laws and payment of $1.25 per acre; that is, the claimant must show the existence of a habitable house on the land at the time of final commutation proof, that residence for the period of not less than 14 months was actual and substantially continuous, and cultivation of one-sixteenth of the area during the second year of the entry, and, if commutation proof is submitted after the second entry year, one-eighth of the area the third entry year and until the submission of final commutation proof. In such cases the homesteader is entitled to a 5 months' leave of absence in each year, but cannot have credit as residence for such period, since actual presence on the land for not less than 14 months is required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), is not subject to commutation.

§ 65.20 *Survey without expense to settler.* (a) The land included in a settlement claim may be surveyed without expense to the settler, provided he has sufficiently complied with the law in the matter of residence, cultivation and improvements to submit 3-year proof. A petition for a free survey may be filed whenever such requirements have been met before notice of the settlement claim is required to be filed, or at any time within 5 years after such notice has been filed.

(b) Petition for survey should be filed in triplicate and should describe the land settled upon by metes and bounds with relation to some natural or permanent monument, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of land claimed, a full explanation must be given of the reason for such deviation. The petition should show the date when the settlement was made, the dates from which and to which the settler has resided upon the land, the number of acres cultivated each year and the results of the cultivation, and the character and value of the improvements on the land. The petition should also show that the land does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarters authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from the reservation. The petition must be signed by the applicant and should be corroborated by the statements of two persons having knowledge of the facts.

§ 65.21 *Survey at expense of settler.* A settler who wishes to secure earlier action in the matter of survey, or one who wishes to submit commutation proof, may have a survey made at his own expense by a deputy surveyor appointed by the area administrator.

§ 65.22 *Application to enter land included in special survey.* After a special survey has been made, application to enter should be made as in the case of other settlements on surveyed lands.

§ 65.23 *Submission of proof.* (a) Proof may be submitted without previous notice of intention by publication, but it should not be submitted in advance of a special survey.

(b) Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the manager of the land office for the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the district land office.

§ 65.24 *Fees and commissions.* The same payments as fees and commissions are required in connection with homestead entries and proofs in Alaska as must be made in connection with ordinary homestead entries in the State of Oregon. The amounts are set forth in § 166.8 of this chapter.

§ 65.25 *Publication and posting.* (a) Where a special survey has been made, the notice of intention to make proof must give the survey number of the land, and other information required by § 60.3 of this chapter, and it must be published once a week for nine consecutive weeks, in accordance with § 106.18 of this chapter, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(b) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 106.14 of this chapter. The manager must cause a copy of the notice to be posted in his office during the entire period of publication.

§ 65.26 *Adverse claim.* (a) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to, the tract of land or any part thereof sought to be acquired, may file in the land office where the proof is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(b) Where such adverse claim is filed, action on the proof will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(c) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title, as stated, and any contest which may be filed will be disposed of by the manager in accordance with the Rules of Practice, Part 221 of this chapter.

§ 65.27 *Proof of publication and posting.* The proof of publication must consist of the statement of the publisher or foreman of the designated newspaper, or some other employee authorized to act for the publisher, that the notice (a copy of which must be attached to the statement) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper and not in a supplement. Proof of posting on the claim must consist of the statements of the applicant and one witness who of their own knowledge know that the plat of survey and proof notice were posted as required and remained so posted during the required period. The manager must certify to the posting of the notice in a conspicuous place in his office during the period of publication.

NATIONAL FOREST HOMESTEADS

§ 65.28 *Procedure governing national forest homesteads.* (a) The act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–508, 509), providing for homestead entries of agricultural lands within national forests applies to such lands in Alaska. The regulations under this act will be found in Part 170.

(b) National-forest entries may be made only after the lands desired have been listed by the Secretary of Agriculture as agricultural in character and after a declaration by an authorized officer of the Bureau of Land Management that the listed lands are subject to settlement and entry.

(c) Information as to the boundaries of the forests, the method of applying for listing, etc., may be obtained by addressing the Chief, Forest Service, Washington, D. C., or the Regional Forester, Forest Service, Juneau, Alaska.

(d) Homestead entries in national forests are limited in area to 160 acres and are subject to the general homestead laws and regulations, except that no commutation is allowed. Application should be made on Form 4–007, as in other cases.

(e) In the matter of form of entry and direction of boundaries, homestead settlements and entries in national forests in Alaska are subject to the same conditions and provisions as are applicable to other homestead claims in Alaska.

(f) No showing as to shore space, or as to springs or water holes, is required in connection with homestead entries in national forests in Alaska.

CROSS REFERENCE: For prohibition of settlement on forest lands except in accordance with the act of June 11, 1906, see 36 CFR 261.11 (a).

HOMESTEADS SUBJECT TO MORTGAGE LOANS

§ 65.29 *Mortgage loans on existing homestead entries; allowance on homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C., Supp. III secs. 1006a, 1006b), should proceed in accordance with § 166.86 of this chapter.

§ 65.30 *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

PART 66—HOMESTEADS ON COAL, OIL, AND GAS LANDS

INITIATION AND COMPLETION OF HOMESTEAD CLAIMS ON COAL, OIL, AND GAS LANDS

Sec.
66.1 Statutory authority.
66.2 Action by manager on applications.
66.3 Reservations in final certificates and patents.
66.4 Coal, oil, or gas lands not subject to soldiers' additional homesteads.
66.5 Disposal of mineral deposits.
66.6 When bond is required with prospecting permit or lease.
66.7 Form and amount of bond.
66.8 Bonds required with leases, other than noncompetitive oil and gas leases.
66.9 Use of coal by the homestead claimant, prior to its disposal by the United States.
66.10 Mortgage loans on existing homestead entries allowance of homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.
66.11 Mortgage liens.

AUTHORITY: §§ 66.1 to 66.11 issued under R. S. 2478; 43 U. S. C. 1201.

§ 66.1 *Statutory authority.* (a) The act of March 8, 1922 (42 Stat. 415; 48 U. S. C. 376, 377) provides that upon the unreserved, unwithdrawn public lands in the Territory of Alaska homestead claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits, or which may be, in fact, valuable for the coal, oil, or gas contained therein. Thus, by the class last named, provision is made for cases in which land is not at the date of the initiation of the claim thereto actually known to contain workable coal, oil, or gas deposits, but in which it becomes known, during the interval between the initiation of the claim and its completion, that the land is, in fact, valuable for the coal, oil, or gas contained therein.

(b) It also provides that homestead claims so initiated may be perfected under the appropriate public land laws and that, upon satisfactory proof of full compliance with these laws, the claimant shall be entitled to patent to the lands entered by him, which patent shall contain a reservation to the United States of all the coal, oil, or gas in the land patented, together with the right to prospect for, mine, and remove the same.

(c) The act constitutes, therefore, an extension to the Territory of Alaska of the principles of the surface homestead acts already in force in the public-land States, namely, the acts of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), and July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123).

§ 66.2 *Action by manager on applications.* (a) Applications to make homestead entry for land classified as or known to be valuable for coal, oil, or gas must have written, stamped, or printed upon their face the following:

Application made in accordance with and subject to the provisions and reservations of the act of March 8, 1922 (42 Stat. 415).

(b) Like notations will be made by the managers on the face of the notices of allowance issued on applications filed under this act. If, prior to the date of the filing of the homestead applications, the land was embraced in an oil and gas lease, or a coal permit or lease, or an application for such a lease, or permit, the notice of allowance should contain substantially the following:

This land is subject to the right of any prior mineral permittee or lessee, or of any prior applicant for a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the nonmineral entryman or patentee for crop and improvement damages resulting from such mineral activity.

§ 66.3 *Reservations in final certificates and patents.* (a) Final certificates issued to homestead claimants under the act of March 8, 1922, will contain the following provision, which the manager will cause to be written or stamped thereon:

Patent will contain provisions, reservations, conditions, and limitations of the act of March 8, 1922 (42 Stat. 415).

(b) There will be incorporated in patents issued to homestead claimants under this act the following:

Excepting and reserving, however, to the United States all the (deposit on account of which the lands are withdrawn, classified, or reported to be valuable—coal, or oil and gas, as the case may be) in the lands so patented, and to it or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922 (42 Stat. 415; 48 U. S. C. 376, 377).

§ 66.4 *Coal, oil, or gas lands not subject to soldiers' additional homesteads.* The final proviso to the act of March 8, 1922 excludes all the lands in Alaska withdrawn, classified, or valuable for coal, oil, or gas, from entry or disposition by means of the location of rights under section 2306, Revised Statutes (43 U. S. C. 274), commonly known as soldiers' additional homestead entries.

§ 66.5 *Disposal of mineral deposits.* (a) Section 2 of the act of March 8, 1922 (42 Stat. 416; 48 U. S. C. 377) provides that, upon satisfactory proof of full compliance with the provisions of the laws under which entry was made and with the provisions of the act itself, the homestead claimant shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal, oil, and gas in the land so patented, together with the right to prospect for, mine, and remove the same; and that the coal, oil, and gas deposits so reserved shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits, or coal, oil, or gas lands in Alaska, in force at the time of such disposal. It also provides that any person qualified to acquire coal, oil, or gas deposits, or the right to mine and remove the coal, or to drill for and remove the oil or gas, under the laws of the United States shall have the right at all times to enter upon the lands as provided by this act for the purpose of prospecting for coal, oil, or gas upon the approval, by the Secretary of the Interior, of a bond or undertaking to be filed with him as security for the payment of all the damages to the crops and improvements on such lands by reason of such prospecting; and that any person

who has acquired from the United States coal, oil, or gas deposits in any such land or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove the oil or gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking, in an action instituted in any competent court to ascertain and fix the said damages.

(b) There is no provision under the law for prospecting prior to the actual issuance of a permit or lease therefor.

§ 66.6 *When bond is required with prospecting permit or lease.* Provision is made by the act of March 4, 1921 (41 Stat. 1363; 48 U. S. C. 444), for coal prospecting permits in Alaska, and by the act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), as amended, for oil and gas leases. In order lawfully to mine, remove, or drill for the coal, oil, or gas affected by the act of March 8, 1922, the coal permittee or noncompetitive oil or gas lease applicant whose application was filed subsequent to the homestead application must file a waiver from, or a consent of the homestead claimant, or there must be filed a bond or undertaking for the payment of all damages to the crops and improvements on the lands prospected caused by the prospecting.

§ 66.7 *Form and amount of bond.* (a) There must be filed with the bond or undertaking required by the preceding section, evidence of service of a copy thereof upon the homestead claimant. The bond must be executed by the prospector as principal with two competent individual sureties, or a corporate surety which has complied with the provisions of the act of August 13, 1894 (28 Stat. 279; 6 U. S. C. 6–13), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U. S. C. 8, 9), in the sum of $1,000. Except in the case of a bond given by a qualified corporate surety there must be filed therewith statements of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a postmaster as to the identity, signatures, and financial competency of the sureties.

(b) This bond or undertaking may be filed as a matter of expedition at the time of the filing by the mineral claimant of his application for a permit or the filing may be deferred until formal notice of the necessity therefor shall be received from the Bureau of Land Management. For forms of bonds which should be utilized see 50 L. D. 129 to 131 inclusive.

§ 66.8 *Bonds required with leases, other than noncompetitive oil and gas leases.* There is no provision for the presentation to the Bureau of Land Management of bonds executed to or for homestead claimants by lessees or by persons who have acquired from the United States coal, oil, or gas deposits or the right to mine, drill for, or remove the same. In such cases bonds are to be arranged for in an action instituted in any competent court to ascertain and fix the damages suffered.

§ 66.9 *Use of coal by the homestead claimant, prior to its disposal by the United States.* The homestead claimant under the act of March 8, 1922, may, at any time prior to the disposal by the United States of the coal deposits on his claim, make use of them for his domestic purposes and this may be done without the filing of any application therefor. This privilege does not, however, authorize the mining of the coal deposits for the purpose of barter or sale.

§ 66.10 *Mortgage loans on existing homestead entries allowance of homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.* A homestead entryman who desires to secure a loan on an existing homestead entry or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C., Supp., III, secs. 1006a, 1006b), should proceed in accordance with § 166.86 of this chapter.

§ 66.11 *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

PART 67—INDIANS AND ESKIMOS

ALLOTMENTS TO INDIANS AND ESKIMOS

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- 67.1 Statutory authority.
- 67.2 Execution and filing of application.
- 67.3 Description of land in application.
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RESERVATIONS FOR INDIANS AND ESKIMOS

- 67.13 Extension of certain provisions of the Wheeler-Howard Act to Alaska; establishment of reservations.

AUTHORITY: §§ 67.1 to 67.13 issued under R. S. 2478, 34 Stat. 197; 43 U. S. C. 1201, 48 U. S. C. 357. Statutory provisions interpreted or applied are cited to text in parentheses.

CROSS REFERENCES: For applications and entries, see Parts 60, 101–108 of this chapter. For Indian homestead entries and patents, see § 166.7 of this chapter.

ALLOTMENTS TO INDIANS AND ESKIMOS

§ 67.1 *Statutory authority.* The act of May 17, 1906 (34 Stat. 197; 48 U. S. C. 357), authorizes the Secretary of the Interior to allot not to exceed 160 acres of nonmineral land in Alaska to certain Indians or Eskimos of full or mixed blood, who reside in and are natives of the Territory.

§ 67.2 *Execution and filing of application.*[1] An application for allotment must be made on Form 4–021. The application must be signed by the applicant but need not be sworn to, and it must be corroborated by the statements of two persons having knowledge of the facts, who may be Indians or Eskimos. If the applicant is unable to write his name, his thumb print should be attached to the application in preference to his signature by mark, and the thumb print should be witnessed by two persons. The application must be filed in the proper district land office.

§ 67.3 *Description of land in application.* If surveyed, the land must be described in the application according to legal subdivisions of the public land surveys. If unsurveyed, it must be described as accurately as possible by metes and bounds and natural objects, and its position with reference to rivers, creeks, mountains or mountain peaks, towns or other prominent topographic points or natural objects or monuments, giving the distance and directions with reference to any well-known trail to a town or mining camp, or to a river or mountain appearing on the map of Alaska.

§ 67.4 *Marking claim on ground; notice of application.* The applicant should plainly indicate on the ground the corners of the land claimed by setting substantial posts or heaping up mounds of stones at each corner. Notice of the application should be posted on the land, describing the tract applied for in the terms employed in the application, and a copy of such notice should accompany the application.

§ 67.5 *Showing required in application.* The application, giving the name and address of the applicant, must show that the applicant is an Indian or Eskimo of full or mixed blood, who resides in and is a native of the Territory; whether the applicant is married or single; whether the applicant is 21 years of age or over; the facts constituting applicant the head of a family, if applicant is under 21 years of age, or is a married woman; that the applicant has not theretofore made application for allotment under the act of May 17, 1906, if such is the case; and that the land applied for is not reserved by authority of Congress or embraced in any reservation made by Executive order or proclamation of the President. If the land has been occupied by the applicant, the application should show when the residence commenced and the extent to which it has been maintained.

§ 67.6 *Nonmineral statement required.* The applicant must furnish a nonmineral statement on the prescribed form, which is printed as a part of Form 4–021. This

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

statement must be made on personal knowledge and not on information and belief.

§ 67.7 *Allotments in national forests.* Allotments will not be made in national forests unless founded on occupancy of the land prior to the establishment of the particular forest, except as authorized by section 31 of the act of June 25, 1910 (36 Stat. 863; 25 U. S. C. 337), which authorizes an allotment to be made to an Indian who is occupying, living on or has made improvements on the land included within a national forest, and for whose tribe no reservation has been made, provided the Secretary of Agriculture shall certify that the land applied for is more valuable for agricultural or grazing purposes than for the timber thereon. An application under said section 31 should be made on Form 5–149, and should contain a reference to the act of May 17, 1906.

CROSS REFERENCE: For national forest homesteads, Alaska, see § 65.28 of this chapter.

§ 67.8 *Shore space.* An Indian allotment may not extend more than 160 rods along the shore of any navigable water unless the restriction as to length of claim has been waived and it may not extend within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homesite, Indian or Eskimo allotment, or school indemnity selection, unless the land has been restored from reservation, or a petition for restoration based on an equitable claim is filed with the application (34 Stat. 197; 48 U. S. C. 357).

CROSS REFERENCE: For shore space, see Part 77 of this chapter.

§ 67.9 *Action by manager on applications.* The manager will carefully examine each application, and if he finds it complete in all respects and no objection is shown by his records, he will allow it and will advise the applicant of the allowance by special letter, reading substantially as follows:

> Your application under the act of May 17, 1906 (34 Stat. 197), No. ____, for _____, has been placed of record in this office and forwarded to the Bureau of Land Management.
>
> This action segregates the land from the public domain, and no other application can be allowed therefor, or settlement rights attach, during the life of this application.

If the application is incomplete or in conflict with any other application or claim of record, the manager will take such action as the facts may warrant. The application, upon allowance, will operate as a segregation of the land. Any application subsequently presented which conflicts therewith in whole or in part, should be rejected, as to the part in conflict, subject to appeal, unless rights superior to those of the Indian or Eskimo claimant are asserted under the conflicting application.

§ 67.10 *Proof required before approval of application.* An allotment application will not be approved until the applicant has made satisfactory proof of five years' use and occupancy of the land as an allotment. Such proof must be made in triplicate, corroborated by the statements of two persons having knowledge of the facts, and it should be filed in the land office. It must be signed by the applicant but need not be sworn to. The showing of 5 years' use and occupancy may be submitted with the application for allotment if the applicant has then used or occupied the land for 5 years, or at any time after the filing of the application when the required showing can be made. The proof should give the name of the applicant, identify the application on which it is based, and appropriately describe the land involved. It should show the periods each year applicant has resided on the land; the amount of the land cultivated each year to garden or other crops; the amount of crops harvested each year; the number and kinds of domestic animals kept on the land by the applicant and the years they were kept there; the character and value of the improvements made by the applicant and when they were made, and the use if any to which the land has been put for fishing or trapping.

§ 67.11 *Land occupied by Indians or Eskimos not subject to entry.* Lands occupied by Indians or Eskimos in good faith are not subject to entry or appropriation by others.

§ 67.12 *Rules of practice for hearings upon possessory claims to lands and waters used and occupied by natives of Alaska.* (a) *Petitions of native groups.* Petitions of native groups of Alaska concerning possessory claims to lands and waters based upon any of the foregoing statutes or upon use or occupancy maintained from aboriginal times to the present day, but not evidenced by formal patent, deed or Executive order, shall be filed with the Secretary of the Interior on or before December 31, 1952. No petition filed thereafter will be considered by the Department. A copy of any such petition shall be forthwith transmitted to the Commissioner of Indian Affairs and the Director of the Bureau of Land Management for preliminary investigations and reports, and such reports shall be made a part of the record at the hearing.

(b) *Hearing and notice.* The Secretary of the Interior or such other presiding officer as may be designated by the Secretary of the Interior shall hold public hearings upon the possessory claims of native groups of Alaska. The Secretary will give notice of the hearings by publication of the time, place and subject matter of the hearing in the FEDERAL REGISTER. The Secretary will also cause a copy of the said notice to be mailed to the last known address of all parties who are shown by the preliminary investigations to have interests in the area concerned which may be adversely affected by the claims asserted. The hearing may be continued from time to time and adjourned to a later date or a different place without notice other than the announcement thereof by the presiding officer at the hearing.

(c) *Powers of presiding officer.* (1) The hearing shall be conducted in an informal but an orderly manner in accordance with the rules of practice hereinafter set forth. Matters of procedure not covered by this section shall be determined by the presiding officer. He shall have power to: (i) Administer oaths; (ii) rule upon motions and requests; (iii) examine witnesses and receive evidence; (iv) admit or exclude evidence and rule upon objections; (v) hear oral arguments and receive memoranda on facts and law in his discretion; (vi) do all acts and take all measures necessary for the maintenance of order at the hearing and the official conduct of the proceeding.

(2) At any stage of the hearing, the presiding officer may call for further evidence upon any matter. In the event that the hearing shall be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place for the taking of evidence shall be published in the FEDERAL REGISTER and sent to all parties who appeared at the hearing.

(3) The presiding officer may take official notice of any generally recognized fact, any established technical or scientific fact, or any official public records.

(d) *Appearances.* Any interested person including any agency of the Department or other governmental agency shall be given an opportunity to appear either in person or through authorized counsel or other representation and to be heard with respect to matters relevant and material to the proceeding. Each such person or representative shall be required to inform the presiding officer of his name and address, the names, addresses and occupations of persons, if any, whom he represents and the position he takes with respect to the issues of the hearing. Where a person appears through counsel or representation, such counsel or representative shall before proceeding to testify or otherwise to participate in the hearing, state for the record his authority to act as such counsel or representative.

(e) *Evidence.* (1) The evidence of the witnesses shall be given under oath. Witnesses may be questioned by the presiding officer or by any person who has entered an appearance for the purpose of assisting the presiding officer in ascertaining the material facts with respect to the subject matter of the hearing.

(2) The evidence, including affidavits, records, documents and exhibits received at the hearing, shall be reported and a transcript thereof shall be made. In the discretion of the presiding officer, written evidence may be received without being read into the record. Every party shall be afforded adequate opportunity to cross-examine, rebut or offer contravening evidence. Evidence shall be received with respect to the matters specified in the notice of the hearing in such order as the presiding officer shall announce.

(f) *Rules of evidence.* All evidence having reasonable probative value shall be admitted, regardless of common law or statutory rules of evidence, but immaterial, irrelevant or unduly repetitious evidence shall be excluded.

(g) *Opinion evidence.* In the discretion of the presiding officer, opinion evidence by properly qualified witnesses may be admitted.

(h) *Stipulations.* In the discretion of the presiding officer, stipulations of facts signed by the parties or their representatives may be introduced.

(i) *Depositions.* The presiding officer may order evidence to be taken by deposition at any stage of the proceeding before any person designated by him and having the power to administer oaths or affirmations. Unless notice be waived, no deposition shall be taken except after reasonable notice to the parties. Any person desiring to take a deposition of a witness shall make application in writing setting out the reasons why such deposition should be taken and stating the time when, the place where, and the name and address of the person before whom it is desired the deposition should be taken, the name and address of the witness and the subject matter concerning which the witness is expected to testify. If good reason be shown, the presiding officer will make and serve upon the parties or their attorneys an order naming the witness whose deposition is to be taken and specifying the time when, the place where, and the person before whom the witness is to testify. These may or may not be the same as those named in the application. The deponent shall be subject to cross-examination by all the parties appearing. In lieu of oral cross-examination, parties may transmit written cross-interrogations to the deponent. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in the usual form by the officer. Such deposition, unless otherwise ordered by the presiding officer for good cause shown, shall be filed in the record in the proceeding and a copy thereof supplied to the party upon whose application said deposition was taken or his attorney.

(j) *Objections.* It shall not be necessary to make formal exceptions to adverse rulings of the presiding officer upon objections.

(k) *Oral argument and briefs.* (1) Oral arguments may be permitted in the discretion of the presiding officer. Such arguments shall be made a part of the transcript, if the presiding officer so orders.

(2) Briefs and proposed findings of fact and conclusions of law may not be filed after 30 days from the close of the hearing unless otherwise ordered by the presiding officer.

(l) *Filing the record of the hearing.* As soon as practicable after the close of the hearing the complete record shall be filed with the presiding officer. It shall consist of the transcript of the testimony and include exhibits and any written arguments that may have been filed. This record shall be the sole official record. No free copies of the record will be available in any proceeding under this section.

(m) *Action of presiding officer.* Within a reasonable time of the filing of the record of the hearing, the presiding officer shall file with the Secretary of the Interior a report upon the possessory claims of the petitioner which shall contain findings of fact and conclusions of law with respect to such claims. Unless final authority has been delegated by the Secretary to the presiding officer, the Secretary of the Interior will approve, disapprove or modify the findings and conclusions of the presiding officer. The determinations finally made shall be published in the FEDERAL REGISTER and a copy thereof shall be mailed to each party who appeared at the hearing or who received actual written notice of the hearing.

(n) *Rehearing.* Upon good cause shown within 30 days of the publication of the presiding officer's report, the Secretary in his discretion may order a rehearing.

(o) *Public notice of regulations.* Public notice of the issuance of the foregoing rules of practice for hearings shall be given by publishing the same in the FEDERAL REGISTER.

(p) *Revision of section.* This section may be revised by the Secretary of the Interior at any time without prior notice and such revision shall be published in the FEDERAL REGISTER.

(Sec. 8, 23 Stat. 26, sec. 14, 26 Stat. 1101, 30 Stat. 409, 413, 31 Stat. 321, 330, 43 Stat. 464, 49 Stat. 1250; 48 U. S. C. 356, 358, 359, 371, 61, 356, 221, 362) [11 F. R. 6909]

RESERVATIONS FOR INDIANS AND ESKIMOS

§ 67.13 *Extension of certain provisions of the Wheeler-Howard Act to Alaska; establishment of reservations.* (a) The inherent power conferred upon the Secretary of the Interior by section 441, Revised Statutes (5 U. S. C. 485), to supervise the public business relating to the Indians includes the supervision over reservations in the Territory of Alaska created in the interest of the natives and the authority to lease lands therein for their benefit. Opinion of the solicitor, May 18, 1923 (49 L. D. 592).

(b) The act of May 1, 1936 (49 Stat. 1250; 48 U. S. C., Sup., 358a, 362) extends certain provisions of the act of June 18, 1934 (48 Stat. 984; 25 U. S. C. 461–479), known as the Wheeler-Howard Act, to Alaska, and provides for the designation of Indian reservations in the Territory.

(c) The act of May 31, 1938 (52 Stat. 593; 48 U. S. C. 353a), authorizes the Secretary of the Interior in his discretion to withdraw, subject to any valid existing rights, and permanently reserve, small tracts of not to exceed 640 acres each of the public domain in Alaska, for schools, hospitals, and such other purposes as may be necessary in administering the affairs of the Indians, Eskimos, and Aleuts of Alaska.

PART 68—LANDING AND WHARF PERMITS ON RESERVED SHORE SPACES

Sec.
68.1 Statutory authority.
68.2 Application; evidence required.
68.3 Use of lands; tolls.
68.4 Survey; issuance of permit.
68.5 Jurisdiction in national forests.

AUTHORITY: §§ 68.1 to 68.5 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCE: For shore space, see Part 77 of this chapter.

§ 68.1 *Statutory authority.* Section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 462), authorizes the Secretary of the Interior to grant the use of reserved shore space lands abutting on the water front to any citizen, or association of citizens, or to any corporation incorporated under the laws of the United States or under the laws of any State or Territory, for landings and wharves, with the provision that the public shall have access to and proper use of such landings and wharves at reasonable rates of toll to be prescribed by the Secretary of the Interior.

§ 68.2 *Application; evidence required.* (a) Applications for landing and wharf privileges should be filed in the proper land office.

(b) Applications should describe the tracts desired by words and by a preliminary diagram showing their position in connection with adjoining surveys and water front and by courses and distances where not defined by prior surveys. There should be filed diagrams and specifications of the proposed wharves and landings, showing their position in connection with the roadway used by vessels, the width of the channel, and the various soundings. Maps and such other papers as may be necessary to fully show the situation must be furnished. All buildings proposed to be erected should be shown on the diagram accompanying the application, and there should be indicated their use and whether they are for public or private purposes.

(c) In an application by an individual or association, the citizenship of the individual and of the members of the association must be shown.

(d) In case of a corporation a certified copy of the articles of incorporation and evidence of organization must be furnished in the same manner as is required where corporations apply for rights of way for railroad purposes.

CROSS REFERENCE: For railroad rights-of-way, see §§ 74.1–74.21 of this chapter.

§ 68.3 *Use of lands; tolls.* The use of such land is limited to landings and wharves, and all rates of toll to be paid by the public must be submitted for approval of the manager of the land office. The application should be accompanied by a proposed schedule of public toll charges; and if such charges are found to be reasonable, the schedule will be approved, subject, however, to revision as the public interests may thereafter require.

§ 68.4 *Survey; issuance of permit.* If the application be allowed, a surveyor of the Bureau of Land Management will execute a survey and set permanent monuments to delineate the boundaries of the tract, and a permit will be issued granting the applicant the use of the land sought for landings and wharves, subject to the provisions and conditions prescribed by the statute, which permit will be revocable at the discretion of the manager. The erection of wharves and piers in any port, roadstead, haven, harbor, canal, navigable river, or other

water of the United States, outside of established harbor lines, or where no harbor lines have been established, must be in conformity with plans recommended by the Chief of Engineers, and authorized by the Secretary of the Army; consequently such applications will be submitted to the Department of the Army for approval, or such other action as that department may deem proper, before final action is taken in the Interior Department.

CROSS REFERENCE: For surveys, see Parts 73, 280 of this chapter.

§ 68.5 *Jurisdiction in national forests.* Reserved spaces between claims upon navigable waters within existing national forests in Alaska are subject to the jurisdiction of the Secretary of Agriculture, pursuant to the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 472), and permits for the use of such spaces for landings and wharves must be obtained through that department.

PART 69—MINERAL LANDS; GENERAL MINING REGULATIONS

LOCATION AND ENTRY OF MINERAL LANDS IN ALASKA

Sec.
69.1 Laws relating to mining claims extended to Alaska.
69.2 Law in respect to placer claims.
69.3 Annual assessment work on mining claims and proof thereof.
69.4 Identification of lands.
69.5 Plats and field notes of survey.
69.6 Rates for newspaper publications.
69.7 Evidence of title.
69.8 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.
69.9 Period allowed for filing of adverse claims.
69.10 Period allowed for institution of adverse suits.

AREAS SUBJECT TO SPECIAL LAWS

69.11 Mineral deposits in the Glacier Bay National Monument.

MINING FOR GOLD AND OTHER PRECIOUS METALS IN BEDS AND ALONG SHORES OF NAVIGABLE WATERS IN ALASKA

69.12 Purpose and authority.
69.13 Filing of notice of intention to mine.
69.14 Area to be dredged.
69.15 Restrictions on dredge location.
69.16 Laws for the protection of navigable waters and fisheries.
69.17 Prior rights protected.
69.18 No title to be acquired; rights of future States.

SCHOOL SECTIONS

69.19 Statutory authority; mining claims.
69.20 Mining locations, entries and patents.

CROSS REFERENCES: For mineral lands, general mining regulations, see Part 185 of this chapter. For surveys in Alaska, see Part 78 of this chapter. For surveys and resurveys, general, see Parts 280, 281 of this chapter.

LOCATION AND ENTRY OF MINERAL LANDS IN ALASKA [1]

AUTHORITY: §§ 69.1 to 69.10 issued under R. S. 2478; 43 U. S. C. 1201.

[1] The general mining regulations contained in Part 185, as modified and supplemented by the regulations in this part, are effective in the Territory of Alaska. For laws relating to mining enacted by the Territory, see Session Laws of Alaska, March 14, 1935, Ch. 76, and March 9, 1939, Ch. 77.

§ 69.1 *Laws relating to mining claims extended to Alaska.* The laws of the United States relating to mining claims were extended to Alaska by section 8 of the act of May 17, 1884 (23 Stat. 26), and sections 15, 16, and 26 of the act of June 6, 1900 (31 Stat. 327–329; 48 U. S. C. 119, 120, 381–383), again, in terms, extended the mining laws of the United States and all rights incident thereto, to the Territory, with certain further provisions with respect to the acquisition of claims thereunder.[2]

§ 69.2 *Law in respect to placer claims.* (a) The law in respect to placer claims in Alaska was modified and amended by the act of August 1, 1912 (37 Stat. 242), and section 4 of that act was amended by the act of March 3, 1925 (43 Stat. 1118).

(b) By the act of May 4, 1934 (48 Stat. 663; 48 U. S. C. 381a) [3] the acts of August 1, 1912, and March 3, 1925, were repealed and the general mining laws of the United States applicable to placer mining claims were declared to be in full force and effect in the Territory.

§ 69.3 *Annual assessment work on mining claims and proof thereof.* Under the act of March 2, 1907 (34 Stat. 1243; 48 U. S. C. 384, 385),[4] an unpatented mining claim in Alaska becomes forfeited for failure to complete the required assessment work during any assessment period, the act containing no provision for the protection or preservation of such claim through resumption of work.

§ 69.4 *Identification of lands.* A statement as to descriptions should be incorporated in field notes of survey not tied to a corner of the public survey, and in applications for patent based thereon.[5]

[2] See also amendatory acts of May 31, 1938 and August 8, 1947 (52 Stat. 588, 61 Stat. 916; 48 U. S. C. 381).

[3] Sec. 3 of the act of May 4, 1934 (48 Stat. 663; 48 U. S. C. 381a) provided: "This Act shall take effect thirty days subsequent to the date of convening of the first regular session of the Alaska Territorial Legislature which is held after the passage of this Act." The next legislature convened on the second Monday of January, 1935.

[4] The act of March 2, 1907 (34 Stat. 1243; 48 U. S. C. 384, 385), prescribes the requirements as to annual assessment work on mining claims in Alaska and the manner of making proof thereof.

[5] The field notes of survey of all claims within the Territory of Alaska, and all applications for patent based thereon, where the survey is not tied to a corner of the public survey, shall contain a description of the location or mineral monument to which the survey is tied by giving its latitude and longitude and its position with reference to rivers, creeks, mountains, or mountain peaks, towns or other prominent topographical points or natural objects or monuments, giving the distances and directions as nearly accurate as possible, especially with reference to any well-known trail to a town or mining camp or to a river or mountain appearing on the map of Alaska, which description shall appear regardless of whether or not the survey be tied to an existing monument or to a monument established by the surveyor when making the survey in accordance with existing regulations with reference to the establishment of such monuments. The description of such monument shall appear in a paragraph separate from the description of the courses and distances of the survey.

§ 69.5 *Plats and field notes of survey.* Copies of the plats and field notes of survey in mining cases will be made and disposed of in accordance with instructions issued by the Director, Bureau of Land Management.

§ 69.6 *Rates for newspaper publications.* Section 2334 of the Revised Statutes (30 U. S. C. 39) provides for the appointment of surveyors to survey mining claims, and authorizes the Director of the Bureau of Land Management to establish the rates to be charged for surveys and for newspaper publications in mining cases. Under this authority of law, the following rates have been established as the maximum charges for newspaper publications:

(a) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of Alaska for the publication of legal notices wherein the notice is published, and in no case shall the charge exceed $9.40 for each 10 lines of space occupied. Such charge shall be accepted as full payment for the publication for the entire period required by law.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates are established upon the understanding that the notices are to be set in the usual body type used for legal notices.

(c) Further information relative to publication and a sample of advertisement set up in accordance with Government requirements is given in § 185.85 of this chapter.

§ 69.7 *Evidence of title.* (a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the Territorial laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to Form 4–1246.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed and the order for publication issued, if the certificate of title or the abstract showing full title in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental certificate of title or supplemental abstract of title brought down so as to include

the date of the filing of the application must be furnished prior to the expiration of the 60-day period of publication.

§ 69.8 *Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.*[4] Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

§ 69.9 *Period allowed for filing of adverse claims.* The act of June 7, 1910 (36 Stat. 459; 48 U. S. C. 386), provides that adverse claims may be filed at any time during the 60-day period of publication or within 8 months thereafter. This provision operates to enlarge by 8 months additional the time within which an adverse claim may be filed.

§ 69.10 *Period allowed for institution of adverse suits.* (a) It is also provided by the act that adverse suits may be instituted at any time within 60 days after the filing of adverse claims in the land office. This provision applies to any adverse claim which is seasonably filed.

(b) Managers of the land offices in Alaska will exercise the greatest care in applying the provisions of the act, and will allow no mineral entry until after the expiration of the full period granted for the filing of adverse claims. For example, on any application under which the publication period ended with or after June 7, 1910, no entry will in any event be allowed until after the expiration of the 8 months' period following the publication period.

AREAS SUBJECT TO SPECIAL LAWS[5]

§ 69.11 *Mineral deposits in the Glacier Bay National Monument.* (a) Under the act of June 22, 1936 (49 Stat. 1817), the lands in the Glacier Bay National Monument, reserved by proclamation of February 26, 1925 (43 Stat. 1988), or as it may be extended are open to prospecting for the kinds of mineral now subject to location under the United States mining laws, and, upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations, duly made, will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior.

(b) The owner of a mining location may cut such timber within the boundaries of his claim as is necessary for mining purposes. Prospectors may cut timber for their necessary mining and domestic uses only with the permission of the custodian of the monument or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims or by prospectors shall be disposed of by the claimant or prospector in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

(c) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition so long as it is used by the permittee or his successors.

(d) Occupation and use of the surface of an unpatented mining claim is restricted by the general law to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Upon written permission of the Director of the National Park Service or his representative, the surface of such claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(e) Prospectors and miners shall at all times conform to any rules prescribed or which may be made applicable by the Director of the National Park Service to the national monument.

(f) The Park regulations for the protection of wild life provide:

The national monument is a sanctuary for wild life of every sort, and all hunting, or the killing, wounding, frightening, capturing or attempting to capture at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited.

Firearms, traps, seines, and nets are prohibited within the boundaries of the monument, except upon written permission of the custodian or his representative.

(g) The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to the act of June 22, 1936, will terminate when the minerals are mined out or the claim is abandoned. Any owner of an unpatented location who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim and his right of occupation and use of the surface of the claim considered at an end.

(h) Applications for patents and final certificates issued thereon for mining claims in this monument should be noted "Glacier Bay National Monument Lands", and all patents issued for claims under the act will convey title to the minerals only, and contain appropriate reference to the act and the regulations issued thereunder.

(R. S. 2478; 43 U. S. C. 1201)

CROSS REFERENCE: For general mining regulations, see Part 185 of this chapter.

MINING FOR GOLD AND OTHER PRECIOUS METALS IN THE BEDS AND ALONG THE SHORES OF NAVIGABLE WATERS IN ALASKA

AUTHORITY: §§ 69.12 to 69.18 issued under 61 Stat. 916.

§ 69.12 *Purpose and authority.* The act of August 8, 1947 (61 Stat. 916) amends section 26 of the act of June 6, 1900, as amended (31 Stat. 321, 52 Stat. 588; 48 U. S. C. 381) to authorize the exploration and mining for gold and other precious metals in Alaska in land below the line of ordinary high tide on tidal waters and below the line of ordinary high water mark on nontidal waters navigable in fact, subject to certain conditions. It is the purpose of §§ 69.12 to 69.18, inclusive, to set forth the conditions under which such exploration and mining operations may be conducted.

§ 69.13 *Filing of notice of intention to mine.* Any citizen of the United States, any person who has legally declared his intention to become such, any association of such citizens, or any corporation organize under the laws of the United States or of any State or Territory thereof, shall, before commencing actual operations, file a notice of intention to mine or dredge for gold and other precious metals in any of the land described in the preceding section. This notice must be filed in triplicate in the nearest land office, and should contain (a) the full name, address and citizenship of the person filing the notice, (b) a description of the place where the dredge will be initially located or the mining operations otherwise commenced, such place to be connected where practicable by course and distance to a corner of the public land survey on the shore, or if there are no surveyed lands in the vicinity, with the nearest, readily-ascertainable geographical or topographical point, (c) a statement that actual dredging or mining operations will be com-

[4] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[5] Mining locations may be made on lands in the Mount McKinley National Park, under the provisions of the act of February 26, 1917 (39 Stat. 938; 16 U. S. C. 347-354) which expressly provides that the United States mining laws shall be applicable to mineral lands in that area.

Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a-364e) are subject to mining location, under the provision of section 3 of that act for the development of the reserved minerals under applicable law, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. Such mining locations are subject to the applicable general regulations in Parts 69 and 185 and to the additional conditions and requirements in § 75.35 of this chapter.

menced no later than 90 days after the date of filing of the notice, and (d) a statement that the dredging or other mining operations will comply with all pertinent regulations and laws.

§ 69.14 *Area to be dredged.* In order to assure the preservation of order and the avoidance of conflict, each dredge commencing operations in accordance with §§ 69.12 to 69.18, inclusive, shall not be interfered with by other dredging or mining operations within an area of 200 feet in the direction of either bank and within a space of 500 feet up or down stream. This area shall be indicated by properly placed buoys. Other dredges or boats are to have access to such area for passage and navigational purposes, but, while passing through that area, are not to extract any minerals nor engage in any dredging or moving of materials except as may be necessary for the actual movement of the equipment.

§ 69.15 *Restrictions on dredge location.* No dredge shall be placed in a position or be so operated as to interfere with the free passage of boats on nontidal waters navigable in fact or along the shore line of tidal waters, or interfere with the landing at any public wharf, or with other authorized means for landing stores or supplies. No dredge shall be located nearer to the shore than 100 feet from the line of ordinary low tide on tidal waters. Nor shall any dredge be located within the limits of frontage occupied by any townsite, mission or trading company with established entry under the law.

§ 69.16 *Laws for the protection of navigable waters and fisheries.* No dredging or other mining operations shall be conducted unless all the applicable laws and regulations relating to navigable waters and to the protection of fisheries are complied with.

CROSS REFERENCE: The regulations of the Fish and Wildlife Service of the Department of the Interior concerning fisheries are codified in 50 CFR Chapter I. For regulations of the Department of the Army concerning navigable waters, see 33 CFR Chapter II.

§ 69.17 *Prior rights protected.* No dredging or other mining shall in any way be deemed to affect or impair any valid claims, rights or privileges arising under any other provision of law, including possessory claims under the first proviso of section 8 of the act of May 17, 1884 (23 Stat. 26).

§ 69.18 *No title to be acquired; rights of future States.* No dredging or other mining operations shall authorize, or be permitted to lead to, the acquisition of title to any of the land dredged or mined. Any privileges acquired with respect to mining operations in land, title to which is later transferred to a future State upon its admission to the Union, and which is situated within its boundaries, shall be terminable, by such State, and the mining operations shall be subject to the laws of such State.

SCHOOL SECTIONS

§ 69.19 *Statutory authority: mining claims.* (a) The act of March 5, 1952 (66 Stat. 14; 48 U. S. C. 353) repealed the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353), which provided for the disposition under the mining laws of the United States, of the minerals in the lands reserved to the Territory of Alaska for educational uses. No valid claim may, therefore, be initiated under the mining laws after March 5, 1952, on lands reserved to the Territory for educational uses.

(b) Unsurveyed public lands which when surveyed will be sections reserved for educational uses, will, until the survey of the lands in the field but not thereafter be subject to the operation of the mining and mineral leasing laws in like manner as other public lands.

(R. S. 2478; 43 U. S. C. 1201)

§ 69.20 *Mining locations, entries and patents.* (a) Section 1 of the act of March 4, 1915, as amended, provides that nothing in that act shall affect any lands subject to or included in any valid application, claim, or right initiated or held under any laws of the United States, unless and until such application, claim, or right is extinguished, relinquished or cancelled. Therefore, any valid mining location or claim initiated prior to March 5, 1952, shall remain intact, subject to compliance with the mining laws and regulations thereunder applicable to the Territory, and subject to the rights of Territorial lessees. All proceeds or income derived by the United States from the disposition of the lands or the minerals therein under such outstanding mining claims shall be appropriated and set apart as permanent funds in the Territorial treasury.

(b) Controversies between Territorial lessees and owners of mining claims on the same land involving the right of possession, occupancy and use of lands, or liability for damages, are matters within the jurisdiction of the local courts.

(R. S. 2478; 43 U. S. C. 1201)

PART 70—MINERAL LANDS; COAL PERMITS AND LEASES AND LICENSES FOR FREE USE OF COAL

GENERAL

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AUTHORITY: §§ 70.1 to 70.31 issued under sec. 17, 38 Stat. 745; 48 U. S. C. 451.

GENERAL

§ 70.1 *Statutory authority.* Sections 1 to 19, inclusive, of the act of October 20, 1914 (38 Stat. 741, et seq.; 48 U. S. C., sections 432–438, 438a, 439–452), as amended, authorize the Secretary of the Interior to:

(a) Divide into leasing units and award leases of the coal, lignite and associated minerals in unreserved coal lands and coal deposits owned by the United States in Alaska;

(b) Issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits in Alaska; and

(c) Issue limited licenses or permits to prospect for, mine and dispose of, for free use, coal on specified tracts belonging to the United States in Alaska.

§ 70.2 *Area and limitation on holdings.* A single lease or permit may embrace not exceeding 2,560 acres except where the rule of approximation applies. A permit will comprise contiguous tracts, or tracts in reasonably compact form, if good reasons appear for not including a contiguous area. A lease will comprise contiguous tracts, except in a case where it appears that non-contiguous tracts can be practically worked as a single mine or unit. No person, association, or corporation, except as in the act provided, may hold more than 2,560 acres in the aggregate, whether directly through the ownership of coal leases and permits or interests in such leases or permits, or indirectly as a member of an association or associations, or as a stockholder of a corporation, holding such leases and permits or interests therein or both.

§ 70.3 *Qualifications of applicants.* (a) Leases, prospecting permits and limited licenses may be issued to citizens of the United States over the age of 21 years, associations of such citizens, corporations organized under the laws of the United States or any State or Territory thereof, including a company or corporation operating a railroad or common carrier, and municipalities. A majority of the stock of such corporation shall at all times be owned and held by citizens of the United States.

(b) Every applicant for coal permit or lease must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate 2,560 acres, not including areas held under a limited license which, under the act (48 U. S. C., sec. 445), is no bar to acquiring or holding a lease.

(c) Where the applicant is or operates a railroad or common carrier, it must make a statement that it operates main or branch lines in the Territory of Alaska; that the coal or coal lands applied for through leases, applications therefor, and permits, do not exceed such area or quantity as may be required and used solely for its own use; and that the aggregate acreage, other than as set out in § 70.28, in leases and applications therefor and permits in which it is interested directly or indirectly does not exceed 2,560 acres.

(d) Every applicant for lease or permit must also furnish a showing as to the need for additional coal production which cannot otherwise be reasonably met, or, if such a showing of need cannot be made, a statement of the reasons why a lease or permit is desired.

§ 70.4 *Permits and leases for lands disposed of with reservation of coal.* Where lands included in a lease or permit have been disposed of with reservation of the coal deposits, a lessee or permittee must make full compliance with the law under which such reservation was made. See the act of March 8, 1922 (42 Stat. 416; 48 U. S. C., sec. 377); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U. S. C., Supp. III, 54), and other laws authorizing such reservations.

§ 70.5 *Requirements when lands are within a withdrawal.* Where any part of the lands embraced in an application for coal lease or permit is within a withdrawal which does not preclude disposition of the coal deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a coal lease or permit. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease or permit.

§ 70.6 *Payments.* Unless otherwise directed by the Secretary, rentals, royalties and other payments under leases, permits and licenses issued under the act shall be paid to the manager of the land office for the land district in which the lands are situated. All remittances shall be made payable to the Bureau of Land Management.

COAL LEASES

§ 70.7 *Leasing units.* (a) No coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be established either upon application or when it is deemed advisable that additional coal units be established.

(b) All material facts, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

(c) Leasing units may include, in whole or in part, unsurveyed land, but a survey of the land will be made and the leasing unit conformed to such survey prior to the execution of a lease thereof.

§ 70.8 *Form of lease.* Leases shall be issued on Form 4–031a.[1]

§ 70.9 *Minimum expenditure and lease bond.* (a) An actual bona fide expenditure for mine operation, development, or improvement purposes on or for the benefit of the leased land, of the amount that may be determined will be a condition in each lease as the minimum basis on which it will be granted, with the requirement that not less than one-third of such expenditure shall be made during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years.

(b) Prior to the issuance of a lease, the lessee shall furnish a bond executed by the lessee with approved corporate surety on Form 4–1113 or the lessee's personal bond on Form 4–1114, in such sum as may be required but in no event less than $1,000, and conditioned upon compliance with all of the terms and provisions of the lease. Personal bonds must be accompanied by a deposit of securities such as specified in § 70.23. If the amount of the bond is fixed at $1,000, the lessee may, instead, furnish a bond on Form 4–1113 with two qualified individual sureties to cover compliance with all terms and provisions of the lease or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution double the sum specified in the undertaking, over and above his just debts and liabilities, and that he is either a resident of the same State or Territory and the United States Judicial District as the principal on the bond, or of the Territory and the Judicial District in which the lands involved are located. There must also be furnished a certificate by a judge or clerk of record, a United States Attorney, a United States Commissioner, or United States postmaster, as to the indemnity, signature and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on Form 4–215.

[1] Filed with the Federal Register Division as part of the original document.

§ 70.10 *Minimum production; suspension of operations.* (a) Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, unless, on application and showing made, an authorized officer of the Department of the Interior in the interest of conservation, or for other satisfactory cause, shall direct, or shall assent to the suspension of operations or production of coal as provided in section 19 of the act (48 U. S. C. 438a). The law provides that where suspensions are made the payment of rentals will be waived for the period of suspension and the lease term extended for a like period.

(b) If operations or production are suspended pursuant to section 19 of the act (48 U. S. C. sec. 438a), no payment of acreage rental prescribed in the lease is required during such period of suspension. Any such suspension if granted shall be effective beginning with the first day of the lease month following the date of filing of written application for such suspension in duplicate in the office of the regional mining supervisor, and ending with the first day of the lease month in which relief is terminated in writing by an authorized officer of the Department of the Interior. Where rentals have been paid in advance, proper credit will be allowed on the next rental or royalty payment due under the lease. Complete information must be furnished showing the necessity for suspension of operation and production in the interest of conservation or other satisfactory cause for the suspension requested.

(c) The term of a lease shall be extended by adding thereto any period of suspension of operations or production assented to or directed by an authorized officer of the Department of the Interior.

(d) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which suspension of operations or production is directed or granted by an authorized officer of the Department of the Interior in the interest of conservation or for other satisfactory cause.

§ 70.11 *Application for lease by competitive bidding.* (a) An application for a lease by competitive bidding must be filed in duplicate in the proper land office. No specific form is required, but the application should cover the following points:

(1) The applicant's name and address.

(2) A statement as to citizenship: In the case of an individual, whether native born or naturalized, and if naturalized, date of naturalization, court in which naturalized, and the number of certificate if known, and if a woman, whether married or single, and if married, the facts as to the citizenship of her husband and the date of her marriage if both are not native born citizens. Associations are required to file a certified copy of their articles of association and the same showing as to citizenship and holdings of their members as required of an individual and specified in this subparagraph. If the applicant is a corporation, it must file (i) a certified copy of the articles of incorporation or appro-

priate reference by land office serial number of the record of the Bureau in which such a copy has been filed, with statement as to any subsequent amendments, (ii) a separate showing as to the citizenship and holdings of any stockholder owning or controlling at least 20 percent of the stock of the corporation, and (iii) a statement of the proportion of its stock owned or held by aliens. If a majority of the stock of a corporation is held by aliens, the application will be denied. A municipality must submit evidence of: (i) The law, charter and procedure taken by which it became and exists as a legal body corporate; (ii) that the taking of a permit or lease is authorized under such law or charter; and (iii) that the action proposed has been duly authorized by the governing body of such municipality.

(3) A statement that the interests, direct or indirect, in coal leases, permits or applications therefor in Alaska, do not exceed in the aggregate 2,560 acres, except as indicated in § 70.3 (b). Where the applicant is or operates a railroad or common carrier, it must state that the coal or coal lands applied for through leases, applications therefor, and permits, do not exceed such area or quantity as may be required and used solely for its own use.

(4) Description of the land for which the lease is desired, by legal subdivision if surveyed, and by metes and bounds if unsurveyed. In order to properly identify unsurveyed lands, if practicable, the metes and bounds description should be connected by course and distance with some corner of the public-land surveys and their position with reference to rivers, creeks, mountains or mountain peaks, towns, islands, or other prominent topographical points or natural objects or monuments should be given.

(5) The showing specified in § 70.3 (d).

(6) A statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities and the character and extent of the coal deposits so far as known.

(7) The contemplated investment for the development and equipment of a producing mine of a stated average daily output.

(b) The application must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement [2] as to citizenship and acreage holdings. Application on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

§ 70.12 *Offer of lands or deposits for lease by competitive bidding.* If the lands or deposits are found to constitute an acceptable leasing unit and subject to coal lease, they will be offered for such lease on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bidding as provided by the notice of sale. If it be found that the area covered by an application does not constitute an acceptable leasing unit, the area may be adjusted, by appropriate additions and eliminations, to constitute an acceptable leasing unit which may be offered for lease.

§ 70.13 *Notice of lease offer.* Notice under the preceding section of the offer of the lands or deposits for lease will be given by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation, published in the Territory of Alaska. The notice will be published at the expense of the Government. Such notice will show the day, hour, and place of sale, whether the sale will be at public auction or by sealed bids, the method of submitting sealed bids, the rental and rate of royalty to be charged, the minimum investment and the minimum production requirement, and the description of the land. If the sale is by public auction the notice will also specify that sealed bids will be accepted. The right is reserved, in the public interest, to reject any and all bids, and should a bid be rejected, the deposit made by the bidder will be returned. All bidders at any public sale of leases are warned against committing any act of intimidation, combination or unfair management to hinder or prevent bidding thereon, in violation of 18 U. S. C. 1860.

§ 70.14 *Sale; bidding requirements; action by successful bidder.* When the sale is by public auction, before bidding is commenced by those persons present, the manager or other officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of sale. The successful bidder must on the day of sale deposit with the manager of the land office or other officer conducting the sale and each sealed bid must be accompanied by the following: Certified check, money order, or cash, for one-fifth of the amount of bid and evidence of qualifications of the bidder as prescribed in § 70.11 (a) (2), (3) and (b), if a current showing in that regard has not been filed in connection with the application for lease of the lands or deposits. If the land is surveyed, the successful bidder will be allowed 30 days from receipt of lease forms within which (a) to file in the proper land office a lease, duly executed by him on form 4–031a and the bond required by § 70.9, and (b) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with requirements of paragraphs (a) and (b) in this section until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder fails to comply after due service of notice, that portion of his deposit representing the minimum required to be deposited with the bid shall be held as liquidated damages and disposed of as other receipts under the Alaska Coal Act.

§ 70.15 *Modification and leasing of additional land or coal deposits; consolidation of leases of small areas.* (a) Under section 4 of the act (48 U. S. C. Sec. 435), a lessee may obtain a further or new lease to include additional coal lands contiguous to those embraced in his original lease, but in no event shall the area embraced in the original and new lease exceed in the aggregate 2,560 acres, except where the rule of approximation applies. The lessee shall file his application for a new lease in duplicate in the proper land office describing the additional lands desired, the needs and reason for and the advantage to the lessee of such lease. Upon determination that the new lease is justified, the land or deposits may be offered as provided in § 70.13.

(b) Upon a satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within three years thereafter, an additional tract of land or coal deposit may be leased. An application should be filed in duplicate in the proper land office and should contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested, and the proposed method of entry into such lands. If the lands or coal deposits or any part thereof are found to constitute an acceptable leasing unit, they will be offered for leasing as provided in § 70.13. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease which must not exceed 2,560 acres; otherwise, a separate lease may be issued.

(c) Under section 5 of the act (48 U. S. C., sec. 436), lessees holding under leases small blocks or areas may consolidate their leases or holdings so as to include in a single holding not to exceed 2,560 acres of contiguous lands. The lessees should file their joint application for a new lease in duplicate in the proper land office describing the lands held in their respective leases and giving the serial numbers of such leases, and stating the reasons why they desire a consolidated lease. If the showing is deemed satisfactory, a consolidated lease will be issued.

(d) Before a new lease under paragraph (a) of this section, or a lease modified under paragraph (b) of this section, or a consolidated lease under paragraph (c) of this section is issued, the lessee or lessees shall file the consent of the surety or sureties and the acceptance by the lessee or lessees of the terms and conditions proposed.

§ 70.16 *Renewal of lease; readjustment of terms and conditions.* A lease is subject to renewal and its terms and conditions are subject to readjustment at

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement as to any matter within its jurisdiction.

the end of each fifty-year period (or such extended period as results from the grant of a suspension of operations or production) succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. In addition, the lessor may readjust and fix royalties payable under the lease at the end of each 20-year period of the lease. The lessee will be notified by the lessor of the proposed readjustments or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after receipt of notice, he will be deemed to have agreed to such terms and, at the end of each 50-year period, to renewal of his lease. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty- or fifty-year period as the case may be.

§ 70.17 *Relinquishment of lease.* Upon payment of all rentals, royalties, and other debts due and payable to the lessor, upon payment of all wages or money due and payable to the workmen employed by the lessee, and upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease. The lessee may also surrender any legal subdivision of the area included within the lease, but in no case shall such lease be so terminated in whole or in part until and unless the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered thereby in accordance with the regulations and terms of the lease. A surrender must be made by a relinquishment filed in duplicate in the proper land office. A relinquishment upon its acceptance shall take effect as of the date it is filed.

§ 70.18 *Cancellation of lease.* If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease or at the effective date of any readjustment of the terms and conditions thereof under § 70.16, or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 14 of the act (48 U. S. C. sec. 449). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

§ 70.19 *Use of timber.* The use of timber found upon the public lands in Alaska, by the permittee and the lessee, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes in addition to that taken from the area in the permit or lease, may be obtained under the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. sec. 423), as amended, or by arrangement with the Department of Agriculture, if the land is in a national forest.[3]

COAL PROSPECTING PERMITS

§ 70.20 *Character of lands.* Permits shall be issued on Form 4–031b[4] for a period of four years to qualified applicants to prospect unclaimed and undeveloped lands where prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

§ 70.21 *Rights conferred.* A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right, the permittee shall be authorized to remove from the premises only such coal as may be necessary to determine the workability and commercial value of the coal deposits in the land.

§ 70.22 *Application for permit.* An application for a permit must be filed in duplicate in the manner and in the office specified in § 70.11 (a). Each application must be accompanied by a filing fee of $10.00 which will be retained as a service charge even though the application should be rejected or withdrawn either in whole or in part. No specific form of application is required, but in addition to the requirements of § 70.11 (a) (1), (2), (3), (4) and (5) and (b), it should cover the following points:

(a) Condition of coal occurrences, so far as determined; description of workings, and outcrops of coal beds, if any, and reason why the land is believed to offer a favorable field for prospecting for coal.

(b) Detailed plan and method of conducting prospecting or exploratory operations on the land, estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

(c) Brief statement of applicant's experience in coal-mining operations, if any, together with one or more references as to his reputation and business standing.

§ 70.23 *Permit bond.* The applicant must furnish a corporate surety bond on Form 4–1130 or his personal bond on Form 4–1131 conditioned upon compliance with all the terms of the prospecting permit. The bond shall be in the sum of $1,000 and where the lands applied for have been entered or patented with the coal reserved to the United States pursuant to the act of March 8, 1922 (42 Stat. 416; 48 U. S. C., sec. 377), the bond must be conditioned upon the payment of any damages caused to the crops or improvements thereon by reason of prospecting for coal thereon under the permit. Personal bonds must be accompanied by a deposit of negotiable Federal securities equal at their par value to the amount of the bond. The bond may be filed with the application which will expedite action thereon, or within 30 days after receipt of notice by the applicant, that the permit will be granted when the bond is filed. The permittee may, in place of a bond of the two types specified above, submit one on Form 4–1130 with two qualified sureties as provided in § 70.9 (b).

§ 70.24 *Reward for discovery.* A permittee who shows, that prior to the expiration of his permit, the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in compact form. An application for preference right lease must be filed in duplicate in the office specified in § 70.11 (a) promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited. The application must describe the land desired, set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit, show that coal was discovered in commercial quantities before the date of the expiration of the permit and show any change in the information contained in the application for permit. The application must be accompanied by the rental for the first year of the lease, which shall be 25 cents for each acre, or fraction thereof. The lease, if issued, will be in accordance with the provisions of §§ 70.8 to 70.10, inclusive, and will be dated the first day of the month following the date the application is filed unless the applicant requests that it be dated the first day of the month within which it is filed. If the permit expires and the application for lease is finally rejected, royalty for coal mined to the date of receipt of notice by the permittee of such rejection will be charged in accordance with the royalty terms of the permit and such mining of the coal will not constitute a trespass.

TRANSFERS OF PERMITS AND LEASES; OVERRIDING ROYALTIES

§ 70.25 *Transfers, including subleases.* (a) Permits and leases may be transferred in whole or in part to any person, association, or corporation qualified to hold such leases and permits. The approval of a transfer of only part of the lands described in a permit or lease will create a new permit or lease but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease. Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval at the office specified in § 70.11 (a) within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by § 70.11 (a), (2) and (3) and (b). If the instrument fails to describe the true consideration, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection. If a bond is necessary it must be furnished. Transfers of record title interest must be filed in du-

[3] See Part 79 of this chapter, Timber.

[4] Filed with the Federal Register Division as part of the original document.

plicate. A single executed copy of all other instruments of transfer is sufficient. A transfer will take effect the first day of the month following its final approval or if the transferee requests, the first day of the month of approval.

(b) The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval, the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The account under the permit or lease must be in good standing before approval of a transfer will be given.

(c) An application for approval of any instrument or transfer of a lease or permit or interest therein or a filing of any such instrument must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

§ 70.26 *Limitation on overriding royalties.* An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any over overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

LIMITED COAL LICENSES

§ 70.27 *Purpose of license.* Coal licenses may be issued, for the supply of strictly local and domestic needs for fuel, for a period of two years to any of the applicants having the qualifications specified in § 70.3 (a), without the payment of royalty for the coal mined or for the land occupied. All licensees may mine coal for sale, except a company or corporation operating a common carrier, which is restricted by section 3 of the act (48 U. S. C., sec. 434), to the requirement of only such an area or amount of coal as may be required and used solely for its own consumption. The holding of a lease is no bar to the acquisition of, holding or operating a limited coal license and the holding of a license is no bar to the acquisition or holding of a lease or interest therein. No such licenses, however, will be issued for coal lands in the Bering or Matanuska coal fields which have been surveyed into leasing blocks or tracts or in fields where mines are being operated under lease. A license grants the right to prospect for, mine, and remove coal free of charge from specified tracts of lands belonging to the United States in Alaska, and does not authorize the mining of any other form of mineral deposits, nor the cutting or removal of timber.

§ 70.28 *Area and duration.* A license will be limited to specified tracts not to exceed 10 acres in any one coal field. The ground covered by a license must be square in form and should be limited to an area reasonably sufficient to supply the quantity of coal needed. The act limits the license period to 10 years, but a license will expire by limitation at the end of 2 years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the 2-year period, subject to such conditions necessary for the protection of the public interest as may be imposed prior to or at the time of the extension. Misrepresentation, carelessness, waste, injury to the property, the charge of unreasonable prices for coal, or material violations of the rules and regulations governing operation as shall have been prescribed in advance of the issuance of a license, will be deemed sufficient cause for revocation.

§ 70.29 *Application for license.* (a) Application for a license to mine coal for local and domestic needs must be filed on Form 4–694a, or its substantial equivalent in the office specified in § 70.11 (a) and be accompanied by a $10 filing fee. A municipality must file with the application a showing of (1) the law or charter and procedure taken by which it became and exists as a legal body corporate, (2) that the taking of a license is authorized under such law or charter and (3) that the proposed action has been duly authorized by the governing body of the municipality.

(b) Prior to the execution of the application, the applicant must have gone upon the land, plainly marked the boundaries thereof by substantial monuments, and posted a notice setting forth his intention of mining coal therefrom. The application must contain the statement that these requirements have been complied with and the description of the land as given in the application must correspond with the description as marked on the ground. The license, if granted, should be recorded with the local mining district recorder, if the land is situated within an organized mining district.

(c) Applicants are allowed, due to the long distances and limited means of transportation, the privilege of mining coal as soon as their applications have been forwarded to the office specified in § 70.11 (a). If the application should be rejected, upon receipt of notice of such rejection, all privileges under this section terminate and the applicant must cease mining the coal.

SCHOOL SECTIONS

§ 70.30 *Coal permits and leases.* Under the act of August 5, 1953 (67 Stat. 364) amending section 1 of the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), coal permits and leases may be issued under the act of October 20, 1914 (38 Stat. 741; 48 U. S. C. 434), as amended, and the regulations thereunder in this part, on lands reserved to the Territory of Alaska for educational uses by the said act of March 4, 1915. The act also provides that should a State be created out of the Territory of Alaska during the life of the permit, lease or contract, all right, title and interest of the United States under such lease, permit or contract, including any authority to modify its terms and conditions retained by the United States, shall vest in the State to which title to the lands is transferred.

§ 70.31 *Occupation and use of the surface by coal permittees or lessees.* Permits and leases issued for the land will be subject to the condition that the permittee or lessee shall compensate any Territorial lessee of the surface of the leased lands or any part thereof for any resulting damages to any crops, improvements or other property of the surface lessee on the land or for any interference with such lessee's normal and proper use of the land for the purpose or purposes for which it was leased. The amount of such damages in any case may be determined by agreement between the parties or by an action in the local courts. Each permittee or lessee for such lands must furnish and maintain at all times a bond in the penal sum of not less than $1,000 for the protection of the surface lessee except that where a bond in not less than that amount is required to be furnished for other purposes, it may be also conditioned on the protection of that lessee.

PART 71—MINERAL LANDS; OIL AND GAS, PHOSPHATE AND OIL SHALE LEASES, AND POTASH AND SODIUM PERMITS AND LEASES

Sec.

71.1 Mineral leasing laws and regulations applicable in Alaska.
71.2 Description of unsurveyed lands; conflicting applications for unsurveyed lands.
71.3 Potassium and sodium permits and leases and oil and gas, oil shale and phosphate leases.
71.4 Occupation and use of the surface by permittees and lessees.
71.5 Preference rights.

AUTHORITY: §§ 71.1 to 71.5 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

§ 71.1 *Mineral leasing laws and regulations applicable in Alaska.* Subject to the provisions of §§ 71.2 and 71.3, the regulations under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181, et seq.), as amended and supplemented, including the Act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281, et seq.), contained in Parts 191 and 192 and 194 to 197, inclusive, of this chapter, shall govern the issuance of oil and gas, phosphate and oil shale leases, and potash and sodium permits and leases, in Alaska.

§ 71.2 *Description of unsurveyed lands; conflicting applications for unsurveyed lands.* (a) Applications for leases of unsurveyed lands shall describe them by metes and bounds; the corners must be plainly marked on the ground by setting substantial posts or

heaping up mounds of stone, and the boundaries must conform to true cardinal directions insofar as practicable.

(1) Where the lands are within two miles of an approved public land survey corner, a corner of the area applied for shall be connected by courses and distances to that corner. There may be utilized as the point of reference the initial monument erected by another applicant who has described said monument by courses and distances with reference to a public survey corner. In such case the location of the adopted monument with respect to the public land survey corner must be stated, or the field notes or calculations by which the location of the applicant's initial monument, with reference to the public survey monument, was obtained, must be furnished.

(2) Where the lands are not within two miles of an approved public land survey corner, the initial monument shall be connected by courses and distances to such permanent monuments as will enable the Bureau of Land Management to identify its location from its records and maps. A plat or chart illustrating the location of said monument will aid in a determination of its location, and its position must also be noted with reference to rivers, creeks, mountains, or mountain peaks, towns, or other prominent topographic points, or natural objects.

(b) In order to permit adjustment of conflicts, areas covered by all applications in conflict with a prior application or claim must be identified with reference to a monument of the first application or claim which can be definitely ascertained and located upon the records and plats of the Bureau of Land Management.

§ 71.3 *Potassium and sodium permits and leases and oil and gas, oil shale and phosphate leases.* Under the act of August 5, 1953, amending section 1 of the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), permits or leases for the prospecting for or mining of oil, gas, oil shale, phosphate, sodium or potassium deposits may be issued under the act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181, et seq.), as amended, and the regulations thereunder, as supplemented by the regulations in this part, on lands reserved to the Territory for educational uses by the said act of March 4, 1915.

§ 71.4 *Occupation and use of the surface by permittees and lessees.* Permits and leases issued for the land will be subject to the condition that the permittee or lessee shall compensate any Territorial lessee of the surface of the leased lands or any part thereof for any resulting damages to any crops, improvements or other property of the surface lessee on the land or for any interference with such lessee's normal and proper use of the land for the purpose or purposes for which it was leased. The amount of such damages in any case may be determined by agreement between the parties or by an action in the local courts. Each permittee or lessee for such lands must furnish and maintain at all times a bond in the penal sum of not less than $1,000 for the protection of the surface lessee except that where a bond in not less than that amount is required to be furnished for other purposes, it may be also conditioned on the protection of that lessee. The act also provides that should a State be created out of the Territory of Alaska during the life of the permit, lease or contract, all right, title and interest of the United States under such lease, permit or contract, including any authority to modify its terms and conditions retained by the United States, shall vest in the State to which title to the lands is transferred.

§ 71.5 *Preference rights.* The act provides that any person qualified to hold an oil and gas lease who had first filed in point of time and had pending on January 15, 1953, an offer or application for an oil and gas lease for any lands subject to the act which on said date were within the limits of a unitized area created by a unit agreement approved by the Secretary of the Interior and which were on the date the offer or application was filed not within the known geological structure of a producing oil or gas field shall have a preference right over others to an oil and gas lease for such lands.

PART 72—PUBLIC USES

SALE OF PUBLIC LANDS TO RELIGIOUS OR FRATERNAL ASSOCIATIONS OR PRIVATE CORPORATIONS FOR CEMETERY PURPOSES

Sec.
72.1 Statutory authority; governing regulations.

SALE, GRANT, OR LEASE OF PUBLIC LANDS FOR RECREATION AND PUBLIC PURPOSES

72.2 Statutory authority; governing regulations.

TRANSFER OF JURISDICTION OVER PUBLIC LANDS FOR USE UNDER THE ALASKA PUBLIC WORKS ACT

72.3 Effect of application for transfer.

AUTHORITY: §§ 72.1 to 72.3 issued under sec. 1, 54 Stat. 1192; 43 U. S. C. 363. Statutory provisions interpreted or applied are cited to text in parentheses.

SALE OF PUBLIC LANDS TO RELIGIOUS OR FRATERNAL ASSOCIATIONS OR PRIVATE CORPORATIONS FOR CEMETERY PURPOSES

§ 72.1 *Statutory authority; governing regulations.* The sale of public lands in Alaska to religious or fraternal associations or private corporations for cemetery purposes is authorized by the act of March 1, 1907 (34 Stat. 1052; 43 U. S. C. 682), and the regulations thereunder (Part 253 of this chapter).

(34 Stat. 1052; 43 U. S. C. 682)

SALE, GRANT, OR LEASE OF PUBLIC LANDS FOR RECREATION AND PUBLIC PURPOSES

§ 72.2 *Statutory authority; governing regulations.* The sale, grant, or lease of public lands in Alaska to the Territory and its political subdivisions and to nonprofit associations and corporations for recreation and public purposes are authorized by the act of June 14, 1926 (44 Stat. 741), as amended June 4, 1954 (68 Stat. 173; 43 U. S. C. 869), and the regulations thereunder (Part 254 of this chapter).

(68 Stat. 173; 43 U. S. C. Sup 869)

TRANSFER OF JURISDICTION OVER PUBLIC LANDS FOR USE UNDER THE ALASKA PUBLIC WORKS ACT

§ 72.3 *Effect of application for transfer.* An application for the transfer of jurisdiction over public land in Alaska made under section 7 of the Alaska Public Works Act (63 Stat. 629; 48 U. S. C. 486e) based on a project which has been approved under section 4 of the act (63 Stat. 627; 48 U. S. C. 486b) and filed with the appropriate office of the Bureau of Land Management in Alaska will have the effect of segregating the land from all forms of appropriation under the public-land laws, including the mining and mineral leasing laws, subject to existing valid rights, pending the issuance of an order of transfer or the rejection of the application.

(63 Stat. 629; 48 U. S. C. 486e)

PART 73—PRACTICE

CONTESTS OF ENTRIES AND HOMESTEAD LOCATIONS

§ 73.1 *Procedure in contest cases.* (a) Contests against entries of public lands in the Territory of Alaska may be initiated by private persons or on the part of the Government in the same manner as such proceedings are begun elsewhere in the United States.

(b) The procedure in such cases will be governed by the Rules of Practice in Part 221 of this chapter.

(c) Homestead locations of lands in the Territory of Alaska may be contested and canceled upon any ground which would warrant the cancellation of a homestead entry of land elsewhere made under section 2289, R. S. (43 U. S. C. 161, 171); and contests of this character may be initiated at the proper land office by either the Government or any private person, and should be proceeded with in the same manner and given the same effect as contests against homestead entries elsewhere.

(R. S. 2478; 43 U. S. C. 1201)

PART 74—RIGHTS-OF-WAY

RIGHTS-OF-WAY FOR RAILROADS, WAGON ROADS, AND TRAMWAYS

Sec.
74.1 General statement.
74.2 Right-of-way included in area entered.
74.3 Condemnation of right-of-way.
74.4 Incorporated companies.
74.5 Individuals or associations of individuals.
74.6 Preparation of maps and plats.
74.7 Data required on maps.
74.8 Data required in field notes; instructions as to surveys.
74.9 Filing of papers.
74.10 Connections with other surveys.
74.11 Permanent monuments or marks.
74.12 Designation of termini.
74.13 Statement and certificates required.
74.14 Additional width for right-of-way.
74.15 Preliminary map and field notes.
74.16 Scale of maps.
74.17 Plats of station, terminal, and junction grounds.
74.18 Showing required in application.

Sec.
74.19 Statement and certificates required when road is constructed.
74.20 Action where required evidence is not filed.
74.21 Charges for transportation of passengers and freight.

RIGHTS-OF-WAY FOR RESERVOIRS AND CANALS AND FOR ROADWAY, POWER, TELEPHONE, AND TELEGRAPH PURPOSES

74.24 General statement.
74.25 Effect of Federal Power Act.
74.26 General instructions.
74.27 Right-of-way for roadway.

ESTABLISHMENT OF RESERVATIONS OR EASEMENTS FOR PUBLIC HIGHWAYS IN ALASKA

74.28 Reservation for through roads.
74.29 Rights-of-way or easements for feeder roads and local roads.
74.30 Appropriation of lands crossed by roads.
74.31 Homestead settlement or entry, exclusive of a strip reserved for a local road.
74.32 Statement required of applicants as to public roads.
74.33 Adjustment to official survey closing on through road.

AUTHORITY: §§ 74.1 to 74.33 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For rights-of-way, see Parts 243–244 of this chapter. For rights-of-way over Indian lands, see 25 CFR Part 256.

RIGHTS-OF-WAY FOR RAILROADS, WAGON ROADS, AND TRAMWAYS[1]

§ 74.1 *General statement.* The rights-of-way for railroads, wagon roads, and tramways in the Territory of Alaska, granted by sections 2 to 9, inclusive, of the act of May 14, 1898 (30 Stat. 409 ff.; 48 U. S. C. 411–419) does not convey an estate in fee in the lands used for such purposes or in the lands used for station and terminal facilities. The grant is merely of a right of use for the necessary and legitimate purposes of the roads, the fee remaining in the United States, except as to lands authorized to be sold under section 6 by the Secretary of the Interior, "upon such expressed conditions as in his judgment may be necessary to protect the public interests." The nature of these conditions will depend upon the public necessities and will be governed by the particular circumstances of each case. These sections authorize the Secretary of the Interior to approve maps and plats affecting unsurveyed as well as surveyed land, and, while it is not obligatory on the part of grantees to file additional maps and plats after survey of the lands, showing connections with the public surveys, and the smallest legal subdivisions of all lands affected, by so doing the grants and the extent thereof could be properly recorded on the records of the Bureau of Land Management and readily determined.

§ 74.2 *Right-of-way included in area entered.* All persons entering public lands, to part of which a right-of-way has attached, take the same subject to such right-of-way, the latter being computed as a part of the area of the tract entered.

§ 74.3 *Condemnation of right-of-way.* Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnations of the right-of-way across the same may be made in accordance with the provisions of section 4 of the said act of May 14, 1898.

§ 74.4 *Incorporated companies.* (a) Any incorporated company desiring to obtain the benefits of this part is required to file the following papers and maps:

(1) A copy of its articles of incorporation duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(2) A copy of the State or Territorial law under which the company was organized, with the certificate of the governor or secretary of the State or Territory that the same is the existing law.

(3) When said law directs that the articles of association or other papers connected with the organization be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

(4) A certificate from the Secretary of the Territory of Alaska showing that the company has complied with chapter 23, title 3, act of June 6, 1900 (31 Stat. 528), providing a civil code for the Territory of Alaska.

(5) The official statement, under seal of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory where organized. (Form 1.)[1]

(6) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2.)[1]

(7) If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to the Bureau of Land Management by the governor or secretary of any State or Territory, a company organized in such State or Territory may file, in lieu of the requirements of paragraph (b) of this section, a certificate of the governor or Secretary of the State or Territory that no change has been made since a given date, not later than that of the laws last forwarded.

(8) Maps, field notes, and other papers as hereinafter required.

(b) No forms are prescribed for the proofs required in subparagraphs (1)–(4), as each case must be governed to some extent by the laws of the State or Territory.

§ 74.5 *Individuals or associations of individuals.* Individuals or associations of individuals making applications for permits, under section 6 of the act (30 Stat. 411; 48 U. S. C. 416), for tramways or wagon roads are required to file evidence of citizenship. In the case of associations a statement must be filed by the principal officer thereof, giving a list of its members and stating that the list includes all the members. Evidence of citizenship must be furnished for each member of the association. Individuals and associations will also be required to file the maps, field notes, and other papers hereinafter required.

§ 74.6 *Preparation of maps and plats.* All maps and plats must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey thereof, wherever such surveys have been made. The word "profile" as used in the act is understood to intend a map of alignment. No profile of grades will be required.

§ 74.7 *Data required on maps.* (a) The maps should show any other road crossed or with which connection is made, and whenever possible the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which the applicant asks right of way. Field notes of the surveys should be written along the line on the map. If the map should be too much crowded to be easily read, then duplicate field notes should be filed separate from the map, and in such form that they may be folded for filing. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. Station numbers should also be given on the map in all cases where changes of numbering occur and where known lines of survey, public or otherwise, are crossed, with distance to the nearest permanent monument or other mark on such line. The map must also show the lines of reference of initial, terminal, and intermediate points, with their courses and distances.

(b) When the lines are located on surveyed land, the maps must show the 40-acre subdivisions; when on unsurveyed land, a meridian should be drawn on maps through initial and terminal points and at intervals of not more than 6 miles, intermediate points.

§ 74.8 *Data required in field notes; instructions as to surveys.* Typewritten field notes, with clear carbon copies, are preferred, as they expedite the examination of applications. All monuments and other marks with which connections are made should be fully described, so that they may be easily found. The field notes must be so complete that the line may be retraced on the ground. On account of the conditions existing in Alaska surveys based wholly on the magnetic needle will not be accepted. In that case a true meridian should be established, as accurately as possible, at the initial point. It should be permanently marked and fully described. The survey should be based thereon and checked by a meridian similarly fixed at the terminal point and, when the line is a long one, by intermediate meridians at proper intervals. On account of the rapid convergence of the meridians in these latitudes such intermediate meridians should be established at such intervals as to avoid large discrepancies in bearings. It will probably be found preferable to run by transit deflections from a permanently established line, with frequent and readily recoverable reference lines permanently marked;

[1] For forms 1 to 8, inclusive, referred to under §§ 74.1–74.21, see 50 L. D., pp. 75 to 78, inclusive.

and in such surveys occasional true bearings should be stated, at least approximately. On all lines of railroad the 10-mile sections should be indicated and numbered, and on maps of tramways and wagon roads the 5-mile sections shall likewise be indicated and numbered.

§ 74.9 *Filing of papers.* The maps, field notes, and accompanying papers should be filed in the land office for the district where the proposed right of way is located.

§ 74.10 *Connections with other surveys.* Connections should be made with other surveys, public or private, whenever possible; also with mineral monuments and other known and established marks. When a sufficient number of such points are not available to make such connections at least every 6 miles, the surveyor must make connection with natural objects or permanent monuments.

§ 74.11 *Permanent monuments or marks.* Along the line of survey, at least once in every mile, permanent and easily recoverable monuments or marks must be set and connected therewith, in such positions that the construction of the road will not interfere with them. The locations thereof must be indicated on the maps. All reference points must be fully described in the field notes, so that they may be relocated, and the exact point used for reference indicated.

§ 74.12 *Designation of termini.* The termini of a line of road should be fixed by reference of course and distance to a permanent monument or other definite mark. The initial point of the survey and of station, terminal, and junction grounds should be similarly referred. The maps, field notes, engineer's certificate, and applicant's certificate (Forms 3 and 4)[3] should each show these connections.

§ 74.13 *Statement and certificates required.*[4] The engineer's certificate and applicant's certificate must be written on the map, and must both designate by termini (as in the preceding section) and length in miles and decimals the line of route for which right of way application is made. (See Forms 3 and 4.) Station, terminal, or junction grounds must be described by initial point (as in the preceding section) and area in acres (Forms 7 and 8),[3] when they are located on surveyed land, and the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein. When the applicant is an individual the word "applicant" should be used instead of "company," and such other changes made as are necessary on this account.

[3] For forms 1 to 8, inclusive, referred to under §§ 74.1–74.21, see 50 L. D., pp. 75 to 78, inclusive.

[4] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 74.14 *Additional width for right-of-way.* Where additional width is desired for railroad right-of-way on account of heavy cuts or fills, the additional right-of-way desired should be stated, the reason therefor fully shown, the limits of the additional right-of-way exactly designated, and any other information furnished that may be necessary to enable the manager to consider the case before giving it his approval.

§ 74.15 *Preliminary map and field notes.* The preliminary map authorized by the proviso of section 4 of the act will not be required to comply so strictly with the foregoing instructions as maps of definite location; but it is to be observed that they must be based upon an actual survey, and that the more fully they comply with §§ 74.1–74.21 the better they will serve their object, which is to indicate the lands to be crossed by the final line and to preserve the company's prior right until the approval of its maps of definite location. Unless the preliminary map and field notes are such that the line of survey can be retraced from them on the ground, they will be valueless for the purpose of preserving the company's rights. The preliminary map and field notes should be in duplicate, and should be filed in the land office in order that proper notations may be made on the records as notice to intending settlers and subsequent applicants for the right of way.

§ 74.16 *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to an inch. The maps may, however, be drawn to a scale of 1,000 feet to an inch when necessary, or, in extreme cases, to 500 feet to an inch. No other scales must be used and should be so selected as to avoid making maps inconveniently large for handling. In most cases, by furnishing separate field notes, an increase of scale can be avoided. Plats of station, terminal, and junction grounds, etc., should be drawn on a scale of 500 feet to an inch, and must be filed separately from the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

§ 74.17 *Plats of station, terminal, and junction grounds.* Plats of station, terminal, and junction grounds must be prepared in accordance with the directions for maps of lines of routes. Whenever they are located on or near navigable waters the shore line must be shown, and also the boundaries of any other railroad grounds or other claims located on or near navigable waters within a distance of 80 rods from any point of the tract applied for.

§ 74.18 *Showing required in application.* All applications for permits made under section 6 of the act should state whether it is proposed to collect toll on the proposed wagon road or tramway; and, in case of wagon roads, the application must be accompanied by satisfactory evidence, corroborated by a statement, tending to show that the public convenience requires the construction of the proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. In all cases, if the proposed line of road shall be located over any road or trail in common use for public travel, a satisfactory statement, corroborated by statement, must be submitted with the application, showing that the interests of the public will not be injuriously affected thereby.

§ 74.19 *Statement and certificates required when road is constructed.* When the road is constructed, a certificate of the engineer and a certificate of the applicant (Forms 5 and 6)[3] should be filed in the district land office in duplicate. In case of deviations from the map previously approved, whether before or after construction, there must be filed new maps and field notes in full, as in this part provided, bearing proper forms, changed to agree with the facts in the case, and the location must be described in the forms as the amended survey and the amended definite location. In such cases, the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the manager.

§ 74.20 *Action where required evidence is not filed.* Unless the proper evidence of construction is filed within the time prescribed by the act for the construction of each section of the road, appropriate steps will be taken looking to the cancellation of the approval of the right of way and the notations thereof on the records.

§ 74.21 *Charges for transportation of passengers and freight.* (a) In the case of a wagon road or tramway built under permit issued under section 6 of the act upon which it is proposed to collect toll, a printed schedule of the rates for freight and passengers should also be filed with the manager for his consideration and approval at least 60 days before the road is to be opened to traffic, in order to allow a sufficient time for consideration, inasmuch as by section 6 it is made a misdemeanor to collect toll without written authority from the Secretary of the Interior. In the case of a wagon road satisfactory evidence, corroborated, must be submitted with said schedule, showing that at least an average of $500 per mile has been actually expended in constructing such road. These schedules must be submitted in duplicate, one copy of which, bearing the approval of the manager, will be returned to the applicant if found satisfactory. Said schedules shall be plainly printed in large type.

(b) Schedules of passenger and freight rates on railroads should be filed with the Interstate Commerce Commission.

CROSS REFERENCE: For Interstate Commerce Commission, see 49 CFR Chapter I.

RIGHTS-OF-WAY FOR RESERVOIRS AND CANALS AND FOR ROADWAY, POWER, TELEPHONE, AND TELEGRAPH PURPOSES

§ 74.24 *General statement.* (a) On the general applicability of right-of-way laws in the Territory, the Attorney General in an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), responding to an inquiry whether it would be lawful to

grant revocable licenses under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), or easements under the act of March 4, 1911 (36 Stat. 1253; 16 U. S. C. 5, 420, 523, 43 U. S. C. 961), held, after a full review of all the statutes and departmental decisions thereon, and especially of the act of August 24, 1912 (37 Stat. 512; 48 U. S. C. 23), providing for the full organization of the Territory and the extension of all the laws of the United States to the Territory not locally inapplicable, that such action was authorized, for the reason that said acts of Congress were now applicable to the public lands in Alaska.

(b) By analogy it would appear that the provisions of sections 18 to 21, inclusive, of the act of March 3, 1891 (26 Stat. 1101, 1102; 43 U. S. C. 946–949), as amended by section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U. S. C. 951), allowing rights-of-way for canals, ditches, and reservoirs to canal and ditch companies formed for purposes of irrigation, are also applicable to public lands in Alaska and it has been so held since said opinion.

(c) Section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 524), granting rights-of-way for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals within and across the forest reserves of the United States, applies to and is operative in forest reserves in the Territory.

§ 74.25 *Effect of Federal Power Act.* It is to be noted, however, that the act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791–823), known as the Federal Power Act, as amended, has superseded and repealed all acts or parts of acts inconsistent therewith, providing for the development and transmission of water power on the public domain and certain reservations of the United States, and that this act is applicable to Alaska. Applications thereunder should be filed with the Federal Power Commission, Washington, D. C. But electrical projects that are in no way connected with water power, for instance, those where the electrical power is generated by steam, remain under the jurisdiction of the Department of the Interior pursuant to the provisions of the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), and that of March 4, 1911 (36 Stat. 1253; 16 U. S. C. 5, 420, 523, 43 U. S. C. 961), where the land involved is not within a national forest.

CROSS REFERENCE: For Federal Power Commission, see 18 CFR Chapter I.

§ 74.26 *General instructions.* The general instructions and regulations regarding the various rights-of-way referred to in §§ 74.24 and 74.25 are found in Part 244 of this chapter.

§ 74.27 *Right-of-way for roadway.* (a) A provision is made in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 462), that:

> A roadway 60 feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway.

The phrase "shore line" as thus used means high-water line.

(b) This reservation occurs in the proviso relating to the reservation between claims abutting on navigable waters; but since it is its purpose to reserve a roadway for public use as a highway along the shore line of navigable waters, it is held to relate to the lands entered or purchased under this act as well as to the reserved lands; otherwise it would serve little or no purpose. This reservation will not, however, present the location and survey of a claim up to the shore line, for in such case the claim will be subject to this servitude and the area in the highway will be computed as a part of the area entered and purchased.

(1) Section 26 of the act of June 6, 1900 (31 Stat. 329; 48 U. S. C. 381) provides that the reservation for roadway shall not apply to mineral lands or town sites.

(2) The reservation for roadway should not be inserted in patents (Departmental Instructions of March 15, 1915, 44 L. D. 22).

(c) The act of July 24, 1947 (61 Stat. 418; 48 U. S. C. 321d) amended the act of June 30, 1932 (47 Stat. 446) by adding at the end thereof a new section, as follows:

> SEC. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value.

ESTABLISHMENT OF RESERVATIONS OR EASEMENTS FOR PUBLIC HIGHWAYS IN ALASKA

§ 74.28 *Reservation for through roads.* Public Land Order No. 757 of October 16, 1951, amended Public Land Order No. 601 of August 10, 1949, so as to eliminate provisions affecting feeder roads and local roads. The order which, as amended, applies only to designated through roads, provides:

> Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for highway purposes.

§ 74.29 *Rights-of-way or easements for feeder roads and local roads.* (a) In addition to establishing the width of the through roads, reserved as set forth in § 74.28, Order No. 2665 of October 16, 1951 of the Secretary of the Interior also established rights-of-way or easements for highway purposes covering the lands embraced in feeder roads and local roads equal in extent to the width of such roads, as set forth in paragraphs (b) and (c) of this section.

(b) Feeder roads: Abbert Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishook Junction to Wasilla to Knik Road, Slana to Nebesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Park Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman Road, Nome to Council Road and Nome to Bessie Road shall each extend 100 feet on each side of the center line thereof.

(c) Local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

§ 74.30 *Appropriation of lands crossed by roads.* (a) The reservation for through roads made by public land order No. 601 of August 10, 1949, as amended (Appendix C of this title), operates as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws. Unless under the law or regulations such right or claim may embrace non-contiguous land, a right or claim to public land in the Territory initiated on or after August 10, 1949, and abutting on public land reserved for a through road, must be restricted to land on one side of the withdrawn area.

(b) Subject to paragraph (a) of this section public land on either side of the area reserved for through roads, both surveyed and unsurveyed, if otherwise available, may be included in claims extending up to but not including any part of the reserve. Where the land has been surveyed under the rectangular system and the surveys have not been closed on the reserved area, applications may be filed and entries allowed for portions of the legal subdivisions outside of the reserved area without awaiting additional surveys. Where the surveys have been closed on the reserved area, the land must be identified in the terms of such surveys. Settlements on unsurveyed public lands must conform to § 65.2, of this chapter so far as practicable.

(c) Public land crossed by a feeder road or a local road may be appropriated under any applicable public land law, subject to the roadway right-of-way or easement. No deduction in the area chargeable to the claim will be made on account of the area included in the public highway right-of-way or easement. So long as the land is used for public highway purposes, complete jurisdiction

thereover for all highways and highway-related purposes will remain in the Federal Government. If the highway is abandoned, such jurisdiction will terminate without action by the Federal Government, where the land crossed by the highway has passed into private ownership.

§ 74.31 *Homestead settlement or entry, exclusive of a strip reserved for a local road.* Where prior to October 16, 1951, a homestead settlement or entry was made, exclusive of a strip reserved for a local road, under the regulations then in effect (15 F. R. 1874, 43 CFR 1950 Supp. 74.29) the claim may stand in that form, or, in the option of the claimant, it may be amended to include the reserved strip, provided the total area involved does not exceed the total area permitted by law.

§ 74.32 *Statement required of applicants as to public roads.* Every applicant for public lands in Alaska whose right or claims was initiated on or after August 10, 1949, will be required to state in his application, or in a written statement furnished with the application, whether or not the land applied for is crossed by a public road. If it is, such road must be identified by name or otherwise.

§ 74.33 *Adjustment to official survey closing on through road.* Every application made for public land abutting on the area reserved for a through road not described in the terms of an official plat of survey closing on that area, will be subject to adjustment, both as to description and area, after such an official survey has been made.

PART 75—SALES AND LEASES[1]

SALE OR LEASE OF CERTAIN LANDS IN THE MATANUSKA VALLEY OF ALASKA

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SALE OR LEASE OF CERTAIN LANDS IN THE MATANUSKA VALLEY OF ALASKA

AUTHORITY: §§ 75.1 to 75.18 issued under 54 Stat. 1191; 48 U. S. C. 353 note.

§ 75.1 *Statutory authority.* (a) The act of October 17, 1940 (54 Stat. 1191; 48 U. S. C. 353 note) authorizes the Secretary of the Interior, in his discretion, to lease, or to sell at not less than $1.25 per acre, under such rules and regulations and upon such terms and conditions as he may prescribe, subject to valid existing rights certain lands released from reservation for the support of common schools and the public lands in the Territory of Alaska in the area described as follows:

SEWARD MERIDIAN

Tps. 17 and 18 N., Rs. 1 and 2 E., Secs. 16 and 36 and the public lands in the townships.
T. 17 N., R. 1 W.,
Secs. 25, 26, 27, 31, 32, 33, 34, and 35.
T. 16 N., R. 1 W.,
Secs. 3, 4, 5, 6, and 7.
T. 16 N., R. 2 W.,
Secs. 1, 2, 11, and 12.

(b) All the public lands in the areas described in paragraph (a) of this section are situated within the boundaries of the Matanuska Valley Colonization Project administered by the Alaska Rural Rehabilitation Corporation and, except for the school lands released from reservation for the Territory as described in the following paragraph, were withdrawn by Executive Order No. 6957 of February 4, 1935, and Executive Order No. 7128 of August 6, 1935, under authority of the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497; 16 U. S. C. 471; 43 U. S. C. 141 et seq.) from settlement, location, sale, entry, or other form of appropriation, and reserved for classification, and in aid of legislation. The act of October 17, 1940 (54 Stat. 1191; 48 U. S. C. 353 note), provides an exclusive method for the lease or disposal of these public lands.

(1) The act releases sections 16 and 36, townships 17 and 18 north, ranges 1 and 2 east, Seward Meridian, Alaska, from the reservation thereof made by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354), for the support of the common schools in the Territory of Alaska, and provides for the designation and reservation of an equal area of indemnity lands in lieu thereof, in accordance with the act of February 28, 1891 (26 Stat. 796; 43 U. S. C. 851, 852).

(2) The act provides that all leases and patents issued shall contain a reservation to the United States of the oil, gas, and other mineral deposits, together with the right to prospect for, mine and remove the same under such regulations as the Secretary of the Interior may prescribe.

§ 75.2 *Policy.* It will be the policy of this Department to promote the beneficial use of the public lands in the area described, subject to the terms of the Act, and at the same time to safeguard the public interest in the land. To this end, the authorized officer will cooperate with the Alaska Rural Rehabilitation Corporation in its development program of the Matanuska Valley Colonization Project of Alaska.

§ 75.3 *Preference right to Alaska Rural Rehabilitation Corporation.* The Alaska Rural Rehabilitation Corporation shall have the preference right to purchase such part of the above-described public lands as the Corporation shall certify to the Bureau of Land Management, have been improved or cleared and are ready for settlement and development into farm units. The preference right application must be filed by the Alaska Rural Rehabilitation Corporation within 60 days from the date of approval of this part.

§ 75.4 *Persons entitled to make application.* Colonists and settlers who are approved and certified by the Alaska Rural Rehabilitation Corporation may file an application for the purchase or lease of such lands as are not sold to the Corporation. The amount of land sold or leased to any such person shall not exceed the acreage necessary for the purpose of developing a farm unit which will support such person and his family, as determined by the Corporation. Land reported by the Corporation to be not suitable for disposal as part of a farm unit may be sold in tracts of such size and shape as the Corporation may recommend without regard to the above acreage limitations when it is determined by the Corporation that such sale will contribute to the development of the project and safeguard the public interest in the land: *Provided,* That when a special survey is necessary in connection with such a sale, the cost of such survey shall be paid by the purchaser.

§ 75.5 *Authorization for sale.* No sale will be authorized or made, except on prior approval of the authorized officer.

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[1] The act of March 27, 1928 (45 Stat. 371; 48 U. S. C. 472, 472a) provides that lands within abandoned military reservations, in Alaska, not otherwise withdrawn or used for a public purpose, may be surveyed, appraised and sold as provided by the Act of July 5, 1884 (23 Stat. 103; 43 U. S. C. 1071–1074), or that, in the discretion of the Secretary of the Interior, such lands may be restored to disposal under the public land laws applicable to the territory. The said Act further provides: "That any person locating, entering or acquiring title to any such lands shall, in addition to the regular fees, commissions, and purchase price of the land, pay the appraised price of any improvements placed thereon by the Government."

§ 75.6 *Sale price and lease rental.* The sale price of lands sold hereunder shall be fixed by the authorized officer upon consideration of the recommendation of the Alaska Rural Rehabilitation Corporation but in no case shall it be less than $1.25 per acre. The annual rental on land leased hereunder shall be the amount determined by the authorized officer upon consideration of the recommendation of the Corporation.

§ 75.7 *Evidence of citizenship required.*[1] No person shall be entitled to a patent or lease unless he is a native born or naturalized citizen of the United States, or one who has declared his intentions to become a citizen. If naturalized, or a declarant, he must show, by a signed statement, the title and location of the court in which proceedings were instituted, the date of naturalization or declaration of intentions, and if available, the number of the document.

§ 75.8 *Action by Alaska Rural Rehabilitation Corporation.* If the Corporation approves an application by a colonist or settler for the purchase or lease of land, the Corporation shall file the application and its certificate of approval with the manager, land office, Anchorage, Alaska. The application shall include the name, address, and evidence of citizenship of the applicant, and a complete legal description of the land involved. If the application is for a patent, it shall be accompanied by the full amount of the purchase price of the land, as recommended by the Corporation. If the application is for a lease, it shall be accompanied by the full amount of the first annual lease rental payment, as recommended by the Corporation. The certificate of approval of the Corporation shall include a statement that the land described does not exceed the amount necessary for the purpose of developing a farm unit which will support the applicant and his family.

§ 75.9 *Causes for cancellation.* A lease shall be subject to cancellation by the manager for failure of the lessee to comply with any of the terms, covenants, and stipulations of the lease, or of any of the regulations contained in §§ 75.1 to 75.12.

§ 75.10 *Payment of annual rental on lease.* The annual rental on a lease must be paid to the manager, Land Office, Anchorage, Alaska, on or before each anniversary date of the lease.

§ 75.11 *Patent and lease reservations.* Patents and leases issued under the provisions of the act shall contain a reservation to the United States of the oil, gas, and other mineral deposits, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary of the Interior may prescribe.

§ 75.12 *Appeals.* Any party aggrieved by any action of the manager may appeal to the Director and the Secretary of the Interior, pursuant to the Rules of Practice (Part 221 of this chapter).

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

TRANSFER TO ALASKA HOUSING AUTHORITY OF LANDS UNDER JURISDICTION OF DEPARTMENT OF THE INTERIOR

§ 75.13 *Statutory authority.* Section 6 of the Alaska Housing Act of April 23, 1949 (63 Stat. 60; 48 U. S. C. 484c) authorizes any executive department or agency of the Federal Government to sell, transfer, and convey to the Alaska Housing Authority at fair value, as determined by such department or agency, for use under that act, all or any right, title, and interest in any real or personal property under the jurisdiction of such department or agency which it determines to be in excess of its own requirements, notwithstanding any limitations or requirements of law with respect to the use or disposition of such property. The section provides that the authority conferred thereby shall be in addition to and not in derogation of any other powers and authorities of such department or agency.

§ 75.14 *Policy.* (a) The Department of the Interior has been gravely concerned about the critical housing shortage in Alaska, which has been a major obstacle to the proper development of the Territory and to the economic life of its population. The act, which seeks to ameliorate this dire shortage, will be liberally construed to foster the development of the urgently needed housing program.

(b) In order to effectuate the objectives of the act, prompt consideration will be given to all requests filed under the regulations in this part. To facilitate prompt action, the requests should contain complete information and data required by § 75.16.

(c) That lands are withdrawn in aid of a function of the Department of the Interior, or for shore space, will not preclude the disposal of such lands under the act if the lands are found to be in excess of the needs of this Department. However, lands situated in national parks and monuments, fish and wildlife refuges, and Indian lands will not be made available for disposal under the act unless a positive showing is also made of the unavailability of other lands in the general area suitable for the desired purpose. Requests will not be approved until such time as the information and data required by §§ 75.13 to 75.18 are furnished to the manager of the proper land office.

(d) Except to the extent previously indicated, the use of lands under the act, if not already appropriated under the public-land laws or actually used by Federal agencies, will be regarded as a higher use than the other uses authorized by the public-land laws.

(e) Requests should be made only in connection with specific housing projects, and may be made before the plans of construction have been completely formulated. However, requests should not be made until the Authority has determined that it will construct a specific project on the lands, the number and type of housing units to be included in the project, and the acreage and area needed for such project.

(f) Where lands are affected by a permit granted to another department or to any agency thereof, the consent of such department or agency to the proposed conveyance is required before a request may be approved.

§ 75.15 *Definitions.* As used in §§ 75.13 to 75.18, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) The "act" means the Alaska Housing Act of April 23, 1949 (63 Stat. 60; 48 U. S. C. 484c).

(b) "Authority" means the Alaska Housing Authority.

(c) "Property interest" means the title to or any other interest in land, including easements and leaseholds.

(d) "Instrument of transfer" includes a patent, deed, lease, or other instrument transferring a property interest.

§ 75.16 *Request by Authority for transfer of property interest.* Each request by the Authority for the transfer to it of a property interest in public lands or other federally owned lands under the jurisdiction of the Department of the Interior in Alaska should be addressed to and filed with the manager, should be in duplicate, and should contain the following:

(a) A description of the land, if surveyed, by legal subdivision, specifying section, township and range; unsurveyed lands should be described by metes and bounds with a tie to a corner of the public land surveys if within two miles; otherwise, a tie should be made to some permanent topographic feature and the approximate latitude and longitude should be given when practicable.

(b) If the application includes unsurveyed lands, a statement that the Authority has plainly indicated on the ground the corners of the land applied for by setting substantial posts or heaping up mounds of stones at each corner.

(c) A statement showing whether there are any hot springs or other springs having waters possessing curative properties upon any legal subdivision of the land requested, if the land is surveyed; and if the land is unsurveyed, whether any portion of the land is within an area of one-quarter of a mile from such spring or springs.

(d) A statement identifying the proposed project, the acreage required, and showing the number and type of housing units to be included therein, and the desirability or suitability of the site for the particular project.

(e) A statement showing the need for the particular land and the property interest therein requested by the Authority.

(f) The date construction of improvements on the land is contemplated.

(g) A statement showing whether any portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska, or whether the land is occupied, improved, or appropriated by any person claiming the same other than the Authority.

§ 75.17 *Publication of proposed transfer.* (a) The manager will require the Authority to publish at its expense, in a newspaper of general circulation in the land district in which the land is situated, a notice stating that a request has been made by the Authority to acquire an interest (describing it) in certain lands (describing them) under the act, for housing purposes, and that the purpose of the notice is to give persons claiming an interest in the lands, or having bona fide objections to the transfer, an opportunity to file with the manager within 30 days after the date of the first publication a protest, together with evidence that a copy of the protest has been served on the Authority. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue; if a weekly, for four consecutive issues; and if a semi-weekly or tri-weekly, in any of the issues on the same day for four consecutive weeks. The notice will be posted during the entire period of publication in the land office for the district in which the lands are situated. The manager will also require the Authority to keep a notice posted on the land throughout the entire period of publication. No transfer will be made until proof of publication and posting of the notice has been filed with the manager.

(b) After the Authority has made payment for the lands and complied with all of the requirements made by the manager, the Director, Bureau of Land Management, who will direct the issuance of the instrument of transfer.

(c) If unsurveyed public lands are included in a request, patent therefor cannot be issued until the lands have been surveyed.

§ 75.18 *Special provisions and reservations in the instrument of transfer.* Each instrument of transfer made under §§ 75.13 to 75.18, inclusive, of fee title or lesser estate in the land shall contain:

(a) The covenants, terms, and conditions requested by the Authority, as well as those required for the protection of the Department of the Interior, or any agency thereof.

(b) A reservation to the United States of the oil, gas, and other mineral deposits in the lands, together with the right of the United States, its agents, representatives, lessees or permittees, to prospect for, mine, and remove the same, under such regulations as the Secretary of the Interior may prescribe.

SALE OF LANDS AT PUBLIC AUCTION FOR INDUSTRIAL OR COMMERCIAL PURPOSES, INCLUDING HOUSING

AUTHORITY: §§ 75.19 to 75.36 issued under sec. 5 of act of August 30, 1949 (63 Stat. 679; 48 U. S. C. 364e).

§ 75.19 *Statutory authority.* The sale, at public auction, of tracts not exceeding 160 acres in the aggregate, which have been classified as suitable for industrial or commercial purposes, including construction of housing, is authorized by the act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a–364e). Section 4 provides that the act of May 14, 1898 (48 U. S. C. 371, 462), as amended, creating shore-space reserves shall not apply to nor limit the operations of the act.

§ 75.20 *Definitions.* When used in this part:

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Manager" means manager of the land office for the district in which the land is situated.

(d) "Applicant" or "purchaser" includes an individual, partnership, association of individuals, or a corporation, including municipal corporations.

(e) "The act" means the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a–364e).

§ 75.21 *Policy.* It is the policy of the Secretary to sell public lands under the act only when the lands will be put to some definite industrial or commercial use within a reasonable time after purchase according to the utilization program declared by the applicant or purchaser pursuant to § 75.28 or § 75.34 (b).

§ 75.22 *Lands subject to sale; classification and use.* (a) Any public lands in Alaska not within national parks or monuments, national forests, Indian lands, or military reservations, may be sold under the act, provided such lands shall first have been classified by the regional administrator as suitable for disposal for industrial, commercial, or housing use. The authorized officer may classify lands under the act either on his own motion or upon application. A properly filed application for the purchase of public lands will be considered as a request for classification of the land as suitable for disposal under the act.

(b) Disposal of withdrawn or reserved lands may be made only with the consent of the department or agency for whose use or in whose interest the lands were reserved or withdrawn, or which has administrative jurisdiction over such lands, and subject to the conditions required by such department or agency.

(c) Lands may be classified for disposal as industrial, commercial, or housing sites suitable for one or more types of enterprises, including, but not limited to, the following:

(1) Industrial site for manufacturing, fabricating, processing, or warehouse-storaging.

(2) Commercial site for merchandising, retail and wholesale, including warehouse and distribution centers; fur farms for penned animals; transportation facilities, including terminals, and repair shops.

(3) Housing site for apartments, detached and semi-detached dwellings on a project basis of sufficient size, but not less than five dwelling units, to warrant large-scale development; hotels, recreation resorts, overnight lodges, and motor courts.

(d) The sale of lands under §§ 75.19 to 75.36 will be subject to any valid existing rights; but the act of May 14, 1898 (48 U. S. C. 371, 462), as amended, creating shore-space reserves, will not apply to nor limit dispositions under these sections.

§ 75.23 *Application,*[1] *limitation on holdings.* An application may be filed with the manager by any qualified individual, association of individuals, or corporation, including municipal and public corporations, to purchase land for industrial, commercial, or housing purposes. The application must be executed and filed in duplicate if the land is surveyed, and in triplicate if the land is unsurveyed. Each application shall be for only one tract, reasonably compact in form, containing so much land, not exceeding 160 acres, as is actually required for the contemplated enterprise or project.

An applicant may file any number of applications, but no award may be made nor may patent issue to any purchaser for land which, with other lands under this act then held by such purchaser, shall exceed 160 acres in the aggregate. The application must contain in substance the following information:

(a) Name and address of applicant; age; general nature of his business and principal place of business.

(b) An association is required to file a certified copy of its articles of association and the same showing, including holdings of its members, as required of an individual as specified herein. A corporation is required to file a certified copy of its articles of incorporation and a showing that it is qualified to hold real estate in Alaska.

(c) Description of the land desired, by legal subdivision, section, township and range, if surveyed, and by metes and bounds with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments. No patent may issue, however, until an official survey is made.

(d) A brief but complete statement as to the use to which the land will be put, supplemented by the showings required in § 75.24.

(e) A statement of the applicant's interests, direct or indirect, whether as a member of an association or stockholder in a corporation or otherwise, in lands covered by purchase certificates or patents issued under the act, with the acreage thereof, identifying the same by land office and serial or by patent number, and a statement that the total amount of such lands then held by the applicant, together with the lands applied for, do not exceed 160 acres in the aggregate.

(f) The application must be signed by the applicant or an attorney in fact; if executed by an attorney in fact, it must be accompanied by the power of attorney. Application on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto. When a munici-

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

pal or public corporation is the applicant, the authority of the signing official or officials to act for the corporation must be furnished, evidenced by a certified copy of the resolution of its governing board or body.

§ 75.24 *Land utilization program; statement and plat.* (a) The application must be accompanied by an additional statement executed by the applicant disclosing in detail the proposed use to which the land will be put, containing in substance the following information: Type (whether industrial, commercial, or housing); structures and other improvements to be erected on the land, including size and cost of construction; approximate dates for beginning and completing construction; or, in the case of housing, the number of separate housing units or the number of persons or families for whom accommodations will be provided.

(b) The applicant must also furnish a plat of the area desired for purchase, showing the proposed location of all structures, roadways, and other improvements and facilities to be erected, in sufficient detail to illustrate the contemplated utilization of the tract and the need for all the acreage for which application is made.

§ 75.25 *Effect of application; segregation of land.* (a) Subject to valid prior rights, the filing of an application in conformity with the regulations in this part will segregate the land applied for from application, entry, or settlement under any public-land laws or from mining locations except as provided in § 75.35, pending classification of the land under the act.

(b) Subject to valid prior rights, the authorized officer may, at any time, on his own motion, effect a segregation of land, pending its classification as suitable for disposal under the act by filing with the manager of the land office a notice specifying each tract of land under consideration. The notice shall be effective to segregate the land from further application, entry or settlement under any public-land law, or from mining locations except as provided in § 75.35. The segregation notice shall be effective for not more than six months from date of filing of the notice in the land office, but the segregation may be extended for not more than an additional six months by the authorized officer, by filing a similar notice as to any or all of such tracts.

(c) An application or a segregation notice shall not prevent the filing of other applications under any public-land law without the initiation of any rights thereunder, pending classification of the land. Upon determination, pursuant to an application or notice, that the land is not suitable for disposal under the act or upon expiration of the segregation period or an extension thereof without classification, the land shall be subject to the public-land laws and pending applications thereunder.

§ 75.26 *Classification and appraisal; withdrawn or reserved land.* (a) The authorized officer, based upon such reports and studies as may be necessary, will make a determination whether the land in the application or segregation notice is suitable for disposal for industrial or commercial purposes; he will also appraise the land at its fair market value.

(b) If the land is withdrawn or reserved on behalf of or is under the administrative jurisdiction of another department or agency, the consent of such department or agency to the disposal of the land must be obtained prior to classification, and such disposal will be subject to any necessary and proper conditions required by the head of the department or agency.

§ 75.27 *Publication of notice; contents; posting.* (a) Upon a favorable classification of the land, the authorized officer will have a notice of the sale published, at the expense of the United States, not less than 30 days prior to the date fixed for the sale, in a designated newspaper of general circulation in Alaska. Publication may be made once a week for four consecutive weeks.

(b) The notice will contain the date, hour, and place of the sale; description of the tract or tracts, whether surveyed or unsurveyed; if insurveyed, a statement that the land must be surveyed at the expense of the purchaser prior to patent, with the estimated cost of survey; type or types of use for which classified; the minimum acceptable bid price which shall be not less than the appraised value if the land is surveyed, or appraised value plus estimated cost of survey if the land is unsurveyed; a list of all reservations to which the land is subject, including reservation to the United States of all minerals in the land; and such other reservations, if any, as may be necessary and proper; where and how bids shall be submitted; and a statement warning all bidders against violation of the provisions of 18 U. S. C. 1860 prohibiting unlawful combination or intimidation of bidders.

(c) The manager will post a copy of the notice of sale in the land office during the entire period of publication.

§ 75.28 *Bidding and sale.* (a) The land will be offered for sale at public auction at a minimum price of not less than the appraised value, plus the estimated cost of any surveys required to properly describe the land prior to issuance of patent. Bids may be made by the principal or an agent either personally at the sale or by mail, in the manner specified in the notice of sale. Bids sent by mail will be considered only if received at the land office prior to the hour fixed for the sale. The bids must be enclosed in a sealed envelope and must be accompanied by a certified check, cashier's check, or money order payable to the Bureau of Land Management, for one-fifth the amount of the bid. The sealed envelope must be marked in the lower left-hand corner as prescribed in the notice of sale. The sealed envelopes, with the hour and date of receipt in the land office noted thereon, will be opened by the manager only at the time fixed for the sale.

(b) The manager will commence the sale by reading the public announcement thereof and by opening the sealed bids and announcing such bids. He will then receive bids from the persons present.

§ 75.29 *Action at close of bidding; declaration of highest bidder.* (a) When all bids from the persons present shall have been received, the manager will, in the usual manner, declare the bidding closed. He will then announce the amount of the highest bid and require the offeror immediately to deposit one-fifth the amount of the bid. In the absence of such payment the manager will at once proceed with the sale, excluding that bid and starting with the next highest bid not withdrawn. In the event the bids of two or more persons sent by mail are the same in amount and are the highest offered, the manager will then and there hold a public drawing, in the manner specified in § 295.8 (b) of this chapter, from among such persons, and the bid of the person whose name is drawn will be accepted by the manager. The remainder of the bid must be paid by the bidder within 30 days after receipt of notice from the manager. When the full amount of the bid is paid, the manager will declare the offeror as the successful bidder, but no certificate of purchase will be issued unless and until the bidder has made satisfactory compliance with § 75.30.

(b) If the remainder of the bid is not paid within the time allowed or the bidder fails to qualify in accordance with § 75.30, the bid will be rejected and the one-fifth deposit will be forfeited; and an authorized officer may offer the land to the party who made the next highest bid, if such bidder is still interested in the purchase. Until the successful bidder has fully complied with § 75.30, the authorized officer may at any time determine, in the public interest, that the land should not be sold, and the applicant or any bidder shall have no contractual or other rights as against the United States, and no action taken shall create any contractual or other obligation of the United States.

§ 75.30 *Statement of qualifications; proposed utilization program.* Before a certificate of purchase may issue, the successful bidder must, within 30 days after he shall have been so declared, file in the land office, if he has not already done so:

(a) A statement and evidence of his qualifications and holdings of lands under this act in conformity with § 75.23 (a) or (b), and (c).

(b) Acceptable showing as to the proposed program of use and development of the land, consistent with the general purpose for which classified, containing in substance the detailed information required by § 75.24.

(c) A statement, accompanied by satisfactory proof, that he has the financial means or has made arrangements with an established financial institution to provide the means to carry the development program to completion; also a statement that the bid is not made for or on behalf of any undisclosed principal or other party in interest.

(d) In addition, the bidder may furnish or he may be required to furnish any additional information or showing, or proof of his bona fide intention and

of his financial ability to develop the tract for the contemplated use. Any showing as to financial responsibility will, upon request of the bidder, be treated as confidential and not open to public inspection.

§ 75.31 *Certificate of purchase; rights and limitations; survey.* (a) When the authorized officer is satisfied that the successful bidder is qualified, that he has the intention and financial means to develop and use the land in accordance with the act and his proposed utilization program, the authorized officer will authorize the issuance by the manager of a certificate of purchase on Form 4–1139, containing the reservations as listed in the published notice of sale.

(b) Upon issuance of the certificate which will be valid for a period of three years from the date of issuance, the purchaser shall have the right, during the three-year period, to enter upon, occupy, use, and make improvements upon the land in accordance with the declared utilization program.

(c) If the land is unsurveyed, the manager will, upon issuance of the certificate of purchase, have a survey made and plats prepared. Upon completion of the survey work, the purchaser will be required to pay any deficiency, or he will be refunded any amount paid in excess of the actual cost of survey.

(d) Timber on the land may not be cut or removed without the prior approval of an authorized officer. Approval will be granted for the removal of only so much of the timber and clearance of so much of the land as is directly necessary to the actual improvement and use of the land in accordance with the utilization program.

§ 75.32 *Assignment; mortgage or loan security.* (a) A certificate of purchase may be assigned in its entirety only. The proposed assignment must be filed in duplicate in the land office within 90 days after its date of execution, for the approval of the manager. The instrument must contain all the terms and conditions agreed upon by the parties thereto, including the consideration paid for the assignment, and must be accompanied by the same showing as to the assignee's qualifications, holding of lands under this act, proposed program for utilizing and developing the land, and financial ability to carry out the declared utilization program, as is required of the successful bidder in accordance with § 75.30. An assignment will not be recognized unless approved by the manager; a patent, if issued, will be in the name of the approved assignee. Subleases are not authorized.

(b) A certificate of purchase may be pledged as security for a loan from a lending agency when the loan is made in furtherance of the purchaser's or certificate holder's land utilization program; the lending agency may ascertain from the manager the status of the land and other pertinent information concerning the certificate of purchase. In case the holder-borrower's improvements or his rights under the purchase certificate are lawfully acquired by the lending agency through foreclosure or otherwise, such agency, or any party who purchases the property or rights from such agency, if qualified in accordance with § 75.30, will, upon application, be recognized in lieu of the previous holder or purchaser and, upon compliance with the terms of the certificate of purchase, may apply for the issuance of a patent. If, in making a sale the lending agency takes back a mortgage on the property, the agency shall be entitled to the same consideration as in the case of the original loan. A lending agency which files proper notice with the manager that it has made a loan and accepted, as security therefor, a certificate of purchase or improvements on the land, in conformity with the provisions of this paragraph, will be advised of any action taken affecting the status of the land.

§ 75.33 *Termination of certificate; removal of improvements.* (a) At the end of three years from the date of issuance, unless there is then pending an application for the issuance of a patent filed in accordance with § 75.34, the certificate of purchase will be void and of no further effect, all rights thereunder will terminate; and no moneys paid thereon may be returned. No extension of time for compliance with the terms of the certificate of purchase can be granted.

(b) Thereupon the manager will allow the approved holder of the certificate of purchase 90 days from notice within which to remove from the land any materials, improvements, structures, or other property placed thereon. After the 90-day period or any extension thereof granted by the manager because of adverse climatic conditions or other sufficient cause, all such materials, improvements, structures, and property not removed will become the property of the United States.

§ 75.34 *Application for patent; proof of use.* (a) An application for the issuance of a patent for the land, signed by the approved holder thereof, must be filed in triplicate with the manager, at any time after six months and before the expiration of three years from the date of issuance of the certificate of purchase. An application filed after expiration of the three-year period will be rejected. The application must include a showing as to the nature and cost of the improvements and structures placed on the land showing substantial compliance with the declared land utilization program; and the use, dates, and periods of use of the land which must aggregate not less than six months.

(b) There must be furnished with the application the affidavits of two disinterested persons, based upon their own knowledge, that the land has been used for the purpose for which it was sold for an aggregate period of not less than six months. In addition, the approved holder may submit, if he desires, or he may be required by the manager to submit any other evidence which will constitute satisfactory proof that the land has been utilized for such purpose for the required period.

§ 75.35 *Issuance of patent; reservations; disposal of minerals.* (a) If the proof is satisfactory and the land has been surveyed, the manager will authorize the issuance of the patent in fee, subject to the reservations listed in the certificate of purchase.

(b) Any minerals subject to the leasing laws in the lands sold or patented under the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal.

(c) Mining claims for minerals subject to the United States mining laws may be located in accordance with the applicable provisions of Parts 69 and 185 of this chapter, and the additional conditions and requirements of this part notwithstanding the lands have been segregated pursuant to § 75.25 or sold under the act. The locator of any such mining claims must file for record in the proper land office, not later than 90 days after the location is made, a copy of the notice of location of the claim, with the name and address of each owner of the claim and the description of the land claimed.

(d) If the land is surveyed, the copy of the location notice must describe the legal subdivision or subdivisions partly or wholly covered by the mining claim; or the copy may be accompanied by a separate statement of the locator describing the legal subdivisions affected. If the land is unsurveyed, the copy of the location notice should describe the land by metes and bounds connected by course and distance to the nearest corner of the public land surveys, if practicable or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments or the copy of the notice may be accompanied by a separate statement of the locator giving the same information. The mining claimant must file within 90 days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year, or as to compliance, in lieu thereof, with any applicable relief act.

(e) Such location duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title, possessory or otherwise, to the surface or surface resources other than the right to occupy and use so much thereof as is reasonably required for carrying on mining or prospecting, subject to the general regulations of the Secretary of the Interior, and the provisions contained in Parts 69 and 185 of this chapter. An application for the issuance of a mineral patent should be noted "Mining claim on land sold under the act of August 30, 1949 (63 Stat. 679; 48 U. S. C. 364a–364e)." A mineral patent for a mining claim on land so segregated or sold under this act will convey title only to the mineral deposits within the claim and will carry a reference to the act of August 30, 1949.

(f) Any party who obtains the right, whether by license, permit, lease, or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the act, will be required to compensate the holder of the surface rights for any dam-

ages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by an authorized officer, as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $20,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

§ 75.36 *Appeals.* An appeal pursuant to the rules of practice (Part 221 of this chapter) may be taken from the decision of any subordinate officer of the Bureau of Land Management to the Director, and from the Director's decision to the Secretary.

PART 76—SCHOOL LAND RESERVATION; GRANT FOR UNIVERSITY

SCHOOL LANDS RESERVED FOR THE TERRITORY OF ALASKA

Sec.
76.1 Statutory authority.
76.2 Indemnity selections.
76.3 Leasing of school lands.

GRANT TO ALASKA FOR AGRICULTURAL COLLEGE AND SCHOOL OF MINES, NOW UNIVERSITY OF ALASKA

76.4 Statutory authority.
76.5 Applications for selection.
76.6 Statement must accompany application.

AUTHORITY: §§ 76.1 to 76.6 issued under R. S. 2478; 43 U. S. C. 1201.

§ 76.1 *Statutory authority.* (a) By section 1 of the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as amended by the act of March 5, 1952 (Pub. Law 270, 82d Cong., 2d Sess.), sections 16 and 36 in every township are reserved for the support of the common schools in Alaska and section 33 in each township between parallels 64° and 65° of north latitude and between 145° and 152° of of west longitude are reserved for the support of a Territorial agricultural college and school of mines, now University of Alaska.

(b) No homestead settlement or other appropriation under the public land laws may be made after survey in the field on unsurveyed public lands which, when surveyed, will be reserved for educational uses, as provided in paragraph (a) of this section.

§ 76.2 *Indemnity selections.* Where any of the sections are lost to the reservations mentioned in the act of March 4, 1915, in whole or in part, because of prior settlement or sale, or other appropriation under an act of Congress, or where they are wanting or are fractional in quantity, indemnity lands may be designated and reserved in lieu thereof, as provided in the act of February 28, 1891 (26 Stat. 796; 43 U. S. C. 851, 852). The regulations in Part 270 of this chapter providing for such selections by the States will be followed in Alaska.

Each application for selection must be accompanied by a duly corroborated statement showing:

(a) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived; and that it is not within a distance of 80 rods along any navigable or other water from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment or school indemnity selection, or that the land has been restored from reservation.

(c) That the land is not included within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated in accordance with § 292.8 of this chapter.

(d) The facts as to all waters upon the land other than springs, whether creek, pond, lagoon or lake, their source, depth, width, outlet, and current (whether swift or sluggish), whether or not the same or any of them are navigable for skiffs, canoes, motorboats, launches, or other small watercraft and whether or not the same or any of them constitute a passageway for salmon or other merchantable sea-going fish to spawning grounds.

(e) That no part of the land is valuable for coal, oil, gas, or other valuable mineral deposits and that at the date of the application no part of the land was claimed under the mining laws.

CROSS REFERENCES: See the following parts in this chapter: for homesteads, Part 65; for Indian and Eskimo allotments, Part 67; for mining claims, Part 69; for shore space, Part 77; for soldiers' additional rights, Part 61; for trade and manufacturing sites, Part 81.

§ 76.3 *Leasing of school lands.* The Territory of Alaska is authorized to provide by law for the leasing of its school lands, it being stipulated, however, that no greater area than one section shall be leased to any person, association, or corporation, and that leases shall not be for longer periods than 10 years.

CROSS REFERENCE: For the leasing of school sections under the mineral leasing laws, see §§ 70.30, 70.31, 71.3, 71.4, and 71.5 of this chapter.

GRANT TO ALASKA FOR AGRICULTURAL COLLEGE AND SCHOOL OF MINES, NOW UNIVERSITY OF ALASKA

§ 76.4 *Statutory authority.* The act of Congress approved January 21, 1929 (45 Stat. 1091; 48 U. S. C. 354a) granted to the Territory of Alaska, for the exclusive use and benefit of the Agricultural College and School of Mines (now University of Alaska), 100,000 acres of vacant non-mineral surveyed unreserved public lands in said Territory, to be selected by the Territory, under the direction and subject to the approval of the Secretary of the Interior, and subject to the conditions and limitations expressed in the act. This grant was made in addition to the provision made for the benefit of the Agricultural College and School of Mines by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354).

§ 76.5 *Applications for selection.*[1] (a) Applications to select lands under the grant made to Alaska by the act of January 21, 1929, will be made by the proper selecting agent of the Territory and will be filed in the land office of the district in which such selected lands are situated. Such selections must be made in accordance with the law, and with the regulations governing the selections of lands by States, set forth in §§ 270.1–270.16, insofar as such sections apply to "special grants" or "grants in quantity."

(b) Each list of selections must contain a reference to this act under which the selections are made and must be accompanied by a certificate of the selecting agent showing the selections are made under and pursuant to the laws of the Territory of Alaska.

(c) The selections in any one list should not exceed 6,400 acres. No more than one serial number must be given to any list of selections, notwithstanding it may contain more than one selection.

(d) Each list must be accompanied by a certificate of the selecting agent showing that the selections therein and those pending, together with those approved, do not exceed the total amount granted for the purpose stated.

(e) The nonmineral character of the land applied for must be shown by a statement of some responsible party, having and testifying to a personal knowledge of the land, based upon examination made not more than 3 months prior to the filing of the list, and shall apply to each smallest legal subdivision of land selected. This statement should also show that the land is not occupied by nor does it contain improvements placed thereon by any Indian.

§ 76.6 *Statement must accompany application.* Every application for selection under the act of January 21, 1929, must be accompanied by a duly corroborated statement making the following showing as to the lands sought to be selected:

(a) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant; that no part of the land is valuable for coal, oil, gas or other mineral deposits, and that at the date of the application no part of the land was claimed under the mining laws.

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived; and that it is not within a distance of 80 rods along any navigable or other waters from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment or school indemnity selection, or that the land has been restored from reservation.

(c) All facts relative to medicinal or hot springs upon the land must be stated. The facts as to all waters upon the land other than springs, whether creek, pond, lagoon or lake, their source, depth, width, outlet and current (whether swift or sluggish), whether or not the same or any of them are navigable for skiffs, canoes, motorboats, launches or other small watercraft, and whether or not the same or any of them constitute a passageway for salmon or other merchantable sea-going fish to spawning grounds.

PART 77—SHORE SPACE

SHORE-SPACE RESTRICTION AND RESERVATION

Sec.
77.1 Statutory authority.
77.2 Navigable or other waters defined.
77.3 Entries and claims affected by shore-space reservations and restrictions.
77.4 Restriction as to length of claims; method of measuring length of shore space.
77.5 Reservation between claims.
77.6 Surveys involving shore space.

SHORE-SPACE RESTORATION

77.7 Statutory authority.
77.8 Form of petition for restoration; preference right.
77.9 Description of land in petition.
77.10 Showing required in petition.
77.11 Application to make entry in conflict with shore-space reserve.

AUTHORITY: §§ 77.1 to 77.11 issued under R. S. 2478; 43 U. S. C. 1201.

SHORE-SPACE RESTRICTION AND RESERVATION

§ 77.1 *Statutory authority.* Section 1 of the act of May 14, 1898 (30 Stat. 409), as amended by the act of March 3, 1903 (32 Stat. 1028; 48 U. S. C. 371, 462), provides among other things, that no location or scrip, selection, or right along any navigable or other waters shall be made within the distance of 80 rods of any lands, along such waters, theretofore located by means of any such scrip or otherwise and that no entry shall be allowed extending more than 160 rods along the shore of any navigable water, and along such shore a space of at least 80 rods shall be reserved from entry between all such claims. However, under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 462) the Secretary of the Interior may grant the use of such shore-space reserves for landings and wharves. (See Part 68 of this chapter.)

Section 10 of the act of May 14, 1898, as amended by the acts of March 3, 1927 (44 Stat. 1364) and May 26, 1934 (48 Stat. 809; 48 U. S. C. 462, 461, 411), provides among other things, that no entry shall be allowed for trade and manufacturing sites, homesites and headquarter sites, and rights-of-way for railroad terminals and junction points, on lands abutting on navigable waters for more than 80 rods.

§ 77.2 *Navigable or other waters defined.* The term "navigable waters" is defined in section 2 of the act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 411), "to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark." The words "or other waters" as used in section 1 of the act, are held to include all waters of sufficient magnitude to require meandering under the Manual of Surveying Instructions, or which are used as a passageway or for spawning purposes by salmon or other seagoing fish.

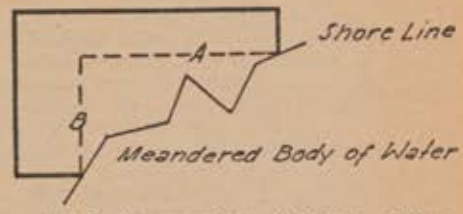
§ 77.3 *Entries and claims affected by shore-space reservations and restrictions.* Claims, including homestead settlements and entries, other than in national forests (see act of June 5, 1920, 41 Stat. 1059; 48 U. S. C. 372), allotments to Indians and Eskimos which are considered as homesteads, soldiers' additional entries, trade and manufacturing sites, homesites and headquarter sites under Part 64 of this chapter, and school-indemnity selections, but not including mission sites (44 L. D. 83) or mining claims (43 L. D. 120), may not be made in Alaska, within a distance of 80 rods (one-quarter of a mile), of any such claim, entry, or selection theretofore located along any navigable waters. In addition, a soldier's additional entry or school-indemnity selection may not be made in Alaska within a distance of 80 rods of any lands along any navigable or other waters theretofore located as such entry, selection or otherwise.

Trade and manufacturing sites, and rights-of-way for terminals and junction points under the act of May 14, 1898, may not extend more than 80 rods along the shore of any navigable water, and homesites and headquarter sites under Part 64 of this chapter, which must be reasonably compact in form, may not extend as much as 80 rods along such shore. All other claims subject to the restrictions of the preceding paragraph may not extend more than 160 rods along the shore of any navigable water.

§ 77.4 *Restriction as to length of claims; method of measuring length of shore space.* In the consideration of applications to enter lands shown upon plats of public surveys in Alaska, as abutting upon navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the longest straight-line distance between the shore corners of the tract, measured along lines parallel to the boundaries of the subdivision; and the sum of the distances of each subdivision of the application abutting on the water, so determined, shall be considered as the total shore length of the application. Where, so measured, the excess of shore length is greater than the deficiency would be if an end tract or tracts were eliminated, such tract or tracts shall be excluded, otherwise the application may be allowed if in other respects proper.

The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

The following sketch shows the method of measuring the length of shore space, the length of line "A" or line "B", whichever is the longer, representing the length of shore space which is chargeable to the tract:



§ 77.5 *Reservation between claims.* For the purpose of the regulations in this part, any claim which is so located as to approach within 80 rods of the actual shore line shall be considered as if it were actually on the shore line. Between all such claims or the constructive extension thereof, the reserved strip shall extend for a distance of 80 rods from the shore as well as 80 rods along the shoreline. However, the land included within that constructive extension to the shore line shall not be included within the shore space reservation created by such claim, but shall be open and subject to appropriation under and in accordance with appropriate law.

§ 77.6 *Surveys involving shore space.* The procedure which should be followed in connection with a petition for the survey of a homestead settlement claim, where a shore-space limitation is involved, is set forth in § 65.20 of this chapter. Surveys of other kinds of claims for lands subject to a shore-space limitation will not be made by the Bureau of Land Management unless and until the limitation on the land is removed.

SHORE-SPACE RESTORATION

§ 77.7 *Statutory authority.* The act of June 5, 1920 (41 Stat. 1059; 48 U. S. C. 372), provides that the Secretary of the Interior, in his discretion, may upon application to enter or otherwise, restore to entry and disposition the reserved shore spaces, or waive the restriction that no entry shall be allowed extending more than 160 rods along the shore of any navigable waters as to such lands as he shall determine are not necessary for harborage, landing and wharf purposes.

The act of June 5, 1920, does not authorize the waiver of the 80-rod restriction in the case of trade and manufacturing sites, homesites and headquarter sites, or in any way affect the reservation for roadway purposes along navigable waters, created by section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 462).

§ 77.8 *Form of petition for restoration; preference right.*[1] Any person who desires to secure such waiver or restoration should file a petition therefor, in duplicate, in the proper land office. No special form of petition is required, but it should be in typewritten form or legible manuscript, and must be signed by the applicant and corroborated by

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

the statements of two persons having knowledge of the facts.

No preference right to enter the land will be secured by the applicant by reason of the filing of such a petition unless it is based on an equitable claim which is subject to allowance and confirmation. Restoration of the land to disposal under the homestead laws, under the small-tract act of June 1, 1938 (52 Stat. 609), as amended by the act of July 14, 1945 (59 Stat. 467; 43 U. S. C. 682a), and under the act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461) for homesite or headquarters site purposes, will be subject to the provisions of section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U. S. C. 282), as amended, granting preference to veterans of World War II and of the Korean conflict.

§ 77.9 *Description of land in petition.* If the land is surveyed, it should be described by legal subdivisions of the public land surveys. If unsurveyed, it should be described by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. The description should be tied to known monuments, towns, and natural objects whenever possible.

§ 77.10 *Showing required in petition.* The petition must contain a full statement as to all pending claims on each side of the tract bordering along the water in question and as to the availability of the land sought for harborage, landing and wharf purposes, and, if the land abuts a stream or lake, all facts must be stated as to the width, depth and navigability of the water and the use which is ordinarily made thereof, as well as whether or not such stream or lake is a runway or spawning ground for seagoing fish.

Where it is asserted that equities have accrued, and a preference right of entry based thereon is claimed, the petition should set forth the facts upon which the alleged claim is founded. If settlement is claimed and the land is unsurveyed, the petition should be accompanied by a certified copy of the location notice which was filed in the local recording office.

§ 77.11 *Application to make entry in conflict with shore-space reserve.* The Manager will reject any application to enter which conflicts with a shore-space reservation or restriction, unless it is accompanied by a petition for restoration or request for waiver of the restriction, based on an equitable claim warranting consideration. The Manager, in every case, will notify the applicant that consideration will be given to the restoration of the land from the shore-space reserve or to the waiver of the restriction.

PART 78—SURVEYS

Sec.
78.1 System of surveys.
78.2 Meridians.
78.3 Administration of surveying activities.
78.4 Existing surveys and extensions thereof.
78.5 Special surveys.
78.6 Copies of records.

AUTHORITY: §§ 78.1 to 78.6 issued under R. S. 2478; 43 U. S. C. 1201.

§ 78.1 *System of surveys.* The rectangular system of survey of the public lands was extended to the Territory of Alaska by the act of March 3, 1899 (30 Stat. 1098; 48 U. S. C. 351). The regular township surveys in Alaska conform to that system, but departures therefrom are permitted under the conditions stated in the act of April 13, 1926 (44 Stat. 243; 48 U. S. C. 379), and in certain other cases, such as special surveys for trade and manufacturing sites, headquarters sites, and homesites under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 461), as amended; for soldiers additional entries, pursuant to sections 2306 and 2307 of the Revised Statutes (43 U. S. C. 274, 278); and for small tracts under the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended.

§ 78.2 *Meridians.* The public land surveys in Alaska are governed by three principal meridians established as follows: The Seward Meridian, initiated just north of Resurrection Bay and extending to the Matanuska coal fields; the Fairbanks Meridian, commencing near the town of Fairbanks and controlling the surveys in that vicinity, including the Nenana coal fields; and the Copper River Meridian which lies in the valley of the Copper River and from which surveys have been executed as far north as the Tanana River and south to the Bering River coal fields and the Gulf of Alaska.

§ 78.3 *Administration of surveying activities.* Administration of the public land surveying activities in Alaska is under the general supervision of the area administrator, Bureau of Land Management, at Anchorage, Alaska. The office, in which the records relating to the public land surveys in the Territory are maintained, is located at Juneau, Alaska. Correspondence relating to local survey matters should be addressed to the Area Cadastral Engineering Office, Juneau, Alaska.

§ 78.4 *Existing surveys and extensions thereof.* The surveys up to the present time have been confined to known agricultural areas, the coal fields, and such other lands as have been considered to be suitable for development by settlers or otherwise. The extensions of the surveys to other areas will be governed largely by the character of the lands and their suitability for use, development, and administration under the public land laws applicable to Alaska.

§ 78.5 *Special surveys.* Information respecting special surveys of soldiers' additional entries, homesites, homesteads, and trade and manufacturing sites is given in Parts 61, 64, 65, and 81 of this chapter, respectively.

§ 78.6 *Copies of records.* Copies of plats of surveys in Alaska, or other records of the Public Survey Office, will be sold at the cost of production, in accordance with section 1 of the act of August 24, 1912 (37 Stat. 497), as amended (5 U. S. C. 488), and § 2.4 of this title.

PART 79—TIMBER

FREE USE OF TIMBER ON PUBLIC LANDS IN ALASKA

Sec.
79.1 Statutory authority.
79.2 Free use privilege; cutting by agent.
79.3 Free use of timber for Government purposes.
79.4 Application for permit.
79.5 Issuance and cancellation of permit; removal of timber; bond.
79.6 Cutting rules; restriction on cutting timber along highways or public roads, or bordering the shores of lakes.
79.7 Amount of timber which may be cut.
79.8 Notice of completion of timber cutting operations.
79.9 Timber on school sections and on withdrawn lands.
79.10 Termination of permit; extensions.
79.11 Trespass; penalty for unauthorized cutting of timber.
79.12 Appeals.

FREE USE OF TIMBER BY OIL AND GAS CLAIMANTS

79.14 Governing regulations.

SMALL SALES OF TIMBER FOR USE IN ALASKA

79.15 Statutory authority.
79.16 Timber which may be sold.
79.17 Application.
79.18 Minimum prices for timber.
79.19 Cash deposit to be made; disposition thereof.
79.20 Conditions precedent to cutting and removal of timber.
79.21 Exclusive right to cut timber.
79.22 Subsequent claim subject to timber application.
79.23 Issuance of permit.
79.24 Field examination and appraisal of timber.
79.25 Removal of timber.
79.26 Payment.
79.27 Timber on reserved school section lands.
79.28 Rules to be observed in cutting timber.
79.29 Revocation of permit.
79.30 Trespass; penalty for unauthorized cutting of timber.
79.31 Forms.

SALE OF DEAD, DOWN, OR DAMAGED TIMBER

79.32 Governing regulations.

SALE OF TIMBER FOR EXPORTATION FROM ALASKA

79.33 Statutory authority.
79.34 Small-quantity sales.
79.35 Large-quantity sales.
79.36 Applications to purchase; deposit.
79.37 Publication and posting; marking of land.
79.38 Action by manager on application; field report and appraisal necessary.
79.39 Execution of contract; bond required.
79.40 Renewals of contract.
79.41 Lands from which timber may not be sold.

FREE USE OF TIMBER ON PUBLIC LANDS IN ALASKA

AUTHORITY: §§ 79.1 to 79.12 issued under sec. 11, 30 Stat. 414, as amended; 48 U. S. C. 423.

CROSS REFERENCE: For additional free use privileges, see §§ 259.21—259.25 of this chapter.

§ 79.1 *Statutory authority.* Section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 423), empowers the Secretary of the Interior to permit the use of timber found upon the public lands in Alaska by actual settlers, residents, individual miners, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes as may actually be needed by such persons for such purposes. This section was amended by the Act of June 15, 1938 (52 Stat. 699), so as to permit the use of such timber by

churches, hospitals, and charitable institutions for firewood, fencing, buildings, and for other domestic purposes.

§ 79.2 *Free use privilege; cutting by agent.* (a) Except as provided in § 79.9, the only timber which may be cut under §§ 79.1 to 79.12 for free use in Alaska is timber on vacant public lands in the Territory not reserved for national forest or other purposes. The timber so cut may not be sold or bartered. The free use privilege does not extend to associations or corporations, except churches, hospitals, and charitable institutions. Any applicant entitled to the free use of timber may procure it by agent, if desired, but no part of the timber may be used in payment for services in obtaining it or in manufacturing it into lumber. Timber may not be cut by an applicant under this section after the land has been included in a valid homestead settlement or entry or other claim, except that any applicant for the free use of timber who has been granted a permit to cut as hereinafter provided, will have the right to cut the timber while the permit remains in force as against a subsequent applicant who may wish to obtain the same timber by purchase, except as provided in § 79.21.

(b) Free use permits will not be issued where the applicant owns or controls lands having an adequate supply of timber to meet his needs.

§ 79.3 *Free use of timber for Government purposes.* Persons contracting with Government officials to furnish firewood or timber for United States Army posts or for other authorized Government purposes may procure it from the vacant and unreserved public lands in Alaska free of charge, provided the contracts do not include any charge for the value of the firewood or timber. Where it is desired to procure timber for such use, an application for permit in duplicate on Form 4–056 must be filed, as in other cases, and a copy of the contract must be attached to the application.

§ 79.4 *Application for permit.* Before timber is cut for free use, an application for permit in duplicate on Form 4–056 must be filed in an office or with an employee of the Bureau of Land Management in Alaska.

§ 79.5 *Issuance and cancellation of permit; removal of timber; bond.* (a) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of Form 4–056 shall be returned to the applicant showing the approval or rejection of such application.

(b) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or the regulations in §§ 79.1 to 79.12, or if the permit has been issued erroneously.

(c) No timber shall be removed until the permit is issued. If deemed necessary by the signing officer, a bond, satisfactory to him, may be required as a guarantee of faithful performance of the provisions of the permit and the regulations in §§ 79.1 to 79.12.

§ 79.6 *Cutting rules; restriction on cutting timber along highways or public roads, or bordering the shores of lakes.* All free-use timber shall be cut and removed in accordance with approved forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources. In the free-use disposal of timber, the cutting and removal shall be accomplished in such manner as to leave the stand in condition for continuous production. Moreover, no green timber shall be cut within 300 feet of either side of the center line of a highway or public road, or bordering streams or the shores of lakes designated for recreational use unless specifically authorized by the authorized officer, to prevent or control fungus infection or insect attacks, or for other reasons found sufficient to justify such cutting.

§ 79.7 *Amount of timber which may be cut.* During each calendar year each applicant entitled to the benefits of section 11 of the act of May 14, 1898, may take a total of 100,000 feet board measure or 200 cords in saw logs, piling, cordwood, or other timber. This amount may be taken in whole in any one of such classes of timber or in part of one kind and in part of another kind or other kinds. Where a cord is the unit of measure, it shall be estimated in relation with saw timber in the ratio of 500 feet board measure to the cord. Permits to take timber in excess of the amount stated may be granted to churches, hospitals, and charitable institutions upon a showing of special necessity therefor, and with the approval of the authorized officer.

§ 79.8 *Notice of completion of timber cutting operations.* Upon completion of the cutting and the removal of the timber, the permittee must notify the Area Range and Forestry officer, or other forest officer, stating when the work was completed, the land from which the timber was taken, the amount and kind of timber which was cut and removed, and the use to which the timber was put.

§ 79.9 *Timber on school sections and on withdrawn lands.* Sections 79.1 to 79.12 are not applicable to timber upon sections 16, 33, and 36, which were reserved to the Territory for educational uses by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354). Sections 79.1 to 79.12 are also inapplicable to timber upon withdrawn areas, unless the order of withdrawal permits.

§ 79.10 *Termination of permit; extensions.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the signing officer.

§ 79.11 *Trespass; penalty for unauthorized cutting of timber.* The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 79.1 to 79.12, will render the persons responsible liable to the United States in a civil action for trespass, and such persons may be prosecuted criminally under 18 U. S. C. 1852 or section 56–1–26 and 56–1–27 of the Alaska Compiled Laws, Annotated, 1949.

§ 79.12 *Appeals.* A party aggrieved by any action involving his application may appeal to the Director of the Bureau of Land Management and the Secretary of the Interior, pursuant to the Rules of Practice contained in Part 221 of this chapter.

FREE USE OF TIMBER BY OIL AND GAS CLAIMANTS

§ 79.14 *Governing regulations.* The free use of timber upon oil and gas leases by lessees, authorized by the Secretary of the Interior under authority of section 32 of the act of February 25, 1920 (41 Stat. 450; 30 U. S. C. 189), is governed by §§ 284.42–284.53 of this chapter.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189, 221)

SMALL SALES OF TIMBER FOR USE IN ALASKA

AUTHORITY: §§ 79.15 to 79.31 issued under sec. 11, 30 Stat. 414, as amended; 48 U. S. C. 421.

§ 79.15 *Statutory authority.* Section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 421) provides that the Secretary of the Interior may cause to be appraised the timber of any part thereof upon the public lands in Alaska, and sell such timber in such quantities as actually is needed for consumption in Alaska from year to year.

§ 79.16 *Timber which may be sold.* The only timber which may be sold under §§ 79.15–79.31 is timber on the vacant public lands in Alaska, not reserved for national forest or other purposes. Such sales may be made to individuals, associations and corporations. Sales will be made only in such quantities as are actually needed for use in the Territory within 2 years from the date of the filing of the application.

§ 79.17 *Application.* (a) Persons wishing to purchase timber must make application therefor, accompanied by a deposit, as required by § 79.19 to the land office for the district in which the lands to be cut over are situated.

(b) The application must be made on Form 4–023 and must contain the following information:

(1) The name, address, and business or occupation of the applicant, or such information for each applicant, if more than one.

(2) A description of the land from which the cutting is to be done, by legal subdivision, section, township and range numbers, if surveyed, or by metes and bounds, with reference to some permanent natural landmark, if unsurveyed. The cutting area must be restricted to the smallest area possible necessary to produce the kind and quantity of timber applied for. If an exclusive right to cut the timber is desired, the applicant must request such right and must show that the timber is not needed by persons entitled to the free use of timber under section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 423), if such is the case.

(3) The amount and kind of the timber applied for.

(4) The proposed use of the timber and the place in Alaska at which it is to be used within 2 years from the date of the filing of the application.

(5) The name and address of the person who is to do the cutting.

(6) The amount of money transmitted with the application and the form of remittance.

(7) Facts as to the status of the land, known to the applicant.

(8) Facts as to any other application to purchase timber under §§ 79.15–79.31 filed by the applicant within the preceding 12 months.

(c) The application must be witnessed by the signatures of two persons.

§ 79.18 *Minimum prices for timber.* The minimum rates at which any timber will be appraised or sold are as follows: For Sitka spruce, hemlock and red cedar, $1 per 1,000 feet b. m.; for yellow cedar, $2.50 per 1,000 feet b. m.; for piling 50 feet or less in length up to a top diameter of 7 inches, one-half cent per linear foot; for piling between 50 and 80 feet in length up to a top diameter of 8 inches, three-fourths of a cent per linear foot; for piling over 80 feet in length, up to a top diameter of 8 inches, 1 cent per linear foot; for shingle bolts and cooperage stock, 50 cents per cord; and for wood suitable only for fuel or mine lagging, 25 cents per cord.

§ 79.19 *Cash deposit to be made; disposition thereof.* Each application must be accompanied by a deposit in the sum of $50, in cash, postoffice money order or certified check, where the stumpage value of the timber applied for, at the minimum rate, equals or exceeds that amount, or in a sum representing the full stumpage value, at the minimum rate, where such value is less than $50. If afterwards a permit is issued, the deposit will be applied to the purchase price of the timber. If no permit is issued under the application and no timber is cut thereunder, the deposit will be returned.

§ 79.20 *Conditions precedent to cutting and removal of timber.* (a) The applicant may cut the timber applied for, under the following conditions, if the land is subject to timber cutting under this part:

(1) After he has filed his application to purchase in the land office, with the required deposit.

(2) After he has posted notice of his application on Form 4–023c in a conspicuous place on the land.

(3) After he has received a permit authorizing the cutting of the timber applied for.

(b) Land which is occupied or improved by an Indian or Eskimo, or which is included in a homestead settlement claim, or in a mining or other claim initiated under the public land laws, is not subject to timber cutting hereunder, notwithstanding that the facts as to such claim may not be shown by the records of the district land office.

(c) An applicant will be allowed 12 months from the date of the filing of his application in the district land office within which to cut the timber applied for. The right to cut such timber will expire at the end of such time. No timber may be removed from the land before a permit authorizing its removal has issued or before the applicant has made payment in full for all timber cut, as provided in §§ 79.21–79.28.

§ 79.21 *Exclusive right to cut timber.* An application to purchase timber will give the applicant an exclusive right to take it as against persons entitled to the free use of timber in Alaska under section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 423), if such exclusive right is requested and granted, but not otherwise. Where such request is made, the applicant must show that the timber applied for is not needed by persons entitled to such free use. Further, in order to claim such exclusive right, the applicant to purchase timber will be required to show in his posted notice on Form 4–023c that such right has been granted, and, if the land is unsurveyed, the boundaries thereof must be blazed or otherwise marked on the ground, sufficiently to identify them.

§ 79.22 *Subsequent claim subject to timber application.* When a homestead, mining or other claim is initiated subsequent to the filing in the land office of an application to purchase timber, and the posting of notice on the land, such subsequent claimant must take the claim subject to the right of the timber applicant to cut and remove the timber applied for.

§ 79.23 *Issuance of permit.* (a) A permit to cut and remove the timber applied for will be issued by the authorized officer without awaiting a field examination and appraisal of the timber, in the absence of objection appearing. If any objection is known to such officer, he will suspend the application for permit until a field examination has been made.

(b) Where conditions warrant the authorized officer will reject the application, stating his reasons for such action. The officer will insert in all permits issued by him such conditions and provisions respecting the cutting and removal of the timber as in his opinion are required by the public interests. Any person who is adversely affected by the action taken on his application may secure a review thereof by making request therefor to the Director, Bureau of Land Management.

§ 79.24 *Field examination and appraisal of timber.* As soon as practicable after the filing of the application, or at such time or times as the authorized officer may deem most advantageous, a field examination or field examinations will be made and the timber will be appraised. The field officer who makes the appraisal will advise both the applicant and the manager thereof.

§ 79.25 *Removal of timber.* Timber cut in accordance with §§ 79.15–79.31 under an application on which a permit has been issued may be removed from the land, provided the applicant first transmits to the proper land office, by registered mail, or furnishes the field officer who appraises the timber, his signed statement showing the serial number of his application, the amount and kind of the timber cut, the lands from which it was cut and the value of the timber at the appraised price, and provided further, the applicant first makes payment for all timber cut, if any, over and above the amount for which the payment has been made. If the timber has not been appraised, it may be removed, provided the applicant first transmits such statement to the manager, by registered mail, with payment for such excess timber, if any, at the minimum stumpage price.

§ 79.26 *Payment.* (a) Where payment is made to a field officer, he will give the applicant a memorandum receipt therefor and a further receipt will later be issued by the manager. If timber is removed after the issuance of a permit but in advance of a field examination and it is subsequently found that more timber has been cut and removed than has been paid for at the minimum price, the applicant will be required to pay for such excess.

(b) The manager will advise the authorized officer as to all moneys received in connection with applications to purchase timber giving the serial numbers of the cases and other necessary information. The moneys will be held as "unearned" pending receipt of a report from such officer. The authorized officer will account to the manager for all moneys received by him or by the examiners, and he will advise the manager when moneys on deposit should be covered into the Treasury or returned.

§ 79.27 *Timber on reserved school section lands.* (a) The act of March 5, 1952 (Pub. Law 270, 82d Cong., 2d Sess.), repealed the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353), authorizing the sale of timber under the provisions of section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 421), on lands reserved to the Territory of Alaska for educational uses by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353). Therefore, no sale of timber may be made under the act of May 14, 1898, after March 5, 1952, on surveyed sections 16, 33 and 36, which are reserved to the Territory for educational uses.

(b) Unsurveyed public lands which when surveyed will be sections reserved for educational uses will, until the survey of the lands in the field but not thereafter, be subject to the act of May 14, 1898, for the sale of timber thereon.

(c) Although the provisions of section 11 of the act of May 14, 1898, for the sale of timber, are applicable to the unsurveyed lands in Sections 16, 33, and 36 in Alaska, there is no provision of law for appropriating the proceeds from such sale as permanent funds in the Territorial treasury.

§ 79.28 *Rules to be observed in cutting timber.* (a) Immature trees or trees other than of the size, kind and maturity necessary to furnish the class of timber desired are not to be cut and cordwood is not to be cut from trees suitable for saw logs or from spruce trees of a size exceeding 10 inches in diameter at the stump.

(b) All stumps are to be cut as close to the ground as conditions will permit and each tree is to be utilized to a diameter at the top sufficiently small to prevent unnecessary waste.

(c) Tops, lops, and necessarily cut underbrush are to be disposed of in such manner as will insure the least danger of the spread of forest fires. Every possible precaution to prevent such fires is to be taken and assistance in suppressing such fires when discovered is to be rendered. If applicant fails properly to dispose of tops, lops, and underbrush, he will be liable for any expense necessarily incurred by the Department of the Interior.

§ 79.29 *Revocation of permit.* Any permit issued under §§ 79.15–79.31 may be revoked for failure of the applicant to comply with the conditions in the permit or with the regulations in §§ 79.15–79.31. If cutting is being done in violation of the terms of the sale, any officer of the Department of the Interior who is authorized to act in timber cutting cases may stop the cutting, revoke the permit and collect such additional payment as may be due the Government for the timber.

§ 79.30 *Trespass; penalty for unauthorized cutting of timber.* The cutting of timber from the vacant and unreserved public lands in Alaska, other than in accordance with the terms of the law and the regulations of the Department of the Interior will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under 18 U. S. C. 1852.

§ 79.31 *Forms.* Copies of any of the forms referred to in this part may be obtained, on request, from any district land office in Alaska.

SALE OF DEAD, DOWN, OR DAMAGED TIMBER

§ 79.32 *Governing regulations.* The sale of dead or down timber or timber killed or seriously damaged by forest fires, authorized by the act of July 3, 1926 (44 Stat. 890; 16 U. S. C. 614, 615), which amended the act of March 4, 1913 (37 Stat. 1015; 16 U. S. C. 614, 615), is governed by §§ 284.1–284.22.

(Sec. 1, 37 Stat. 1015, as amended; 16 U. S. C. 614)

SALE OF TIMBER FOR EXPORTATION FROM ALASKA

AUTHORITY: §§ 79.33 to 79.41 issued under 44 Stat. 242; 16 U. S. C. 616.

§ 79.33 *Statutory authority.* Authority for the exportation of timber from Alaska when lawfully cut, if in the judgment of the Secretary of the Interior the supply of timber for local use will not be endangered thereby, is contained in the act of April 12, 1926 (44 Stat. 242; 16 U. S. C. 616)

§ 79.34 *Small-quantity sales.* Sales of timber to be cut for export may be made pursuant to the procedure and under the conditions set forth in §§ 79.15–79.31, where quantities are such as will be disposed of from year to year, and the purchases are made by those who do not contemplate large-scale production and an expenditure of large sums of money for developing enterprises for the exportation of such timber.

§ 79.35 *Large-quantity sales.* Sales of timber suitable for manufacturing purposes are hereby authorized in quantities, if found available, sufficient to supply a mill or proposed mill for a period of as much as 20 years, when it is satisfactorily shown that the purchaser in good faith intends to develop an enterprise for the cutting of this class of timber for export from Alaska and the sale does not endanger the supply of such timber for local use. The amount of timber that any one purchaser will be permitted to purchase under this provision and the period of the contract will be governed by the capacity of the mill and the estimated quantity that it will be capable of producing during the period covered by the contract of sale. When a 20 years' supply is sold the period within which the same must be cut (20 years) will begin to run from the time that the contract of sale is executed, if the manufacturing plant has been built, or from the time that the mill has been constructed and ready to begin operations if it is to be built, but in no case will more than 2 years be allowed for construction: *Provided, however,* That if operations have not been commenced within three years from the date of the execution of the contract the Secretary of the Interior, upon a satisfactory showing, may in his discretion excuse the delay. Commencement of operations in this sense will be construed as a bona fide commencement of actual cutting of timber in quantity sufficient to show that it is the purpose of the purchaser to fulfill the conditions of the contract and that it was not entered into merely for speculative purposes.

§ 79.36 *Applications to purchase; deposit.* Applications to purchase timber for export from Alaska pursuant to the act of April 12, 1926, must be filed in duplicate in the land office for the district wherein the lands to be cut over are situated and should show: (a) Name, postoffice address, residence, and business location of applicant; (b) amount or approximate amount of board feet of timber that the applicant desires to purchase; (c) a description by legal subdivision or subdivisions, if surveyed, or by metes and bounds with reference to some permanent natural landmark, if unsurveyed, and the area or approximate area of the land from which the timber is to be cut, and if the lands are within the area (Alaskan Timber Reserves) withdrawn pursuant to the act of March 12, 1914 (38 Stat. 305; 48 U. S. C. 301, 302, 303–308), in aid of the construction of the Alaskan Government-owned railroads it should be so stated, and evidence of consent previously obtained from The Alaska Railroad should be filed with the application; (d) whether or not the applicant is prepared to commence cutting immediately, and if not, approximately how long before timber cutting operations will be commenced; (e) the estimated annual capacity of the mill or proposed mill, and the amount of money invested or to be invested in the establishment of the enterprise, accompanied by evidence as to the financial standing of the applicant and a statement showing the general plan of operation and the purpose for which the timber is to be used. A minimum sum of $200 must be deposited with each application, as an evidence of good faith and for the purpose of helping to defray the cost of appraisal. The sum of such deposit may be increased when, in the opinion of the Secretary of the Interior, the interests of the Government require that a larger amount be deposited. If the sale is consummated, the amount of the deposit will be credited on the purchase price without deduction for the cost of appraisal. All remittances must be in cash or by certified check or postal money order.

§ 79.37 *Publication and posting; marking of land.* Immediately upon the filing of an application to purchase timber under § 79.35 a notice shall be published at the expense of the applicant in a designated newspaper published in the vicinity of the land from which the timber is to be cut and most likely to give notice to the general public, once a week for a period of five consecutive weeks, in accordance with § 106.14 of this chapter. The description of the land in the notice must be identical with the description in the application. A copy of the notice will be posted in a conspicuous place in the land office during the period of publication. Upon the execution of a contract, the purchaser shall, if the lands from which the timber is to be cut are unsurveyed, cause the boundaries to be blazed or otherwise marked as provided in the contract. This requirement has been adopted in order that others who may subsequently desire to purchase timber or to settle upon or enter the land may have notice that the timber has been applied for.

§ 79.38 *Action by manager on application; field report and appraisal necessary.* The manager will make appropriate notations upon the records of his office. The appraisal rates will be based upon a fair stumpage rate taking into consideration the quality of the timber and its accessibility to market. In no event will any timber suitable for manufacturing purposes be appraised at less than $1 per thousand feet, board measure. The Government reserves the right to reappraise the remaining standing timber at the expiration of 5 years from the date of commencement of the timber cutting period as set forth in § 79.35 and at intervals of 5 years thereafter, but in no instance shall the appraisal be at more than double the rate of the original appraisal.

§ 79.39 *Execution of contract; bond required.* If such sale appears warranted, the Bureau of Land Management will offer the timber for sale by competitive bidding in such newspapers and publications and for such period of time as may be designated. The successful bidder will be notified that he will be allowed 30 days from receipt of such notice within which to enter into a contract with the Government through the Bureau of Land Management as its agent to purchase the timber offered for sale pursuant to the rules and regulations of the Department of the Interior pertaining thereto, and shall execute and file therewith a bond in a sum not less than 50 percent of the stumpage value of

the estimated amount of timber to be cut during each year of the contract. The said bond must have as surety a bonding company shown on an approved list issued by the Treasury Department, and it shall be conditioned on the payment for the timber in accordance with the terms of the contract and to the faithful performance of the contract in other respects and to observance of the rules and regulations pursuant to which the sale is made. Contracts and bonds hereunder will be executed on Forms 4–030 and 4–030a, respectively.

§ 79.40 *Renewals of contract.* At the expiration of a contract a new contract may, in the discretion of the authorized officer, be entered into for a period of not to exceed 20 years, where there is sufficient timber available to warrant it. Prior good faith of the purchaser and substantial compliance with the conditions of the expired contract will be given consideration with reference to awarding a new contract. A new appraisal shall be made at that time for the purpose of fixing the stumpage price.

§ 79.41 *Lands from which timber may not be sold.* The rules and regulations in §§ 79.33–79.41, governing the sale of timber for export, are not applicable to timber on national forests, Indian or Eskimo claims, or lands otherwise appropriated, reserved, or withdrawn, for any purpose, except where the terms of the reservation or withdrawal order permit.

PART 80—TOWN SITES[1]

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METHOD OF SALE

80.28 Method of sale.

CROSS REFERENCES: For Annette Islands Reserve, Alaska, Metlakahtla Indians and other natives, see 25 CFR Part 1. For Indians and Eskimos, see Part 67 of this chapter. For town sites, generally, see Part 255 of this chapter.

TOWN SITES RESERVED BY THE PRESIDENT

§ 80.1 *Statutory authority.* Town sites in Alaska may be reserved by the President and sold as provided for in sections 2380 and 2381 of the Revised Statutes; 43 U. S. C. 711, 712. The regulations governing these town sites are contained in §§ 255.1–255.8 of this chapter.

(R. S. 2381; 43 U. S. C. 712)

TOWN SITES ENTERED BY TRUSTEE

AUTHORITY: §§ 80.2 to 80.17 issued under sec. 11, 26 Stat. 1099; 48 U. S. C. 355.

§ 80.2 *Statutory authority.* The entry of public lands in Alaska for town site purposes, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, is authorized by section 11 of the act of March 3, 1891.

§ 80.3 *Survey of exterior lines; exclusions from town site survey.* If the land is unsurveyed the occupants must, by application to the area cadastral engineering officer, obtain a survey of the exterior lines of the town site which will be made at Government expense. There must be excluded from the tract to be surveyed and entered for the town site any lands set aside by the district court under section 31 of the act of June 6, 1900 (31 Stat. 332; 48 U. S. C. 40), for use as jail and courthouse sites, also all lands needed for Government purposes or use, together with any existing valid claim initiated under Russian rule.

§ 80.4 *Petition for trustee and for survey of lands into lots, blocks, etc.* When the survey of the exterior lines has been approved, or if the town site is on surveyed land, a petition, signed by a majority of occupants of the land, will be filed in the land office requesting the appointment of trustee and the survey of the town site into lots, blocks, and municipal reservations for public use, the expense thereof to be paid from assessments upon the lots, as provided in § 80.10.

§ 80.5 *Designation of trustee; payment required; area enterable.* If the petition be found sufficient, the Secretary of the Interior will designate a trustee to make entry of the town site, payment for which must be made at the rate of $1.25 per acre. If there are less than 100 inhabitants the area of the town site is limited to 160 acres; if 100 and less than 200, to 320 acres; if more than 200, to 640 acres, this being the maximum area allowed by the statute.

§ 80.6 *Filing of application; publication and posting; submission of proof.* The trustee will file his application and notice of intention to make proof, and thereupon the manager will issue the usual notice of making proof, to be posted and published at the trustee's expense, for the time and in the manner as in other cases provided, and proof must be made showing occupancy of the tract, number of inhabitants thereon, character of the land, extent, value, and character of improvements, and that the town site does not contain any land occupied by the United States for school or other purposes or land occupied under any existing valid claim initiated under Russian rule.

§ 80.7 *Expense money to be advanced by lot occupants.* The occupants will advance a sufficient amount of money to pay for the land and the expenses incident to the entry, to be refunded to them when realized from lot assessments.

§ 80.8 *Contests and protests.* Applications for entry will be subject to contest or protest as in other cases.

§ 80.9 *Subdivision of land and payment therefor.* After the entry is made, the town site will be subdivided by the United States into blocks, lots, streets, alleys, and municipal public reservations. The expense of such survey will be paid from the appropriation for surveys in Alaska reimbursable from the lot assessments when collected.

§ 80.10 *Lot assessments.* The trustee will assess against each lot, according to area, its share of the cost of the subdivisional survey. The trustee will make a valuation of each occupied or improved lot in the town site and assess upon such lots, according to their value, such rate and sum in addition to the cost of their share of the survey as will be necessary to pay all other expenses incident to the execution of his trust which have accrued up to the time of such levy. More than one assessment may be made if necessary to effect the purpose of the act of March 3, 1891, and §§ 80.2–80.17.

§ 80.11 *Award and disposition of lots after subdivisional survey.* On the acceptance of the plat by the Bureau of Land Management, the trustee will publish a notice that he will, at the end of 30 days from the date thereof, proceed to award the lots applied for, and that all lots for which no applications are filed within 120 days from the date of said notice will be subject to disposition to the highest bidder at public sale. Only those who were occupants of lots or entitled to such occupancy at the date of the approval of final subdivisional town site survey, or their assigns thereafter, are entitled to the allotments herein provided. Minority and coverture are not disabilities.

[1] The Area Administrator, Bureau of Land Management, Anchorage, Alaska, has been designated as the town-site trustee for all townsites in Alaska established under authority of §§ 80.2 to 80.27, inclusive.

§ 80.12 *Applications for deeds.* Claimants should file their applications for deeds, setting forth the grounds of their claims for each lot applied for, which should be corroborated by two witnesses.

§ 80.13 *Issuance of deeds; procedure on conflicting applications.* Upon receipt of the patent and payment of the assessments the trustee will issue deeds for the lots. The deeds will be acknowledged before an officer duly authorized to take acknowledgements of deeds at the cost of the grantee. In case of conflicting applications for lots, the trustee, if he considers it necessary, may order a hearing, to be conducted in accordance with the Rules of Practice, Part 221 of this chapter.

No deed will be issued for any lot involved in a contest until the case has been finally closed. Appeals from any decision of the trustee or from decisions of the Bureau of Land Management may be taken in the manner provided by the Rules of Practice, Part 221 of this chapter.

§ 80.14 *Public sale of unclaimed lots.* After deeds have been issued to the parties entitled thereto the trustee will publish or post notice that he will sell, at a designated place in the town and at a time named, to be not less than 30 days from date, at public outcry, for cash, to the highest bidder, all lots and tracts remaining unoccupied and unclaimed at the date of the approval of final subdivisional town-site survey, and all lots and tracts claimed and awarded on which the assessments have not been paid at the date of such sale. The notice shall contain a description of the lots and tracts to be sold, made in two separate lists, one containing the lots and tracts unclaimed at the date of the approval of final subdivisional town-site survey and the other the lots and tracts claimed and awarded on which the assessments have not been paid. Should any delinquent allottee, prior to the sale of the lot claimed by him, pay the assessments thereon, together with the pro rata cost of the publication and the cost of acknowledging deed, a deed will be issued to him for such lot, and the lot will not be offered at public sale. Where notice by publication is deemed advisable the notice will be published once a week for 5 consecutive weeks in accordance with § 106.14 of this chapter prior to the date of sale, and in any event copies of such notice shall be posted in three conspicuous places within the town site. Each lot must be sold at a fair price, to be determined by the trustee, and he is authorized to reject any and all bids. Lots remaining unsold at the close of the public sale in an unincorporated town may again be offered at a fair price if a sufficient demand appears therefor.

§ 80.14a *Sale to Alaska Housing Authority.* (a) Any lot or tract in the town which is subject to sale to the highest bidder by the trustee pursuant to § 80.14 may, upon request of the Alaska Housing Authority in connection with a specific housing project authorized by the act of April 23, 1949 (63 Stat. 57, 48 U. S. C. secs. 484, 484a-e), at any time prior to its disposition at public sale be sold by the trustee to the Alaska Housing Authority at fair value to be fixed by the trustee, provided such action in the opinion of the trustee will be of benefit to the occupants of the town site.

§ 80.15 *Final report of trustee; disposition of unexpended moneys and unsold lots.* After the disposal of a sufficient number of lots to pay all expenses incident to the execution of the trust, including the cost of the subdivisional survey, the trustee will make and transmit to the Bureau of Land Management his final report of his trusteeship, showing all amounts received and paid out and the balance remaining on hand derived from assessments upon the lots and from the public sale. The proceeds derived from such sources, after deducting all expenses, may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated such remaining proceeds may be turned over to the municipality for the use and benefit thereof. After the public sale and upon proof of the incorporation of the town, all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipalty in trust for the public purposes for which they were reserved.

§ 80.16 *Records to be kept by trustee.* The trustee shall keep a tract book of the lots and blocks, a record of the deeds issued, a contest docket, and a book of receipts and disbursements.

§ 80.17 *Disposition of records on completion of trust.* The trustee's duties having been completed, the books of accounts of all his receipts and expenditures, together with a record of his proceedings as provided in § 80.16, with all papers, other books, and everything pertaining to such town site in his possession and all evidence of his official acts shall be transmitted to the Bureau of Land Management to become a part of the records thereof, excepting from such papers, however, in case the town is incorporated, the subdivisional plat of the town site, which he will deliver to the municipal authorities of the town, together with a copy of the town site tract book or books, taking a receipt therefor to be transmitted to the Bureau of Land Management.

INDIAN POSSESSIONS IN TRUSTEE TOWNS; NATIVE TOWNS

AUTHORITY: §§ 80.18 to 80.27 issued under 44 Stat. 630; 48 U. S. C. 355d. Interpret or apply 44 Stat. 629, 630, 62 Stat. 35; 48 U. S. C. 355a, 355b, 355c, 355e.

§ 80.18 *Statutory authority.* The act of May 25, 1926 (44 Stat. 629; 48 U. S. C. 355a-355d) provides for the town-site survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee town-sites in Alaska and for the survey and disposal of the lands occupied as native towns or villages. The act of February 26, 1948 (62 Stat. 35; 48 U. S. C. 355e), provides for the issuance of an unrestricted deed to any competent native for a tract of land claimed and occupied by him within any such trustee town-site.

§ 80.19 *Administration of Indian possessions in trustee towns.* As to Indian possessions in trustee town-sites in Alaska established under authority of section 11 of the act of March 3, 1891 (26 Stat. 1009; 48 U. S. C. 355), and for which the town-site trustee has closed his accounts and been discharged as trustee, and as to such possessions in other trustee town-sites in Alaska, such person as may be designated by the Secretary of the Interior will perform all necessary acts and administer the necessary trusts in connection with the act of May 25, 1926.

§ 80.20 *Application for restricted deed.* A native Indian or Eskimo of Alaska who occupies and claims a tract of land in a trustee town-site and who desires to obtain a restricted deed for such tract should file application therefor on Form 4-231, with the town-site trustee.

§ 80.21 *Administration of native towns.* The trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of the said act of May 25, 1926 (44 Stat. 630; 48 U. S. C. 355c), will take such action as may be necessary to accomplish the objects sought to be accomplished by that section.

§ 80.22 *No payment, publication or proof required on entry for native towns.* In connection with the entry of lands as a native town or village under section 3 of the said act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee town-sites will not be required.

§ 80.23 *Native towns occupied partly by white occupants.* Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the act of March 3, 1891 (26 Stat. 1095, 1099), and the act of May 25, 1926 (44 Stat. 629).

§ 80.24 *Provisions to be inserted in restricted deeds.* The town site trustee will note a proper reference to the act of May 25, 1926, on each deed which is issued under authority of that act and each such deed shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior or his authorized representative, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts, or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the town site have been extended upon and across the tract, that there is reserved to the town site the area covered by such streets and alleys as extended. The deed shall further provide that the approval by the Secretary of the Interior or his authorized representative of a sale by the Indian or Eskimo trans-

fered shall vest in the purchaser a complete and unrestricted title from the date of such approval.

§ 80.25 *Sale of land for which restricted deed was issued.* When a native possessing a restricted deed for land in a trustee town site, issued under authority of the act of May 25, 1926 (44 Stat. 629; 48 U. S. C. 355a–355d), desires to sell the land, he should execute a deed on Form 4–232a prepared for the approval of the Secretary of the Interior, or his authorized representative, and send it to the town-site trustee in Alaska. The town-site trustee will forward the deed to the Area Director of the Alaska Native Service who will determine whether it should be approved. Where the deed is approved it shall be returned by the Area Director, Alaska Native Service, through the town-site trustee to the vendor. In the event the Area Director determines that the deed shall not be approved, he shall so inform the native possessing the restricted deed, who shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs within sixty days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

§ 80.26 *Application for unrestricted deed.* Any Alaska native who claims and occupies a tract of land in a trustee town site or is the owner of land under a restricted deed issued under the act of May 25, 1926 (44 Stat. 629; 48 U. S. C. 355a–355e), may file an application for an unrestricted deed pursuant to the act of February 26, 1948 (62 Stat. 35; 48 U. S. C. 355e), with the town-site trustee. The application must be in writing and must contain a description of the land claimed and information regarding the competency of the applicant. It must also contain evidence substantiating the claim and occupancy of the applicant, except when the applicant has been issued a restricted deed for the land. A duplicate copy of the application must be submitted by the applicant to the Area Director of the Alaska Native Service.

§ 80.27 *Determination of competency or noncompetency; issuance of unrestricted deed.* (a) Upon a determination by the Alaska Native Service that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the town-site trustee will issue an unrestricted deed to the applicant. Thereafter all restrictions as to sale, encumbrance, or taxation of the land applied for shall be removed, but the said land shall not be liable to the satisfaction of any debt, except obligations owed to the Federal Government, contracted prior to the issuance of such deed. Any adverse action under this section by the town-site trustee shall be subject to a right of appeal to the Director, Bureau of Land Management, and to the Secretary of the Interior, in accordance with the rules of practice (Part 221 of this title).

(b) In the event the Area Director determines that the applicant is not competent to manage his own affairs, he shall so inform the applicant, and such applicant shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs, within 60 days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

(c) Except as provided in this section, the town-site trustee shall not issue other than restricted deeds to Indian or other Alaska natives.

METHOD OF SALE

§ 80.28 *Method of sale.* Sales of railroad town sites in Alaska, provided for by Executive Order No. 3489 of June 10, 1921 (§ 297.3 of this chapter), will be made by the authorized officer in Alaska, as superintendent of sales of railroad town sites in accordance with town-site regulations contained in §§ 255.1 to 255.8 of this chapter so far as those regulations are applicable.

(Sec. 1, 38 Stat. 305; 48 U. S. C. 303)

PART 81—TRADE AND MANUFACTURING SITES

SALE OF PUBLIC LANDS FOR TRADE AND MANUFACTURING SITES

Sec.

81.1 Statutory authority.
81.1a Notice of initiation of claim.
81.1b Form of notice.
81.1c Failure to file notice.
81.1d Recording fee.
81.2 Execution of application.
81.2a Time for filing application.
81.3 Qualifications of applicant.
81.4 Description of land in application.
81.5 Form of entry.
81.6 Facts to be shown in application.
81.7 Application for survey; instructions.
81.8 Publication and posting; adverse claim.
81.9 Entry and final certificate.

AUTHORITY: §§ 81.1 to 81.9 issued under R. S. 2478; 43 U. S. C. 1201.

§ 81.1 *Statutory authority.* Section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 461) authorizes the sale at the rate of $2.50 per acre of not exceeding 80 acres of land in Alaska possessed and occupied in good faith as a trade and manufacturing site.

§ 81.1a *Notice of initiation of claim.* Any qualified person, association, or corporation initiating a claim on or after April 29, 1950, under section 10 of the act of May 14, 1898, by the occupation of vacant and unreserved public land in Alaska for the purposes of trade, manufacture, or other productive industry, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, association, or corporation, the claimant must file notice of the claim in the proper land office, within 90 days from that date.

§ 81.1b *Form of notice.* The notice must be filed on Form 4–1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (a) The name and address of the claimant, (b) age and citizenship, (c) date of occupancy, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude. The notice must designate the kind of trade, manufacture, or other productive industry in connection with which the site is maintained or desired.

§ 81.1c *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in § 81.1a, no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

§ 81.1d *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be earned and applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording, because the land is not subject to the form of disposition specified in the notice.

§ 81.2 *Execution of application.*[1] Application for a trade and manufacturing site should be executed in duplicate and should be filed in the proper land office. It need not be sworn to, but it must be signed by the applicant and must be corroborated by the statements of two persons.

§ 81.2a *Time for filing application.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

§ 81.3 *Qualifications of applicant.* An application must show that the applicant is a citizen of the United States and 21 years of age, and that he has not theretofore applied for land as a trade and manufacturing site. If such site has been applied for and the application not completed, the facts must be shown. If the application is made for an association of citizens or a corporation, the qualifications of each member of the organization must be shown. In the case of a corporation, proof of incorporation must be established by the certificate of the officer having custody of the records of incorporation at the place of its formation and it must be shown that the corporation is authorized to hold land in Alaska.

§ 81.4 *Description of land in application.* If the land be surveyed, it must be described in the application accord-

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

ing to legal subdivisions of the public-land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without survey.

§ 81.5 *Form of entry.* Claims initiated by occupancy after survey must conform thereto in occupation and application, but if the public surveys are extended over the lands after occupancy and prior to application, the claim may be presented in conformity with such surveys, or, at the election of the applicant, a special survey may be had.

§ 81.6 *Facts to be shown in application.* The application to enter must show:

(a) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry, when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 461).

(b) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(c) That the land does not abut more than 80 rods of navigable water.

(d) That at the date of the initiation of the claim, the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or from a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application or the land has been restored from reservation.

(e) That the land is not included within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, in accordance with § 292.8 of this chapter.

(f) That no part of the land is valuable for coal, oil, gas, or other valuable mineral deposits and that at the date of the location no part of the land was claimed under the mining laws.

§ 81.7 *Application for survey; instructions.* If the land applied for be unsurveyed and no objection to its survey is known to the manager, he will furnish the applicant with a certificate stating the facts, and, after receiving such certificate, the applicant may make application to the area cadastral engineering officer for the survey of the land. The instructions governing survey in connection with applications for soldiers' additional homestead entries, as set forth in § 61.12 of this chapter, will be followed in connection with trade and manufacturing sites.

§ 81.8 *Publication and posting; adverse claim.* The instructions given in § 61.13 of this chapter, relative to publication and posting, adverse claims and proof of publication and posting in connection with applications for soldiers' additional homestead entries will be followed in connection with trade and manufacturing sites.

§ 81.9 *Entry and final certificate.* The application and proofs filed therewith will be carefully examined and, if all be found regular, the application will be allowed and final certificate issued upon payment for the land at the rate of $2.50 per acre, and in the absence of objections shown by his records.

PART 82—WATERS

LANDS CONTAINING HOT OR MEDICINAL SPRINGS

Sec.
82.1 Withdrawal of lands.
82.2 Showing required as to springs.

USE OF LANDS WITHDRAWN AS PUBLIC WATER RESERVES

82.3 Governing regulations.

LEASING OF PUBLIC LANDS NEAR OR ADJACENT TO MINERAL, MEDICINAL, OR OTHER SPRINGS

82.4 Governing regulations.

AUTHORITY: §§ 82.1 to 82.4 issued under R. S. 2478; 43 U. S. C. 1201.

LANDS CONTAINING HOT OR MEDICINAL SPRINGS

§ 82.1 *Withdrawal of lands.* Every smallest legal subdivision of the public land surveys in Alaska which is vacant, unappropriated and unreserved public land and contains hot springs, or a spring the waters of which possess curative properties; and all land in the Territory within one-quarter of a mile of every such springs located on unsurveyed public land were, as of August 20, 1947, withdrawn from settlement, location, sale or entry and reserved for lease under the provisions of the act of March 3, 1925 (43 Stat. 1133), subject to valid existing rights.[1]

§ 82.2 *Showing required as to springs.* An applicant to enter or select public lands in Alaska situated outside of national forests must furnish a duly corroborated statement as to hot or medicinal springs, in accordance with § 292.8 of this chapter.

USE OF LANDS WITHDRAWN AS PUBLIC WATER RESERVES

§ 82.3 *Governing regulations.* Permission may be obtained to use or improve lands withdrawn as or in connection with public water reserves, under the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143), or any other act, by filing application for such permission under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), in accordance with the regulations under said act, as found in §§ 292.10–292.16 of this chapter.

LEASING OF PUBLIC LANDS NEAR OR ADJACENT TO MINERAL, MEDICINAL, OR OTHER SPRINGS

§ 82.4 *Governing regulations.* The matter of leasing public lands near or adjacent to mineral, medicinal, or other springs, for the erection of bathhouses, hotels, or other improvements for the accommodation of the public is governed by §§ 292.18–292.26 of this chapter.

[1] The lands were withdrawn and reserved as stated by Public Land Order No. 399 of August 20, 1947. Prior to that time the public lands in Alaska were affected by Executive Order No. 1324½ of March 28, 1911, as amended by Executive Order No. 1883 of January 24, 1914, which withdrew from settlement, location, sale or entry all tracts of public land in Alaska upon which are located hot springs or other springs, the waters of which possess curative medicinal properties, to the extent of 160 acres surrounding each spring, in rectangular form, with side and end lines equidistant, as near as may be from such spring or group of springs. See §§ 292.6, 297.9 and 297.19 of this chapter.

SUBCHAPTER B—APPLICATIONS AND ENTRIES

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

EXECUTION AND FILING OF APPLICATIONS

Sec.
101.1 Time limit for filing applications.

SEGREGATION OF LAND UNDER APPLICATIONS

101.2 Payments required to effect segregation of land.

NOTATION OF RIGHTS-OF-WAY

101.3 Notations to be made on entry papers and notice of allowance.
101.4 When notation is required.
101.5 When notation is not required.

APPLICATIONS AND SELECTIONS FOR, AND FILINGS AND LOCATIONS UPON, UNSURVEYED LAND

101.6 Rules to be observed.

APPLICATIONS IN CONFLICT WITH RESERVOIR SITES

101.7 Nature of grant for reservoir sites; disposition of applications conflicting with such a grant.

DISPOSITION OF CONFLICTING APPLICATIONS UNDER SECTIONS 8 (b), 14, AND 15 OF THE TAYLOR GRAZING ACT

101.8 Allowance of applications discretionary with the Secretary of the Interior.

NAMES OF CLAIMANTS

101.9 Names of claimants.

ENTRIES FOR LANDS IN MORE THAN ONE LAND DISTRICT

101.10 Governing regulations.
101.11 Applications and fees to be filed in each office.
101.12 Only one proof and publication necessary; separate final certificates to issue.
101.13 Appeal or further showing, when proof is rejected.
101.14 Annual proofs on desert-land entry.
101.15 Mining claims.
101.16 Timber and stone entries.
101.17 Public offerings.

OATHS

101.18 Elimination of the requirements of oaths on written statements in public land matters.

AUTHORITY: §§ 101.1 to 101.18 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For amendments of entries, see Part 104 of this chapter. For applications and entries, Alaska, see Part 60 of this chapter.

EXECUTION AND FILING OF APPLICATIONS

§ 101.1 *Time limit for filing applications.* (a) The manager will reject all applications to make entry which are executed more than 10 days prior to filing.

(b) Such rejections should be subject to the usual right of appeal; also subject to the right to file a new and properly executed application, or to reexecute the rejected application, prior to the intervention of any valid adverse claim.

(c) The manager will accept as filed within the time named in paragraph (a) of this section all applications to enter which were deposited in the mails within 10 days from the date of execution.

CROSS REFERENCE: For applications, Alaska, see § 60.1 of this chapter.

SEGREGATION OF LAND UNDER APPLICATION

§ 101.2 *Payments required to effect segregation of land.* (a) The minimum fees or payments necessary to gain segregative effect for agricultural and other kinds of applications or selections shall be those which are prescribed by existing regulations in connection with the particular application or selection that may be involved: *Provided, however,* That where the laws or regulations so plainly express the full amount of fees or other payments required to be made at the time of filing, that no mistaken interpretation thereof could reasonably be made, the amounts tendered by the conflicting applicants when filing their applications may be an element for consideration in the adjudication of their respective priorities, notwithstanding a tender of the minimum fee has been made by all of them.

(b) The minimum fee, as in the case of all other fees, must be in the form prescribed by § 216.30 of this chapter.

CROSS REFERENCE: For rule of priority in the case of mineral permits and leases, see § 102.35 of this chapter.

NOTATION OF RIGHTS-OF-WAY

§ 101.3 *Notations to be made on entry papers and notice of allowance.* (a) In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, a reference to such right-of-way should be made upon the original entry papers and upon the notice of allowance of the application (Form 4–279) issued to the entryman.

(b) He will make no such notation upon the final entry papers unless the right-of-way has been granted under an act of Congress which does not in terms protect the grantee against subsequent adverse rights, in which case he will place the same notation as to right-of-way upon the final entry papers, so that the reservation of the right-of-way will be made in the patent, when issued (23 L. D. 67).

§ 101.4 *When notation is required.* The manager will make notations of rights-of-way on entry papers, only where his records show that the land involved, or some part of it, is covered by an approved application for right-of-way. In this connection, attention is directed to the decision of the United States Supreme Court in the case of Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. Doughty (208 U. S. 251, 52 L. ed. 474). Applicants to enter public lands that are affected by a mere pending application for right-of-way, should be verbally informed thereof by the manager, and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine

§ 101.5 *When notation is not required.* (a) The Secretary of the Interior having held, in the case of Dunlap v. Shingle Springs and Placerville R. R. (23 L. D. 67) that "A railroad right-of-way under the act of March 3, 1875, 18 Stat. 482; 43 U. S. C. 934–939, is fully protected by the terms of the act as against subsequent adverse rights, and a reservation of such right-of-way, in final certificates and patents issued for lands traversed thereby, is therefore not necessary and should not be inserted" (syllabus), and having on October 16, 1896 denied a motion for review of said decision, the managers will be governed thereby.

(b) The language of the canal and reservoir right-of-way act of March 3, 1891 (26 Stat. 1101, 1102; 43 U. S. C. 946–949), in reference to this matter, being the same as of the act of 1875, the ruling applies to it as well.

APPLICATIONS AND SELECTIONS FOR, AND FILINGS AND LOCATIONS UPON, UNSURVEYED LAND

§ 101.6 *Rules to be observed.* To remedy the confusion and uncertainty arising from applications and selections for and filings and locations upon unsurveyed public lands, managers will reject any such application, selection, filing, or location, under whatsoever law permitted, unless it conforms to paragraphs (a) to (e) of this section.

(a) It must contain a description of the land by metes and bounds, with courses, distances, and reference to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or object need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, water courses, or other natural objects will not be permitted.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished; or, if this can not be done, a statement[1] must be filed setting forth a valid reason therefor.

(c) The address of the claimant must be given, and it shall be the duty of the manager, upon the filing of the township plat in the district land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 30 days. In default of action by the party notified the manager will promptly adjust the claim and report his action to the Bureau of Land Management.

(d) Notice of the application, selection, filing, or location, describing the land as directed in paragraph (a) of this section, must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application, selection, filing, or location, as the case may be.

(e) Wherever, under existing regulations, notice of such application, selection, filing, or location is required to be posted elsewhere than upon the land and published in a newspaper, the description of the tract in the posted and published notice must conform to the requirements of paragraph (a) of this section.

APPLICATION IN CONFLICT WITH RESERVOIR SITES

§ 101.7 *Nature of grant for reservoir sites; disposition of applications conflicting with such a grant.* (a) The grant for reservoir sites made by sections 18 to 21, inclusive, of the act of March 3, 1891 (26 Stat. 1101, 1102; 43 U. S. C. 946–949), is an easement only, and not a fee. See § 244.19 of this chapter. The act of May 21, 1930 (46 Stat. 373; 30 U. S. C. 301–306), authorizes the leasing of oil and gas deposits in lands covered by such a grant under certain conditions, to the right-of-way grantee, or his or its successor in interest, as provided in §§ 200.80 to 200.87, inclusive, of this chapter.

(b) An application other than for oil and gas which includes one or more legal subdivisions entirely within the grant of an easement for a reservoir site will be rejected as to such subdivisions. If the application covers legal subdivisions partially within such a grant, it may be allowed as to such subdivisions, in the absence of other objection, subject to the easement.

DISPOSITION OF CONFLICTING APPLICATIONS UNDER SECTIONS 8 (b), 14, AND 15 OF THE TAYLOR GRAZING ACT

CROSS REFERENCES: See § 147.19 of this chapter, as to the issuance of grazing leases for public lands embraced in pending conflicting State exchange applications.

For patents, see Part 108 of this chapter.

§ 101.8 *Allowance of applications discretionary with the Secretary of the Interior.* The exchange of privately owned lands under section 8 (b) of the Taylor

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Grazing Act approved June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), the ordering of public sales under section 14 of the act (48 Stat. 1274; 43 U. S. C. 1171), and the issuance of leases under section 15 (49 Stat. 1978; 43 U. S. C. 315m), thereof are within the discretionary power of the Secretary of the Interior.

NAMES OF CLAIMANTS

§ 101.9 *Names of claimants.* Full names of claimants should appear in applications, final certificates, and patents.

ENTRIES FOR LANDS IN MORE THAN ONE LAND DISTRICT

§ 101.10 *Governing regulations.* Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by §§ 101.11 to 101.17.

§ 101.11 *Applications and fees to be filed in each office.* Complete applications must be filed in each office, together with the usual fee and commissions payable for the land in each land district, besides any other payment required by law. Each application should contain a proper reference to the other application.

§ 101.12 *Only one proof and publication necessary; separate final certificates to issue.* In submitting proof, the two entries should be treated as one, and the published notice of intention should describe all the land and specify in which land district each part of the claim is located. If the notice is published correctly and the proof is satisfactory, the manager who issued the notice for publication will issue final certificate for the portion within his land district on payment of the testimony fees and payment of the commissions and (if required) the purchase money due for the land in his district. He will then advise the manager of the district wherein the remainder of the claim is located, who will, on receipt of the final commissions and purchase money (if any) due for the part in his district, issue final certificate for that portion without further proof.

§ 101.13 *Appeal or further showing, when proof is rejected.* Should a proof be rejected by the office from which the notice of intention is issued the appeal or further showing must be filed in the office which rejected the proof.

§ 101.14 *Annual proofs on desert-land entry.* When a desert-land entry embraces land in more than one district, the required annual proofs may be filed in either district, provided proper reference is made to the portion of the entry in the adjoining district, and the entryman must notify the manager of the adjoining district by letter of the date when the annual proof is filed.

CROSS REFERENCE: For desert-land entries, see Part 232 of this chapter.

§ 101.15 *Mining claims.*[1] In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land will be further governed by the provisions of § 101.12.

CROSS REFERENCE: For mining claims, see Part 185 of this chapter.

§ 101.16 *Timber and stone entries.* Sections 101.11 and 101.12 are applicable to timber and stone entries, except that on such entries no commissions are collected.

CROSS REFERENCE: For timber and stone entries, see Part 285 of this chapter.

§ 101.17 *Public offerings.* Applications for public offerings under section 2455, Revised Statutes, as amended (43 U. S. C. 1171), cannot be considered unless all the land lies in one land district.

CROSS REFERENCE: For public offerings, see Part 250 of this chapter.

OATHS

§ 101.18 *Elimination of the requirements of oaths on written statements in public land matters.* (a) By section 1 of the act of June 3, 1948 (62 Stat. 301; 43 U. S. C. 1211), written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require. Accordingly, all written statements in public land matters within the jurisdiction of the Department of the Interior required prior to June 3, 1948, by law, or Chapter I of this title, to be made under oath, need no longer be made under oath, except as provided in this paragraph.

(1) Affidavits must be furnished where required by Part 221—Rules of Practice, Part 222—Government Contests, and Part 223—Witnesses, of this chapter.

(2) Final proofs required by R. S. 2294 (43 U. S. C. sec. 254) as amended and supplemented, and the regulations thereunder, to be taken in affidavit form before designated officers shall be taken in that form before such officers. (See §§ 52.1, 65.23, 166.45, 210.1, 232.28 and 285.16 of this chapter.)

(3) Statements as to the financial worth of individual sureties on bonds furnished in connection with leases, licenses or permits granted under the public land laws, known as "Affidavits of Justification," must be made in affidavit form.

(b) Where prior to June 3, 1948, the law required an application or other paper to be sworn to in a particular land district, and this section makes it unnecessary for the paper to be executed in affidavit form, the applicant still must sign the paper in the particular land district and state in the paper that it was so signed.

(c) Unsworn statements in public land matters are subject to Title 18, U. S. C., sec. 1001, which makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statement or representations as to any matter within its jurisdiction.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

PART 102—AGRICULTURAL ENTRIES ON MINERAL LANDS

PROTECTION OF SURFACE RIGHTS OF NONMINERAL ENTRYMEN OF LANDS WHICH SUBSEQUENT TO ENTRY, ETC., ARE CLAIMED, CLASSIFIED, OR REPORTED AS VALUABLE FOR COAL

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CONDITIONS GOVERNING THE ALLOWANCE OF NONMINERAL APPLICATIONS FOR LANDS EMBRACED IN MINERAL PERMITS OR LEASES, OR CLASSIFIED, WITHDRAWN OR REPORTED AS VALUABLE FOR ANY MINERAL SUBJECT TO LEASE

102.30 Disposition of surface discretionary as to lands embraced in mineral permits and leases or classified, withdrawn, or reported as valuable for any mineral subject to lease.
102.31 Definition of prior mineral claim.

Sec.
102.32 Notation in notice of allowance of nonmineral application.
102.33 Notation on final certificate and patent.
102.34 Compensation for damages by mineral claimant.

AUTHORITY: §§ 102.1 to 102.34 issued under R. S. 2478, sec. 32, 41 Stat. 450; 43 U. S. C. 1201, 30 U. S. C. 189.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For homesteads on coal, oil, and gas lands, Alaska, see Part 66 of this chapter. For leases on mineral lands, Alaska, see Parts 70, 71 of this chapter. For mineral leases, generally, see Parts 191–198 of this chapter.

PROTECTION OF SURFACE RIGHTS OF NONMINERAL ENTRYMEN OF LANDS WHICH SUBSEQUENT TO ENTRY, ETC., ARE CLAIMED, CLASSIFIED, OR REPORTED AS VALUABLE FOR COAL

§ 102.1 *Statutory authority.* (a) The act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81) protects persons who, in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed, or reported as being valuable for coal by providing a means whereby such persons may at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein. It applies alike to locations, selections, and entries made prior to its passage and those made subsequently thereto.

(b) The act also provides for the disposal, under the existing coal land laws, of the coal contained in such lands and gives the patentees of such lands the right to mine coal for domestic purposes prior to disposal thereof by the United States.

§ 102.2 *Election to take patent with reservation to United States of the coal deposits.* All persons who, in good faith, locate, select, or enter, under the nonmineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed, or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions and limitations imposed by the act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as provided for in §§ 102.3 to 102.4.

§ 102.3 *Procedure where final proof has not been submitted.* (a) Managers will promptly advise each nonmineral claimant to land which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the act of March 3, 1909.

(b) In the event of election to receive such a patent, no further inquiry will be necessary respecting the coal character of the land.

(c) In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation, unless it shall be shown that the land is chiefly valuable for coal.

(d) The claimant may, after determination at final proof that the lands are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

§ 102.4 *Procedure when final proof has been submitted.* Where satisfactory final proof has been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, the entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

§ 102.5 *Disposal of the coal deposits.* Where election to accept patent with the prescribed reservation has been made by the nonmineral claimant, coal deposits in the land may be leased or otherwise disposed of, as provided for by the act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), as amended.

AGRICULTURAL ENTRIES ON COAL LANDS

§ 102.6 *Statutory authority.* (a) Section 1 of the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83) provides that from and after its passage, the unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws, by actual settlers only, the desert land law, selection under section 4 of the act approved August 18, 1894, known as the Carey Act (28 Stat. 422; 43 U. S. C. 641), and to withdrawal under the act approved June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.), known as the Reclamation Act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; but that no desert-land entry made under the provisions of this act shall contain more than 160 acres, and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the act approved February 19, 1909 (35 Stat. 639; 43 U. S. C. 218), entitled "An act to provide for an enlarged homestead." The act of February 19, 1909, was amended by the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218).

(b) In the proviso to section 1 (36 Stat. 583; 30 U. S. C. 83) it is enacted that those who had initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or classified as coal lands, may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

(c) Section 2 of the act (36 Stat. 584; 30 U. S. C. 84) provides that any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section 4 of the act of August 18, 1894, known as the Carey Act, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions of this act.

(d) The act of April 30, 1912 (37 Stat. 105; 30 U. S. C. 90) authorizes the selection of unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, by the several states within whose limits the lands are situated, under grants made by Congress, and the offering at public sale, in the discretion of the Secretary of the Interior, of isolated or disconnected tracts of coal lands, which are so withdrawn, classified or valuable, with a reservation of the coal deposits to the United States and otherwise subject to all the conditions and limitations of the act of June 22, 1910.

CROSS REFERENCES: For original, additional, second, and adjoining farm homesteads, authorized by the general provisions of the homestead laws, see Part 166 of this chapter. For enlarged homesteads, see Part 167. For desert land entries, see Part 232 of this chapter. For Carey Act selections, see Part 272 of this chapter. For entries in reclamation projects, see Part 230 of this chapter.

§ 102.7 *Purposes of acts of March 3, 1909 and June 22, 1910 distinguished.* The act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85) was not designed to operate as an implied repeal of any provision of the act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81). There is no inconsistency between the two acts, and both of them may have harmonious operation within their proper spheres. The earlier law provides a remedy in those cases in which entries, locations, and selections have been or may be made for lands which, subsequently to entry, location, or selection, have been, or may be, claimed, classified, or reported as being valuable for coal, while the later act permits certain dispositions to be made of

lands valuable for coal, notwithstanding that they may have been previously withdrawn, or classified as such. The proviso to section 1 of the later act also affords relief to those persons who, prior to June 22, 1910, in good faith made entries, locations, or selections of lands which, at the date of such entries, locations, or selections, had been withdrawn or classified, as valuable for coal.

§ 102.8 *Requirements to complete homestead entries.* The act of February 19, 1909, as amended by the act of June 6, 1912 (subject to which, as to residence and cultivation, such homestead entries must be made), provides that "no entry made under this act shall be commuted" (35 Stat. 639; 43 U. S. C. 218). This, then, requires a residence for the full period of 3 years to entitle the homesteader to patent thereunder. The enlarged homestead act, as amended, also provides that in addition to the proofs and affidavits required under section 2291 of the Revised Statutes (43 U. S. C. 164) the entryman shall prove by two credible witnesses that at least one-sixteenth of the area embraced in his entry was continuously cultivated to agricultural crops, other than native grasses, beginning with the second year of the entry, and that at least one-eighth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

§ 102.9 *Lands on which entries may be made.* The act of June 22, 1910 applies to unreserved public lands of the United States, exclusive of the Territory of Alaska, which have been withdrawn as coal lands and not released therefrom, or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified.

§ 102.10 *Application for reclassification of land; hearing.*[1] (a) The last proviso to section 3 of the act of June 22, 1910 (36 Stat. 584; 30 U. S. C. 85) provides that nothing in the act contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

(b) Except in the case of those who present applications under section 2 of the act (36 Stat. 584; 30 U. S. C. 84), the manager will advise any person presenting a nonmineral application or filing for lands classified as coal lands that he will be allowed 30 days in which to submit evidence, preferably the statements of experts or practical miners, that the land is in fact not coal in character, together with an application that the same be reclassified, and that in the event of failure to furnish said evidence within the time specified the application will be rejected. If upon the showing made, and such other inquiry as may be deemed proper, the land is classified as agricultural land, the nonmineral application, in the absence of other objections, will be allowed. If reclassification be denied, the applicant may, within 30 days from receipt of notice, apply for a hearing, at which he may be afforded an opportunity for showing that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, his application to enter or file will be finally rejected. The rejection of such application, however, does not preclude the person from filing another application pursuant to section 2 of the act.

§ 102.11 *Patent with reservation of coal deposits; disposal of coal deposits.* By section 3 of the act of June 22, 1910, it is provided that upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the land so patented, together with the right to prospect for, mine, and remove the same; and that the coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Said section 3 also provides that any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this act, for the purpose of prospecting for coal thereon upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting; and that any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages.

§ 102.12 *Prospecting for reserved coal deposits.* As a condition precedent to the exercise of the right mentioned in the act of June 22, 1910, to prospect for coal on public land which has been entered or patented with a reservation of the coal deposits as provided by that act, the person desiring to so prospect must file a bond in the sum of $1,500, apply for and obtain a coal prospecting permit, and otherwise comply with the regulations relating to coal prospecting permits contained in Part 193 of this chapter.

§ 102.13 *Notations on applications; reservations in patents.* (a) (1) Entries and selections under the provisions of the act of June 22, 1910, must have noted across the face of the application for entry or selection, before such application for entry or selection is signed by the applicant and presented to the manager, the following:

Application made in accordance with and subject to the provisions and reservations of the act of June 22, 1910 (36 Stat. 583).

(2) The Secretary of the Interior in withdrawing, under the Reclamation Act, lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, will state in the notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of the act of June 22, 1910.

(b) There will be incorporated in patents issued to nonmineral claimants under this act the following:

Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions and subject to the provisions and limitations of the act of June 22, 1910 (36 Stat. 583).

HOMESTEAD ENTRY OF COAL LANDS IN ALABAMA

§ 102.14 *Statutory authority.* The act of April 23, 1912 (37 Stat. 90; 30 U. S. C. 77) makes unreserved public lands containing coal, in Alabama, which were withheld from homestead entry under the act of March 3, 1883 (22 Stat. 487; 30 U. S. C. 171), subject to homestead entry with a reservation of the coal deposits to the United States, as provided by the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85).

§ 102.15 *Lands to which applicable.* The lands referred to in the act of April 23, 1912, include all tracts which were prior to March 3, 1883, reported as containing valuable coal, and which were not under the provisions of the act of March 27, 1906 (34 Stat. 88; 30 U. S. C. 172), classified as agricultural in character.

§ 102.16 *Procedure to be followed.* Sections 102.6 to 102.13, under the act of June 22, 1910, will govern proceedings with reference to these lands so far as applicable.

§ 102.17 *Notation on application prior to execution.* Prior to execution of a homestead application it must bear across its face the notation provided by § 102.13. This notation may not be placed upon the application after its execution without applicant's consent. In the absence of the notation the application will be treated as incomplete, and the applicant will be allowed the usual time to perfect same.

§ 102.18 *Claimants not entitled to protest coal character of land.* The second proviso to section 3 of the act of June 22, 1910 (36 Stat. 584; 30 U. S. C. 85), has no application to the Alabama lands, and claimants are not, therefore, entitled to contest the classification of the land and disprove its coal character.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

AGRICULTURAL ENTRY OF LANDS WITHDRAWN, CLASSIFIED OR VALUABLE FOR PHOSPHATE, NITRATE, POTASH, OIL, GAS, ASPHALTIC MINERALS, SODIUM AND SULPHUR

§ 102.19 *Statutory authority.* (a) Section 1 of the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121), authorizes the appropriation, location, selection, entry, or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made. The only exception is that no desert land entry made under the act shall contain more than 160 acres.

(b) The term "person" used in this act will be interpreted as covering a State (see ex parte, Utah, 38 L. D. 245), or other corporation, or an association when duly qualified.

(c) Under the proviso in section 2 of the act (38 Stat. 509; 30 U. S. C. 122) applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservations; also, claimants for lands withdrawn or classified for the specified minerals subsequent to location, selection, entry, or purchase have the privilege of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are in fact nonmineral in character.

(d) Under the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124), lands withdrawn, classified, or reported as valuable for sodium and/or sulphur are subject to entry, filing, or selection, if otherwise available, and subject to the reservations, provisions, limitations and conditions of the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), sulphur lands being limited to the States of Louisiana and New Mexico, pursuant to the act of July 16, 1932 (47 Stat. 701; 30 U. S. C. 271, 276).

§ 102.20 *Lands to which act of July 17, 1914 is applicable.* The act of July 17, 1914 is general and comprehensive and operates in all the States containing public lands of the character specified. It does not apply to lands in the Territory of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special acts of August 24, 1912 (37 Stat. 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stat. 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general act, July 17, 1914, will be treated as within the scope of the latter act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general act.

§ 102.21 *Practice and procedure.* The act of July 17, 1914 in many respects resembles that of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), which provides for the protection of the surface rights of entrymen upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these acts as set forth in §§ 102.1 to 102.13 and 270.21 of this chapter may be followed, so far as applicable, in matters of practice and procedure.

§ 102.22 *Procedure on reports as to oil and gas, involving nonmineral entries, prior to proof, or after proof and prior to patent.* (a) Where the Geological Survey reports that land embraced in a nonmineral entry or claim on which final proof has not been submitted or which has not been perfected is in an area in which valuable deposits of oil and gas may occur because of the absence of reliable evidence that the land is affected by geological structure unfavorable to oil and gas accumulation, the entryman or claimant will be allowed 30 days from notice to furnish consent under the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), or to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in event reclassification is denied, or to appeal. He must be advised that if a hearing is ordered the burden of proof will be upon him, and also that if he shall fail to take one of the actions indicated, his entry or claim will be canceled.

(b) In a case where acceptable final proof has been submitted, or a claim has been perfected, and the Geological Survey thereafter makes report, as in the above or similar form, such report will not be relied upon as basis for adverse proceedings against the entry or claim unless the Government is prepared to assume the burden of proving, prima facie, that the land was known to be of mineral character, at the date of acceptable final proof or when the claim was completed, according to the established criteria for determining mineral from nonmineral lands, among which may be those recognized by the Supreme Court in the case of United States v. Southern Pacific Company et al. (251 U. S. 1, 64 L. ed. 97). If the Government is thus prepared to assume such burden of proof, the Bureau of Land Management will institute adverse proceedings against the entry or claim, making a charge to that effect, giving the entryman or claimant the option of refuting the charge in accordance with Part 222 of this chapter or of consenting to the reservation of the oil and gas to the United States, and thereby avoiding the expense of litigation. The entryman or claimant will be advised that in the event hearing is had, the burden of proof will be upon the Government; also, that if he shall fail to make answer or to exercise the option offered him within the time allowed, the entry or claim will be canceled without further notice.

CROSS REFERENCE: For Geological Survey, classification of public coal lands, see 30 CFR Part 201.

§ 102.23 *Patent with reservation.* Section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U. S. C. 123) is both retrospective and prospective, and under it any person who prior to the act, had applied, or who after the passage of the act, shall apply for lands which are subsequently withdrawn, classified or reported as being valuable for the specified minerals, and which are otherwise available, may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular the statute is quite similar to that of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), and the disposition of such cases will follow the practice under that act insofar as the same is applicable.

§ 102.24 *Notations on applications; statements in orders of withdrawal.* (a) All applications to locate, select, enter, or purchase lands under the act of July 17, 1914, before being accepted and filed by the manager, must have written, stamped, or printed upon their face the following:

> Application made in accordance with, and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

(b) Orders of withdrawal under the Reclamation Act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing title to the same in accordance with the terms of this act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the act of July 17, 1914.

§ 102.25 *Reservations in patents.* There will be incorporated in patents issued to nonmineral claimants under this act the following:

> Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914 (38 Stat. 509).

§ 102.26 *Disposition of reserved deposits; protection of surface claimant.* The act of July 17, 1914, provides that the deposits reserved in agricultural patents issued thereunder shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." Provisions are made in the act for

the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits.

§ 102.27 *Restricted patent to issue or entry will be canceled.* Nonmineral claimants who are or may be affected by withdrawals or classifications made or which shall be made, subsequent to their locations, selections, entries, or purchases, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral, shall be entitled to the patent authorized to be issued by section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U. S. C. 123) upon the filing of an application therefor. Such claimant will be notified of his right to such a patent, and upon failure to file within 30 days his application therefor or to apply for a classification of the land as nonmineral, the entry will be canceled.

§ 102.28 *Applications to disprove classification of land; hearing thereon.*[1] (a) (1) The proviso to section 2 of the act of July 17, 1914 (38 Stat. 509; 30 U. S .C. 122), allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the statements of experts or practical miners, of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

(2) Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the act (38 Stat. 509; 30 U. S. C. 121), and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by the manager and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

(3) If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be allowed.

(4) If the application be denied the applicant may, within 30 days from notice of such denial, apply to the land office for a hearing to disprove the classification. When a hearing is applied for, the manager will proceed therewith under the Rules of Practice, Part 221 of this chapter. If the applicant fails to apply for a hearing within the time allowed, the application to locate, select, enter or purchase will be finally rejected.

(5) The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter or purchase the land in accordance with and subject to the provisions and reservations of said act.

(b) (1) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

(2) Claimants to whom this provision is applicable may, therefore, file in the proper land office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification. If the application be denied, the claimant will be allowed 30 days from notice of such denial within which to make application to the land office for a hearing to establish the nonmineral character of the land. When a hearing is applied for the manager will proceed therewith under the Rules of Practice, Part 221 of this chapter.

§ 102.29 *Burden of proof.* (a) Where application is made to enter, locate, or select[1] lands withdrawn or classified as valuable for or on account of any of the minerals specified in the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123) as supplemented by the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124), the burden of proof to show that said lands are not of the character of those intended to be withdrawn or that the classification as such was and is erroneous and improper in point of fact will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

(b) A withdrawal or classification will be deemed prima facie evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has preceded the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended to be included in the withdrawal. Where the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land, which subsequent thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral in character and was so known at the date of final completion and perfection of the claim. (See Charles W. Pelham (39 L. D. 201).)

CONDITIONS GOVERNING THE ALLOWANCE OF NONMINERAL APPLICATIONS FOR LANDS EMBRACED IN MINERAL PERMITS OR LEASES, OR CLASSIFIED, WITHDRAWN OR REPORTED AS VALUABLE FOR ANY MINERAL SUBJECT TO LEASE

§ 102.30 *Disposition of surface discretionary as to lands embraced in mineral permits and leases or classified, withdrawn, or reported as valuable for any mineral subject to lease.* Section 29 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449; 30 U. S. C. 186) and the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124) grant the Secretary of the Interior complete discretion to determine whether the surface of public lands embraced in mineral permits or leases, or in applications for such permits or leases, or classified, withdrawn, or reported as valuable for any leasable mineral, or lying within the geologic structure of a field, should be disposed of. Accordingly, where a nonmineral application is filed, in the continental United States,[1] for any of such described lands, the nonmineral application may be allowed only if it is determined by the proper officer, with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts. Appeals from any decision of the Director, Bureau of Land Management, or other officer, may be taken by any affected party in accordance with the Rules of Practice Part 221 of this chapter.

§ 102.31 *Definition of prior mineral claim.* As used in §§ 102.36 to 102.38, inclusive, a mineral claim is "prior" where an application for a mineral permit or lease has been filed before either the filing of a complete nonmineral application for part or all of the same land, or before the classification of that land for the purposes requested by that nonmineral applicant: *Provided,* That the nonmineral application is not either for:

(a) A State exchange under section 8 of the Taylor Grazing Act (48 Stat. 1269; 43 U. S. C. 315g), as amended, filed prior to such mineral claim; or

(b) A reclamation homestead under the Reclamation Act of June 17, 1902 (32

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[1] Sections 102.30 to 102.34, apply to all public land States, including, though not limited to, those States which are specifically excepted by statute from the operation of the mining laws, but which are covered by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181) (48 L. D. 629, Apr. 8, 1922). Sections 102.30 to 102.34 do not apply, however, to public domain lands in Alaska, which are governed by § 66.2 of this chapter.

Stat. 338; 43 U. S. C. 372 et seq.) for lands applied for by a mineral claimant under the Leasing Act after withdrawal for reclamation purposes.

§ 102.32 *Notation in notice of allowance of nonmineral application.* Wherever the mineral claim is "prior", the following notation will be made in the notice of allowance of the nonmineral application, as well as on the original copy of that nonmineral application:

This land is subject to the right of any prior mineral permittee or lessee, or of any prior applicant for a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the nonmineral entryman or patentee for crop and improvement damages resulting from such mineral activity.

§ 102.33 *Notation on final certificate and patent.* (a) Wherever a nonmineral application, which is affected by the notation described in § 102.32, proceeds to issuance of final certificate and patent, and at the time of such issuance there is outstanding a mineral lease, permit, or application therefor, based on a "prior" mineral claim, such final certificate and patent will indicate that they are subject to the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124).

(b) Such final certificate and patent will indicate that they are also subject to the provisions and limitations of section 29, act of February 25, 1920 (41 Stat. 449; 30 U. S. C. 186), if, when the final certificate or patent issues, there is outstanding a mineral lease or permit based on a "prior" mineral claim.

§ 102.34 *Compensation for damages by mineral claimant.* In any case where there is no "prior" mineral claim, any person obtaining authority to prospect for, mine or remove the reserved mineral deposits will be liable to the entryman, selector or patentee of the surface for any damages to crops or improvements which may result from his prospecting or mining operations on the land.

PART 103—ENTRIES SUBJECT TO SECTION 24 OF FEDERAL POWER ACT

APPLICATIONS AND ENTRIES CONFLICTING WITH LANDS RESERVED OR CLASSIFIED AS POWER SITES, OR COVERED BY POWER APPLICATIONS

Sec.
103.1 Statutory authority.
103.2 Application for restoration of withdrawn lands.
103.3 Rights to withdrawn lands which may be recognized.
103.4 Lands occupying status of withdrawn lands.

GENERAL DETERMINATION UNDER SECTION 24 OF FEDERAL POWER ACT AS TO LANDS APPLIED FOR, OCCUPIED, AND USED FOR TRANSMISSION-LINE PURPOSES

103.5 General determination; exception.

AUTHORITY: §§ 103.1 to 103.5 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For rights of way for power projects and for power transmission lines, see Part 245 of this chapter. For regulations of the Federal Power Commission, see 18 CFR Chapter I. For rights of way over Indian lands; power projects; see Indians, 25 CFR 256.42-256.44.

APPLICATIONS AND ENTRIES CONFLICTING WITH LANDS RESERVED OR CLASSIFIED AS POWER SITES, OR COVERED BY POWER APPLICATIONS

§ 103.1 *Statutory authority.* Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 49 Stat. 846; 16 U. S. C. 818), provides that any lands of the United States included in an application for power development, under said act, shall be reserved from entry, location, or other disposal under the laws of the United States, until otherwise directed by the Federal Power Commission or by Congress. It also provides that whenever the said Commission shall determine that the value of any lands withdrawn or classified for power purposes will not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any or all of such lands for power purposes.

§ 103.2 *Application for restoration of withdrawn lands.* Whenever the manager finds it necessary to reject an application, he should inform the applicant that he is at liberty to file an application for the restoration of such withdrawn lands, under the provisions of section 24 of the Federal Power Act, but that favorable action upon such application will not give the applicant any preference right, or right to preferential treatment if or when the lands are finally restored.

§ 103.3 *Rights to withdrawn lands which may be recognized.* (a) Withdrawn public lands are not subject to lease, or other disposition, other than such as is specifically recognized by the Federal Power Act and there is no way to acquire preference rights, preferential treatment, or equitable or legal preference, excepting where legal or equitable rights were acquired before the withdrawal of the land, and that, in all cases where such rights are claimed, careful investigation as to its bona fides will be made before it is recognized.

(b) While the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143), allows metalliferous mineral explorations and applications based thereon, the act of June 10, 1920 makes no exceptions.

(c) Any mineral application or location, based upon discoveries made subsequent to June 10, 1920, which is in conflict with lands reserved or classified as power sites, will be rejected by the manager, subject to appeal.

(d) If the application alleges a valid location made prior to the date of the act of June 10, 1920, and is accompanied by a corroborated statement attesting the fact, the patent proceedings may be prosecuted to completion. The proof should be considered upon its merits, and, if found regular, final certificate may issue although a protest may have been filed by the authorized officer; but the claimant should be advised in such cases that patent will be withheld pending a report upon the bona fides of the claim.

§ 103.4 *Lands occupying status of withdrawn lands.* Lands within final hydroelectric power permits under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), or transmission-line permits or approved rights-of-way, whether under said act of February 15, 1901, or the act of March 4, 1911 (36 Stat. 1253; 16 U. S. C. 5, 420, 523, 43 U. S. C. 961) are deemed "classified as valuable for power purposes," and, whether withdrawn as power-site reserves or not, occupy the status of withdrawn lands.

GENERAL DETERMINATION UNDER SECTION 24 OF FEDERAL POWER ACT AS TO LANDS APPLIED FOR, OCCUPIED, AND USED FOR TRANSMISSION-LINE PURPOSES

§ 103.5 *General determination; exception.* (a) The executive secretary of the Federal Power Commission having called to the attention of the Commission the desirability of making a general determination under the provisions of section 24 of the Federal Water Power Act[1] with respect to lands of the United States theretofore or thereafter reserved or classified as power sites which are applied for, or occupied and used for, transmission-line purposes only, the Commission at its meeting of April 17, 1922, voted as follows:

(1) That where lands of the United States have heretofore been, or hereafter may be, reserved or classified as power sites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes has been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the commission determines that the value of such lands so reserved or classified or so applied for or authorized, will not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Water Power Act.

(2) That when notice is given to the Secretary of the Interior of reservations made under the provisions of section 24 of the Federal Water Power Act, such notice shall indicate what lands so reserved, if any, may, in accordance with the determination of the preceding paragraph, be declared open to location, entry, or selection subject to the reservation of said section 24.

(b) Where the Bureau finds that lands applied for are occupied in trespass, the application will be referred to the Federal Power Commission for such action as it deems to be appropriate to the particular circumstances existing in the case.

PART 104—AMENDMENTS

Sec.
104.1 Statutory authority.
104.2 Application to amend; form; where filed.
104.3 Nature and source of error; good faith.

[1] The act of Aug. 26, 1935 (49 Stat. 838; 16 U. S. C. 796 et seq.) amended the Federal Water Power Act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791–823) and changed its short title to the "Federal Power Act."

Sec.
104.4 Showing required that no timber has been removed, etc.
104.5 Showing required as to ownership; deed of reconveyance.
104.6 Application to be corroborated and verified.
104.7 [Reserved]
104.8 Publication of notice; statements of witnesses.
104.9 Amendments in exercise of equitable powers.
104.10 Amendment to enlarge area of desert-land entry.
104.11 Conditions governing amendments in exercise of equitable powers; amendments involving homestead and desert-land entries of adjoining lands.
104.12 Evidence of water-right to accompany application to amend desert-land entry.
104.13 Entry improperly allowed not to be amended.
104.14 When amendment becomes effective.

AUTHORITY: §§ 104.1 to 104.14 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For applications and entries, Alaska; see Part 60 of this chapter. For desert-land entries, see Part 232 of this chapter. For general regulations involving applications and entries, see Part 101 of this chapter. For homesteads generally, see Part 166 of this chapter. For patents, see Part 108 of this chapter. For timber and stone entries, see Part 285 of this chapter.

§ 104.1 *Statutory authority.* Section 2372, United States Revised Statutes, as amended by the act of Congress approved February 24, 1909 (35 Stat. 645; 43 U. S. C. 697), authorizes the amendment of entries and patents for the purpose of correcting errors pertaining to the description of the lands entered and intended to be entered.

§ 104.2 *Application to amend; form; where filed.*[1] Application for amendment must be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office with the Bureau of Land Management, Washington 25, D. C., except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska or Kansas must be filed in the land office at Cheyenne, Wyoming and for lands in Oklahoma in the land office at Santa Fe, New Mexico. The application should be substantially in accordance with Form 4–005. This form may be used for the amendment of nonmineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be signed by the applicant and corroborating witnesses, and must describe the land erroneously entered, as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 104.3 *Nature and source of error; good faith.* The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that proper precaution was taken to avoid error at the time of making the original entry, location, or selection; and where there has been undue delay in applying for amendment, the application will be closely scrutinized, and will not be allowed unless the utmost good faith is shown, and the delay explained.

§ 104.4 *Showing required that no timber has been removed, etc.* The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by any adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and in cases of nonmineral claims, the kind and quantity of timber on each legal subdivision applied for must be stated.

§ 104.5 *Showing required as to ownership; deed of reconveyance.*[2] Where no final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the statement of the applicant, corroborated as provided for in § 104.6, will be sufficient; but where final certificate has issued, or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other encumbrance charged against the land. Where patent has been issued, reconveyance of the land embraced in the patent must be made by deed executed by the claimant, and also by his wife, if he be married, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated, such deed to be accompanied by a satisfactory abstract of title or a certificate from the register of deeds in and for the county in which the land is situated, showing the title to be clear and free of encumbrance.

[2] Where application for issuance of amended patent is made by the transferee of the original patentee, the new patent may be issued in the name of the transferee. (Instr. Nov. 13, 1925, 51 L. D. 281). Similarly, patent may be issued to the transferee of the entryman of an unpatented entry which has been amended after issuance of final certificate but before issuance of patent. (Instr. Jan. 22, 1926, 51 L. D. 335).

§ 104.6 *Application to be corroborated and verified.* The statement of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. At least one witness must verify the allegations of the application on his personal knowledge of the facts therein stated, so far as such facts may well be known to anyone other than the applicant, and as to other facts, including those concerning the applicant's intent or purpose, such witness may testify on information and belief.

§ 104.7 [Reserved.]

§ 104.8 *Publication of notice; statements of witnesses.* Where amendments are allowed of claims upon which final proof has been submitted and publication or posting of notice is required, republication of notice applicable to the class of entry for which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must submit statements, showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

§ 104.9 *Amendments in exercise of equitable powers.* The statute to which §§ 104.1–104.6 refer, does not, in terms, provide for amendment of an entry, selection, or location for the purpose of correcting any error other than such as affects and pertains to the description of the lands entered and intended to be entered. Nevertheless, in the exercise of its equitable power and authority, the Department will grant amendment of an entry, made for the purpose of securing a home upon the public lands, or for the purpose of effecting reclamation in accordance with the provisions of the desert-land law, in any case where it is satisfactorily shown that, through no fault or neglect of the entryman, the land embraced by his entry is so far unfit for, or insusceptible of occupancy, cultivation, or irrigation, as to render it practically impossible to perform the requirements of the law thereon.

§ 104.10 *Amendment to enlarge area of desert-land entry.* Amendment for the purpose of enlarging the area of a desert-land entry will be granted under and in the conditions and circumstances now to be stated.

(a) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that pur-

pose, said lands having since been released from such appropriations.

(b) Where contiguous tracts have been omitted from entry because of entryman's belief, after a reasonably careful investigation, that they could not be reclaimed by means of the water supply available for use in that behalf, it having been subsequently discovered that reclamation thereof can be effectively accomplished by means of a changed plan or method of conserving or distributing such water supply.

(c) Where, at the time of entry, the entryman announced, in his declaration, his purpose to procure the cancellation, through contest or relinquishment, of an entry embracing lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

§ 104.11 *Conditions governing amendments in exercise of equitable powers; amendments involving homestead and desert-land entries of adjoining lands.* Applications for amendment presented pursuant to § 104.9 will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 104.1 to 104.10 and on the prescribed form, in so far as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCES: For homesteads, generally, see Part 166 of this chapter. For desert-land entries, see Part 232 of this chapter.

§ 104.12 *Evidence of water-right to accompany application to amend desert-land entry.* Application to amend desert-land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by §§ 232.13 and 232.14 of this chapter.

§ 104.13 *Entry improperly allowed not to be amended.* Where entries, selections, or locations are improperly allowed, as where the lands are not subject to such entries, selections, or locations, amendments will not be allowed, because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

§ 104.14 *When amendment becomes effective.* Amendment of an entry becomes effective, by relation, as of the date of the original entry in all cases except where the effect of the amendment is to transfer the entry in its entirety to lands other than those originally selected for entry. In all cases, therefore, where amendment is granted to correct a mistake in description and to effect the entryman's original intention, or to increase merely the area embraced by the entry, such amendment will not be effective to alter the time within which the requirements of the law must be complied with. In other cases, the date of the amendment will be treated as the date of the entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

PART 105—RELINQUISHMENTS, CANCELLATIONS, AND REINSTATEMENTS

RELINQUISHMENTS

Sec.
105.1 When relinquished land becomes subject to further appropriation; relinquishments in right-of-way, amendment and repayment cases.

REINSTATEMENT OF CANCELED ENTRIES

105.2 Application for reinstatement.

RELINQUISHMENTS

§ 105.1 *When relinquished land becomes subject to further appropriation; relinquishments in right-of-way, amendment and repayment cases.* (a) (1) Upon the filing in the proper land office of the relinquishment of a homestead claim, the land, if otherwise available, will at once become subject to further application or other appropriation in accordance with the applicable public land laws. A provision to this effect is contained in section 1 of the act of May 14, 1880 (21 Stat. 140; 43 U. S. C. 202).

(2) Upon the filing of a relinquishment of an entry or claim (other than a homestead claim), or a lease, the land will not become subject to further application or other appropriation until the entry, claim or lease has been canceled pursuant to the relinquishment and the fact of the cancellation has been noted on the tract books in the land office.

(b) The relinquishment of an approved right-of-way may be conditioned upon the approval of a subsequent application, filed as an amendment to the approved right-of-way, or as an independent application, but conflicting in whole or in part with the approved right-of-way. Such a relinquishment will not be accepted and noted on the land office tract books until action on the subsequent application is taken.

(c) This section applies only to cases wherein the entry shall have been relinquished in its entirety. It in no wise modifies § 217.19 of this chapter which relates solely to applications for repayment of moneys paid in connections with commutation entries, final homestead entries, final desert-land entries, and other final certificates where it is the intention of the applicant for repayment to merely suffer cancellation of the final entry, leaving the basic entry intact subject to future compliance with the public land laws.

(R. S. 2478; 53 U. S. C. 1201)

REINSTATEMENT OF CANCELED ENTRIES

§ 105.2 *Application for reinstatement.*[1] (a) An application for the reinstatement of a canceled entry, while pending, operates to reserve the land covered thereby from other disposition.

(b) Applications for reinstatement of canceled entries must be filed in the proper district land office and must be executed by the entryman, his heirs, legal representatives, assigns, or transferees, as the case may require. If made by other than the entryman, such petition for reinstatement must fully set forth the nature and extent of petitioner's interest in the land, how acquired, and the names and addresses of any other person or persons who have or claim an interest therein. All petitions for reinstatement should set forth all facts and state clearly and concisely upon what grounds reinstatement is urged. Such petition must be signed by the applicant.

(c) Applications for reinstatement of canceled entries executed by agents and attorneys will not be recognized.

(d) Should an application for reinstatement be filed not conforming to the foregoing, the manager will promptly advise the party thereof, calling his attention to the defects and allow 15 days in which to file a proper application.

(R. S. 2478; 43 U. S. C. 1201)

PART 106—PROOFS

Sec.
106.1 Purpose of publication of final proof notices.
106.2 Qualifications of newspaper as medium of publication.
106.3 Newspaper must be published nearest the lands involved.
106.4 Newspaper need not be published in same county or land district as lands involved.
106.5 Discretion of manager in selecting newspaper; review of such selection.
106.6 Publication of proof notices in timber and stone purchases.
106.7 Protest by editor or proprietor against selection of newspaper.
106.8 Evidence to accompany protest.
106.9 Action by manager on protest.
106.10 Extent to which manager's decision dismissing protest is final.
106.11 Protest by individual against designation of newspaper.
106.12 Payment for republication of notice, when necessary because of error of manager or publisher.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Sec.
106.13 Maximum rates allowed for publishing proof notices.
106.14 Notices to be published weekly only, where not otherwise directed by law.

AUTHORITY: §§ 106.1 to 106.14 issued under 20 Stat. 472; 43 U. S. C. 251.

§ 106.1 *Purpose of publication of final proof notices.* The object of the law requiring publication of notices of intended final proof on entries of public lands is to bring to the knowledge and attention of all persons who are or who might be interested in the lands described therein, or who have information concerning the illegality or invalidity of the asserted claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the Bureau of Land Management.

§ 106.2 *Qualifications of newspaper as medium of publication.* A notice of intended final proof must be published in a newspaper of established character and of general circulation in the vicinity of the land affected thereby, such paper having a fixed and well-known place of publication. No newspaper shall be deemed a qualified medium of notice unless it shall have been continuously published during an unbroken period of 6 months immediately preceding the publication of the notice, nor unless it shall have applied for and been granted the privilege of transportation in and by the United States mails at the rate provided by law for second-class matter (39 CFR, Part 22).

§ 106.3 *Newspaper must be published nearest the lands involved.* The notice must, in all cases, be published in the newspaper which is published at a place nearest to the lands which the notice affects.

§ 106.4 *Newspaper need not be published in same county or land district as lands involved.* It is not necessary that the newspaper nominated as the medium of such notice shall be published in the same county as that in which the land lies, or even in the same land district. On the contrary, a newpaper published in an adjoining county, if its place of publication is nearer to the land than that of any other newspaper, must be designated as the agency of publication, if it is also qualified by reason of its general circulation in the vicinity of the affected lands.

§ 106.5 *Discretion of manager in selecting newspaper; review of such selection.* The law invests managers with discretion in the selection of newspapers to be the media of notice in such cases as are here referred to, but that discretion is official in character, and not a purely personal and arbitrary power to be exercised without regard for the object of the law by which it is conferred.

§ 106.6 *Publication of proof notices in timber and stone purchases.* None of the rules in this part respecting the designation of the newspaper are intended to apply to, or govern, publication of notice concerning proof proposed to be offered in support of an application for the purchase of lands chiefly valuable for their timber or stone, under the act of June 3, 1878 (20 Stat. 89; 43 U. S. C. 311–313), as extended by the act of August 4, 1892 (27 Stat. 348; 30 U. S. C. 161, 43 U. S. C. 311). Publication of such notices must be procured by the applicants, in newspapers selected by them, but this privilege does not exempt them from the obligation to select a newspaper published nearest to the lands to which the application relates, and such paper must be in all other respects a competent medium of notice, in accordance with the principles which have been stated.

CROSS REFERENCE: For publication for timber and stone entries, see § 285.15 of this chapter.

§ 106.7 *Protest by editor or proprietor against selection of newspaper.* No appeal will lie from the action of the manager in refusing to name any particular newspaper as an agency for the publication of notices concerning claims to public lands. But any editor or proprietor of a newspaper who believes and desires to charge that a notice of proof in support of any claim to public land has been published in a paper disqualified by the rules and principles stated in this part, to serve as the medium of such notice, may file in the land office from which such notice emanated a written protest against the acceptance of the proof submitted in accordance with such notice. Such protest should set forth all material and essential facts within the knowledge of the protestant, or of which he has reliable information and which he believes to be true, and which, if duly established by proof, would require a determination that the newspaper in which the notice was published was and is not a reputable and established publication, printed, in good faith, for the diffusion of local and general news; or that it is and was not the paper published nearest to the land affected by said notice, and that there is another newspaper published at a place nearer to said lands, equally well qualified in all respects to convey notice of the claim thereto asserted; or any other cause of disqualification expressed and defined in and by §§ 106.1 to 106.6.

§ 106.8 *Evidence to accompany protest.* Any such protest must be accompanied by copies of at least three successive editions of the paper against whose efficiency as a means of notice the protest is directed, and by as many like copies of the paper published by protestant, and alleged to have been a more efficient agency of notice than was the paper actually chosen. It should, in addition to other facts hereby made essential, disclose the relative number of actual paying subscribers supporting the said two newspapers; the number of papers actually distributed in the county in which said papers are published and in the county in which the land is situated; and the number of papers mailed to bona fide subscribers at the post office nearest to the land to which such notice relates. It should state the length of time during which each of said newspapers has been actually and continuously published, immediately preceding the date of the protest; and, if either of said papers has been denied, or has never applied for, entry as second-class matter in the post office at the place of publication, that fact should be stated.

§ 106.9 *Action by manager on protest.* Where any protest has been filed in the manner prescribed in this part it shall be the duty of the manager to immediately consider same and to proceed thereon as in other cases of protests against final proofs. If he should conclude that the facts stated in the protest are insufficient to warrant an order for a hearing, he will render decision to that effect and duly notify the protestant thereof, at the same time advising him of his right of appeal in the manner and within the time prescribed by the Rules of Practice, Part 221 of this chapter.

§ 106.10 *Extent to which manager's decision dismissing protest is final.* In all cases where no appeal is prosecuted from a decision by the manager dismissing a protest, that decision will be considered final as to the facts; and acquiescence therein by the Bureau of Land Management will be refused only when it is manifest that it was error to determine that no proper ground of protest was sufficiently alleged.

§ 106.11 *Protest by individual against designation of newspaper.* Any person having knowledge of the failure of a manager to designate the proper newspaper for the publication of notice of final proof may file with the proper area administrator a statement fully setting forth all the facts and circumstances.

§ 106.12 *Payment for republication of notice, when necessary because of error of manager or publisher.* (a) The law imposes upon managers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication.

(b) Neglect of the duty defined in paragraph (a) of this section, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the entire cost of such republication shall be borne by the Government. If an error is committed by the printer of the paper in which the notice appears, the manager may require such printer to correct his error by publishing the notice anew for the necessary length of time at his own expense, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

§ 106.13 *Maximum rates allowed for publishing proof notices.* In designating papers in which notices of intention to make final proof under the act of March 3, 1879 (20 Stat. 472; 43 U. S. C. 251) shall be published, the manager shall designate only such reputable papers of general circulation nearest the land applied for, the rates of which do not exceed the rates established by State or Territorial laws for the publication of legal notices.

§ 106.14 *Notices to be published weekly only, where not otherwise directed by law.* (a) In many cases it is

necessary to designate a daily paper in which to publish the notices of intention to submit final proof required to be given by homestead and desert land entrymen as well as the notices of location of scrip, warrants, certificates, and lieu selections, and other cases.

(b) The expense of publishing such notices for the prescribed period in every issue of a daily paper is often prohibitive, and the object of publication of such notices can be accomplished by a less number of insertions. Therefore, in all cases where the law does not specifically otherwise direct, publication will be made as follows:

(1) Where publication is required for 30 days, if the manager designate a daily paper, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, in five consecutive issues, and if semiweekly, or triweekly, in any one of the weekly issues for five consecutive weeks.

(2) Where publication is required for 60 days, except in mining cases, if the manager designate a daily paper the notice should be published in the Wednesday issue for nine consecutive issues; if weekly in nine consecutive issues; if semiweekly or triweekly in any one of the weekly issues for nine consecutive weeks.

(c) Publication of notice in mining cases must be made in accordance with § 185.56 of this chapter.

PART 107—CONFIRMATIONS

EQUITABLE ADJUDICATION

Sec.

107.1 Statutory authority.

107.2 Cases subject to equitable adjudication.

PATENT AFTER 2 YEARS, ETC.

107.3 Entryman entitled to patent after 2 years from date of manager's final receipt.

EQUITABLE ADJUDICATION

AUTHORITY: §§ 107.1 and 107.2 issued under R. S. 2450, as amended; 43 U. S. C. 1161.

§ 107.1 *Statutory authority.* By the act approved September 20, 1922 (42 Stat. 857; 43 U. S. C. 1161–1163), sections 2453 and 2454, Revised Statutes, were repealed, and sections 2450, 2451, and 2456, Revised Statutes, were amended. Sections 1161–1163 U. S. C., based on the statutes mentioned and section 403 of Reorganization Plan No. 3 of 1946 (60 Stat. 1100), read as follows:

SEC. 1161. The Secretary of the Interior, or such officer as he may designate, is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be approved by the Secretary of the Interior, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patents shall issue upon the same.

SEC. 1162. Every such adjudication shall be approved by the Secretary of the Interior and shall operate only to divest the United States of the title to the land embraced thereby, without prejudice to the rights of conflicting claimants.

SEC. 1163. Where patents have been already issued on entries which are approved by the Secretary of the Interior, the Secretary of the Interior, or such officer as he may designate, upon the canceling of the outstanding patent, is authorized to issue a new patent, on such approval, to the person who made the entry, his heirs or assigns.

§ 107.2 *Cases subject to equitable adjudication.* The cases subject to equitable adjudication by the Director, Bureau of Land Management, cover the following:

All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not effected within the period authorized by law, or where the final proof testimony, or affidavits of the entryman or claimant were executed before an officer duly authorized to administer oaths but outside the county or land district in which the land is situated, and special cases deemed proper by the Director, Bureau of Land Management, where the error or informality is satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had no control, or any other sufficient reason not indicating bad faith, there being no lawful adverse claim.

PATENT AFTER 2 YEARS, ETC.

§ 107.3 *Entryman entitled to patent after 2 years from date of manager's final receipt.* (a) The decision of the Supreme Court of the United States in Thomas J. Stockley et al., appellants, v. the United States, decided January 2, 1923 (260 U. S. 532, 67 L. ed. 390) holds that after the lapse of 2 years from the date of the issuance of the "receiver's receipt"[1] upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, such entryman is, there being no pending contest or protest against the validity of such entry, entitled to patent under the proviso to section 7 of the act of March 3, 1891 (26 Stat. 1098; 43 U. S. C. 1165), regardless of whether or not the manager's final certificate has issued.

(b) The Supreme Court of the United States in Payne v. U. S. ex rel. Newton (255 U. S. 438, 65 L. ed. 720), decided that Newton was entitled to a patent on his homestead entry under the proviso to section 7 of the act of March 3, 1891, 2 years having elapsed from the date of the issuance of the receiver's final receipt upon final entry, and there being no contest or protest pending against the validity of the entry, but stated that the purpose of the statute was:

To require that the right to a patent which for 2 years has been evidenced by a receiver's receipt, and at the end of that period stands unchallenged, shall be recognized and given effect by the issue of the patent without further waiting or delay, and thus to transfer from the land officers to the regular judicial tribunals the authority to deal with any subsequent controversy over the validity of the entry, as would be the case if the patent were issued in the absence of the statute.

(R. S. 2478; 43 U. S. C. 1201)

[1] The receipts formerly issued by the receivers are now issued by the managers.

PART 108—PATENTS[1]

Sec.

108.1 Issuance of patents; transmittal to district land office.

108.2 Delivery of patents.

108.3 Delivery of erroneously canceled patents.

108.4 Issuance of perfect patent where record does not show that original was signed.

108.5 Issuance of supplemental noncoal patents.

108.6 Limitation on time within which suits may be brought to vacate and annul patents.

AUTHORITY: §§ 108.1 to 108.6 issued under R. S. 2478; 43 U. S. C. 1201.

§ 108.1 *Issuance of patents; transmittal to district land office.* (a) Patents for all grants of land shall be issued under the authority of the Director and signed in the name of the United States (act of June 17, 1948, 62 Stat. 476; 43 U. S. C. 15). The patents shall be recorded in the Bureau of Land Management in books kept for that purpose.

(b) Patents for lands entered or located under general laws can be issued only in the name of the party making the entry or location, or, in case of his death before making proof, to the statutory successor making the proof, provided by law.

(c) The recitals and description of land in patents will in all cases follow the manager's certificate of entry or location, as prescribed by law.

(d) When a patent issued on or after August 1, 1950, is ready for delivery it will be transmitted to the patentee or his or her recognized agent or successor in interest.

§ 108.2 *Delivery of patents.* Original patents (issued before August 1, 1950) on file in land offices, or which have been returned to the Washington office of the Bureau of Land Management from such offices upon their discontinuance, may be procured upon proper request therefor made to the Washington office of the Bureau of Land Management.

§ 108.3 *Delivery of erroneously canceled patents.* (a) The decision of the Supreme Court in case of U. S. ex rel. McBride v. Schurz (102 U. S. 378, 26 L. ed. 166), in effect holds that the patentee of lands takes the title of the Government by matter of record, and that after the record is complete, "there remain" but "the duty simply ministerial, to deliver the patent to the owner."

(b) From the opinion in the case, it clearly appears that the court intended to insist upon the doctrine that, unless manifestly and notoriously void upon its

[1] Quitclaim Deeds. Where a conveyance of land is made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands or for any other purpose, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Director, Bureau of Land Management is authorized and directed by section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U. S. C. 872), if the deed of conveyance has been recorded, to execute a quitclaim deed of the conveyed land to the party or parties entitled thereto.

face, the patent of the Government must be from the date of its record treated as the property of the grantee, and beyond the jurisdiction of the Department of the Interior to withhold.

(c) This being so, the question is narrowed to the one inquiry respecting the delivery of those patents withheld and canceled, and the manner in which, precedent to delivery, the effect of the unauthorized cancellation shall be removed from the patent and the record thereof in the Bureau of Land Management.

(d) These patents fall into the same place in the administration of the business of the Bureau of Land Management that they would have held had no proceedings looking to their cancellation been initiated. Those proceedings being entirely extraneous to the jurisdiction, and consequently void, have no effect upon the instrument, and do not vary the rule properly governing its tradition or transmission to the grantee. The same formalities should be observed as in ordinary cases. The right of the party to its possession must be shown, and the surrender of the usual receipts, or due accounting for their loss, must be required.

§ 108.4 *Issuance of perfect patent where record does not show that original was signed.* The Bureau of Land Management will cause a new patent to be issued whenever it appears that a patent was regularly issued and the patent record on file in the Bureau of Land Management is imperfect in that it does not contain the name, or the initials, of the signing and the countersigning officers.

§ 108.5 *Issuance of supplemental noncoal patents.* (a) The act of Congress approved April 14, 1914 (38 Stat. 335; 30 U. S. C. 82), authorized and directed the Secretary of the Interior:

> In cases where patents for public lands have been issued to entrymen under the provisions of the acts of Congress approved March third, nineteen hundred and nine, and June twenty-second, nineteen hundred and ten, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as noncoal in character, to issue new or supplemental patents without such reservation.

(b) The act is construed to affect all filings, locations, selections, or entries upon which patent or its equivalent had issued, or might thereafter issue, containing a reservation of the coal in the land to the United States under the act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), or the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), such land having subsequently been finally classified as non-coal character. (See § 108.1.)

§ 108.6 *Limitation on time within which suits may be brought to vacate and annul patents.* (a) It is provided in the act of March 3, 1891 (26 Stat. 1093; 43 U. S. C. 1166), that suits by the United States to vacate and annul any patent previously issued shall only be brought within 5 years from the passage of said act, and suits to vacate and annul patents thereafter issued shall only be brought within 6 years after the date of the issue of such patents.[1]

(b) By act of March 2, 1896 (29 Stat. 42; 43 U. S. C. 900–902), the time within which such suits might be brought, so far as regards patents issued under railroad or wagon-road grant, was extended so as to admit of bringing suit in such cases within 5 years from the passage of the act in cases of patents issued prior thereto, and in cases of patents issued thereafter within 6 years after the date of the issuance of the patents, with a provision protecting the titles of bona fide purchasers of such lands.

SUBCHAPTER C—AREAS SUBJECT TO SPECIAL LAWS

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON[2]

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[1] In cases of fraud, the statute has been construed not to commence to run "until discovery of the fraud." Exploration Co., Limited, et al. v. United States (247 U. S. 435, 62 L. ed. 1200).

[2] The provisions of section 2455 of the Revised Statutes (43 U. S. C. 1171), authorizing public sales, were extended, with certain conditions, to the revested lands, Class 3, by the act of May 25, 1920 (41 Stat. 622; 43 U. S. C. 1174). The said section of the Revised Statutes was amended by section 14 of the act of June 28, 1934 (48 Stat. 1274; 43 U. S. C. 1171) and the section last mentioned was extended, with certain conditions, to the revested and reconveyed lands, by section 3 of the act of Aug. 28, 1937 (50 Stat. 874).

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CROSS REFERENCES: For general orders of withdrawal, effect of, see footnote to Part 295 of this chapter. For mining locations on the revested and reconveyed lands, see §§ 185.37a to 185.37e of this chapter. For recreational sites on the revested and reconveyed lands, see Part 254 of this chapter.

SUSTAINED-YIELD UNITS AND COOPERATIVE AGREEMENTS

AUTHORITY: §§ 115.2 to 115.14 issued under 50 Stat. 874.

§ 115.2 *Statutory authority.* (a) The act of August 28, 1937 (50 Stat. 874), relates to the administration of the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road grant lands in Oregon, both of which are hereinafter referred to as O. and C. lands. It provides that such portions of those lands now or hereafter under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be classified as timber lands, and power-site lands valuable for timber, shall be managed, except as provided in section 3 of the act, for permanent forest production, and the timber thereon shall be sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities. Nothing contained in the act shall be construed to interfere with the use and development of power sites as may be authorized by law.

(b) Section 1 of the act authorizes the Secretary of the Interior, if he determines that such action will facilitate sustained-yield management, to subdivide the revested lands into sustained-yield forest units, the boundary lines of which shall be so established that each will provide, so far as practicable, a permanent source of raw materials for the support of dependent communities and local industries of the region. The boundaries of such forest units may be established only after hearings are conducted in the vicinity of such lands.

(c) Section 2 of the act authorizes the Secretary to make cooperative agreements with other Federal or State administrative agencies or with private forest owners or operators for the coordinated management, with respect to time, rate, and method of cutting, and sustained yield, of forest units comprising parts of revested or reconveyed lands, together with lands in private ownership or under the administration of other public agencies, when by such agreements he may be aided in accomplishing the purposes of the act.

§ 115.3 *Determination of annual productive capacity.* The authorized officer of the Bureau of Land Management shall determine and declare the annual productive capacity of the O. and C. lands under the principle of sustained yield. The lands shall be treated as a single unit for the purpose of applying the principle of sustained yield, except that upon the establishment of one or more sustained-yield forest units in accordance with § 115.7, each such unit shall be treated separately in the determination of its annual productive capacity and the average annual cut of timber.

§ 115.4 *Master units and appurtenant marketing areas.* As a basis for studies leading to the formulation of plans for the sustained-yield forest units and cooperative agreements authorized by the act, and in order to facilitate administration under the act, the authorized officer, after the determination and declaration of the annual sustained-yield productive capacity of the O. and C. lands, will divide the entire area of the O. and C., intermingled and contiguous lands into master units, on the basis of natural groupings of such lands related to each other by physical and economic factors, and will declare an appurtenant marketing area for each such master unit.

§ 115.5 *Hearings concerning master units.* (a) In order that the Director may obtain the aid and advice of interested persons and agencies, and the public may be informed as to contemplated plans, a public hearing will be held in connection with each proposed master unit. Such hearing will be held in the vicinity of the lands involved and will be open to the attendance of all interested persons, including State and local officers and representatives of dependent industries and labor. The hearing will be conducted by a representative or representatives of the Department of the Interior.

(b) At the conclusion of the hearing, the minutes thereof, together with appropriate recommendations, shall be forwarded to the Director. The Director will thereafter take such action as he deems appropriate and due notice thereof will be given to the public.

§ 115.6 *Notice of hearings concerning master units.* (a) Before any hearing is held in connection with a master unit, notice thereof will be published, once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the proposed master unit and the appurtenant marketing area are situated, and once in the FEDERAL REGISTER. The notice may also be published in a trade paper, if such publication is desirable.

(b) Such notice shall be approved by the Director.

§ 115.7 *Sustained-yield forest units.* Sustained-yield forest units will be established by the Director within the boundaries of each master unit in such manner that each forest unit will contain sufficient forest land to furnish a sustained supply of timber to forest industries upon which a local community depends and to constitute a suitable basis for a cooperative agreement. Due consideration shall be given to established lumbering operations for the purpose of protecting dependent communities against adverse economic effects. Each forest unit shall be established so as to promote the widest distribution of the benefits of sustained-yield management to all forest owners, operators, workers and dependent communities affected thereby.

§ 115.8 *Hearings concerning sustained-yield forest units and cooperative agreements.* Prior to the establishment of a sustained-yield forest unit, a public hearing shall be held in the vicinity of the lands involved, in accordance with section 1 of the act. Plans for the establishment of the unit and the execution of a cooperative agreement shall be considered at such hearing. The hearing will be conducted in the same manner as hearings concerning master units, as set forth in § 115.5. The representative or representatives of the Department of the Interior who conduct the hearing will upon its conclusion make appropriate recommendations to the Director concerning the establishment of the forest unit and the execution of the cooperative agreement, forwarding at the same time a copy of the minutes of the hearing. The Director thereafter will take such action as he deems appropriate and due notice thereof will be given to the public.

§ 115.9 *Notice of hearings concerning forest units and cooperative agreements.* The provisions of § 115.6 relative to notice of hearings concerning a master unit shall be applicable to the hearing in connection with the establishment of a sustained-yield forest unit and the execution of a cooperative agreement.

§ 115.10 *Cooperative sustained-yield agreements.* (a) The formulation and administration of cooperative agreements shall be guided by a policy of promoting the widest distribution of the

benefits obtainable under sustained-yield management, and of preventing monopoly.

(b) A prerequisite to participation in the cooperative agreement covering a sustained-yield forest unit will be either (1) ownership of land therein upon which timber is growing in commercial quantities, or of cutover and other lands which have been restocked or are suitable primarily for the production of timber in commercial quantities, or (2) sufficient rights or interests in the timber within the unit to enable the holder of such rights or interests to fulfill the obligations involved in commitment to the agreement.

(c) In each cooperative agreement the parties shall agree, in consideration of the benefits conferred by such agreement, that the forest management of their lands shall be conducted in such manner as may be necessary to effectuate the purposes of the act. Each such cooperative agreement shall provide for (1) the disposition of timber from the Federal land in the forest unit to cooperating parties without competitive bidding at appraised prices, in accordance with sustained-yield management plans formulated or approved by the Director; (2) the time, rate, and method of cutting timber from any lands committed to such agreement; (3) the terms and conditions, but not the price, upon which private cooperating parties may sell to any person timber from their lands; (4) the terms and conditions upon which additional lands, timber, or parties may be admitted to the agreement subsequent to its original execution; (5) the protection of the reasonable interests of other owners or operators within the unit, of workers and others affected by the execution of such cooperative agreement, and of communities dependent upon the timber within such unit; and (6) such other matters as the Director shall determine are necessary or proper to achieve the objectives of the act.

(d) The provisions of a cooperative agreement, except as therein otherwise provided, shall prevail, in the administration and disposal of O. and C. timber included in such agreement, over the regulations of the Secretary of the Interior theretofore applicable to such timber.

§ 115.11 *Qualifications.* Any individual who wishes to obtain the rights of a producer under a cooperative agreement will be required to furnish satisfactory proof, prior to the execution of the agreement, that he is a citizen of the United States, or, if a partnership or association, that each member thereof is such a citizen. A corporation which wishes to become a party to such an agreement must file a certified copy of its articles of incorporation to show that it was organized under the laws of the United States or of some state, territory, or possession thereof, as well as a statement setting forth the name, residence, citizenship, and amount of stock held by each of its stockholders, separately listing those of alien citizenship. A corporation organized outside of the State of Oregon must also file a certificate by the proper state official that it is authorized to do business within the State of Oregon. The Director, in his discretion, may require a corporate party to a cooperative agreement to furnish additional information as to the ownership of its stock and may deny participation in a cooperative agreement to a corporation, any of whose stock is owned, held, or controlled by citizens of another country.

§ 115.12 *Forms of agreement.* The standard form for cooperative agreements between the United States and owners and operators of non-federal lands, heretofore approved by the Secretary of the Interior, will be made available through the Area Administrator, Portland, Oregon. Changes in the form of agreement may be made by the Director, from time to time when such changes are warranted by peculiar circumstances in a forest unit, or to reflect the experience gained from the operation of previous agreements. All such changes shall be consistent with the retention by the Director, of the authority necessary to accomplish the objectives of the act. Where Federal lands not under the jurisdiction of the Secretary of the Interior are involved, different forms will likewise be adopted.

§ 115.13 *Execution of agreement.* The Director of the Bureau of Land Management, after consideration of the minutes of the hearing and the recommendation of the hearing officer, will execute the agreement if he is of the opinion that it will promote the achievement of the objectives of the act and is otherwise in the public interest. No rights shall accrue to a party under a cooperative agreement until the Director has executed the agreement on behalf of the United States

§ 115.14 *Exchanges.* Exchanges for the purpose of consolidating and segregating O. and C. timber lands, or which otherwise are in furtherance of the O. and C. timber management program are authorized by the act of July 31, 1939 (53 Stat. 1144), and the regulations thereunder. (See §§ 115.94–115.111.)

EXTENSION OF TIME TO CUT AND REMOVE TIMBER PURCHASED ON THE REVESTED AND RECONVEYED LANDS

AUTHORITY: §§ 115.15 to 115.24 issued under 46 Stat. 369.

§ 115.15 *Statutory authority.* The act of May 19, 1930 (46 Stat. 369) authorizes the Secretary of the Interior to extend the time for cutting and removing timber upon certain revested and reconveyed lands in the State of Oregon.

§ 115.16 *Where application should be filed.* Applications for an extension of time beyond that specified in the patent issued for timber purchased, on land revested in the United States under the act of June 9, 1916 (39 Stat. 218), or reconveyed to the United States under the act of February 26, 1919 (40 Stat. 1179), should be filed with the State Supervisor, Bureau of Land Management, Portland, Oreg.

§ 115.17 *Form and contents of application.* Applications may be submitted in longhand if plainly written, but preferably in typewritten form. Any application filed under the act of May 19, 1930 should describe the land, give the name of the land office and serial number under which the timber patent issued and briefly and concisely set forth, by the individual applicant or by an official of the company where the application has been filed by a corporation, the approximate amount of timber remaining on the land, together with a comprehensive statement showing the reason or reasons why the timber involved has not or can not be cut and removed during the period stipulated in the patent.

§ 115.20 *Contract and bond required prior to approval.* The applicant will be allowed 30 days from receipt of notice in which to execute and file a contract and bond, before favorable action is taken.

§ 115.22 *Granting extension of time.* When the contract and bond mentioned in § 115.20 have been submitted in the required form, the authorized officer shall grant such an extension for the cutting and removal of the patented timber as the facts disclosed by the record may warrant.

§ 115.23 *Responsibility of principal and surety in bonds.* The principal and surety in the bonds will, as the principal and surety in similar bonds submitted with the sale of timber in the first instance under the said act of May 17, 1928 (45 Stat. 597), or the act of August 28, 1937 (50 Stat. 874), be held responsible until the condition in the bond has been fulfilled without reference to the expiration of the extension granted.

§ 115.24 *Termination of rights under extensions.* In cases where the timber is cut and removed before the expiration of the time granted, rights under such extensions may be terminated by the authorized officer in the same manner as are rights under timber patents issued under the act of June 9, 1916 (39 Stat. 218).

REGULATIONS GOVERNING THE SALE OF TIMBER ON THE O. & C. LANDS

AUTHORITY: §§ 115.36 to 115.51 issued under sec. 5, 50 Stat. 875; 43 U. S. C. 1181e.

§ 115.36 *Statutory authority.* The act of August 28, 1937 (50 Stat. 874) authorizes the sale and disposal of timber from the Revested Oregon and California Railroad and the Reconveyed Coos Bay Wagon Road Grant Lands.

§ 115.37 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 115.36 to 115.51 and in contracts made thereunder:

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Area Administrator" means the Area Administrator, Area 1, Bureau of Land Management, or his authorized representative.

(c) "State Supervisor" means the State Supervisor, Oregon, Bureau of Land Management, or his authorized representative.

(d) "Revested and Reconveyed Lands" means the Revested Oregon and California and Reconveyed Coos Bay Wagon Road Grant Lands, and other lands administered by the Bureau of Land Man-

agement under the provisions of the act of August 28, 1937 (50 Stat. 874).

(e) "O. and C. Lands" means the Revested and Reconveyed lands.

(f) "District Forester" means a district forester of the Bureau who is stationed in Oregon and in or west of Range 8 East, Willamette Meridian, Oregon.

(g) "Authorized Officer" means the Government official who has been duly authorized to sign a contract or issue a permit for the disposal of timber from the O. and C. lands, and to supervise operations and take action under such contract or permit.

(h) "Officer in Charge" means such officer as may be designated by the authorized officer to supervise operations under such contract or permit.

(i) "Timber" means standing and downed trees, logs, and forest products of any type.

§ 115.38 *Disposals which must be made under other statutes; rights under other statutes.* On the Revested and Reconveyed lands the owner of any patented or unpatented mining claim which was located on or after August 28, 1937, shall have no title to the timber, possessory or otherwise, except that he may use timber not disposed of by the United States in the development and operation of the mine only, as provided under the act of April 8, 1948 (62 Stat. 162) and the applicable regulations (§§ 185.37a to 185.37e of this chapter). The owner of a patented or unpatented mining claim which was located prior to August 28, 1937, on Revested and Reconveyed lands classified as timberlands under the act of June 9, 1916 (39 Stat. 218) is not vested with title to the timber thereon but may use so much thereof as may be necessary in the development and operation of his mine until such time as such timber is sold by the United States.

§ 115.39 *Sale and appraisal.* (a) All timber to be sold under the provisions of the act of August 28, 1937, shall be appraised and in no case shall be sold at less than the appraised price. Such timber shall be sold to a responsible, qualified purchaser under the appropriate form of contract. All sales, other than those specified in paragraphs (b), (c), (d) and (e) of this section, shall be made only after inviting competitive bidding through publication and posting and the submission of either sealed or oral bids.

(b) When the authorized officer determines that it is unlikely that competitive interest exists, he may, in his discretion, without publishing, posting, or calling for bids, sell to or for the benefit of any one qualified purchaser, in any twelve consecutive month period, (1) timber on the revested and reconveyed lands not to exceed an estimated volume of 100 M bd. ft., or (2) other forest products on such land, the estimated appraised value of which is not more than the current average market value of 100 M bd. ft. of O. and C. timber.

(c) When thinning or sanitation cutting on small isolated tracts of mature or overmature timber in the judgment of the authorized officer is required, he may sell the timber or other forest products to be removed for such purpose without publishing, posting, or calling for bids. There shall be no limitation on the number of such noncompetitive sales which may be made to one purchaser in any given twelve month period, but no such sale shall exceed an estimated volume of 100 M bd. ft. or, for forest products, an equivalent value.

(d) The authorized officer may without publishing, posting, or calling for bids sell to the holder of an O. and C. timber sale contract up to 500 M bd. ft. of windthrown, insect-damaged, or fire-killed timber which is on or adjacent to the contract area when in his judgment such sale is in the public interest.

(e) When a road is constructed with Government funds, the timber on the right-of-way may be sold to the contractor constructing the road at the appraised price without publishing, posting or calling for bids.

§ 115.40 *Qualifications of bidders.* A bidder at a sale of timber from O. and C. lands may be (a) an individual who is a citizen of the United States, (b) a partnership composed wholly of such citizens, (c) an unincorporated association composed wholly of such citizens or (d) a corporation organized under the laws of the United States or of a State or Territory thereof and authorized to transact business in the State of Oregon. A bidder prior to being declared the successful bidder must supply evidence of ability to comply with the financial obligations and, as required by the authorized officer, with the other terms of the contract.

§ 115.41 *Timber sale plan.* Plans for the sale of timber during a calendar year will be developed by the State Supervisor prior to such year. At or before the commencement of such calendar year, or as soon thereafter as the timber sale program for such year has been formulated, the plan will be advertised in a newspaper of general circulation in the marketing area in which the timber is located. Notwithstanding such advertising, the State Supervisor may, subsequent thereto, change, alter, or amend the timber sale plan.

§ 115.42 *Publication and posting.* (a) In addition to the advertisement described in § 115.41, notice of any proposed competitive sale must be published prior to the time of such sale at the expense of the Government. The notice of sale of timber on revested and reconveyed lands shall be published on the same day weekly for at least two consecutive weeks in a newspaper published within the marketing area in which the timber is located (as established by the Secretary of the Interior or the Director of the Bureau of Land Management). In the case of salvage sales of windthrown, insect-damaged or fire-killed timber, the notice shall be published at least once and the sale shall be held not less than one week after such publication.

(b) The notice must state specifically where complete information can be obtained.

§ 115.43 *Oral auction sales.* The authorized officer may conduct sales at oral auction bidding where the timber is tributary to a privately owned and maintained access road which the United States has the right to use and to permit others to use pursuant to an agreement under this part.

§ 115.44 *Deposits with bids.* Deposits shall be submitted with each bid. Such deposits shall be at least 20 percent of any estimated stumpage value which is less than $1,000; at least 10 percent of any estimated stumpage value between $1,000 and $10,000; at least 5 percent of any estimated stumpage value between $10,000 and $100,000; and at least 3 percent of any estimated stumpage value exceeding $100,000. In the discretion of the authorized officer, greater deposits may be required by the notice of sale. Every deposit must be made in cash or by money order, cashier's check or certified check made payable to the Bureau of Land Management. Deposits with bids are required as a guarantee of good faith, and when a bond is not executed the deposit of the successful bidder will be retained until the contract is completed. In the final settlement the deposit will be credited as a portion of the whole amount due for the timber purchased and any balance returned, provided the Purchaser has faithfully performed the terms of the contract. If a bond is furnished and accepted, the deposit will be credited as a first installment in the payment for the timber. Checks of unsuccessful bidders will be returned upon the award of the bid.

§ 115.45 *Action on bids.* (a) In the event of tie high sealed bids, the high bidder shall be determined by lot. In oral bidding, except for the first bid, no bid will be considered or recorded which is not higher than the preceding bid.

(b) Where no bid is received within the time specified in the notice of sale for the receipt of bids and if the authorized officer determines that no significant rise has occurred in the market price of the timber over the appraised price, he may in his discretion keep open the period for the receipt of bids for not to exceed an additional 90-day period and may sell the timber without readvertising in the following manner:

(1) If during the extended period for the receipt of bids, a written, sealed offer is made for the timber at not less than the advertised minimum appraised price accompanied by the minimum deposit, notice of such offer shall be posted in the office of the district forester and in the office of the State supervisor for a period of not less than 5 days from receipt thereof. If no other such offers are received during the 5-day posting period, the contract may be awarded to the sole bidder, if qualified.

(2) If, however, during such posting period, other offers are received, then all offerors at the end of the original posting period of 5 days shall be permitted to participate in an oral auction sale at which no oral bid will be received which is less than the highest sealed bid received during the 5-day period. The time and place of the oral auction will be designated by the authorized officer and the sealed bidders notified thereof.

(3) Timber which has been determined by the authorized officer to be

salvage in nature, which has been advertised as such, and which is sold under the terms of this section because no bids were received within the time specified in the notice of sale, may be manufactured in any O. and C. marketing area which has been established by the Secretary of the Interior, or the Director, Bureau of Land Management.

(c) In any sale of timber, if the contract amount is not paid in full in advance, the authorized officer, in his discretion, and either before or as a condition of the award of the contract, may require a financial statement or other information concerning the ability of the bidder to perform the obligations of the contract, as well as data covering plant, equipment, etc.

(d) The right is hereby reserved to waive technical defects in the advertisement; to reject all bids, or to award the timber for the amount of the highest bid to the next highest qualified bidder when the officer authorized to approve the contract shall deem the high bidder unqualified to fulfill the contractual requirements of the advertisement, or to other than the highest bidder when necessary, pursuant to the act of August 28, 1937 (50 Stat. 874), in order to provide a continued supply of timber to local industry, so as to assure the permanence of the community which is dependent upon such industry.

(e) In addition to the foregoing, if the successful bidder is (1) an individual, he may be required to furnish a statement that he is a native born citizen or evidence that he is a naturalized citizen; (2) a partnership or an unincorporated association, it may be required to file with the signing officer a certified copy of its written articles of partnership or association and a statement or evidence of the citizenship of each of its members; (3) a corporation, it may be required to file with the authorized officer a certified copy of its articles of incorporation. If not organized under the laws of the State of Oregon, such corporation may also be required to file a certificate showing the corporation's authority to do business in the State of Oregon.

§ 115.46 *Contracts.* (a) For sales of timber made under § 115.39 contracts shall be prepared on standard forms, the needs of the sale determining which form is to be used. No essential departure from the requirements of the standard contract forms may be authorized except with the approval of the Secretary. Three copies of the contract shall be transmitted to the successful bidder together with notice that he will be allowed 30 days in which to execute and return the contracts and to furnish any bond required by § 115.47 and any other information required by or under the authority of §§ 115.45 (d) and (e), together with the initial payment or payment in full as may be required under § 115.48.

(b) If the successful bidder fails within 30 days to comply with the requirements of paragraph (a) of this section, then his bid may be rejected and that part of his deposit representing the minimum deposit specified in this part shall be retained as liquidated damages.

§ 115.47 *Bonds.* In sales of timber in which the value of the stumpage does not exceed $5,000 the initial deposit may be retained as a cash bond until the contract is completed. In sales of timber in which the stumpage value exceeds $5,000 but is not over $10,000 a bond of approximately 20 per cent of the value of the timber will be required. In sales of timber in which the stumpage value exceeds $10,000 but is not over $100,000 a bond in an amount of approximately 10 per cent of the estimated value of the timber will be required and in sales in which the stumpage value exceeds $100,000 a bond will be required in an amount to be fixed by the authorized officer. Ordinarily corporate surety bonds will be required. However, if personal sureties are furnished in lieu thereof, such sureties will be accepted and the bond approved only upon a clear showing by the principals and the bondsmen that they are fully capable of carrying out the terms of the agreement.

§ 115.48 *Payment.* (a) No part of the timber sold under the contract may be severed, extracted, or removed unless advance payment has been made therefor.

(b) Payments for timber shall be required in advance of cutting either as a single payment or in the form of installments. In sales having a stumpage value of not more than $1,000 payment will ordinarily be required in full before cutting is started. In sales of timber having a stumpage value of $1,000 to $5,000 payment shall be made in installments of not less than $1,000 each; in sales of from $5,000 to $25,000 in installments of not less than $2,500 each, and in sales of from $25,000 to $100,000 in installments of not less than $5,000 each: *Provided*, That the last installment on any sale may be in an amount equal to the balance due and payable thereon. In sales in which the stumpage value is in excess of $100,000 the amount of the installments shall be determined at the time such sales are authorized: *Provided*, That the amount so fixed shall not be less than $5,000 for each installment.

(c) In any sale of timber for which payment in installments is permitted, the purchaser shall make an initial payment equivalent to two installments as follows: One installment prior to the approval of the contract and the second installment prior to the commencement of cutting or extraction operations.

(d) On the basis of his initial payment of two installments, the purchaser may, under the contract, sever timber of a value not to exceed one-half of such initial payment. Remaining installments shall become due and payable without prior notice whenever the value of the timber severed or the materials extracted under the contract shall equal the sum of the payments made by the purchaser (exclusive of one-half of the initial payment as herein provided).

(e) All payments hereunder shall be made in cash, or by money order, or check made payable to the Bureau of Land Management.

§ 115.49 *Reappraisals.* No reappraisals of timber sold under the contract will be made during the contract term if it is for 2 years or less. If the term of the contract is for more than 2 years, the authorized officer shall, prior to the commencement of the third and each subsequent year, reappraise the timber covered by the contract remaining to be severed or extracted, in accordance with standard appraisal techniques. If the value of the timber remaining uncut is found upon reappraisal to exceed the contract price, timber cut subsequent to such reappraisal shall be charged for at a price not to exceed the reappraisal value. No price less than the contract price shall be established. Notice of the adjusted prices to be fixed under the contract shall be sent, registered mail, by the authorized officer to the purchaser at least 30 days before the beginning of the year. Not later than 30 days after receipt of notice, the purchaser may submit his objections, if any, in writing to the signing officer. In the absence of such objections, or if the authorized officer does not find the objections sufficient and so advises the purchaser, or subject to final determination of an appeal, if taken, from the decision of reappraisal of the timber, the adjusted prices shall be in effect and govern the payments to be made for all timber severed or extracted during the new contract year.

§ 115.50 *Permits to mining claim owners, Revested and Reconveyed lands.* The owner of any unpatented mining claim located upon revested and reconveyed lands shall file an application with the district forester for permission to cut and use the timber thereon in accordance with § 185.37d of this chapter.

§ 115.51 *Appeals.* A person aggrieved by any final official action regarding his contract, application for permit, or permit may make an appeal pursuant to the Rules of Practice (Part 221 of this chapter).

FOREST PRACTICE RULES AND GENERAL CONTRACT STIPULATIONS

AUTHORITY: §§ 115.54 to 115.84 issued under sec. 5, 50 Stat. 875; 43 U. S. C. 1181e.

§ 115.54 *Forest practice rules and general contract stipulations.* The forest practice rules and general contract stipulations in §§ 115.55 to 115.84 are hereby prescribed for use in all contracts for the sale of timber from revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands situated in the State of Oregon, except as special provision shall be made by the Secretary of the Interior with respect to particular sales.

§ 115.55 *Definitions.* (a) The term "state supervisor" as used in these forest practice rules and contract stipulations signifies the State Supervisor, Oregon, Bureau of Land Management. His office and principal place of business shall be in the city of Portland, Oregon.

(b) The term "officer in charge" whenever used in §§ 115.54 to 115.84 signifies the forest officer of highest rank assigned to the administration of timber sales within the District in which the sale is located, or such other officer as

may be designated by the state supervisor, to supervise the sale.

(c) Foresters, logging engineers, log scalers and other officers authorized to administer timber sales will receive their instructions from the state supervisor, or the officer in charge.

§ 115.56 *Basis of sale.* Timber shall be sold on the basis of cruise, tree scale or log scale, and no timber except that necessary for improvements or that which interferes with the economical conduct of a logging enterprise shall be cut unless it has been marked or designated in advance by the officer in charge. Where volumes are determined on the basis of a scale of the standing trees, such volumes shall be checked for accuracy by a periodic scaling of the logs on sample areas. The purchaser shall be permitted to witness such check scaling. Where the volume is determined by log measurement the Scribner Decimal C log rule will be used in scaling the logs.

§ 115.57 *Deposits.* Cash deposits in advance of cutting will be required as stipulated in the contract. The title to standing timber or forest products covered by the contract will not pass to the purchaser until such timber or products are paid for. If at any time the stumpage value of the timber cut and unpaid for shall approach or equal the total amount then on deposit, an additional advance deposit shall be required.

§ 115.58 *Designation of logging areas.* The priority of areas to be logged, when economically feasible, may be designated by the officer in charge if such action is necessary to prevent deterioration from fire, insects or disease, and to fully protect the interests of the United States.

§ 115.59 *Selective logging.* The logging of areas in such manner as to preserve a part of the merchantable timber, promote the growth of young trees, or preserve the forest cover, shall be practiced on all lands chiefly valuable for the production of timber. The general plan of selective logging to be followed may take any of the various forms of tree selection, group selection or area selection, or combinations thereof, which in the judgment of the officer in charge will assure the successful conservation and protection of the resources under development.

§ 115.60 *Reservations for public purposes.* In the discretion of the officer in charge, a strip of suitable width on each side of lakes, streams, roads, and trails and in the vicinity of camping places and recreation grounds may be reserved, in which little or no cutting will be allowed. In carrying out the selective cutting in these areas all reasonable care shall be taken to avoid injury to the remaining standing timber. Within these reserved areas trees shall be felled in such manner as to leave the right-of-way, streams and lake shores free from slash deposits.

§ 115.61 *Protection of young growth.* The young growth shall be protected as fully as possible in every branch of the logging operations and its use in the construction of improvements may be restricted by the officer in charge.

§ 115.62 *Fire code.* Section 5 of the act of August 28, 1937 (50 Stat. 875), provides in part, "That rules and regulations for the protection of the revested lands from fire shall conform with the requirements and practices of the State of Oregon insofar as the same are consistent with the interests of the United States", and proceeding in accordance therewith, contractors will be required to comply with applicable provisions of the State fire code, as well as the following:

(a) The slash resulting from logging operations shall be burned only under written permit from the officer in charge, acting in cooperation with the State Forester, or his duly authorized representative. In the Douglas fir type on areas logged in the group or area selection manner the burning of slash, where required, shall be carried out in accordance with the best and safest practices recognized in the "Forest Practice Handbook" of the Pacific Northwest Loggers and the West Coast Lumbermen's Associations. Adequate special protection shall be given to all reserved timber. Proper fire trails shall be constructed as required by the officer in charge where necessary in advance of slash burning to protect green timber areas, islands of immature timber and previously logged areas that have been cleared of slash. Where the tree selection method of logging is used special methods economically possible shall be worked out by the officer in charge, in cooperation with the State Forester and the purchaser. In the Ponderosa pine type slash disposal shall be carried out in accordance with the Rules of Forest Practice (Oregon) of the Western Pine Association. Special provisions may be developed by the officer in charge, in cooperation with the State Forester and the purchaser.

(b) Smoking and lunch fires shall be restricted during periods of fire hazard and shall be permitted only in especially prepared places.

(c) The contractor shall be required to stop logging operations in especially hazardous fire weather upon request from the officer in charge.

§ 115.63 *Responsibility for damage.* The contractor shall be held accountable for any damage to virgin timber, reserve stands or young growth, occurring as a result of slash burning or other fires originating on the sale area or adjacent lands and shall be required to pay for such damage on the basis of an appraisal to be conducted by the authorized officer; provided the purchaser, his subcontractors or employees are directly or indirectly responsible for the origin or spread of the fire.

§ 115.64 *Sales; rights-of-way.* Other sales within a sale area may be made of products and kinds of timber not sold under a previous sale, provided such sales will not, in the judgment of the officer having authority to make such sale, interfere with the operations of the previous purchaser. The previous purchaser shall not be held liable for any damage by fire or other causes for which such additional purchasers are directly or indirectly responsible. Rights-of-way may be granted through portions of the sale area during the contract period, provided they do not interfere with the operations of the previous purchaser.

§ 115.65 *Firewood; improvements.* As far as possible only unmerchantable timber other than young growth shall be used for firewood and improvements, and material so used will not be charged to the purchaser. Wood and improvements taken from merchantable material will be scaled or measured, charged, and paid for at its appraised value.

§ 115.66 *Stumps.* Stumps will be cut low so as to avoid unnecessary waste.

§ 115.67 *Waste.* Unnecessary waste of merchantable timber not previously paid for in high stumps, butts, tops, breaks, skids, and partially sound logs and all trees designated for logging which are not logged and all trees which are left felled or lodged or badly damaged by the logging operations will be scaled for their merchantable contents and charged against the purchaser.

§ 115.68 *Carelessness; breakage.* Carelessness on the part of fellers or other employees of the purchaser that results in unnecessary breaking of trees not previously cruised or scaled will be penalized by scaling such trees full as if they had not been broken.

§ 115.69 *Sanitation.* The vicinity of logging camps and stables will be kept in a clean and sanitary condition, and rubbish will be removed and properly burned or buried during the occupancy and upon the removal of the camps and stables.

§ 115.70 *Pollution; obstruction of streams.* Streams shall not be obstructed by felled trees or otherwise, nor shall they be polluted by sawdust, manure, or any other refuse from a camp or mill.

§ 115.71 *Utility facilities.* Existing telephone lines, fences, roads, trails, and other improvements shall be protected as far as possible in the logging operations, and whenever they are broken or obstructed the purchaser shall promptly repair the damage. If he fails to make the repairs promptly, the officer in charge may make the repairs and purchasers may be charged with double the expense thereof.

§ 115.72 *Necessary improvements.* Improvements necessary to execute his contracts, such as camps, sawmills, railroads, roads, telephone lines, chutes, bridges, sluices, and dams may be constructed and maintained by the purchaser on and across the contracted area, subject to regulation by the state supervisor.

§ 115.73 *Existing improvements.* Improvements already on the area which are necessary for logging purposes may be used by the purchaser, subject to regulation by the state supervisor.

§ 115.74 *Time for removal of improvements.* The time limit for the removal of the improvements and other property of the purchaser is 1 year after the expiration of the contract.

After that time the title to improvements, including camps, will attach to the land, and no personal property of the purchaser will thereafter be removed except with the written consent of the officer in charge: *Provided*, That improvements necessary for the logging of other O. & C. timber may be left for such time and on such terms as may be prescribed by the state supervisor.

§ 115.75 *Extension of time.* Extension of time for the performance of any contract may be granted the purchaser by the officer approving the contract, in his discretion and subject to such conditions as he may impose.

§ 115.76 *Extension of time denied.* If extension of time to cut and remove the timber is not granted by the officer approving a contract, the purchaser shall not cut timber after the expiration of the contract, but he may remove the timber previously cut and paid for, within one year of the expiration of the contract. If not removed within the time allowed, the title will revert to the United States notwithstanding the purchaser may have paid for the timber.

§ 115.77 *Assignments by purchaser.* Assignment of any contract in whole or in part by the purchaser will not relieve him of his contract obligations unless the assignment is approved by the officer approving the contract and the bond is satisfactorily renewed.

§ 115.78 *Records; reports.* The purchaser shall furnish the state supervisor annually on forms provided therefor, a report of the amount of lumber sold and the average grade prices received f. o. b. the mill during the preceding year; the amount of ties and timber sold, with average price per M; and the amount of by-products sold and the total receipts for the same, and such other information as may be requested. These reports will be regarded as confidential.

§ 115.79 *Suspension of operations.* Suspension of the purchaser's operations may be made by the authorized officer after due notice if any requirements of the contract and of the regulations in this part are disregarded and until there is satisfactory compliance. Failure to comply with any one of the requirements of the contract after written notice addressed to the purchaser by the officer in charge will be ground for revocation by the officer approving the contract of all rights of the purchaser under this and other contracts, and the forfeiture of his bond and of all moneys paid, and the purchaser will be liable for all damage resulting from his breach of contract.

§ 115.80 *Appeal.* An appeal as provided by the Rules of Practice of the Department of the Interior (Part 221 of this chapter) may be made.

§ 115.81 *Bond unsatisfactory.* Whenever any bond furnished to guarantee obligations under a sale shall be unsatisfactory to the officer approving the sale he may require a new bond which shall be satisfactory to him.

§ 115.82 *Default.* Willful failure of the purchaser to complete his contract or to log as promptly as economically possible an area damaged by fire, wind, insects, or other causes, or the commission by him of any act for which the officer approving his contract shall declare the contract forfeited, will render the purchaser and his bondsmen liable for the depreciation in the value of the remaining timber on an estimate of value and quantity to be made under the direction of the officer approving this contract.

§ 115.83 *Persons excluded.* No Member of or Delegate to Congress shall be admitted to any share, part, or interest in any contract, or to any benefit derived therefrom (see 18 U. S. C. 431–433), and no person undergoing a sentence of imprisonment at hard labor shall be employed in carrying out any contract (see Executive order of May 18, 1905).

§ 115.84 *Forms.* Forms for application, bid, contract, and bond heretofore approved by the Secretary of the Interior will be made available through the Director of the Bureau of Land Management.

EXCHANGE OF REVESTED AND RECONVEYED LANDS

AUTHORITY: §§ 115.94 to 115.111 issued under sec. 2, 53 Stat. 1145.

§ 115.94 *Forest policy.* The act of August 28, 1937 (50 Stat. 874), laid the foundation and framework of a new forest policy for the revested and reconveyed Oregon grant lands. This measure provides for the conservation of land, water, forest, and forage on a permanent basis; the prudent utilization of these resources for the purposes to which they are best adapted; and the realization of the highest current values consistent with undiminished future returns. It seeks, through the application of the policy of sustained-yield management, to provide perpetual forests which will serve as a foundation for continuing industries and permanent communities.

§ 115.95 *Lands subject to exchange.* The Oregon grant lands which are subject to exchange aggregate about 2.2 million acres, and are located in 18 counties in western Oregon. The O. and C. lands are intermingled with private holdings, State lands, unreserved public domain, and lands reserved for national forests and national parks. Where the grant lands are intermingled in checkerboard arrangement with other public lands, important administrative problems on both would be simplified by segregating them from each other and concentrating them in solid blocks. Conflicts in land use which exist in certain localities may be solved by rational land use zoning and application of the exchange procedure to segregate the lands according to the dominant use.

§ 115.96 *Statutory authority.* The act of July 31, 1939 (53 Stat. 1144), authorizes and empowers the Secretary of the Interior, in his discretion, in the administration of the act approved August 28, 1937 (50 Stat. 874), to exchange any land formerly granted to the Oregon and California Railroad Company, title to which was revested in the United States pursuant to the provisions of the act of June 9, 1916 (39 Stat. 218), and any land granted to the State of Oregon, title to which was reconveyed to the United States by the Southern Oregon Company pursuant to the provisions of the act of February 26, 1919 (40 Stat. 1179), for lands of approximately equal aggregate value held in private, or State, or county ownership, either within or contiguous to the former limits of such grants, when by such action the Secretary of the Interior will be enabled to consolidate advantageously the holdings of lands of the United States. The act further provides that all lands and timber secured by the United States pursuant to any such exchange shall be administered in accordance with the same provisions of law as the revested and reconveyed lands exchanged therefor, and that parties to the exchange may make reservations of easements, rights-of-way, and other interests and rights. Under this legislation the Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations as may be necessary to carry out the provisions of the law.

§ 115.97 *Primary objectives.* Concisely stated, the primary objectives sought by the act of July 31, 1939, include the following:

(a) Simplification of administration, improvement, and protection through the consolidation of holdings and the reduction of diversified small ownerships.

(b) The development of a balanced distribution of age classes of timber with a view to promoting the policy of sustained-yield forest management provided for in the act of August 28, 1937.

(c) The establishment of natural cooperative sustained-yield management units, with a view to sustaining dependent industry, dependent labor and dependent communities.

(d) The effective administration of cooperative forest units.

(e) Aid in establishing economic operating units for combined agricultural and grazing enterprises, where such enterprises appear to provide the most desirable use of the land.

(f) The protection of recreational and other values against impairment or destruction.

§ 115.98 *Exchange policy.* (a) Since the exchange authority of the act of July 31, 1939, has been provided for the specific purpose of promoting the policy of sustained-yield management laid down for the Oregon lands, it is essential that the formulation of tentative sustained-yield unit plans precede the actual carrying out of the exchange program. This does not mean that the planning of the exchange program will be held in abeyance pending the final establishment of sustained-yield management units, since it is expected that exchange plans will be outlined concurrently with the setting up of sustained-yield units and an action program initiated as soon as the boundaries thereof are fully determined.

(b) It may be broadly stated that the lands and timber to be acquired under

authority of the act of July 31, 1939, should be of a character and so located that the acquisition thereof will promote the conservation principles laid down by the act of August 28, 1937. Lands and timber which will be disposed of by exchange should be of such a type and so located that the transfer of these resources to private ownership will not interfere with the carrying out of a regional program of cooperative sustained-yield forest management in western Oregon.

(c) Generally speaking, exchanges will not be authorized where the exchange would create a serious disturbance of existing economic conditions; or in cases where the exchange would operate materially to reduce the revenues which should accrue to the counties under authority of the act of August 28, 1937. Neither can approval be given to the exchange of lands which would prevent the free and ready access of the Government in the development of the resources under its jurisdiction, nor the passing of title to which would in any way interfere with the policy of sustained-yield forest management which governs the administration of the O. and C. lands.

(d) Land exchange applications will be accepted and given consideration as occasion may arise. However, the right is reserved by the Government to reject any and all applications. Applications may be received upon approval of this part; but no preference in action will be granted because of priority of application. Upon the establishment of sustained-yield units the Government will consider all applications for exchange within the boundaries thereof and accept those which are found most advantageous in attaining the primary objectives of such units.

§ 115.99 *Qualifications of applicants.* Applications may be filed by the State of Oregon, by the several counties thereof either wholly or partially within the former limits of the grants, by citizens of the United States, by associations of such citizens, or by corporations organized under the laws of the United States or any State, Territory, or district thereof, authorized under its charter to own and sell real property and authorized to do business in the State of Oregon. Evidence of citizenship or of incorporation must be filed with the application, and when the applicant is a corporation a certified copy of the order or direction of the board of directors, or other governing body, to effect such exchange should accompany the application.

§ 115.100 *Application for exchange.*[1] (a) Applications, in duplicate, should be addressed to the Director of the Bureau of Land Management and filed in the land office having jurisdiction over the selected lands, and should set forth, by legal subdivisions of the public land surveys, the lands offered to the Government and the lands selected in exchange therefor. The application should contain the full name and post-office address of the applicant; state that the applicant is legally capable of consummating the exchange; that he is the owner of the lands offered in exchange; that such offered lands are not the basis of another selection or exchange; state whether any reservation or easements, rights of use, and other interests and rights in or to the offered lands are desired, and what use thereof is contemplated. It should also show the reservations or easements which, if made by the United States, on the selected land will be acceptable to the applicant.

(b) An application by the State should be accompanied by a certificate of the selecting agent showing that the application for exchange is made under and pursuant to the laws of the State and that the State is the owner of the lands offered in the proposed exchange. In the case of an application for exchange by a county, there should also be furnished a certificate of the proper officer or officers of the county, under seal, to the effect that the application is made under and pursuant to the laws of the State.

(c) The application must be accompanied by a statement by the applicant or by some credible person who is familiar with the character, condition and value of the selected lands and the character, condition and value of the lands offered in exchange. This statement must be in duplicate. The statement must specifically describe by subdivision, section, township and range, the lands offered to the Government and the lands selected in exchange therefor, and show the following: whether there is within the limits of any of the selected land any known deposit of coal, or any lode or placer deposit, oil, or other valuable mineral; whether said land contains any salt springs or known deposits of salt in any form sufficient to render it chiefly valuable therefor; whether any portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; whether said land is essentially nonmineral in character and has upon it any mining or other improvements; that the selected lands are unappropriated and are not occupied, claimed, improved or cultivated by any person adversely to the applicant; and give as full data as are available concerning the character, and the amount, kind, and value of timber upon each smallest or forty-acre subdivision of the lands offered in exchange. This statement must also show that the lands offered and the lands selected are approximately of equal aggregate value, consideration being given to any reservations or easements which may be made by the applicant or the United States. The values of both offered and selected lands are to be determined by the authorized officer of the Department of the Interior. The application must be accompanied with a corroborated statement relative to springs and water holes on the selected lands, in accordance with existing regulations pertaining thereto (§§ 292.1 to 292.9 of this chapter). Evidence of citizenship, or of incorporation, must be filed with the application.

§ 115.101 *Costs and fees.* The applicant shall agree to pay the cost of publishing notices of the exchange. Filing fees must be paid by the applicant at the rate of $2.00 for each 160 acres, or fraction thereof, of the lands selected. The act provides that no fee shall be charged in applications filed by the State of Oregon or any county thereof, except one-half of the cost of publishing notice of the proposed exchange.

§ 115.102 *Preliminary evidence required.* (a) The applicant shall, upon request, submit proof of publication of notice of the exchange, a deed of conveyance of the offered lands, and in all cases, except as hereinafter provided, an abstract of title showing that at the date of execution of the deed valid title to the lands covered by such deed was vested in the party making the conveyance. The abstractor's certificate must show that the lands as conveyed were free from judgments or mortgage liens, pending suits, taxes, tax assessments, or other encumbrances. If such certificate does not cover taxes and tax assessments, the applicant must furnish a certificate by the proper official of the county in which the lands are situated showing that all taxes or assessments levied or assessed against the lands conveyed to the United States, or that could operate as a lien thereon, have been duly paid; whether there is a tax or assessment due on such lands or that could operate as a lien thereon but which tax or assessment is not yet payable and that there are no unredeemed tax sales and no tax deeds outstanding against such lands conveyed to the United States. Such abstract must be prepared and authenticated by an abstractor or by an abstract company acceptable to the Bureau of Land Management, and must show that the title memoranda contained therein are a full, true, and complete abstract of all matters of record or on file in the offices of the recorders of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, suits, pending suits, judgments, liens, lis pendens, or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the offices of the clerks of courts of record affecting in any manner whatever the title to the lands to be conveyed to the United States.

(b) Where the State is the applicant and the offered lands were acquired by grant from the United States, the State may furnish in lieu of an abstract of title a certificate of the proper State officer showing that the offered lands have not been sold or encumbered by the State, and a certificate by the Recorder of Deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way encumber title to the offered lands is of record or on file in his office; but in all cases of lands offered by the State which have

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

been held in private ownership and were acquired by the State from such source, including cases where any of the lands offered by the State have been sold by it and title again acquired by it the State will be required to furnish an abstract of title.

§ 115.103 *Publication and posting.* The publication notice must give the name and post-office address of the applicant, serial number and date of the application, act under which application is filed, describe both the offered and selected lands in terms of legal subdivisions of the public land surveys, and state that the purpose of the notice is to permit all persons claiming the offered or selected lands or having bona fide objections to such exchange an opportunity to file their protests or other objections in the land office within 45 days from the date of the first publication, together with evidence that a copy of such protest or objection has been served upon the applicant. The cost of publication of the notice must be at the expense of the applicant, unless such applicant is the State of Oregon or any county thereof, in which case each newspaper will collect one-half of the cost of publication from the applicant and submit proper vouchers to the United States for the remainder. The notice must be published once a week for four consecutive weeks in some designated newspaper of general circulation in the county or counties in which are situated the lands offered to the United States, and in the same manner in some like newspaper published in any county in which are situated any lands selected in exchange. In the event the newspaper is a daily, the publication should be made in the Wednesday issue thereof. Proof of publication of notice shall consist of a statement by the publisher, or foreman, or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published.

§ 115.104 *Deed of conveyance.* The deed of conveyance to the United States must be executed and acknowledged in accordance with the laws of the State, and must contain covenants of general warranty except where the grantee is prohibited by law from executing such a conveyance. The United States of America should be named as grantee and the deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by the act of July 31, 1939 (53 Stat. 1144)." Where the deed of conveyance is by a private corporation, it should be recited in the instrument of transfer that the deed was executed pursuant to an order or by the direction of the board of directors or other governing body, and a copy of such order or direction must accompany such instrument of transfer and both should bear the impression of the corporate seal.

§ 115.105 *Taxes.* In case taxes have been assessed or levied on lands conveyed to the United States, and such taxes are not due and payable until some future date, the applicant in addition to the certificates above required, relating to taxes and tax assessments, may make a deposit with the Bureau of Land Management of at least twice the amount of the taxes for the preceding year with evidence as to the amount of the taxes for such year, or may furnish a bond with qualified corporate surety for such sum, in order to indemnify the United States against loss for the nonpayment of the tax so assessed or levied.

§ 115.106 *Tax title lands.* Where the offered lands have been acquired by the applicant through tax foreclosure proceedings, it must be shown that the foreclosure was a matter of judgment and decree of the proper court; that the sheriff or other proper official has issued a deed based upon the judgment and decree of the court, and that the period of time provided by the laws of the State of Oregon within which to bring action, suit, or proceeding of whatever kind or nature, for the purpose of determining the validity of the sale, has expired. As part of the abstract of title to the offered lands, the applicant shall submit the foreclosure proceedings in full.

§ 115.107 *Title insurance report or preliminary policy of title insurance.* In lieu of the abstract of title required by § 115.104, the applicant may furnish a title report, preliminary policy of title insurance, or certificate of title with respect to the offered lands issued by a solvent and properly qualified title insurance company which is acceptable to the Department of the Interior. Such title report, preliminary policy, or certificate (a) shall contain a statement to the effect that, upon approval of the exchange and the recording of the deed of conveyance to the United States, the insuring company will issue a final policy of title insurance or a certificate of title, as the case may be, in an amount not less than the value of the offered lands as determined by the Bureau of Land Management, guaranteeing valid title to the offered lands in the United States as of the date such deed is recorded, and (b) shall set forth all of the conditions and stipulations of such proposed final policy or certificate. A policy of title insurance or a certificate of title when furnished must be free from conditions and stipulations not acceptable to the Department of the Interior. A certificate of title will be accepted only where the certificate is made to the Government or expressly for its benefit and where the interests of the Government will be sufficiently protected thereby. (Opinion of the Solicitor, August 14, 1934, M. 27768; § 211.1 of this chapter.)

§ 115.108 *Mineral land excepted.* Mineral lands may not be selected in exchange proceedings hereunder.

§ 115.109 *Coos Bay Wagon Road land.* An applicant under the exchange act selecting Coos Bay Wagon Road grant lands must offer as base in lieu thereof lands situated in the same county as the lands selected. (See act of May 24, 1939, 53 Stat. 753). The advantageous consolidation of the holdings of lands of the United States, required under the exchange act, may be with either the reconveyed or revested lands, or with both.

§ 115.110 *Conveyed lands.* All lands conveyed to the United States pursuant to the act of July 31, 1939 (53 Stat. 1144), and under §§ 115.94 to 115.111 shall upon acceptance of title, become a part of the revested and reconveyed lands and shall be managed, as a part of such lands, in the manner prescribed by the act of August 28, 1937 (50 Stat. 874).

§ 115.111 *Action by the Bureau of Land Management; additional evidence required.* (a) If the deed and abstract of title, title report, preliminary policy of title insurance, or certificate of title have been found to be regular and to conform with the law and regulations, and if there are no objections, the manager will transmit them to the applicant who shall thereupon affix to the deed and cancel such revenue stamps as are required by law, and record the deed in accordance with the laws of the State. The applicant shall also have the abstract of title brought down to the date of the recording of the deed, showing that at such date the title to the offered land is vested in the United States or, if a title report, preliminary policy of title insurance, or certificate of title was submitted in lieu of an abstract of title, the applicant shall obtain a final policy of title insurance or a final certificate of title from the company issuing such report, preliminary policy of title insurance or certificate of title, which policy or certificate shall be brought down to the date of recording of the deed, showing that at such date the title to the offered lands is vested in the United States. Upon submission of the recorded deed and the amended abstract of title, title insurance policy or certificate of title, if all is regular, title will be accepted to the offered lands and patent will issue for the lands selected in exchange.

(b) Notices of additional requirements, rejection, or other adverse action will be given, and the right of appeal, review, or rehearing recognized in the manner prescribed by the Rules of Practice (Part 221 of this chapter). Protests against exchanges should be filed in the land office.

(c) If the application for exchange be finally rejected for any reason, the abstract of title will be returned, and the applicant will be advised of his right to apply for a quitclaim deed under existing law for the lands conveyed to the United States.

GRAZING LEASES OF THE REVESTED AND RECONVEYED LANDS AND INTERMINGLED PUBLIC DOMAIN LANDS

AUTHORITY: §§ 115.128 to 115.135 issued under sec. 5, 50 Stat. 875; 43 U. S. C. 1181e.

§ 115.128 *Statutory authority.* Section 4 of the act of August 28, 1937 (50 Stat. 875) authorizes the Secretary of the Interior in his discretion to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereinafter referred to as O. and C. lands, which may be so used without interfering with the production

of timber or other purposes specified in section 1 of the act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands. In addition to issuing grazing leases for O. and C. lands under the provisions of §§ 115.128 to 115.135, grazing leases also will be issued under such sections for such lands and intermingled public lands, or for public lands in and West of Range 5 East, or West of Klamath Lakes and Link River in Ts. 36 to 41 S., Rs. 6 to 9 E., inclusive, Willamette Meridian, Oregon.

§ 115.129 *Policy.* Since the statutory authority for grazing on the O. and C. lands subordinates such use to the primary purposes of the act, namely, to provide a permanent source of timber supply by managing the lands in conformity with the sustained-yield principle, protect water sheds, regulate streamflow, and contribute to the economic stability of local communities and industries, no lease will be issued unless the authorized officer of the Bureau of Land Management, who is charged with the administration of grazing on such lands, determines that grazing on the lands to be included in the lease will not interfere with the production of timber, or any of the other purposes of the act.

§ 115.130 *Grazing of livestock kept for domestic use.* Bona fide settlers or prospectors may apply to the regional administrator for permission to graze without charge not more than a total of 10 head of milk and work stock on the O. and C. lands, or such lands and intermingled public domain lands. Such permission may be granted by the authorized officer, in his discretion, upon such conditions as he may prescribe.

§ 115.131 *Crossing permits.* The authorized officer may permit the transit of stock on established stock driveways or thoroughfares on O. and C. lands, or such lands and intermingled public domain lands, free of charge. Under such conditions and restrictions as are necessary, the authorized officer may also grant permission to cross allotments of other lessees, areas closed to grazing, or unleased lands, and such permission must be obtained before such crossing occurs. The permittee shall be liable for any damage caused to the range.

§ 115.132 *Application and lease.* An application for a grazing lease shall be made on Form 4–721 in the manner set forth in § 160.5 of this chapter. An application may include O. and C. lands or public lands or both. Leases shall be issued in the manner set forth in § 160.10 of this chapter, and the lease rental shall be computed in accordance with § 115.133.

§ 115.133 *Rental.* (a) The lessee shall pay in accordance with the terms of the lease, an annual rental computed in conformity with the following rate tabulations. However, when warranted by circumstances, including changed marketing conditions, the authorized officer may establish any other appropriate schedule of rental rates for leases issued under §§ 115.128 to 115.135.

Estimated grazing capacity in acres per A. U. M.	Estimated grazing capacity in animal units year-long per section	Yearly lease-rate per acre
107.00	0.5	$0.005
53.00	1.0	.010
38.00	1.5	.013
25.00	2.0	.020
20.00	2.5	.025
18.00	3.0	.028
16.00	3.5	.031
14.00	4.0	.036
12.00	4.5	.042
11.00	5.0	.045
10.00	6.0	.05
7.50	7.0	.067
6.50	8.0	.077
6.00	9.0	.083
5.50	10.0	.091
5.00	11.0	.10
4.50	12.0	.11
4.00	13.0	.125
3.75	14.0	.13
3.50	15.0	.14
3.25	16.0	.15
3.00	17.0	.17
2.75	19.0	.18
2.50	21.0	.20
2.25	24.0	.22
2.00	27.0	.25
1.75	30.0	.29
1.50	36.0	.33
1.25	43.0	.40
1.00	53.0	.50
0.50	107.0	1.00
0.25	213.0	2.00

(b) One cow or one horse or five sheep or five goats constitute one animal unit. The minimum rental charge shall be fixed at not less than $1.00 per annum. The rental may be adjusted to reflect differences in numbers of livestock authorized to be grazed, changes in carrying capacity, and changes in authorized rates of rental at the end of the third year of the lease, and at the end of each subsequent three-year period.

§ 115.134 *Timber and other uses of land.* A lease issued for grazing purposes will not entitle the lessee to cut and remove timber from the land, or to take any other asset therefrom, or to use such land for purposes other than grazing. In order to obtain such rights or privileges, the lessee must make application therefor in accordance with the governing laws and regulations.

§ 115.135 *Governing regulations; applications and leases subject to regulations.* Applications filed and leases issued under §§ 115.128 to 115.135, inclusive, shall be subject to the regulations therein, as well as to the regulations contained in Part 160 of this chapter relating to grazing leases issued pursuant to section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended (43 U. S. C. sec. 315m), to the extent that the latter are not inconsistent with the former. The leases will also be subject to the standard terms and conditions set forth therein, and to any other terms and conditions which, in his discretion, the authorized officer may require.

SPECIAL LAND USE PERMITS

§ 115.150 *Applications; issuance of permits.* Applications for special land use permits for the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road grant lands, in Oregon, should be filed with the district forester of the district in which the lands are situated. The district forester, may issue revocable land use permits for these lands, and act on assignments thereof, under the principles embodied in the regulations contained in §§ 258.1 to 258.15, inclusive, of this chapter.

(R. S. 2478; 43 U. S. C. 1201)

PERMITS FOR RIGHTS-OF-WAY FOR LOGGING ROADS

AUTHORITY: §§ 115.154 to 115.179 issued under 28 Stat. 635, as amended, sec. 11, 39 Stat. 223, sec. 6, 40 Stat. 1181, sec. 5, 50 Stat. 875; 43 U. S. C. 956, 1181e.

§ 115.154 *Statutory authority.* (a) The act of January 21, 1895 (28 Stat. 635, 43 U. S. C. 956) authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, or quarrying or of cutting timber and manufacturing timber. The act of January 21, 1895, is made applicable to the Revested Oregon and California Railroad and the Reconveyed Coos Bay Wagon Road Grant Lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(b) The act of August 28, 1937 (50 Stat. 874) provides for the conservation and management of the O. and C. lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

§ 115.155 *Statement of policy.* (a) The intermingled character of the O. and C. lands presents peculiar problems of management which require for their solution the cooperation between the Federal Government and the owners of the intermingled lands, particularly with respect to timber roads.

(b) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and overmature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(c) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of federal timber by competitive bidding, prospective bidders must have an opportunity to reach the

timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

(d) Accordingly, to the extent that in the judgment of the authorized officer it appears necessary to accomplish these purposes, when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees (1) rights-of-way across lands controlled directly or indirectly by him; (2) the right to use, to the extent indicated in §§ 115.163 and 115.164, any portions of the road system or rights-of-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect; (3) the right to extend such road system across the operator's lands to reach federal roads or timber; and (4) in addition, in the limited circumstances set forth in § 115.162 (b), the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States.

(e) When the United States or a licensee of the United States uses any portion of a permittee's road system for the removal of forest products, the permittee will be entitled to receive just compensation, including a fair share of the maintenance and amortization charges attributable to such road, and to prescribe reasonable road operating rules, in accordance with §§ 115.165 to 115.169.

(f) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under §§ 115.154 to 115.179 without requesting any rights with respect to roads, rights-of-way or lands which the authorized officer finds will not be required for management of or access to federal timber, or timber included in a cooperative agreement. Where, however, the authorized officer finds that there is a road controlled directly or indirectly by the applicant, which will be needed for such purposes and which he finds either has capacity to accommodate the probable normal requirements both of the applicant and of the Government and its licensees, or such additional capacity can be most economically provided by an investment in such road system by the Government rather than by the construction of a duplicate road, he may require, for the period of time during which the United States and its licensees will have need for the road, the rights to use the road for the marketing and management of its timber and of timber included in a cooperative agreement in return for the granting of rights-of-way across O. and C. lands, and an agreement that the road builder will be paid a fair share of the cost of the road and its maintenance. Where it appears to the authorized officer that such a road will not be adequate or cannot economically be enlarged to handle the probable normal requirements both of the private operator and of the United States and its licensees, or even where the authorized officer has reasonable doubt as to such capacity, he will not request rights over such a road. Instead, the Bureau will make provision for its own road system either by providing in its timber sale contracts that in return for the road cost allowance made in fixing the appraised value of the timber, timber purchasers will construct or extend a different road system, or by expending for such construction or by extension monies appropriated for such purposes by the Congress, or, where feasible, by using an existing duplicating road over which the Government has obtained road rights. In such circumstances, however, road cost and maintenance allowances made in the stumpage price of O. and C. timber will be required to be applied to the road which the Bureau has the right to use, and thereafter will not in any circumstances be available for amortization or maintenance costs of the applicant's road.

(g) When a right-of-way permit is issued for a road or road system over which the United States obtains rights of use for itself and its licensees, the authorized officer will seek to agree with the applicant respecting such matters as the time, route, and specifications for the future development of the road system involved; the portion of the capital and maintenance costs of the road system to be borne by the timber to be transported over the road system by the United States and its licensees; a formula for determining the proportion of the capacity of the road system which is to be available to the United States and its licensees for the transportation of forest products; and other similar matters respecting the use of the road by the United States and its licensees and the compensation payable therefor. To the extent that any such matter is not embraced in such an agreement, it will be settled by negotiation between the permittee and the individual licensees of the United States who use the road, and, in the event of their disagreement, by private arbitration between them in accordance with the laws of the State of Oregon.

(h) The authorized officer may, in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged. The permits shall be revocable by the district forester, the State supervisor, the area administrator, the Director, or the Secretary for violation of their terms and conditions or of these regulations or if hazardous conditions result from the construction, maintenance or use of the rights-of-way by the permittees or those acting under their authority. As a condition for the granting of such permits, the applicant must comply with § 115.162 (a) and (d) to the extent that rights-of-way and road use rights are needed to remove government timber offered for sale in the same general area during the period for which the short term right-of-way is granted.

(i) The authorized officer may, in his discretion, issue to private operators rights-of-way across O. and C. lands, needed for the conduct of salvage operations, for a period not to exceed five years. A salvage operation as used in this paragraph means the removal of trees injured or killed by windstorms, insect infestation, disease, or fire, together with any adjacent green timber needed to make an economic logging show. As a condition of the granting of such rights-of-way, the operator will be required, when the authorized officer deems it necessary, to grant to the United States and its licensees for the conduct of salvage operations on O. and C. lands for a period not to exceed five years, rights-of-way across lands controlled directly or indirectly by him and to grant the right to use to the extent indicated in §§ 115.163 and 115.164 any portions of the road system controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the requirements of both the operator and of the United States and its licensees.

§ 115.156 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 115.154 to 115.179:

(a) "Bureau" means Bureau of Land Management.

(b) "Timber of the United States" or "federal timber" means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.

(c) "Area Administrator" means the Area Administrator, Area 1, Bureau of Land Management, or his authorized representative.

(d) "State Supervisor" means the State Supervisor, Oregon, Bureau of Land Management, or his authorized representative.

(e) "Authorized Officer" means an employee of the Bureau of Land Management to whom has been delegated the authority to take action.

(f) "O. and C. lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, other lands administered by the Bureau under the provisions of the act approved August 28, 1937, and the public lands administered by the Bureau of Land Management which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon.

(g) "District Forester" means a District Forester of the Bureau who is stationed in the O. and C. area.

(h) "Tramroads" include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

(i) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

(j) "Licensee" of the United States is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.

(k) "Direct control" of a road, right-of-way, or land, by an applicant for a permit hereunder means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with §§ 115.154 to 115.179.

(l) "Indirect control" of a road, right-of-way, or land, by an applicant hereunder means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 115.157 *Nature of permit.* (a) Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 115.174 and 115.178, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 115.176.

(b) A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement while the prior permit is outstanding, to be bound by the road rules of, and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in §§ 115.166, 115.168, and 115.169.

§ 115.158 *Filing of application.* (a) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on Form 4–410 and filed in the office of the appropriate district forester. Application forms will be furnished upon request.

(b) Any application filed hereunder, including each agreement submitted by the applicant as a part thereof or as a condition precedent to the issuance of a permit, may be withdrawn by the applicant by written notice delivered to the appropriate district forester prior to the time the permit applied for has been issued to, and accepted by, the applicant.

§ 115.159 *Construction in advance of permit.* The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by §§ 115.154 to 115.179. Advance construction will not be authorized unless and until applicant has complied with §§ 115.153, 115.161, 115.162, and 115.170.

§ 115.160 *Trespass.* The mere filing of an application under §§ 115.154 to 115.179 does not authorize the applicant to use the right-of-way in any manner or for any purpose until written permission therefor has been duly executed by the authorized officer and delivered to the applicant. Any unauthorized use of O. and C. land constitutes a trespass for which the trespasser is liable in damages to the United States. Where there has been such a trespass, no permit shall be issued to the alleged trespasser unless (a) the trespass claim is fully satisfied; or (b) the alleged trespasser files a bond conditioned upon payment of the amount of damages found by the State supervisor, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or (c) the State supervisor finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability or as to the extent of his liability and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States.

CROSS REFERENCE: For disposal of timber or material to a trespasser, see § 288.12 of this chapter.

§ 115.161 *Contents of application.* (a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of Part 137 of this chapter.

(b) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

(c) Where the application is for a right-of-way on any portion of which the applicant proposes to construct a road, it must be accompanied by two copies of a map prepared on a scale of 4 inches or 8 inches to the mile, showing the survey of the right-of-way so that it may be accurately located on the ground. The map should comply with the following requirements, except as the authorized officer may waive in any particular instance all or any of such requirements:

Courses and distances of the center line of the right-of-way should be given; the courses referred to the true meridian and the distance in feet and decimals thereof. The initial and terminal points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or, if there be no such corner within two miles, then connected to two permanent and prominent monuments or natural objects. All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked. The width of the right-of-way should be given; and if not of uniform width, the locations and amount of change must be definitely shown. There shall also be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges. The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in Forms Nos. 4–411 and 4–412 respectively.

(d) Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

(e) Every application for a right-of-way must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested right-of-way will connect, the portions of such road system which the applicant directly controls within the meaning of § 115.156 (i), the portions thereof which the applicant indirectly controls within the meaning of § 115.156 (j), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing, for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

§ 115.162 *Right-of-way and road use agreement; recordation.* (a) Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 115.155, he may require the applicant, as a condition precedent to the issuance of the permit:

(1) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(2) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of §§ 115.154 to 115.179, such portion as the applicant directly controls of the road system and rights-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or rights-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and rights-of-way.

(b) In addition to the private road systems and rights-of-way described in paragraph (a) of this section, in the event the applicant controls directly or indirectly other roads or rights-of-way in any O. and C. area where the authorized officer of the Bureau finds that, as of the time of filing or during the pendency of the application, the United States is unreasonably denied access to its timber for management purposes or where, as of such time, competitive bidding by all prospective purchasers of timber managed by the Bureau in the O. and C. area, or of other Federal timber intermingled with or adjacent to such timber, is substantially precluded by reason of the applicant's control, direct or indirect, of such roads or rights-of-way, the authorized officer may require the applicant to negotiate an agreement granting to the United States and its licensees the right to use, in accordance with the terms and conditions of §§ 115.154 to 115.179, such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

(c) Where, in the judgment of the authorized officer, it is consistent with the policy set forth in § 115.155, he may issue a permit without requesting the applicant to grant any rights to the United States under this section.

(d) Any grant of rights to the United States under this section shall be executed on Form 4–413, which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the appropriate district forester.

§ 115.163 *Use by the United States and its licensees of rights received from a permittee.* The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from Government lands or from other lands during such periods of time as the timber thereon may be committed by a cooperative agreement to coordinated administration with timber of the United States. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by § 115.165 or § 115.168.

§ 115.164 *Duration and location of rights granted or received by the United States.* The rights-of-way granted by the United States under any permit issued under § 115.173, subject to the provisions of § 115.176, will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest of the various portions of the right-of-way requested. In the same manner the permit will also state the duration of the rights of the United States to use and to permit its licensees to use, and the location by legal subdivisions of, each of the various portions, if any, of the roads, rights-of-way, and lands which a permittee hereunder authorizes the United States and its licensees to use; and, similarly, the duration of such rights received by the United States will normally be coincident with the probable period of use for the removal of forest products, by the United States and its existing and prospective licensees, of such roads, rights-of-way, and lands.

§ 115.165 *Permittee's agreement with United States respecting compensation and adjustment of road use.* (a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; the total volume of timber to be moved over such road system, and the proportion of such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United

States or its licensees shall be required to amortise such capital costs; provisions for road maintenance; the use, in addition to the uses set forth in § 115.163, which the United States and its licensees may make of the road system involved; a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the authorized officer may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such advance agreement, subsequent contracts for the sale of timber managed by the Bureau and tapped by such road system, and subsequent cooperative agreements for the coordinated management of such timber with other timber, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the advance agreement. Where such an advance agreement between the United States and the permittee includes provisions relating to the route and specifications for extensions of the road system involved, the authorized officer may agree that upon the filing of proper applications in the future the applicant or his successor in interest shall receive the necessary permits for such road extensions as may cross lands managed by the Bureau: *Provided, however,* That the applicant shall have substantially complied with the terms of such advance agreement and of the outstanding permits theretofore issued to him.

(b) The provisions of §§ 115.166 to 115.169 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 115.166 *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (a) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands, of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 115.165, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 115.169.

(b) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs an extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 115.163. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage, and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(c) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(d) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 115.167 *Compensation payable by United States to permittee for use of road.* In the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under § 115.165 covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State supervisor, who shall base his determination upon the same standards established by §§ 115.154 to 115.179 for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however,* That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee, or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cruise made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State supervisor.

§ 115.168 *Agreements and arbitration between permittee and licensee respecting adjustment of road use.* (a) When the United States exercises the right received under §§ 115.154 to 115.179 to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under § 115.165 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 115.169.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived therefrom; the extent to which each of the parties may practicably satisfy any of the aforesaid commitments from other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the ex-

tent to which the United States or its licensees have enlarged the road capacity.

§ 115.169 *Arbitration procedure.* (a) Within ten days after the delivery of a written request for arbitration under § 115.166 or § 115.168, each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State or Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(b) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 115.166 and 115.168.

(c) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 115.166 and 115.168 for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the appropriate district forester or the State supervisor, either personally or by registered mail.

(d) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matters as may appear relevant to the arbitrators.

§ 115.170 *Payment required for O. and C. timber.* An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

§ 115.171 *Payment to the United States for road use.* (a) A permittee shall pay a basic fee of five dollars per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way except that in those cases where the permittee has executed under § 115.162 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid. If the term of the permit is for five years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than five years, the basic fee for each five-year period or for the remainder of the last period, if less than five years, must be paid in advance at five-year intervals.

(b) In addition, where the permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of the Bureau of Land Management, he will be required to pay to the United States for the use thereof, except where he transports forest products purchased from the United States through the Bureau, a fee to be determined by the authorized officer who shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs, plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The authorized officer may fix the rate at which payments shall be made by the permittee during his use of the road: *Provided, however,* That this paragraph shall not apply where payment for such road use to another permittee is required under §§ 115.154 to 115.179.

§ 115.172 *Bond in connection with existing roads.* An applicant for a permit to use an existing Government road which is under the administrative jurisdiction of the Bureau for timber hauling purposes other than for federal timber acquired under a free-use permit, will be required, for the protection of such existing road, to execute a bond on Form 4–414 in an amount to be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof, conditioned on compliance with §§ 115.154 to 115.179 and the terms and conditions of the permit.

§ 115.173 *Approval of permit.* (a) Upon the applicant's compliance with the appropriate provisions of §§ 115.154 to 115.179 and if it is determined that the approval of the application will be in the public interest, the authorized officer may, in his discretion, issue an appropriate permit, upon Form 4–415.

(b) The authorized officer may waive the requirements of §§ 115.161 (c) and (e) and 115.172, in the case of a natural person who applies for a right-of-way for not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

§ 115.174 *Terms and conditions of permit.* (a) As to all permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under § 115.162, with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the authorized officer that the permittee allow use of a road in conformity with such additional regulations, the permittee shall unreasonably withhold his assent, the authorized officer shall refer the disagreement through the proper channels to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the authorized officer and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the authorized officer and, if the permittee nevertheless unreasonably withholds such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the district forester and making payment therefor.

(3) To take adequate precaution to prevent and suppress forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way; to do no burning on or near the right-of-way without State permit during the seasons that permits are required but in any event to set no fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 115.166, 115.168, and 115.169.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under § 115.162, to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under §§ 115.154 to 115.179, to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(8) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the authorized officer may otherwise permit or direct to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use: *Provided, however,* That the road and all usable road improvements shall be left in place.

(b) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 115.175 *Assignment of permit.* Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the appropriate district forester for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 115.161 and 115.162; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

§ 115.176 *Causes for termination of permittee's rights.* (a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under §§ 115.154 to 115.179 if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any requirement of such permit or §§ 115.154 to 115.179, knowingly such representation to be false, or makes such representation in reckless disregard of the truth.

(b) The authorized officer, in his discretion may elect to terminate any permit or right-of-way issued under §§ 115.154 to 115.179, if the permittee shall fail to comply with any of the provisions of such regulations or make default in the performance or observation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to §§ 115.154 to 115.179, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under §§ 115.154 to 115.179, to submit to and be bound by arbitration pursuant to §§ 115.166, 115.168, and 115.169.

§ 115.177 *Remedies for violations by licensee.* (a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of §§ 115.154 to 115.179, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to § 115.179 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 115.178 *Disposition of property on termination of permit.* Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed six months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 115.179 *Appeals.* An appeal pursuant to the Rules of Practice, Part 221 of this chapter, may be taken from any final decision of the authorized officer, to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

PART 116—ABANDONED MILITARY RESERVATIONS [1]

CROSS REFERENCE: For public lands, military and naval reservations, Canal Zone regulations; see Panama Canal, 35 CFR Part 21.

§ 116.1 *Installment payments for lands in abandoned military reservations optional with homesteader.* The act of August 23, 1894 (28 Stat. 491; 43 U. S. C. 1077, 1078), as amended by the act of February 15, 1895 (28 Stat. 664; 43 U. S. C. 1077, 1080), authorizing homestead entries in certain abandoned military reservations, provides:

(a) That persons who enter under the homestead law shall pay for such lands not less than the value determined by appraisement, nor less than the price of the land at the time of the entry, and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior.

(b) The time for the payments in installments authorized by said act, and the interest thereon, will be as follows: Each homesteader will be given the option in making payment upon his entry of these lands, of making his payments

[1] Regulations governing the sale and disposal of lands in abandoned military reservations have been issued from time to time. Most of the lands affected by such regulations have been disposed of.

On June 4, 1936, the Department issued instructions with reference to the disposal of the remaining lands in such reservations, affected by E. O. 6910, Nov. 26, 1934 and E. O. 6964, Feb. 5, 1935. The instructions state:

"Lands in abandoned military reservations were included in the withdrawals, and thereafter such lands were subject to use and disposition as provided in the several sections of the Taylor Grazing Act. Following the reasoning in the cited instructions of Jan. 2, 1914, the lands within abandoned military reservations may now be included and used in grazing districts, and may be disposed of as provided in secs. 7, 8, 14 and leased as provided in sec. 15 of the Taylor Grazing Act."

The above-mentioned instructions of Jan. 2, 1914 are reported in 43 L. D. 33.

in five equal payments to date from the time of the acceptance of his proof tendered on his entry, and the rate of interest upon deferred payments will be charged at the rate of 4 percent per annum.

(R. S. 2478; 43 U. S. C. 1201)

PART 117—ARKANSAS DRAINAGE

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117.3 State report on assessments.
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117.16 Lands subject to homestead and cash entry after 90 days from sale by State.
117.17 Issuance of cash certificates; receipts and patents.

AUTHORITY: §§ 117.1 to 117.17 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For applications and entries, generally, see Part 101 of this chapter. For regulations relating to proofs, see Part 106 of this chapter. For regulations relating to patents, see Part 108 of this chapter. For regulations relating to homesteads, generally, see Part 166 of this chapter. For payments, generally, see Part 216 of this chapter.

§ 117.1 *Statutory authority.* (a) The act of January 17, 1920 (41 Stat. 392; 43 U. S. C. 1041–1048) provides that all those unentered, unreserved public lands and all those entered for which no final certificates have been issued, in certain townships in Arkansas, are made subject to the laws of the State of Arkansas relating to organization, government and regulation of drainage districts to the same extent and in the same manner except as otherwise provided, in which lands held under private ownership are subject to such laws, provided that the United States and all persons legally holding unpatented lands under public land laws shall be accorded all the rights, privileges and benefits given by said laws to persons holding lands in private ownership. The said act contains special provisions governing the disposal of such lands by the United States. The act of February 28, 1929 (45 Stat. 1410) amended the act of January 17, 1920, and gave consent of the United States to the levy of special assessments within the Saint Francis Levee District in Arkansas on lands of the United States, subject to the conditions hereinafter set forth.

(b) Sections 1, 2, and 3 of the act of February 28, 1929, impose no duties on the Department of the Interior nor do they require any change in the matter of entry, proof, payment, or patent. The proviso to section 1 excludes Government land, entered or unentered, from levy, assessment, or tax until the date an entryman or purchaser thereof has earned the right to a patent. If and when equitable title to any particular tract shall have passed from the Government of the United States to an entryman or purchaser, the levy, special assessment, or tax to which consent was given will become effective.

(c) Section 4, however, provides for the purchase after foreclosure by any drainage district in Tps. 14, 15, 16 N., R. 9 S., and Tps. 15, 16 N., R. 10 E., 5th P. M., in Mississippi County, and in Tps. 11 and 12 N., R. 6 E., in Poinsett County, Ark., and does not apply to the balance of the lands in the St. Francis Levee district. It is in effect an amendment of the act of January 17, 1920 (41 Stat. 392), which expressly prohibited the issuance of patent to a drainage district for lands bid in by it.

NOTE: Public land withdrawn by Executive Order 6964 of February 5, 1935 is not subject to entry until it has been classified therefor. See Part 296 and § 297.12 of this chapter.

§ 117.2 *Public lands in certain townships made subject to State drainage laws.* All unentered, unreserved public lands in the townships described in § 117.1, in the State of Arkansas which are subject to entry, and entered lands for which no final certificates have issued, are by the act of January 17, 1920 (41 Stat. 392; 43 U. S. C. 1041–1048) as amended by the act of February 28, 1929, made subject to the State drainage laws to the same extent and in the same manner except as noted in §§ 117.3 to 117.17, in which lands of like character held in private ownership are or may be subject to said laws.

§ 117.3 *State report on assessments.* Certified lists showing the amount of the charges assessed against each smallest legal subdivision should be furnished by the county officers to the Bureau of Land Management as soon as the charges would become a lien on the land if in private ownership. Such office will compare said lists with its records and if any charges are assessed against land which is not subject to the State drainage laws, it will promptly notify the county auditor thereof, and advise him that the lands are not subject to sale thereunder.

§ 117.4 *Enforcement of lien by State sales; State report on sales.* (a) The charges against the Government lands subject thereto may, under section 3 of the act of January 17, 1920 (41 Stat. 393; 43 U. S. C. 1043), be enforced by a sale of the lands by the State in the same manner and under the same proceedings as such charges would be enforced against lands held in private ownership.

(b) Immediately after the close of the sale, the State officials should furnish the Bureau of Land Management with a statement showing the name of the purchaser of each tract, including land bid in for a drainage district, the price at which each legal subdivision was sold, the amount assessed against it, the penalties and interest, the cost of the sale, and the amount of excess, if any, over and above all lawful assessment charges and the cost of sale. No entries will be allowed under said act until this requirement has been complied with.

(c) When such statement has been filed in the said office, proper notations thereof will be made on the records.

§ 117.5 *Cash entries by purchasers at State sale.* Section 5 of the act of January 17, 1920 (41 Stat. 393; 43 U. S. C. 1045), provides that purchasers of unentered lands at such sales by the State have 90 days from the date of sale and purchasers of entered but unpatented lands have 90 days from the expiration of the period of redemption provided for in the drainage laws under which the lands were sold, no redemption having been made within which to pay $5 per acre, together with the usual fees and commissions both original and final, charged in entry of lands under the homestead laws, and make entry. The required payments and application for entry must be filed in the Bureau of Land Management, Washington 25, D. C.

§ 117.6 *Qualification of purchasers; tracts purchased need not be contiguous.*[1] A purchaser (other than an improvement or drainage district) of land from the Government under the act of January 17, 1920, is required to have the qualifications of a homestead entryman which must be shown by his signed statement. Any purchaser hereunder shall exhaust his homestead right to the extent of the amount of lands purchased by him, and not more than 160 acres can be sold to any one purchaser. The tracts must be entered by legal subdivisions, but they need not be contiguous or in one body.

§ 117.7 *Cash entries by persons subrogated to rights of persons at State sale.* Unless the purchaser of unentered lands at the sale by the State files application for a patent and pays the required amounts, within the time specified in section 5 of the act of January 17, 1920 (41 Stat. 393; 43 U. S. C. 1045), any other qualified person may make application for a patent and file a statement of qualifications and pay to the Bureau of Land Management the unpaid fees, commissions, and purchase price and in addition an amount equal to the drainage charges, penalties, interest, and costs for which the land was sold, and if the lands were bid in for the drainage district, an additional amount equal to 6 percent per annum on the sum for which the lands were sold from the date of sale and shall become subrogated to the rights of such purchaser and shall be entitled to receive

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

a patent for not more than 160 acres of said lands.

§ 117.8 *Procedure when payment is made to effect subrogation.* When payment is made to effect subrogation as provided in § 117.7, the Bureau of Land Management shall serve notice upon the purchaser at the sale that an application for patent for the lands purchased by him has been filed and that the amount of the drainage charges, penalties, interests, and costs of the sale will be paid to him upon submission of proof of purchase and payment of said sums. The Bureau of Land Management shall make such payment as soon as said requirement shall have been fulfilled. If the lands were bid in for a drainage or improvement district, the said office will make such payments to the proper county officers.

§ 117.9 *Purchase of lands by drainage district.* Section 5 of the act of January 17, 1920 (41 Stat. 393; 43 U. S. C. 1045) permits the bidding in of lands for a drainage district. Section 4 of the act of February 28, 1929 (45 Stat. 1411) provides that in case of the foreclosure of the liens of any improvement or drainage district, and the lands have been purchased by said district, said improvement or drainage district may, upon proof of the sale and purchase and payment of $5 per acre, together with the usual fees and commissions charged entry of lands under the homestead laws, where such payment has not heretofore been made, receive a patent for the land. In case of unentered land, a preference right exists for 90 days from date of sale. In case of entered lands, the preference-right period is for 90 days from the expiration of the period of redemption. The drainage or improvement district may exercise the right of purchase after the period mentioned in the absence of an adverse claim. No limitation is placed on the amount of land an improvement or drainage district may enter under the act.

§ 117.10 *Proof of foreclosure required and cancellation of entry.* (a) Proof of the foreclosure of the land and of the failure of the entryman to redeem the lands in accordance with State statutes relating to the taxation of lands in private ownership in Arkansas must be furnished under the certificate and seal of the officer of the State declaring the foreclosure. Said certificate should be presented to the Bureau of Land Management, whereupon, should no objection appear, the said office will cancel the entry upon its records, as of the date of the receipt of said certificate, and note such cancellation with proper reference to the entry on the certificate. For 90 days after the expiration of the period of redemption provided by the Arkansas laws the purchaser at the sale, including the improvement district, if bid in by the district, may furnish the certificate mentioned, make entry of the lands, and receive patent in his or its own name. Should such purchaser or district fail to make entry within the 90-day period mentioned, any other person, upon furnishing said certificate, may secure the cancellation of the entry and make entry.

(b) Sections 117.7 and 117.8 should be observed in allowing purchases of entered lands.

§ 117.11 *Cash entry on relinquishment of homestead entry before expiration of period of redemption.* If a homestead entry, after the land covered thereby has been sold for delinquent taxes, should be subsequently relinquished or canceled prior to the expiration of the period of redemption, the purchaser at the tax sale, if the taxes have not been redeemed, will have the preference right for 30 days, after due notice of the cancellation or relinquishment of the entry, to file an application to purchase the land without having to wait until the expiration of the period of redemption. Such right is given to the actual purchaser only if the land has not been redeemed. This right to purchase is not given to the homestead entryman who allowed the land to be sold for taxes and then relinquished the same.

§ 117.12 *Excess charges to be deposited in United States Treasury.* In the sale of lands by the State, should there be paid any excess over and above the drainage charges due, the excess amount shall be paid to the Bureau of Land Management for deposit in accordance with sections 3 and 4 of the act of January 17, 1920 (41 Stat. 393; 43 U. S. C. 1043, 1044) before patent is issued.

§ 117.13 *When settlers and entrymen are not entitled to right of redemption.* To avoid confusion, misunderstanding, and conflict of rights no right of redemption, referred to in section 5 of the act of January 17, 1920 (41 Stat. 393; 43 U. S. C. 1045) can be acquired by settlement on or application for unentered lands after the hour and date fixed for their sale. The Bureau of Land Management will suspend all applications for such lands advertised for sale under said Act received on or subsequent to the date of sale until after the statement of sale provided in section 4 of the act is received, unless the applicant shall show by a statement, duly corroborated, that he settled on the land in good faith prior to the beginning of the sale, for the purpose of securing a home and not for the purpose of defeating the rights of a purchaser at the sale. If the statement referred to shows that the land was actually sold at the sale in question, the application in question will remain suspended until after the expiration of 90 days from the date of sale to give the purchaser an opportunity to make entry for the land. Should the purchaser not make entry the homestead application may then be allowed. If the statement does not show a sale of the land, or it was bid in by the drainage district, the homestead application may be allowed, and the homestead entryman will be required to comply with the homestead laws in the matter of residence, improvements, and cultivation.

§ 117.14 *Payment of drainage charges not required to make entry in homestead cases.* Payment of the drainage charges will not be required, and each applicant making a 3-year homestead entry where the land has been sold for delinquent drainage charges and evidence of redemption has not been furnished will be formally notified by the Bureau of Land Management of the amount of taxes assessed against said land, and of any tax certificates outstanding thereon, as shown by the records of such office.

§ 117.15 *Evidence of redemption required in connection with cash entries.* The Bureau of Land Management will reject all applications for cash entries under the acts of January 17, 1920 and February 28, 1929, where evidence of redemption is required if the same is not filed in connection therewith.

§ 117.16 *Lands subject to homestead and cash entry after 90 days from sale by State.* After the expiration of 90 days from the date of sale by the State for drainage charges the unentered lands will be subject to ordinary homestead entry, in which case residence, improvements, and cultivation are required, or to entry under the act of January 17, 1920, which does not require such compliance with the homestead law. The drainage charges and expenses incident to sale will become a lien on the land which can be enforced by the State after patent issues.

§ 117.17 *Issuance of cash certificates; receipts and patents.* In case payment is made in purchases under the acts of January 17, 1920 and February 28, 1929, and evidence is furnished showing the qualifications of the purchaser, the usual cash certificates and receipts will be issued by the Bureau of Land Management, and should no objection appear patent will issue in due course of business.

PART 118—MINNESOTA DRAINAGE

ENTRY OF LANDS IN MINNESOTA LEGALLY ASSESSED OR SOLD BY THE STATE FOR DRAINAGE CHARGES

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118.31 Rights of United States and persons claiming under public land laws.
118.32 Entries, proofs, and patents for Chippewa lands.

AUTHORITY: §§ 118.1 to 118.32 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For applications and entries, generally, see Part 101 of this chapter. For homesteads, generally, see Part 166 of this chapter. For patents, see Part 103 of this chapter.

§ 118.1 *Statutory authority.* The act of May 20, 1908 (35 Stat. 169; 43 U. S. C. 1021–1027) provides that all lands in the State of Minnesota, when subject to entry and all entered lands for which no final certificates have issued, are made and declared to be subject to all the provisions of the laws of the said State relating to the drainage of swamp or overflowed lands for agricultural purposes to the same extent and in the same manner in which lands of like character held in private ownership are or may be subject to such State laws: *Provided*, That the United States and all persons legally holding unpatented lands under the public land laws of the United States are accorded all the rights, privileges, and benefits given by said laws to persons holding lands of a like character in private ownership. The said act contains special provisions governing the disposal of such lands by the United States.

NOTE: Public land withdrawn by Executive Order 6964 of Feb. 5, 1935 is not subject to entry until it has been classified therefor. See Part 296 and § 297.12 of this chapter.

§ 118.2 *Lands not subject to provisions of the Minnesota drainage laws.* The provisions of the act of May 20, 1908 do not extend the Minnesota drainage laws to entered lands for which final certificates have issued. Lands allotted or reserved for Indians, or reserved for any other purpose, are not subject to the provisions of the act.

§ 118.3 *When drainage charges become lien; State report on assessment.* The lands are assessed under the State drainage laws by the designated officials of the counties in which the lands are located. The county auditor is required to file in the office of register of deeds a statement showing the drainage charges, and such charges are a lien upon the land from the date of the filing of such statement, and bear interest at the rate of 6 percent per annum until paid. Certified lists showing the amount of the charges assessed against each smallest legal subdivision should be furnished the Bureau of Land Management as soon as the charges are assessed. Such office will compare said lists with its records and if any charges are assessed against land which is not subject to the State drainage laws, such as those mentioned in § 118.2, it will promptly notify the county auditor thereof, and advise him that the lands are not subject to sale thereunder.

§ 118.4 *Enforcement of lien by State sales.* The charges against the Government lands subject thereto may, under section 3 of the act of May 20, 1908 (35 Stat. 170; 43 U. S. C. 1023) be enforced by a sale of the lands by the State in the same manner and under the same proceedings as such charges would be enforced against lands held in private ownership.

§ 118.5 *Cash entries by purchasers at State sale of unentered lands.* Purchasers of unentered lands at such sales by the State have 90 days from the date of sale within which to pay to the Director the minimum price of $1.25 per acre, or such other price as may have been fixed by law for such lands, together with the usual fees and commissions, both original and final, charged in entry of like lands under the homestead laws, and make entry in accordance with section 5 of the act of May 20, 1908 (35 Stat. 170; 43 U. S. C. 1025) and the regulations in this part.

§ 118.6 *Cash entries by persons subrogated to rights of purchasers at State sale.* Unless the purchasers of unentered lands make such entry within 90 days, any other qualified person may pay to the Director, Bureau of Land Management, the unpaid fees, commissions, and purchase price, and the sum due at the sale for drainage charges, and if bid in by the State interest at the rate of 7 percent per annum from the date of sale, and make entry for the land.

§ 118.7 *When cash entry may be made by purchasers from State of entered but unpatented lands.* Purchasers of entered but unpatented lands shall have the right to make entry for the lands within 90 days after the period of redemption fixed in the State laws has expired, there having been no redemption by the entryman, upon paying to the Director, Bureau of Land Management, the fees and commissions and the price of the land, less any amount paid by the entryman.

§ 118.8 *When entry may be made by any qualified person.* Unless the purchaser of entered but unpatented lands makes entry in accordance with § 118.7, any other qualified person may make the required payments, as specified in said section, and make entry for the land.

§ 118.9 *Cash entry on relinquishment of homestead entry before expiration of period of redemption.* If a homestead entry, after the land covered thereby has been sold for delinquent taxes, should be subsequently relinquished or canceled prior to the expiration of the period of redemption, the purchaser at the tax sale, if the taxes have not been redeemed, will have the preference right for 30 days after due notice of the cancellation or relinquishment of the entry, to file an application to purchase the land without having to wait until the expiration of the period of redemption. Such right is given to the actual purchaser only if the land has not been redeemed. This right to purchase is not given to the homestead entryman who allowed the land to be sold for taxes and then relinquished the same.

§ 118.10 *Drainage survey charge for lands in Red Lake Reservation.* In addition to the payments mentioned in §§ 118.3 to 118.9, entrymen for lands in the former Red Lake Reservation are also required to pay the sum of 3 cents per acre, as required by section 8 of the act of May 20, 1908. The price of the land under said act of 1908 is not affected by the provisions of the free-homestead act of May 17, 1900 (31 Stat. 179; 25 U. S. C. 421).

§ 118.11 *Payment of drainage charges and excess.* In the sale by the State of unentered lands, or entered but unpatented lands, both the drainage charges due and any excess paid over and above such charges should be collected by the county auditor at the time of sale.

§ 118.12 *Action when charges and price are paid to Bureau of Land Management.* (a) When the drainage charges are paid at the Bureau of Land Management, the said office shall transmit to the treasurer of the county where the land is situated the amount due at the sale, together with the interest paid thereon, if any.

(b) If the lands are Indian lands the Bureau of Land Management will deposit the price paid for the land to the credit of the appropriate Indian fund, either Red Lake, where the lands were opened under the act of February 20, 1904 (33 Stat. 46) or Chippewa, as to all other Indian lands.[1] The 3 cents per acre drainage charge should all be deposited to the credit of the Chippewa permanent fund, as the same is intended to reimburse the Chippewa fund for appropriations made therefrom to pay the expense of preliminary drainage surveys of former Red Lake lands.

§ 118.13 *Qualifications of purchaser of entered lands.* Section 6 of the act of May 20, 1908 (35 Stat. 170; 43 U. S. C. 1026) contains no requirement that a purchaser at a tax sale of entered lands shall have the qualifications of a homestead entryman, and no limitation as to

[1] See note to Part 177 of this chapter.

the acreage which such purchaser may enter, and no such qualifications or limitation will be required where such purchaser makes entry of the lands purchased. If such purchaser does not make entry, after giving notice to the entryman, a person who desires to become subrogated to the rights of said purchaser of entered lands must, under said section 6, have the qualifications of a homestead entryman, and the right of entry is limited to 160 acres.

§ 118.14 *Purchases must be made by legal subdivisions; contiguity not required.* The tracts included in cash purchases must be entered by legal subdivisions, but they need not be contiguous or in one body.

§ 118.15 *Right to make cash entry, subsequent to homestead entry for 160 acres.* A person who has made a homestead entry for 160 acres has exhausted his homestead right, unless his right is restored by act of Congress. He will not be permitted to relinquish an existing homestead entry and make entry under the Minnesota drainage laws, unless it can be satisfactorily established that he made his homestead entry in good faith for the purpose of securing a home; that he has honestly endeavored to comply with the homestead laws, and, if assessed for drainage, that he has paid the drainage charges due on the relinquished entry, and is entitled by law to make a second homestead entry. A person who makes a homestead entry for land advertised for sale for drainage charges will not be permitted, unless the circumstances be exceptional, to file a relinquishment of his entry and to make an entry under the act of May 20, 1908 (35 Stat. 169; 43 U. S. C. 1021–1027). The showing required to be made must be in the form of the entryman's statement corroborated by two witnesses, which should be filed in the Bureau of Land Management.[3]

§ 118.16 *Right to make cash entry, subsequent to homestead entry for less than 160 acres.* An additional entry may be made for an amount which does not exceed 160 acres, including that previously entered, provided that his previous entry did not exhaust his homestead right; in other words, he may purchase such amount as he might then have entered under the homestead laws, and without regard to the location of the land previously entered. He need not necessarily have submitted proof on his original entry in order to be entitled to exercise his additional homestead right under the act of May 20, 1908.

§ 118.17 *Area enterable affected by general limitation statute.* The amount of land which may be purchased by any person will be affected by the provision in the act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 212), limiting the amount of land to which title may be acquired by any one person under the agricultural public land laws to 320 acres.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 118.18 *Qualifications of purchasers of unentered lands.* Persons who are the owners of more than 160 acres are not qualified to make a homestead entry in the State of Minnesota and therefore would not be qualified to purchase unentered land at a sale of lands under said act of May 20, 1908. It is held by the Department of the Interior that a person purchasing land under a contract giving him right to acquire title, acquisition of which depends only on his own performance or default, is owner of such land and proprietor of it within the meaning and intent of section 2289, Revised Statutes (43 U. S. C. 161, 171). (See cases of Smith v. Longpre, 32 L. D. 226, and Boyce v. Burnett, 16 L. D. 562.)

§ 118.19 *Agent or attorney may make purchases from State.* Purchasers at any sale by the State under the act of May 20, 1908 may make their purchases by agent or attorney to the extent permitted by the State drainage laws of sales of lands held in private ownership.

CROSS REFERENCE: For agents and attorneys, see Part 1 of this title.

§ 118.20 *Statements by purchasers.* Statements as to qualifications or as to the status of lands which may be required of purchasers under §§ 118.1–118.32 need not be sworn to but must be signed by the purchasers. The statement as to the nonsaline character of the land can not be made on information and belief. It may, however, be made by a reliable party who has actual knowledge of the facts. (See case of Mendenhall v. Howell et al., 14 L. D. 461.)

§ 118.21 *State report on sale; notation thereof.* (a) Immediately after the close of the sale the State officials should furnish the Bureau of Land Management a statement showing the price at which each legal subdivision was sold. This statement should give the names of the purchasers and their addresses, if possible, and should also include lands bid in by the State.

(b) When such statement has been filed in the said office, proper notations thereof will be made at once on its records.

§ 118.22 *Evidence of redemption required in connection with cash entries.* (a) Evidence of redemption must be furnished in connection with cash entries where land has been sold for drainage charges under the act of May 20, 1908 (35 Stat. 169; 43 U. S. C. 1021–1027):

(1) When the State is a purchaser and there has been no assignment.

(2) When the State purchased the land, but later assigned it and 6 years have not expired since date of assignment.

(3) Where there is an actual purchaser, and 6 years have not expired since date of sale.

(b) All applications for cash entries under the act of May 20, 1908, will be rejected where evidence of redemption is required, if the same is not filed in connection therewith.

§ 118.23 *Settlers not entitled to right of redemption.* The law makes no provision for the redemption of lands by a mere settler, and therefore only entrymen have the right to pay to the county officials the drainage charges prior to the sale of land for nonpayment of such charges.

§ 118.24 *When settlers and entrymen are not entitled to right of redemption; compliance with homestead law required.* To avoid confusion, misunderstanding, and conflict of rights, it is hereby provided that no right of redemption referred to in section 6 of the act of May 20, 1908 (35 Stat. 170; 43 U. S. C. 1026), can be acquired by settlement on or application for lands subject to entry after the hour and the date fixed for their sales. All applications for lands advertised for sale under said act received on or subsequent to the date of sale until after the statement of sale provided in section 4 of the act (35 Stat. 170; 43 U. S. C. 1024) is received, will be suspended, unless the applicant shall show by statement duly corroborated that he settled on the land in good faith prior to the beginning of the sale for the purpose of securing a home and not for the purpose of defeating the rights of a purchaser at the sale. If the statement referred to shows that the land was actually sold at the sale in question, the application in question will remain suspended until after the expiration of 90 days from the date of sale to give the purchaser an opportunity to make entry for the land. Should the purchaser not make entry, the homestead application may then be allowed. If the statement does not show a sale of the land or it was bid in by the State, the homestead application may be allowed. The homestead entryman will be required to comply with the homestead law in the matter of residence, improvements, and cultivation.

§ 118.25 *Lands subject to homestead entry after 90 days from sale by State.* After the expiration of 90 days from the date of sale, the lands will be subject to ordinary homestead entry, in which case residence, improvements, and cultivation are required, or to entry under the act of May 20, 1908 (35 Stat. 169; 43 U. S. C. 1021–1027), which does not require such compliance with the homestead law.

§ 118.25a *Payments required of homestead applicants in advance of allowance of entry; disposition of moneys.* Every person making homestead application for public or ceded Indian lands in Minnesota which have been legally assessed or sold or bid in by the State for drainage charges will be required to make the following described payments to the Director of the Bureau of Land Management in advance of allowance of his application: (a) the usual homestead fees and commissions; (b) one-fifth of the purchase price, if any, prescribed by law for said lands; (c) the Federal drainage survey charge of three cents per acre, if that be chargeable against the lands sought; and (d) all sums due the State for drainage charges. If an application be allowed, the Director will transmit to the appropriate State officer the sums due the State. If an application be rejected, the Director will return to the applicant all moneys paid by him.

§ 118.26 *Residence, cultivation or improvement not required for cash pur-*

chases. There is no provision in the law which requires residence on the land purchased under the act of May 20, 1908, or cultivation or improvement thereof.

§ 118.27 *Contest of entry by purchaser.* In case a purchaser at a tax sale of entered but unpatented land should find that the entryman had not complied with the land laws as to settlement, improvements, and cultivation, and such purchaser should secure the cancellation of the entry as a result of his contest, he would then have the right to acquire title to the land upon making payment and showing the required qualifications.

§ 118.28 *Issuance of cash certificates, receipts and patents.* In case payment is made as required, and evidence is furnished showing the qualifications of the purchaser on the form provided therefor, the usual cash certificates and receipts will be issued by the Bureau of Land Management, and, should no objection appear, patent will issue in due course of business.

§ 118.29 *Notices required of purchasers of unentered land.* Section 5 of the act of May 20, 1908 (35 Stat. 170; 43 U. S. C. 1025) provides for the issuance of patent for unentered land to qualified purchasers at any time after the sale when the proper payments have been made. Therefore no notice of the expiration of the statutory period of redemption is required to be given the United States. Because of withdrawals, settlement on the lands referred to in this section is no longer permitted. Purchasers of entered but unpatented lands will be required to give the notices of redemption required by the State drainage laws, but the usual final-proof notice required of homesteaders need not be given.

§ 118.30 *Assignments of drainage tax certificates not authorized but waiver of right of entry permitted.* The act of May 20, 1908 (35 Stat. 169; 43 U. S. C. 1021–1027) makes no mention of, nor reference to, assignments of drainage-tax certificates or rights acquired at any sale of land for nonpayment of a State drainage assessment. It is held, however, that a purchaser at a sale may waive his right to enter the land.

§ 118.31 *Rights of United States and persons claiming under public land laws.* The United States and all persons legally holding unpatented lands under entries made under the public land laws of the United States are entitled to all the rights, privileges, and benefits given by said laws to persons holding lands of a like character in private ownership. A copy of all notices required by the State drainage laws to be given to the owners or occupants of lands held in private ownership must be given the Bureau of Land Management in cases where unentered lands are affected, and to entrymen whose unpatented lands are affected thereby. The United States and such entrymen have the same rights to be heard by petition, answer, remonstrance, appeal, or otherwise as are given to persons holding lands in private ownership; and all entrymen shall be given the same rights of redemption as are given to the owners of land held in private ownership.

§ 118.32 *Entries, proofs, and patents for Chippewa lands.* Section 8 of the act of May 20, 1908, provides that entries and proofs may be made and patents issued for all ceded Chippewa lands (except in the Red Lake Reservation) which were withdrawn under the act of June 21, 1906 (34 Stat. 325), in the same manner in which entries, proofs, and patents for other lands are made and issued under the homestead laws, subject to the payment of the purchase price fixed by law for such lands. Persons making final proofs on entries in the Red Lake Reservation will be required to pay 3 cents per acre in addition to the purchase price originally fixed by law.

SUBCHAPTER D—CERTIFICATES AND SCRIP

PART 130—GENERAL REGULATIONS INVOLVING CERTIFICATES AND SCRIP [1]

Sec.
130.1 Statement required with location or selection.
130.2 When publication must begin.
130.3 Form of notice.
130.4 Proof of publication and posting.

AUTHORITY: §§ 130.1 to 130.4 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For bounty land warrants, see Part 131 of this chapter. For certificates and scrip, Alaska: see Part 61 of this chapter. For scrip, see Part 133 of this chapter. For soldiers' additional homestead rights, see Part 132 of this chapter.

§ 130.1 *Statement required with location or selection.* [2] Applications to locate scrip, warrants, certificates, soldiers' additional rights or to make lieu selections of public lands of the United States must be accompanied, in addition to the evidence required by existing rules and regulations, by a statement of the locator, selector, or some credible person possessed of the requisite personal knowledge of the premises, showing that the land located or selected is not in any manner occupied adversely to the locator or selector.

§ 130.2 *When publication must begin.* Where classification of the land is required under section 7 of the act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315f), publication of notice of location or selection should not be started until authorization is received from the authorized officer. Where classification is not required, the authorized officer will require the locator or selector, within 20 days from the filing of his location or selection, to begin publication of notice thereof, at his own expense, in a newspaper to be designated. Such publication must be made once a week for five consecutive weeks, in accordance with § 106.14, during which time a similar notice of the location or selection must be posted in the district land office and upon the lands included in the location or selection, and upon each and every noncontiguous tract thereof.

§ 130.3 *Form of notice.* The notice for publication must describe the land located or selected, give the date of location or selection, and state that the purpose thereof is to allow all persons claiming the land adversely, or desiring to show it to be mineral in character, an opportunity to file objection to such location or selection with the manager for the land office in which the land is situated, and to establish their interest therein, or the mineral character thereof.

§ 130.4 *Proof of publication and posting.* Proof of publication must consist of a statement of the publisher or of the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the publication notice attached. Proof that the notice remained posted upon the land during the entire period of publication, must be made by the locator or selector or some credible person having personal knowledge of the fact. The manager will certify to the posting in his office. The first and last days of such publication and posting must in all cases be given.

CROSS REFERENCE: For regulations relative to proofs, see Part 106, of this chapter.

PART 131—BOUNTY LAND WARRANTS

ASSIGNMENT AND USE OF BOUNTY LAND WARRANTS

Sec.
131.1 Services for which warrants are issued.
131.2 Locating privilege restricted.
131.3 How warrants may be used.
131.4 Warrants received as the equivalent of money.
131.5 Use of warrant as equivalent of money does not excuse compliance with law.
131.6 Assignment prior to issuance of warrant not recognized.
131.7 Requirements governing assignments.
131.8 Requirements governing powers of attorney to sell or locate.
131.9 Blank assignments.
131.10 Attestation of powers of attorney to sell or locate.
131.11 Assignee not recognized as witness.
131.12 Acknowledgment of assignments and powers of attorney.
131.13 Assignments by unmarried females.
131.14 When copy of decree of court is required with assignments.
131.15 Two assignments by same party.
131.16 Erasure of name.
131.17 Assignment executed in a foreign country.

[1] There are outstanding, certain rights known as "forest lieu selection rights," or scrip.

Forest lieu selections were authorized by the act of June 4, 1897 (30 Stat. 36), which was amended by the act of June 6, 1900 (31 Stat. 614).

The act of March 3, 1905 (33 Stat. 1264), repealed the acts mentioned but confirmed contracts which theretofore had been entered into by the Secretary of the Interior. The repealing act excepted from its operation valid selections then pending and provided that if any such selection should fail through no fault of the selector, a new selection might be made in lieu thereof.

Regulations under the acts of June 4, 1897, and June 6, 1900, were approved July 7, 1902 (31 L. D. 372), and regulations under the act of March 3, 1905, were approved May 16, 1905 (33 L. D. 558). These regulations were not codified, in view of their limited application on June 1, 1938.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Sec.
131.18 Assignment after minor warrantee has attained his majority.
131.19 Assignment executed and witnessed but not acknowledged.
131.20 Assignment by an Indian residing among whites.
131.21 Assignment by an Indian holding tribal relations.
131.22 Assignment for minor Indians.
131.23 Assignability of warrants.
131.24 Descent of title, to widow of warrantee.
131.25 Vesting of title on death of warrantee before issue of warrant.
131.26 Court certificate required when warrantee is deceased.
131.27 Assignment by widow, her heirs, or legal representatives.
131.28 Vesting of title on death of warrantee after issue of warrants, etc.
131.29 Requirements in connection with assignments by heirs.
131.30 Transcript of will required.
131.31 Assignment by administrator de bonis non, with will annexed.
131.32 Loss or destruction of warrant.
131.33 Reissued warrants.
131.34 Return of warrant, where location is canceled.
131.35 Substitution for objectionable warrant.

AUTHORITY: §§ 131.1 to 131.35 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For general orders of withdrawal, see §§ 297.11 and 297.12 of this chapter. For land classifications, see Part 296 of this chapter.

§ 131.1 *Services for which warrants are issued.* Warrants for bounty lands were and are issued by the Administrator of Veterans' Affairs, for services in wars or battles prior to March 3, 1855, only. Applications for the issuance of warrants should be addressed to that official.

§ 131.2 *Locating privilege restricted.* Warrants can not now be "located" upon the public lands. The locating privilege was denied except in the State of Missouri after the passage of the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 700), and there are now no lands known to the Bureau of Land Management to be subject to warrant location in Missouri.

§ 131.3 *How warrants may be used.* A warrant for bounty lands may be used as cash in commuted homestead, desert land, and timber and stone entries, and for lands sold at public auction, except ceded Indian lands.

CROSS REFERENCES: For homesteads, generally, see Part 166, of this chapter. For ceded Indian lands, see Part 177 of this chapter. For desert-land entries, see Part 232 of this chapter. For public sales, see Part 250 of this chapter. For timber and stone entries, see Part 285 of this chapter.

§ 131.4 *Warrants received as the equivalent of money.* In the instances mentioned in § 131.3, warrants are received as the equivalent of money to the extent of their valuation at $1.25 per acre, and it is not necessary to apply the warrant to a specific tract. For instance, a 40-acre warrant will be received as $50 cash in payment or part payment of the money due.

§ 131.5 *Use of warrant as equivalent of money does not excuse compliance with law.* In order to use a warrant, as indicated in §§ 131.3 and 131.4, it is necessary for the party to make application under one of the four classes mentioned, and all residence upon and cultivation and improvement of the tract, which may be required by such law and the regulations thereunder, must be fully complied with.

§ 131.6 *Assignment prior to issuance of warrant not recognized.* No assignment of a warrant or power of attorney to sell or locate the same executed prior to the date of the issue thereof can be recognized by the Bureau of Land Management. (See R. S. 2436; 43 U. S. C. 822.) Assignments must be in writing. Delivery only constitutes no transfer.

§ 131.7 *Requirements governing assignments.* The assignment and acknowledgment are required to be indorsed as far as practicable upon the warrant. Should it be found necessary to write the entire assignment or a separate paper, which can only occur when prior assignments or acknowledgments have filled entirely the blank space on the warrant, it must be so attached as to show positively that the warrant assigned was in the hands of the party making the transfer. In such cases the signature of the assignor must be affixed in the presence of the officer before whom it is acknowledged, who must certify that at the date of the assignment the warrant was presented by and in possession of the assignor. The assignments should describe the warrant by number, act, and acreage. Parties should avoid discrepancies in spelling and write their full Christian names and surnames.

§ 131.8 *Requirements governing powers of attorney to sell or locate.* The requirements in the foregoing section as to warrants must be observed in preparing acknowledgments of powers of attorney to sell or locate bounty-land warrants.

CROSS REFERENCE: For agents and attorneys, generally, see Part 1 of this title.

§ 131.9 *Blank assignments.* Blank assignments are void, and will not be recognized by the Bureau of Land Management. The name of an assignee should be written in the assignment before the warrant is sent to the district land office or Bureau of Land Management. Evidence that such assignee procured the warrant for value under the blank assignment may be required.

§ 131.10 *Attestation of powers of attorney to sell or locate.* Each assignment or power of attorney must be attested by two subscribing witnesses. The mark of a witness will not be recognized.

§ 131.11 *Assignee not recognized as witness.* A person to whom a warrant is transferred will not be recognized as a legal attesting witness to the assignment, nor as a proper officer to take the acknowledgment thereof.

§ 131.12 *Acknowledgment of assignments and powers of attorney.* (a) The execution of assignments is required to be acknowledged by the assignor in the presence of a manager of a land office, a judge or clerk of a court of record when authorized to take acknowledgments, a notary public, justice of the peace, a commissioner of deeds, or a United States commissioner, who shall certify to the fact of the acknowledgment and to the identity of the assignor. The official seal of said court, notary public, or commissioner shall be affixed to the certificate. When the acknowledgment is taken before a justice of the peace or other officer without an official seal (except a manager of a land office), it must be accompanied by an additional certificate under seal of proper authority, establishing the official character of such official and the genuineness of his signature.

(b) Powers of attorney must be acknowledged in like manner.

§ 131.13 *Assignments by unmarried females.* Assignments executed by unmarried females must be accompanied by evidence that they have attained the age of 21 years.

§ 131.14 *When copy of decree of court is required with assignments.* Assignments executed by a commissioner, or other designated person acting under a decree of court, must be accompanied by a duly certified copy of such decree in which all the proceedings should be recited, and from which it must appear that due, proper, and legal notice of the proceedings had been given to all parties in interest. The jurisdiction of the court must appear. Where assignments can not be produced, the Director of the Bureau of Land Management will determine the title to a bounty-land warrant according to the principles and usages of law and equity.

§ 131.15 *Two assignments by same party.* Where two assignments exist, executed by the same party in favor of different individuals, whether the assignment first in time has been completed or not, to make the second assignment available it must be established by evidence satisfactory to the Bureau of Land Management, either that no title passed under the first assignment or that all claims thereunder have been transferred to the second assignee, renounced, or abandoned.

§ 131.16 *Erasure of name.*[1] When the name of a person has been inserted in an assignment of a warrant and erased, there should be filed evidence satisfactory to the Bureau of Land Management, consisting of a statement of the assignor, or party or parties by whom said name was inserted and the erasure made, fully explaining the facts and circumstances of such insertion and erasure, and stating that no transfer or delivery of said warrant was made to the party whose name had been so inserted, and that the ownership or custody of said warrant had not been changed by such insertion, which statement shall be accompanied by satisfactory evidence that a copy of the same has been served personally or by registered letter upon the party whose name was inserted. The statement should set forth that the further object

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

thereof is to afford such party an opportunity to file a protest in the Bureau of Land Management against the use of the warrant. When the name of a bona fide assignee has been erased from a transfer, an assignment from said assignee to the present holder of the warrant will be required to perfect the title to the warrant. Material erasures in powers of attorney must be satisfactorily explained.

§ 131.17 *Assignment executed in a foreign country.* When the assignment of a warrant is executed in a foreign country, and the acknowledgment taken by an officer authorized by the laws thereof to perform such duties, the attestation of the American consul in such country should be obtained as to the official character and genuineness of the signature of such official. If the official character, etc., of the foreign officer is attested by a consular agent of such foreign government residing in this country, the latter's official character must be certified by the diplomatic representatives of such government in the United States. When such assignments are executed in a foreign language duly authenticated translations thereof must be furnished. Secretaries of legation and consular officers of the United States are authorized to take acknowledgments, but they must certify the same under their official seals.

§ 131.18 *Assignment after minor warrantee has attained his majority.* When the persons named as warrantees are described in the warrant as minors, their assignments thereof must be accompanied by satisfactory evidence that they had attained their majority at the date of the transfer.

§ 131.19 *Assignment executed and witnessed but not acknowledged.* When an assignment has been executed and witnessed, but not acknowledged, it may be proved in open court, but a certified transcript of the proceedings must be attached to the warrant. Such unacknowledged assignment may also be established to the satisfaction of the Bureau of Land Management by competent evidence. When such assignment has not been properly attested, it must be made anew.

§ 131.20 *Assignment by an Indian residing among whites.* When an assignment is made by an Indian residing among whites, the prescribed form will be adopted with this addition, that the officer taking the acknowledgment shall certify that the Indian is capable of contracting, the amount paid for the warrant, and that he saw the same paid to the Indian.

§ 131.21 *Assignment by an Indian holding tribal relations.* Where an assignment is made by an Indian holding tribal relations, his identity and ability to contract must be certified by the superintendent of Indian Affairs or Indian agent, either of his own knowledge or on the testimony of the chiefs certifying to the amount paid for said warrant; that the same was paid in his presence; and that the transaction was fair and regular. In either case, if the amount paid is not a fair consideration, the assignment will be disregarded.

§ 131.22 *Assignment for minor Indians.* (a) Where a warrant for the service of an Indian is issued or descends to minors who no longer retain their tribal relations, it must be located or sold by a guardian duly appointed and authorized by the proper court for that purpose.

(b) Where the minor or minors retain their tribal relations, the agent or superintendent must certify that they are entitled to the warrant under the laws, usages, and customs of the tribe; and when sold or located, that it was done by the guardian or such proper representative as, according to said laws, usages, and customs, was fully authorized.

(c) Where the signature of a superintendent or an Indian agent is required, the genuineness of the signature of that officer must be certified to by the Commissioner of Indian Affairs.

§ 131.23 *Assignability of warrants.* (a) Prior to June 3, 1858, bounty-land warrants were regarded as real estate. Consequently a transfer of a warrant before that date by an administrator must be accompanied by evidence that the same was made in pursuance of an order of court for the sale of the real estate of the decedent.

(b) By the act of June 3, 1858 (11 Stat. 308; 43 U. S. C. 832), bounty-land warrants were declared to be personal chattels, and, as such, assignable by the warrantees, by their widows in certain cases, by their heirs or legatees, or by the legal representatives of the deceased claimant "for the use of such heirs or legatees only."

(c) It follows that the right to assign inures to the assignees of the vendors named in paragraph (b) of this section, and to their heirs, legatees, or legal representatives; but these latter are not required to assign "for the use of the heirs or legatees only."

§ 131.24 *Descent of title, to widow of warrantee.* Where a warrant has been issued in the name of a deceased soldier, who had applied therefor before his death, the title thereto is declared by section 2444, Revised Statutes (43 U. S. C. 832), to vest in the widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant.

§ 131.25 *Vesting of title on death of warrantee before issue of warrant.* If the claimant died and left a widow, who also was deceased before the issue of the warrant, then the title thereto vests in the heirs or legatees of the warrantee.

§ 131.26 *Court certificate required when warrantee is deceased.* To make a warrant issued in the name of a deceased person available it should be accompanied by a certificate under seal from the proper court having probate jurisdiction, showing the fact of the death of the warrantee at a specified date and place, and whether he left a widow, giving her name, if there was one. If there was no widow the said certificate should state whether the warrantee died testate or intestate and give the names of all his heirs at law, specifying adults and minors. Where the assignee of a warrant is deceased a similar certificate should be exhibited setting forth the fact, time, and place of death, his testacy or intestacy, and, in the event he left no will, the names, ages, and places of residence of all the heirs.

§ 131.27 *Assignment by widow, her heirs, or legal representatives.* If it shall appear from the certificate required by § 131.26 that the warrantee died before the issue of the warrant and left a widow, the assignment of such widow, her heirs, or legal representatives, will be a sufficient conveyance of the warrant.

§ 131.28 *Vesting of title on death of warrantee after issue of warrant, etc.* If the warrantee died after the issue of the warrant, or if he died before such issue and left no widow, the title vests in his heirs at law or legatees.

§ 131.29 *Requirements in connection with assignments by heirs.* (a) If the warrantee died intestate his heirs, shown to be such by the required certificate of court, may assign the warrant, the adults for themselves and the minors by their guardians, who shall file with the warrant a certified copy of their letters of guardianship or a certificate from the clerk of the proper court stating that such letters had been issued and that they were in force at the date of the assignment.

(b) Or the administrator of the estate of the deceased warrantee who died intestate may assign the warrant "for the use of the heirs or legatees only," upon filing therewith a certified transcript of the letters of administration or a certificate from the clerk of the proper court that the said letters had been issued and that they were in force at the date of the assignment. Satisfactory evidence may also be required to show that the administrator was appointed at the instance of the heirs or proper parties in interest and transferred the warrant for their benefit.

§ 131.30 *Transcript of will required.* If the warrantee or his assignee died testate a certified transcript of the will must accompany the warrant. If the will specifically disposes of the warrant the legatee or legatees may assign, if adults, in the usual form; if minors, by their guardians as aforesaid. If the will does not specifically dispose of the warrant the executor of the estate of the warrantee may assign "for the use of the heirs or legatees only," but in that case a certified transcript of the letters testamentary or a certificate from the proper authority that such letters had been granted and were in force at the date of the assignment must accompany the transfer.

§ 131.31 *Assignment by administrator de bonis non, with will annexed.* An assignment executed by an administrator de bonis non, with the will annexed, of the estate of the deceased warrantee or transferee must be accompanied by evidence of his authority to act as required in the case of an administrator of the state of a warrantee who died intestate.

§ 131.32 *Loss or destruction of warrant.* Upon the loss or destruction of a warrant, or where the lawful owner has been fraudulently deprived thereof, the

parties may file in the Bureau of Land Management a statement setting forth a description of the warrant by number, act, and acreage, their interest in the premises, a history of the assignment thereof, a description in detail of its disappearance, and the names of all parties in interest. If the same is deemed sufficient to identify the warrant, and satisfactory in other respects, it will be entered as a caveat against the satisfaction of the warrant. Thereafter the Bureau of Land Management will take all reasonable precautions to prevent a use of the warrant by persons not entitled to the benefits thereof. The doctrine governing innocent purchasers of negotiable instruments does not apply to warrants.

§ 131.33 *Reissued warrants.* Warrants reissued under Revised Statutes, section 2441 (43 U. S. C. 829), are subject to the same rules respecting assignments that apply to original warrants; but in default of an assignment from the warrantee a decree of title must be obtained from a court of competent jurisdiction and a transcript thereof appended to the reissued warrant. Legal notice must be given to all parties in interest. In proper cases the Bureau of Land Management may accept other satisfactory evidence that the original warrant had been assigned to the claimant.

§ 131.34 *Return of warrant, where location is canceled.* When an entry made by the location of a warrant properly assigned to the locator has been canceled, the warrant will be returned to its owner. A transfer of the land by the locator of a warrant is held to carry the warrant. This title reverts to the locator if he indemnifies the grantee for all loss sustained by such cancellation either by the return of the purchase money or by causing the paramount title to the land to be vested in said grantee. Applications for the return of warrants must be accompanied by the duplicate certificate of location or a statement showing the inability of the parties to present the same; evidence that the certificate of location and no assignments thereof were recorded in the proper county; and evidence consisting of a certificate from the proper recording officer, or an abstract of title prepared by a reliable abstracter showing all transfers of the land. When the land has been transferred by the locator or those in privity with him there must also be furnished evidence as to whether or not the grantee sustaining the loss occasioned by the cancellation of the location has been indemnified. (See R. M. Stitt, 33 L. D. 315.)

§ 131.35 *Substitution for objectionable warrant.* (a) When a valid entry is withheld from patent on account of the objectionable character of the warrant located thereon, the parties in interest may procure the issue of patent to the locator by filing in the proper district land office an acceptable substitute for said warrant. The substitution must be made in the name of the original locator, and may consist of a warrant, cash, or any kind of scrip legally applicable to the class of lands embraced in the entry. Two warrants can not be substituted for one originally located, nor will any payment be received that would destroy the identity of the entry.

(b) Cash can not be substituted in locations made since March 2, 1889, outside of Missouri, except in preemption and homestead cases and cases under the act of December 13, 1894 (28 Stat. 594; 43 U. S. C. 783). Attention is directed to Hussman v. Durham (165 U. S. 145, 41 L. ed. 664). Authority to substitute must be first procured from the Bureau of Land Management in each case.

PART 132—SOLDIERS' ADDITIONAL HOMESTEAD RIGHTS

ASSIGNMENT AND USE OF SOLDIERS' ADDITIONAL HOMESTEAD RIGHTS

Sec.

132.1 Persons entitled to soldiers' additional homestead rights.
132.2 Right is both inheritable and assignable.
132.3 How right may be used.
132.4 Residence and cultivation not required of entryman.
132.5 Validity of right not determined in advance of application.
132.6 Selection of land and application.
132.7 Form prescribed for applications.
132.8 Action on applications.
132.9 Assignment of undivided interests.
132.10 Certificates issued prior to August 18, 1894.
132.11 Transfer and assignment of recertified rights.
132.12 Attestation and acknowledgment of recertified rights.
132.13 Allowance of application and issuance of final certificate.
132.14 Rule of approximation not permitted.

AUTHORITY: §§ 132.1 to 132.14 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For certificates and scrip, general regulations, see Part 130 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For soldiers' additional rights, Alaska, see Part 61 of this chapter.

§ 132.1 *Persons entitled to soldiers' additional homestead rights.* Any officer, soldier, seaman, or marine who served for not less than 90 days in the Army or Navy of the United States during the Civil War, receiving an honorable discharge therefrom, and who, prior to June 22, 1874, the date of the adoption of the Revised Statutes, made a homestead entry for less than 160 acres, may, under section 2306, Revised Statutes (43 U. S. C. 274), enter an additional quantity of land which added to the previous entry will not aggregate more than 160 acres. This right was extended by section 2307, Revised Statutes (43 U. S. C. 278), to the widow, if unmarried, otherwise to the minor orphan children.

§ 132.2 *Right is both inheritable and assignable.* By the Supreme Court decision of November 16, 1925, in the case of Anderson v. Clune (269 U. S. 140, 70 L. ed. 200), it was held that the grant vests a property right in the donee, to which must be accorded the quality of inheritability as well as assignability and that such right, if not exercised or transferred by the donee, passes to his estate as other property, subject only to the exercise of the rights given by section 2307, Revised Statutes (43 U. S. C. 278), to the widow and minor orphan children.

§ 132.3 *How right may be used.* The soldier's additional right may be used (a) by the soldier in his lifetime either directly by entering the land or indirectly, in his lifetime, by conveying his right to entry to an assignee; or (b), similarly, by the widow, while her status as widow of the soldier continues; or (c), similarly, by the minor orphan children, during their minority, acting through their lawful guardian. In case a soldier entitled to the right dies without exercising it, leaving no widow or minor orphan children, the right to entry vests in his personal representative as personal property. If the right passes to the soldier's widow and she remarry or die without exercising it, and there be no minor children of the soldier then surviving, the right vests in the soldier's estate; but if the right passes to the minor children, it becomes absolute in them, in no way conditioned upon an appropriation by the guardian during their minority.

§ 132.4 *Residence and cultivation not required of entryman.* Residence and cultivation are not required in the location of soldiers' additional rights, either by the original beneficiary or by his assignee, no matter whether the original entry was perfected or abandoned.

§ 132.5 *Validity of right not determined in advance of application.* The Bureau of Land Management does not pass upon the question of whether or not an additional right exists in the absence of an application to locate the alleged right upon a specific tract of land which must be accompanied with a record of the military service, description of the entry made prior to June 22, 1874, competent evidence showing identity of the soldier with the entryman, that no subsequent entry has been made, and that the right has not been previously assigned. If the right is sought to be located by the assignee, appropriate evidence must be submitted showing that he is entitled thereto by assignment.

§ 132.6 *Selection of land and application.* The owner of a soldiers' additional right who desires to personally exercise the same must first select a tract of land and then file formal application therefor in the land office for the district in which the land desired is situated, accompanying the same with the evidence as to existence and ownership of the right as indicated in § 132.5; or if the land desired be located in Kansas, Michigan, Mississippi, or Wisconsin, or other public-land State in which there is no land office, the application and accompanying evidence must be filed in the Bureau of Land Management, Washington 25, D. C.

§ 132.7 *Form prescribed for applications.* The required nonmineral and nonoccupancy statements are embodied in Form 4–008a, prescribed for soldiers' additional applications.

§ 132.8 *Action on applications.* (a) Where an application to locate soldiers' additional rights under sections 2306 and 2307, Revised Statutes (43 U. S. C. 274,

278), is held for rejection, and the applicant accepts the holding and files a substitute soldiers' additional right, such substitute right should be accompanied by a formal application (Form 4–008a), duly executed. The substitution amounts to a waiver of all rights under the rejected application. Publication and posting must be made as required by Part 130 of this chapter, except in Alaska, where publication and posting must be made in accordance with section 10, act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 359), and § 61.13. The above covers cases in which the entire right has been held to be invalid, and has no bearing whatever on the so-called "combination" cases. Where a part of a combination of rights is held to be invalid and new rights substituted therefor, a formal application (Form 4–008a) should not be filed.

(b) No such application should be received by the manager unless accompanied by evidence of the right, or by a reference to the case, by land office, serial number and description of the land, containing such evidence.

§ 132.9 *Assignment of undivided interests.* (a) If one claiming a portion of a soldier's additional right as the heir of a soldier furnishes convincing proof of his heirship, the names of the other heirs, and that there are no debts due by the estate of the soldier, his application to locate his portion of the right, or an assignment thereof, will be recognized.

(b) A soldier's additional right not exercised (or assigned) by the soldier, nor by his widow during widowhood, in the absence of minor children, descends to those who are his heirs under the laws of the State of his domicile at the time of his death, and, in making proof of the undivided interest to be located or assigned, the applicant will be required to furnish evidence showing the succession in the same manner as in the case of estates generally.

§ 132.10 *Certificates issued prior to August 18, 1894.* All certificates of right regularly issued by the General Land Office prior to August 18, 1894, showing that the parties named therein are entitled to make soldiers' additional homestead entries, are declared to be valid by the act of said date (28 Stat. 397; 43 U. S. C. 276), notwithstanding any attempted sale or transfer. The said act provides that, where such certificates had been or might thereafter be sold or transferred, the sale or transfer thereof shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of bona fide purchasers for value, and that all entries made by such purchasers therewith shall be approved and patent shall issue in the name of the assignees. Before the approval of such entries for patent the transferee must file satisfactory proof of ownership and of bona fide purchase for value.

§ 132.11 *Transfer and assignment of recertified rights.* (a) The transfer and assignment of soldiers' additional rights recertified to owners and bona fide purchasers under the act of August 18, 1894 (28 Stat. 397; 43 U. S. C. 276), may be written or printed upon a separate sheet or sheets of paper to be securely attached to the certificate.

(b) The assignments may be made in accordance with the forms printed in 30 L. D. 604, 605, or their substantial equivalents.

§ 132.12 *Attestation and acknowledgment of recertified rights.* Each assignment of a recertified right must be attested by two witnesses and duly acknowledged before some officer authorized to take acknowledgments of deeds in the county or district wherein the assignment is made, who shall certify that the assignor is well known to such officer, that he is the identical person to whom the soldier's additional right was recertified, and who executes the assignments thereof.

§ 132.13 *Allowance of application and issuance of final certificate.* A soldier's additional application does not segregate the land nor prohibit the filing of other applications for such land until after its allowance. The entry and final certificate should bear the same date. The manager after collecting the fee and the original and final commissions will issue final certificate.

§ 132.14 *Rule of approximation not permitted.* The rule of approximation will not be permitted in the location of soldiers' additional homestead rights whether in their entirety, partly, or in combination with other rights or parts thereof.

PART 133—SCRIP

ASSIGNMENT AND USE OF SCRIP [1]

Sec.
133.1 Valentine scrip.
133.2 Supreme Court scrip.
133.3 Surveyor General scrip.

AUTHORITY: §§ 133.1 to 133.3 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For certificates and script, Alaska, see Part 61 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter.

§ 133.1 *Valentine scrip.* (a) In receiving applications to file, or locate, scrip issued by the General Land Office (now the Bureau of Land Management) to Thomas B. Valentine, under the act of April 5, 1872 (17 Stat. 649), the manager will be governed by the following instructions:

(b) By the terms of the act, and by the face of the scrip itself, such scrip is applicable to any "unoccupied and unappropriated public lands of the United States not mineral."

(c) The scrip may be located by the said Thomas B. Valentine or his legal assignees.

(d) By the location of Valentine scrip upon a legal subdivision of the public land of less area than that called for by the scrip, the locator does not waive or surrender his right to the excess or unused portion thereof (31 L. D. 259).

(e) When application is made to file the said scrip upon unsurveyed land, a description by metes and bounds, together with a map or diagram of the tract applied for must be filed with the application. In such cases, the scrip, with the accompanying papers as aforesaid, will be forwarded to the Bureau of Land Management. Within 3 months from the date of the receipt by the manager of the official plat of survey of the said township, the party who may have filed the said scrip will be required to designate upon the official plat the specific subdivision embraced in the said filing, whereupon the location thereof will be consummated. Should the applicant fail to so adjust within the specified 3 months, the manager will immediately thereafter proceed to adjust the filing.

(f) The fees of the manager for the filing and location of the said scrip will be $1 on each piece of scrip filed, and the same amount on each piece located.

§ 133.2 *Supreme Court scrip.* (a) In pursuance of the provisions of the acts of June 22, 1860 (12 Stat. 85), March 2, 1867 (14 Stat. 544), June 10, 1872 (17 Stat. 378), and January 28, 1879 (20 Stat. 274; 43 U. S. C. 1155), scrip was issued by the General Land Office (now the Bureau of Land Management), the several certificates of which, representing various quantities of land, according to the circumstances of the respective cases, may, under the second section of the act of January 28, 1879, be received from actual settlers in payment of preemption claims, or in commutation of homestead claims, even where the same embrace lands subject to entry at the double minimum price of $2.50 per acre, in the same manner and to the same extent as is authorized by law in the case of military bounty land warrants. But the law authorizes no fees to be collected by the managers on account of locations made with this scrip.

(b) When such scrip is presented in payment of a preemption claim composed of lands subject to entry at $2.50 per acre, the preemptor, in addition to the scrip surrendered, will be required to pay in cash the difference between the value of said scrip at $1.25 per acre, and that of the tract embraced in his claim; or to surrender additional scrip; thus 160 acres of double-minimum land may be paid for by the surrender of one piece of scrip for 160 acres, and the payment of $200, or by the surrender of two pieces of scrip for 160 acres each, or one piece for 320 acres. If the value of the scrip should exceed that of the lands entered therewith, the preemptor will receive no repayment thereof from the United States; but if the land, at its rated price, should exceed the scrip in value, such excess must be paid by the locator with cash.

(c) By the first section of that act (20 Stat. 274; 43 U. S. C. 1155) it is declared that this scrip is assignable by deed or instrument of writing according to the form and pursuant to regulations prescribed pursuant thereto, "so as to vest the assignee with all the rights of the original owners of the scrip." With regard to such form and regulations, the following is prescribed:

[1] Public land withdrawn by Executive orders Nos. 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to location with scrip until such location is authorized by classification. See Part 296 and §§ 297.11 and 297.12 of this chapter.

(1) Entries with this scrip must be made by the confirmee or confirmees named in the scrip, or his or their duly authorized attorney, in the name of such confirmee or confirmees, or by the assignee or assignees of such confirmee or confirmees, or his or their duly authorized attorney in the name of such assignee or assignees.

(2) Each assignment must be attested by one or more subscribing witnesses; the mark of a witness will not be respected. Parties in interest as assignees are not recognized as legal attesting witnesses to an assignment, neither can an officer take an acknowledgment of an assignment to himself.

(3) The execution of assignments is required to be acknowledged by the assignor, in the presence of a manager of a land office, a judge or clerk of a court of record when authorized to take acknowledgments, a notary public, justice of the peace, a commissioner of deeds resident in the State from which he derives his appointment, or a commissioner of a circuit court of the United States, who shall certify to the fact of the acknowledgment and to the identify of the assignor, and the official seal of said court, notary public or commissioner, shall be affixed to the certificate. When the acknowledgment is taken before a justice of the peace or other officer without an official seal (except a manager of a land office), it must be accompanied by an additional certificate, under seal of the proper authority, establishing the official character of the person before whom the acknowledgment was made, and the genuineness of his signature.

(4) Powers of attorney must be acknowledged in like manner.

(5) Assignments executed by unmarried females must be accompanied by evidence that they have attained the age of 21 years; and when married women assign, their husbands must unite with them in making the transfer.

(6) When assignments are executed by a commissioner or other designated person, alleged to be acting under a decree of court, there must be procured and filed in the Bureau of Land Management a duly certified copy of such decree, in which all the proceedings had in the case should be recited, and from which it must appear that due notice of the pending suit had been given, by publication or otherwise, to all the parties interested.

(7) When the assignment of this scrip is executed in a foreign country, and the acknowledgment thereof taken by an officer authorized by the laws thereof to perform such duties, the attestation of the American consul in such country should be obtained as to the official character and genuineness of the signature of the person before whom the acknowledgment of the said assignment was made, or if the official character, etc., of such foreign magistrate, is attested by a consular agent of such foreign government residing in this country, his official character must be certified by the diplomatic representative of such government in the United States.

(8) When such assignments are executed in a foreign language, duly authenticated translations thereof must be furnished. Secretaries of legation and consular officers of the United States are authorized to take acknowledgments, but they must certify the same under their official seals.

(9) When the persons named as confirmees are described in the scrip as being minors, their assignment thereof must be accompanied by satisfactory evidence that they had attained their majority at the date of the transfer.

(10) When an assignment has been executed and witnessed but not acknowledged, it may be proved in open court, but a certified transcript of the proceedings in the case must be filed in the Bureau of Land Management. When, however, such assignment has not been properly attested, it must be made anew.

(11) For general forms of assignment, and of powers of attorney and acknowledgement, see forms in volume 2, Copp's Public Land Laws, 1882, pp. 996–999. In cases where the assignments, powers, or acknowledgments are written or printed and signed on the back of the certificate, the words, "the within certificate" may be used instead of the full description of such certificate provided for in these forms.

(12) It will not be practicable in all cases to attach the assignment or power of attorney to each certificate of location, and it will not be required by the Bureau of Land Management.

(13) When a single assignment or power of attorney covers a number of certificates, such assignment or power may be filed in the Bureau of Land Management and will be referred to in perfecting the assignment of any of the certificates named therein.

(14) Upon the application of any assignee of this scrip, accompanied by the scrip and papers in his possession relative to the assignment thereof, the Bureau of Land Management will examine said scrip and assignments, and such assignments thereof as are found on the files of the Bureau of Land Management, and if the scrip be found free from objections, and the assignments sufficient in form, a certificate of approval of such scrip and the assignments thereof, will be attached by the Bureau of Land Management to the scrip thus submitted.

(15) Each piece of scrip thus transmitted to the Bureau of Land Management must be accompanied by the sum of $1, the legal fee for a certificate of verification.

§ 133.3 *Surveyor General scrip.* The fourth section of the act of January 28, 1879 (20 Stat. 275; 43 U. S. C. 1155) declares that its provisions respecting the assignment and patenting of scrip and its application to preemption and homestead claims shall apply to the indemnity certificates of location provided for in the act of June 2, 1858 (11 Stat. 294), entitled "An act to provide for the location of certain confirmed private-land claims in the State of Missouri," and for other purposes. The general principles laid down in § 133.2 with regard to scrip issued under the act of June 22, 1860, are applicable to the class of certificates issued under the act of June 2, 1858, and the managers will be governed thereby in dealing with any of the latter presented for location. The same forms may be used, with such alterations in them as may be necessary to adapt them to the cases in hand.

SUBCHAPTER E—CITIZENSHIP

PART 137—EVIDENCE OF NATURALIZATION REQUIRED TO ESTABLISH CITIZENSHIP IN PUBLIC LAND CASES [1]

Sec.
137.1 Evidence of citizenship status.
137.2 Statement required of married women and widows.

AUTHORITY: §§ 137.1 and 137.2 issued under R. S. 2478; 43 U. S. C. 1201.

§ 137.1 *Evidence of citizenship status.*[2] (a) In cases where proof of citizenship status is required, the manager may accept a statement of the applicant giving the facts as to such status, which statement should include the date of the alleged naturalization or declaration of intention, the title and location of the court in which instituted, and, when available, the number of the document in question, if the proceeding has been had since September 27, 1906. In addition, in cases of naturalization prior to September 27, 1906, there should be given the date and place of the applicant's birth and the foreign country of which he was a citizen or subject. The citizenship showing may be incorporated in any of the forms prescribed for use in connection with the entry of public lands. Where the necessary data have been given, the manager will accept same and proceed with the case.

(b) The manager may accept the following evidence of a party's citizenship status, where proof of such status is required:

(1) A declaration of intention to become a citizen of the United States executed not more than seven years prior to the date of the filing of the public land application (a declaration more than seven years old is invalid); or

(2) An acknowledgment from the clerk of court (Immigration and Naturalization Service Form N–414) of the filing of a petition for naturalization; or

(3) An original certificate of naturalization or duplicate issued by the Immigration and Naturalization Service in lieu of one lost, mutilated or destroyed.

(c) Any document listed in this paragraph will be returned by the Bureau of Land Management to the party entitled thereto, as soon as it has served the purpose for which it is submitted.

§ 137.2 *Statement required of married women and widows.* (a) A married woman, or widow, who is required to furnish evidence of citizenship in this country in connection with an application or entry under the public land laws must furnish a statement showing the facts

[1] This part does not deal with establishing citizenship by birth.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

upon which she bases her claim to such citizenship.[1]

(1) A married woman must show the date of her marriage if both she and her husband are not native born.

(2) A widow must show the date of her marriage and the date of the death of the husband.

(3) If a married woman or widow claims citizenship through her husband, she must show the facts as to his citizenship and that they were married prior to September 22, 1922. If he acquired such citizenship by naturalization, satisfactory evidence of the naturalization must be furnished in the manner provided by § 137.1.

(4) If applicant was married prior to March 3, 1931, she must show the facts as to her husband's citizenship. An applicant who married on or after March 3, 1931, need not make any showing as to the citizenship of her husband.

(b) An applicant who claims citizenship through her own naturalization separate and apart from the naturalization of the husband or who bases her right to file a particular application on the filing by herself of a declaration of intention to become a citizen must in the manner provided by § 137.1, furnish satisfactory evidence of her naturalization or of the filing of the declaration.

(c) An applicant who fails to make the showing required, as stated, should be allowed 30 days from receipt of notice within which to do so, or to appeal.

SUBCHAPTER F—COLOR OF TITLE AND RIPARIAN CLAIMS

PART 140—GENERAL REGULATIONS GOVERNING COLOR-OF-TITLE CLAIMS

Sec.

140.1 Statutory authority.
140.2 Definition.
140.3 Classes of claims.
140.4 Who may apply.
140.5 Description of lands applied for.
140.6 Application.
140.7 Presentation and verification of factual statements.
140.8 Minerals.
140.9 Price of land.
140.10 Acreage limitation.
140.11 Payment.
140.12 Publication; protests.

AUTHORITY: §§ 140.1 to 140.12 issued under R. S. 2478; 43 U. S. C. 1201.

§ 140.1 *Statutory authority.* The act of December 22, 1928 (45 Stat. 1069), as amended by the act of July 28, 1953 (67 Stat. 227; 43 U. S. C. 1068, 1068a), authorizes the issuance of patent for not to exceed 160 acres of public lands held under claim or color of title of either of the two classes described in § 140.3, upon payment of the sale price of the land.

§ 140.2 *Definition.* "The act", when used in this part, means the act of December 22, 1928 (45 Stat. 1069; 43 U. S. C. 1068, 1068a), as amended by the act of July 28, 1953 (67 Stat. 227, 43 U. S. C. 1068a).

§ 140.3 *Classes of claims.* The claims recognized by the act will be referred to in this part as claims of class 1, and claims of class 2. A claim of class 1 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units.

§ 140.4 *Who may apply.* Any individual, group, or corporation authorized to hold title to land in the State and who believes he has a valid claim under color of title may make application.

§ 140.5 *Description of lands applied for.* Application under the act may be made for surveyed or unsurveyed lands. If unsurveyed, the description must be sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. If unsurveyed land is claimed, final action will be suspended until the plat of survey has been officially filed.

§ 140.6 *Application.* (a) An application for a claim of class 1 or of class 2 must be filed in duplicate on Form 4–1250.[1] It must be filed with the land office for the district in which the land is situated, or, if there is no land office for the district in which the land is situated, with the Bureau of Land Management, Washington 25, D. C., except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas shall be filed in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

(b) Every application must be accompanied by a filing fee of $10, which will be nonreturnable.

(c) The application must be in typewritten form, or in legible handwriting, and it must be completely executed and signed by the applicant.[2]

(d) Every applicant must furnish information required in the application form concerning improvements, cultivation, conveyances of title, taxes, and related matters.

§ 140.7 *Presentation and verification of factual statements.* (a) Information relating to all record and nonrecord conveyances, or to nonrecord claims of title, affecting the land shall be itemized on Form 4–1251.[1] The statements of record conveyances must be certified by the proper county official or by an abstractor. The applicant may be called upon to submit documentary or other evidence relating to conveyances or claims. Abstracts of title or other documents which are so requested will be returned to the applicant.

(b) Applicants for claims of class 2 must itemize all information relating to tax levies and payments on the land on Form 4–1252,[1] which must be certified by the proper county official or by an abstractor.

§ 140.8 *Minerals.* (a) Any applicant who satisfied all requirements for a claim of class 1 or of class 2 commencing not later than January 1, 1901, to the date of application and who so requests in the application will receive a patent conveying title to all other minerals except:

(1) Any minerals which, at the time of approval of the application, are embraced by an outstanding mineral lease or

(2) Any minerals for which the lands have been placed in a mineral withdrawal.

All other patents will reserve all minerals to the United States.

(b) All mineral reservations will include the right to prospect for, mine, and remove the same in accordance with applicable law.

§ 140.9 *Price of land.* The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements or development by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than $1.25 per acre.

§ 140.10 *Acreage limitation.* No patent will be issued pursuant to an application under the act which exceeds 160 acres.

§ 140.11 *Payment.* Applicant will be required to make payment of the sale price of the land within the time stated in the request for payment.

§ 140.12 *Publication; protests.* (a) The applicant will be required to publish once a week for four consecutive weeks in accordance with § 106.14 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the office specified in § 140.6, their objections to the issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

[1] See sec. 3, act of March 2, 1907 (34 Stat. 1228), act of September 22, 1922 (42 Stat. 1021), act of March 3, 1931 (46 Stat. 1511), and the act of June 25, 1936 (49 Stat. 1917), as amended by the act of July 2, 1940 (54 Stat. 715), and section 317 (b) of the Nationality Act of 1940 (54 Stat. 1146–1147, 8 U. S. C. 717).

[1] Filed with the Federal Register Division as part of the original document.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

PART 141—COLOR OF TITLE AND RIPARIAN CLAIMS APPLICABLE TO PARTICULAR STATES

COLOR OF TITLE CLAIMS, NEW MEXICO, CONTIGUOUS TO SPANISH OR MEXICAN GRANTS

Sec.

141.1 Statutory authority.
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141.9 Statutory authority.
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ERRONEOUSLY MEANDERED LANDS, LOUISIANA

141.15 Statutory authority.
141.16 Applications.
141.17 Appraisal of land; purchase price required.
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ERRONEOUSLY MEANDERED LANDS, WISCONSIN

141.19 Statutory authority.
141.20 Form of application.
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COLOR OF TITLE CLAIMS, MICHIGAN

141.25 Statutory authority; applications; reservation of coal and other minerals not required.

CROSS REFERENCES: For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter.

COLOR OF TITLE CLAIMS, NEW MEXICO, CONTIGUOUS TO SPANISH OR MEXICAN GRANTS

AUTHORITY: §§ 141.1 to 141.8 issued under R. S. 2478; 43 U. S. C. 1201.

§ 141.1 *Statutory authority.* The act of February 23, 1932 (47 Stat. 53; 43 U. S. C. 178), authorizes the Secretary of the Interior in his discretion to issue patents, upon the payment of $1.25 per acre, for not more than 160 acres of public land, where such land is contiguous to a Spanish or Mexican land grant, and where such land has been held in good faith and in peaceful, adverse possession by a citizen of the United States, his ancestors or grantors, for more than 20 years under claim or color of title and where valuable improvements have been placed on such land, or some part thereof has been reduced to cultivation. The act further provides that where the land is in excess of 160 acres, the Secretary may determine the 160 acres to be patented under the act. Under the said act the coal and all other minerals in the land are reserved to the United States and shall be subject to sale or disposal under applicable leasing and mineral land laws of the United States.

§ 141.2 *Application and purchase price required.* Applications under the act of February 23, 1932 must be filed with the manager of the land office at Santa Fe, New Mexico, and should be accompanied by payment of the purchase price of the land applied for at the rate of $1.25 per acre.

§ 141.3 *Form of application.*[1] No special form of application is prpvided. The application should be in typewritten form or in legible handwriting and must be corroborated by at least two disinterested persons having actual knowledge of the facts alleged therein.

§ 141.4 *Contents of application; evidence required.* Applicants desiring to take advantage of the benefits of the act of February 23, 1932 must show the following matters in their applications:

(a) Full name and post-office address of the applicant and whether married or single.

(b) Description of the land for which patent is desired. If surveyed, the land should be described by legal subdivision, section, township, and range. If unsurveyed, the land should be described by metes and bounds.

(c) That the land applied for is contiguous to a Spanish or Mexican land grant. The grant should be identified by name, number, patentee or description of land involved. The points or places at which the land applied for is contiguous to the Spanish or Mexican land grant, must be clearly shown.

(d) That possession of the lands applied for has been maintained for more than 20 years under claim or color of title. If the applicant is claiming as a record owner, he or she will be required to file an abstract of title, certified to by a competent abstractor, showing the record of all conveyances of the land up to the date of the filing of the application. If the applicant is not a record owner and no abstract of title can be furnished, statements must be filed, setting forth the names of all mesne possessors of the land, the periods held by each, giving the dates and manner of acquiring possession of the and, and the acts of dominion exercised over the land by each possessor.

(e) That the lands have been held in good faith and in peaceful, adverse possession. The applicant should show whether or not he and his predecessors in interest have paid taxes on the lands and for what periods of time, and whether any consideration was paid for any conveyances of the land. It should further be shown whether there is any person who is claiming the land adversely to the applicant, and if there be such, the name and address of such adverse claimant should be furnished.

(f) Whether or not valuable improvements have been erected upon the land applied for and whether or not any part of such land has been reduced to cultivation. If improvements have been made, the nature, the value, the exact location, and the time of erection thereof, should be fully disclosed together with the identity of the one who was responsible for erecting such improvements. If any of the land has been reduced to cultivation, the subdivision so claimed to have been reduced must be identified and the amount and nature of the cultivation must be set forth, together with the dates thereof.

§ 141.5 *Evidence of citizenship required.* The applicant must furnish a statement showing whether such applicant is a native-born or naturalized citizen of the United States. In the event an applicant is a naturalized citizen, the statement should show the date of the alleged naturalization or declaration of intention, the title and location of the court in which instituted, and when available, the number of the document in question, if the proceeding has been had since September 26, 1906. In addition, in cases of naturalization prior to September 27, 1906, there should be given the date and place of the applicant's birth and the foreign country of which the applicant was a citizen or subject. In case the applicant is a corporation, a certified copy of the articles of incorporation should be filed.

§ 141.6 *Evidence as to acreage claimed.* The applicant in the statement required under § 141.5 must show that the land claimed is not a part of a claim which embraced more than 160 acres on February 23, 1932. If the land claimed is part of a claim containing more than 160 acres, a full disclosure of all facts concerning the larger claim must be furnished.

§ 141.7 *Publication and posting of notice.* (a) If upon consideration of the application it is determined that the applicant is entitled to purchase the land applied for, the applicant will be required to publish notice of the application in a newspaper of general circulation in the county wherein the land applied for is situated. Notice for publication shall be issued in the following form:

Land Office,
Santa Fe, New Mexico.

Notice is hereby given that _____
(Name of applicant)
of _____, has filed applica-
(Address)
tion _____
(Number and land office)
under the act of February 23, 1932 (47 Stat. 53), to purchase _____
(Land)
Sec. ____, T. ____, R. ____, _____ Mer., claiming under _____
(Ground of claim)

The purpose of this notice is to allow all persons having bona fide objection to the proposed purchase, an opportunity to file their protests in this office on or before _____
(Date)

_____
(Manager)

(b) The notice shall be published at the expense of the applicant and such publication shall be made once each week for a period of five consecutive weeks. A copy of the notice will be posted in the land office during the entire period of publication. The applicant must file evidence showing that publication has been had for the required time, which

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representation as to any matter within its jurisdiction.

evidence must consist of the statement of the publisher, accompanied by a copy of the notice as published.

§ 141.8 *Issuance of final certificate with reservation of minerals.* (a) Upon submission of satisfactory proof of publication and the expiration of the time allowed for the filing of objections against the application, if there be no protest, contest or other objection against the application, final certificate will then be issued by the manager.

(b) There will be incorporated in patents issued on applications under the above act, the following:

Excepting and reserving, however, to the United States, the coal and all other minerals in the land so patented, together with the right of the United States or its permittees, lessees, or grantees, to enter upon said lands for the purpose of prospecting for and mining such deposits as provided for under the act of February 23, 1932 (47 Stat. 53).

ERRONEOUSLY MEANDERED LANDS, ARKANSAS

AUTHORITY: §§ 141.9 to 141.14 issued under R. S. 2478; 43 U. S. C. 1201.

§ 141.9 *Statutory authority.* The act of September 21, 1922 (42 Stat. 992; 43 U. S. C. 992) authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Arkansas, which were originally erroneously meandered and shown upon the official plats as water-covered areas, and which are not lawfully apropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who in good faith under color of title or claiming as a riparian owner, has prior to September 21, 1922, placed valuable improvements on such land or reduced some part thereof to cultivation.

§ 141.10 *Applications.* Applications to purchase under the act of September 21, 1922, must be signed by the applicant in the State of Arkansas. Such applications had to be filed within 90 days from the date of the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plats. The applicant must show that he is either a native-born or naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of title his claim is based, and that the applied-for lands are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation had, if any, and how long continued. This application must be supported by the statements of two persons having personal knowledge of the facts alleged in the application.

§ 141.11 *Appraisal of land.* When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the act of September 21, 1922.

§ 141.12 *Purchase price required.* If upon consideration of the application it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified by registered mail that he must within 30 days from service of notice deposit the appraised price, or thereafter, and without further notice, forfeit all rights under his application.

§ 141.13 *Publication and posting.* Upon payment of the appraised price a notice of publication will be issued. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands once a week for five consecutive weeks immediately prior to the date of sale, but a sufficient time should elapse between the date of last publication and date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau of Land Management will cause a notice similar to the notice for publication to be posted in such office, during the entire period of publication. The publisher of the newspaper must file in the Bureau of Land Management prior to the date fixed by the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice published.

§ 141.14 *Final certificate.* Upon submission of satisfactory proof, if no protest or contest is pending, final certificate will be issued.

ERRONEOUSLY MEANDERED LANDS, LOUISIANA

AUTHORITY: §§ 141.15 to 141.18 issued under R. S. 2478; 43 U. S. C. 1201.

§ 141.15 *Statutory authority.* The act of February 19, 1925 (43 Stat. 951; 43 U. S. C. 993) authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Louisiana, which were originally erroneously meandered and shown upon the official plats as water-covered areas and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who, or whose ancestors in title in good faith under color of title or claiming as a riparian owner, has prior to February 19, 1925, placed valuable improvements upon or reduced to cultivation any of such lands. The coal, oil, gas, and other minerals in such lands are reserved to the United States.

§ 141.16 *Applications.* Applications to purchase under the act of February 19, 1925, must be signed by the applicant in the State of Louisiana. Such applications had to be filed within 90 days from the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plat. The applicant must show that he is either a native-born or a naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of the title his claim is based; in other words, a complete history of the claim, and that the lands applied for are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation, if any, and how long continued. Such application must be supported by the statement of at least two persons having personal knowledge of the facts alleged in the application.

§ 141.17 *Appraisal of land; purchase price required.* (a) When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the act.

(b) If, upon consideration of the application, it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified, by registered mail, that he must within 6 months from receipt of notice deposit the appraised price of the land or else forfeit all his rights under his application.

§ 141.18 *Publication and posting; final certificate to issue with reservation of minerals.* (a) Upon payment of the appraised price of the land the Bureau will issue notice of publication. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands, once a week for five consecutive weeks, in accordance with § 106.18 of this chapter, immediately prior to the date of sale, but a sufficient time shall elapse between the date of the last publication and the date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau will also cause a copy of such notice of publication to be posted in such office during the entire period of publication. The applicant must file in the Bureau prior to the date fixed for the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher accompanied by a copy of the notice so published.

(b) Upon the submission of satisfactory proof, the Bureau will, if no protest

or contest is pending, issue final certificate, such certificate to contain a stipulation that all the minerals in the lands described in the application are reserved to the United States with the right to prospect for, mine and remove same.

ERRONEOUSLY MEANDERED LANDS, WISCONSIN

AUTHORITY: §§ 141.19 to 141.24 issued under R. S. 2478; 43 U. S. C. 1201.

§ 141.19 *Statutory authority.* The act of February 27, 1925 (43 Stat. 1013; 43 U. S. C. 994), authorizes the Secretary of the Interior in his judgment and discretion to sell any of those lands situated in the State of Wisconsin, which were originally erroneously meandered and shown upon the official plats as water-covered areas, and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws. Section 2 of this act (43 Stat. 1013; 43 U. S. C. 994) allows either or both of the following two classes of persons to file applications to purchase erroneously meandered lands in Wisconsin within 90 days from the filing of the plat of survey which involves such lands:

(a) Any owner in good faith of land shown by the official public land surveys to be bounded in whole or in part by such erroneously meandered areas, and who acquired title to such land prior to February 27, 1925.

(b) Any citizen of the United States who, in good faith under color of title or claiming as a riparian owner, had prior to February 27, 1925, placed valuable improvements upon or reduced to cultivation any of such erroneously meandered lands.

§ 141.20 *Form of application.* Applications under the act of February 27, 1925, must be filed with the Bureau of Land Management, Washington, D. C., within 90 days from the filing of the plat of survey, involving such erroneously meandered land. No special form of application is provided, but it should be in typewritten form or in legible handwriting and must be corroborated by the statements of at least two disinterested persons having actual knowledge of the facts alleged therein.

§ 141.21 *Contents of application.* Applicants desiring to take advantage of the benefits of the act of February 27, 1925, must show the following matters in their applications:

(a) Full name and post-office address and, if a female, whether married or single.

(b) The description by legal subdivision, section, township and range of the land which the applicant desires to purchase, together with reference to the above act.

(c) If the applicant is claiming under § 141.19 (a), he or she must furnish the legal description of the land upon which the preference right to purchase is based, together with the date of acquisition thereof and whether or not the ownership of such land is vested in the applicant at the time of filing of the application to purchase. Concerning the acquisition and present ownership of the land, an abstract of title will establish these matters, if furnished.

(d) If the applicant is claiming under § 141.19 (b), he or she must furnish evidence of citizenship, a full disclosure of all the facts which form the basis of the color of title or claim as riparian owner to the land sought to be purchased, a full disclosure of whether or not there are any valuable improvements on the land applied for, together with their location, nature, value, date of erection and by whom erected, and if there has been any cultivation of the land applied for, the nature, location, and date thereof should be set forth.

(e) It must be shown whether or not the land sought to be purchased is in the legal possession of any adverse claimant, and whether or not the land is appropriated by any settler or entryman claiming under the public land laws. If the lands applied for are in possession of an adverse claimant or person claiming under public land law, the name and post-office address of such claimant, together with a statement as to the nature of the claim, should be furnished.

§ 141.22 *Appraisal of lands.* If, upon examination the application is found to be in accordance with §§ 141.20 and 141.21, and appears to present a bona fide claim under the act of February 27, 1925, the land applied for, will be appraised in accordance with section 4 of the act (43 Stat. 1013; 43 U. S. C. 994).

§ 141.23 *Purchase price, publication and posting required.* If it shall be determined that the applicant is entitled to a preference right to purchase the land applied for, such applicant will be required to submit the purchase price of the land in accordance with section 5 of the act of February 27, 1925 (43 Stat. 1013; 43 U. S. C. 994), and also to begin publication of notice of the application to purchase. Such notice shall be published at the expense of the applicant, once each week for a period of 5 consecutive weeks, in a designated newspaper having a general circulation in the vicinity of the lands applied for. The purpose of said notice will be to afford all persons claiming the land adversely to the applicant, a reasonable opportunity to file their protests or objections to such purchase in the Bureau of Land Management, Washington 25, D. C. A copy of such notice will be posted in a conspicuous place in the Bureau during the entire period of publication. Upon the completion of the publication of notice, the publisher of the newspaper shall file in the Bureau his statement as to publication, together with a copy of the notice as published.

§ 141.24 *Final certificate; approval for patenting.* Upon receipt of the purchase price of the land and proof of publication of notice, and if no protest, contest or other objection appears, and the law and regulations have been fully complied with, final certificate will be issued and the claim will be approved for patenting.

COLOR OF TITLE CLAIMS, MICHIGAN

§ 141.25 *Statutory authority and provisions; applicable regulations.* (a) The act of June 30, 1948 (62 Stat. 1171), as amended August 28, 1954 (68 Stat. 916), directs the Secretary of the Interior to issue a patent to a tract or tracts of public land in Monroe County, Michigan, not exceeding in the aggregate 160 acres, upon payment for the land at the rate of $1.25 per acre, where prior to June 30, 1955, it is shown to his satisfaction that the land has been held in good faith and in peaceable adverse possession by a citizen of the United States, his ancestors or grantors, for more than 20 years prior to June 30, 1948, under claim or color-of-title and where improvements have been placed on the land or some part thereof reduced to cultivation. For purposes of the act, the term "citizen" includes corporations organized under the laws of the United States or any State or Territory thereof.

(b) Applications under the act must be filed and will be processed in acccordance with the regulations contained in §§ 140.5, 140.6 (a–d), 140.7 (a), 140.10, 140.11, and 140.12 of this chapter.

(R. S. 2478; 43 U. S. C. 1201)

SUBCHAPTER G—EXCHANGES

PART 146—EXCHANGES OF PRIVATELY OWNED LANDS UNDER TAYLOR GRAZING ACT

Sec.

146.1 Authority.
146.2 Application.
146.3 Determination of values; publication of notice of exchange.
146.4 Notice for publication and designation of newspaper; cost and proof of publication.
146.5 Deed to United States.
146.6 Evidence of title; policy of title insurance or certificate of title preferred.
146.7 Taxes.
146.8 Approval of exchange; rules of practice to be followed.

AUTHORITY: §§ 146.1 to 146.8 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

CROSS REFERENCES: For exchanges by States under the Taylor Grazing Act, see Part 147 of this chapter. For exchanges for migratory bird or other wildlife refuges, see Part 151 of this chapter. For exchanges for recreational purposes, see Part 254 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For disposition of conflicting applications within the discretionary power of the Secretary of the Interior, see § 101.8 of this chapter. For exchanges of revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, Oregon, see §§ 115.94–115.111 of this chapter. For exchanges to eliminate private holdings from national parks and national monuments, see Part 150 of this chapter. For exchanges within reclamation projects, see §§ 230.22 and 230.23 of this chapter. For general orders of withdrawals, modifications, see §§ 297.14 and 297.17 of this chapter.

§ 146.1 *Authority.* (a) Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), authorize the Secretary of the Interior when the public interests will be benefited thereby to accept on be-

half of the United States title to any privately owned land within or without the boundaries of a grazing district and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the privately owned land. Either party to an exchange may make reservations of minerals, easements, or rights of use. Whether an exchange will benefit the public interest shall be determined by the officer authorized to act.

§ 146.2 *Application.*[1] (a) Persons, firms, or corporations desiring to exchange lands pursuant to § 146.1 should file in the land office having jurisdiction over the selected lands or in the Washington Office of the Bureau of Land Management, when there is no land office within the State, an application in duplicate, on Form 4–728, or its equivalent, describing the offered and the selected land by legal subdivisions of the public land surveys. The application must contain the full name and post-office address of the applicant and must state whether any reservation of minerals, easements, or other rights in or to the offered lands are outstanding in third parties or desired by the applicant, and what use the applicant will make of such rights. It must also contain the reservations or easements which are acceptable to the applicant and are to be made by the United States affecting the selected lands.

(b) The applicant must be legally capable of consummating the exchange and the application must state that he is the owner of the lands offered in exchange, and that such offered lands are not the basis of any other exchange.

(c) The application must also include a corroborated statement relative to springs and water holes on the selected lands, in accordance with §§ 292.1 to 292.9 of this chapter. The application must state that the value of the selected land does not exceed the value of the offered land.

(d) No filing fees are required. However, the applicant shall pay one-half of the advertising cost.

§ 146.3 *Determination of values; publication of notice of exchange.* (a) The authorized officer shall determine the values of the offered and selected land, taking into consideration the value of any reservation of minerals, easements or other rights which are outstanding in third parties or to be made by the applicant or by the United States. If such officer determines that the value of the selected land exceeds the value of the offered land he will so inform the applicant and afford him the opportunity of bringing the exchange within the provisions of the law.

(b) The authorized officer, if he has no basis to determine that the value of the selected land exceeds the value of the offered lands, that the exchange is not in the public interest, or that there is other reason not to do so, shall direct publication of the notice of exchange in the newspaper or newspapers designated by him, and require the applicant to submit proof of publication and comply with the provisions of §§ 146.4, 146.5 and 146.7. However, until patent to the selected land is issued, the authorized officer may at any time determine that the exchange should not be completed, and the applicant has no contractual or other rights against the United States, and no action taken will create any contractual or other obligation of the United States other than an obligation to pay one-half the cost of publication.

§ 146.4 *Notice for publication and designation of newspaper; cost and proof of publication.* The notice of publication must give the name and post-office address of the applicant, the serial number and date of the application, the act under which the application is filed and a description of the offered and selected lands in terms of legal subdivisions of the public land surveys, and must state that all persons asserting a claim to the selected lands or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with evidence that a copy of such protest or objection has been served upon the applicant. The notice must be published once a week for 4 consecutive weeks in a designated newspaper of general circulation in the county or counties in which the offered lands are situated and in the same manner in a newspaper of general circulation in the county or counties in which the selected lands are situated. One-half of the cost of publication of the notice shall be paid by the applicant. Each newspaper will collect that portion of the cost of publication from the applicant and submit proper vouchers to the United States for the remaining one-half of such cost. Proof of publication of notice shall consist of a statement by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, and attaching thereto a copy of the notice as published.

§ 146.5 *Deed to United States.* The applicant shall submit a warranty deed of conveyance of the offered land to the United States, properly executed, acknowledged, and recorded in accordance with the laws of the State in which the lands are situated together with satisfactory evidence of title, as required by § 146.6, showing that he was vested with a valid unencumbered title to the land at the time of the recordation of the deed. Revenue stamps required by Federal and State law must be affixed to the deed and canceled. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976)". A deed executed by an individual grantor must disclose his marital status. If married, the spouse of the grantor must join in the execution of the deed to bar any right of courtesy, dower, community interest or any other claim to the land conveyed, or it must be fully shown that under the laws of the State in which the conveyed land is situated, the grantor's spouse has no interest present or prospective in the land. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its board of directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

§ 146.6 *Evidence of title; policy of title insurance or certificate of title preferred.* (a) Consummation of an exchange is expedited by applicant's submission, as evidence of title to the offered land, of a policy of title insurance in the form approved by the Department of the Interior, Form 4–1202, or a certificate of title, issued by a qualified title insurance company which is acceptable to the Department of the Interior. Such evidence of title is therefore preferred. However, an abstract of title is also acceptable. The evidence of title must show and certify that title to the offered land has vested in the United States free and clear of all liens, encumbrances and assessments which may operate as liens, as of the date of recordation of the deed to the United States.

(b) A policy of title insurance or a certificate of title must be issued by a title insurance company authorized by law to issue such policies or certificates, and other evidence of title, if furnished, must be prepared and authenticated by an abstracter or abstract company or by the recorder of deeds or other proper officer of the State under his official seal.

§ 146.7 *Taxes.* In case taxes which have been assessed or levied on the offered lands constitute liens against the lands although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the land for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes is furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him.

§ 146.8 *Approval of exchange; rules of practice to be followed.* (a) The proof of publication, conveyance, title evidence and other evidence furnished by the applicant will be examined, and if found satisfactory and no valid objection appearing to the consummation of the exchange, title to the offered land will be accepted and patent for the selected land will issue.

(b) Protests against exchanges when filed in the proper office of the Bureau of Land Management will be considered and determined and the applicant and protestant will be notified accordingly.

(c) Any person aggrieved by any action of the manager or the regional administrator on an application for exchange, or a protest against such an application, may appeal to the Director, Bureau of Land Management, and from

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

his decision to the Secretary of the Interior, pursuant to the Rules of Practice, Part 221 of this chapter.

(d) Should the application for exchange be finally rejected the evidence of title will be returned to the applicant and a quitclaim deed for the land conveyed to the United States will be issued under section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U. S. C. 872).

PART 147—EXCHANGES BY STATES, UNDER TAYLOR GRAZING ACT

EXCHANGES BY STATES UNDER TAYLOR GRAZING ACT, LANDS WITHIN OR WITHOUT GRAZING DISTRICTS

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CROSS REFERENCES: For exchanges for migratory bird or other wildlife refuges, see Part 151 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges of privately owned lands under the Taylor Grazing Act, see Part 146 of this chapter. For exchanges to eliminate private holdings from national parks and national monuments, see Part 150 of this chapter. For general orders of withdrawal, modification, see §§ 297.14, 297.17 of this chapter. For exchanges by the State of California with individuals for State park system, see §§ 270.38–270.41 of this chapter.

EXCHANGES BY STATES UNDER TAYLOR GRAZING ACT, LANDS WITHIN OR WITHOUT GRAZING DISTRICTS

AUTHORITY: §§ 147.1 to 147.14 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

§ 147.1 *Statutory authority.* Subsections (c) and (d) of section 8 of the Taylor Grazing Act, approved June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), authorize exchanges of lands between the United States and a State, upon the application of a State, and provide for the issuance of patent for the selected lands upon acceptance of title to the lands conveyed to the United States in exchange therefor.

§ 147.2 *Lands which may be offered in exchange.* (a) Lands offered in exchange by a State may be lands owned by the State within or without the boundary of a grazing district, and the selected lands may be surveyed grazing district lands not otherwise appropriated or reserved, or unappropriated and unreserved surveyed public lands of the United States, within the same State. If, however, the selected lands are within a grazing district, the lands offered by the State in exchange must be within the same grazing district and such selected lands must lie in a reasonably compact body so as not to interfere with the administration or value of the remaining lands in the district for grazing purposes.

(b) An application for exchange may be made on the basis of equal area or equal value. However, with respect to all exchange applications filed after June 20, 1946 the Secretary of the Interior will consider and determine the value of the offered and selected land and will not approve an exchange unless the values of the offered and selected land are approximately equal. In determining such values, consideration will be given to such matters as the actual appraised value of the lands, the benefits of consolidation or blocking out of land holdings by the State and the Federal Government as a result of the proposed exchange, the size of the areas involved, the value of the surface or other resources, including such reservations of minerals or easements as may be made by the State or the United States, and any other considerations which may have appropriate bearing on the value of the lands involved.

(c) When mineral lands are selected in an exchange based upon equal acreage, the patent will contain a reservation of all minerals to the United States, and in any exchanges based upon equal acreage, the State may offer mineral lands owned by the State, with a mineral reservation to the State.

(d) Unsurveyed school sections within or without the boundary of a grazing district may be offered by the State in an exchange based upon equal areas, but the Secretary of the Interior will consider and determine whether the values of the offered and selected lands are approximately equal for the purpose of the exchanges and no mineral reservations to the State may be made in such unsurveyed sections, the identification of which will be determined by protraction or otherwise, the State by such selections waiving all rights to the unsurveyed sections.

(e) State-owned lands, as well as school sections surveyed and unsurveyed the title to which has not yet vested in the State, located within national forests, national parks and monuments, Indian or other reservations or withdrawals, may be offered as a basis for an exchange under said section 8 of the Taylor Grazing Act as amended, where the selected lands are not within a grazing district. Where the selected lands are within a grazing district, lands within the exterior boundaries of the grazing district and also within such reservations or withdrawals may be offered as a basis for an exchange only if the authorized officer, Bureau of Land Management, determines that the exchange would not interfere with the administration or value of the remaining lands in the grazing district for grazing purposes.

§ 147.3 *Payment of fees not required.* Payment of fees will not be required in the case of any exchange but the State will be required to pay one-half of the cost of the publishing notice of a proposed exchange.

§ 147.4 *Application for exchange; evidence required.*[1] (a) A State desiring to exchange lands under section 8 of the Taylor Grazing Act (43 Stat. 1272; 43 U. S. C. 315g) should file application, in triplicate, in the land office having jurisdiction over the selected lands, or in the Bureau of Land Management, Washington 25, D. C., when there is no district land office within the State, except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas in the land office at Cheyenne, Wyoming and for lands in Oklahoma in the land office at Santa Fe, New Mexico. Such application should describe the lands offered to the Government as well as those selected in exchange, by legal subdivisions of the public land surveys, or by entire sections, and nothing less than a legal subdivision may be surrendered or selected.

(b) The application for exchange should identify the grazing district or districts in which the offered or selected lands are situated, if such lands lie within a grazing district, and should state whether the State desires the proposed exchange to be based upon equal value or equal acreage. In addition, the application should state whether or not any reservations of minerals, easements, or other rights of use in or to the offered lands are desired, and what use thereof is contemplated, whether the State consents to a reservation of minerals to the United States in the selected lands and what other reservations or easements which are to be made by the United States with respect to the selected lands are acceptable to the State. Each application for an exchange must be accompanied by the following certificate and statement:

(1) A certificate by the selecting agent showing that the selection is made under and pursuant to the laws of the State; that the lands selected and the lands relinquished are approximately of equal value, unless the exchange is proposed to be based on equal areas; that the State is the owner of the lands offered in exchange, if such is the case; that the offered lands are not the basis of another selection or exchange, and that the se-

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

lected lands are unappropriated and are not occupied, claimed, improved, or cultivated by any person adversely to the State.

(2) A corroborated statement relative to springs and water holes on the selected lands in accordance with the regulations in §§ 292.1 to 292.9, inclusive, of this chapter.

§ 147.5 *Inquiry as to mineral character of selected land unnecessary in certain equal area exchanges.* Where a State exchange application is based upon equal areas and the State elects to receive title to the selected lands with a reservation of all minerals to the United States, it will not be necessary to make any inquiry as to the mineral or nonmineral character of the selected lands but, all else being regular, a patent may be issued to the State for such lands with a reservation of all minerals to the United States; *Provided*, That the State files in addition to the evidence required by the governing regulations a statement that no part of such land is claimed, occupied or being worked under the mining laws.

§ 147.6 *Additional evidence required.* After considering the application and any evidence relative thereto as he may deem necessary, the authorized officer of the Bureau of Land Management, unless he has reason to do otherwise, will issue notice for publication of the contemplated exchange, and will require the State to submit proof of publication of notice, a duly recorded deed of conveyance of the offered lands (unless such offered lands are not owned by the State), a certificate of the proper State officer showing that the offered lands have not been sold or otherwise encumbered by the State, and a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county, or by an abstractor or abstract company satisfactory to the Bureau of Land Management, that no instrument purporting to convey or in any way encumber title to the offered land is of record or on file in his office. Where reservations of any kind are made in the offered lands, complete description thereof should be furnished. If, however, the offered lands were ever held in private ownership and were acquired by the State from such source, it will be necessary for the State to furnish an acceptable policy of title insurance or an abstract of title showing that at the time the deed of conveyance to the United States was recorded the title to the lands covered by such deed was in the State making the conveyance, a certificate that the lands so conveyed were free from judgments or mortgages, liens, pending suits, tax assessments or other encumbrances, except such reservations as may be made in the lands conveyed, and a certificate by the proper official of the county in which the lands conveyed are situated showing that all taxes levied or assessed against the lands conveyed to the United States, or that could operate thereon as a lien, have been fully paid or that no taxes have ben levied, or whether there is a tax due on such lands that could operate as a lien thereon but which tax is not yet payable, and that there are no unredeemed tax sales and no tax deeds outstanding against such lands conveyed to the United States.

§ 147.7 *Deed of conveyance of base lands.* The deed of conveyance to the United States must be executed, acknowledged, and duly recorded in accordance with the laws of the State making the exchange, and must be accompanied by a certificate of the proper State officer showing that the officer executing the conveyance was authorized to do so under the State law. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended."

§ 147.8 *Abstract of title.* The abstract of title when required must show that the title memoranda contained therein are a full, true and complete abstract of all matters of record or on file in the office of the recorder of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, pending suits, judgments, liens, lis pendens or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the offices of the clerks of courts of record affecting in any manner whatsoever the title to the land to be conveyed to the United States. The abstract of title may be prepared and certified by the recorder of deeds or other proper officer under his official seal, or it may be prepared and authenticated by an abstracter or by an abstract company, approved by the Bureau of Land Management, in accordance with § 211.1 of this chapter.

§ 147.9 *Taxes.* In case the land conveyed to the United States has been held in private ownership and taxes have been assessed or levied thereon, and such taxes are not due and payable until some future date, the State, in addition to the certificate above required relative to taxes and tax assessments, may furnish a bond with qualified corporate surety for the sum of twice the amount of taxes paid on the land for the previous year in order to indemnify the United States against loss for the tax as assessed or levied but not yet due and payable. In lieu of the bond the State may submit a sum similar to that required in the bond, and if and when proper evidence is furnished showing the taxes on the land conveyed have been paid in full, the said sum will be returned to the State.

§ 147.10 *Publication and proof.* (a) The publication notice must give the name of the State making application, the serial number and date of the application, act under which application is filed, describe both the offered and selected lands (except that where the offered lands are unsurveyed no notice of such lands will be required) in terms of legal subdivisions of the public land surveys, and state that the purpose of the notice is to allow all persons claiming the selected lands or having bona fide objections to such exchange an opportunity to file their protests or other objections in the district land office, or in the Bureau of Land Management, together with evidence that a copy of such protest or objection has been served upon the State. Such notice must be published once a week for 4 consecutive weeks in some designated newspaper of general circulation in the county or counties in which may be situated the lands offered to the United States, and in the same manner in some like newspaper published in any county in which may be situated any lands to be selected in exchange. In the event of the designation of a daily newspaper, the publication should be made in the Wednesday issue thereof. A similar notice will be posted in the district land office during the required period of publication. Proof of publication of notice shall consist of a statement by the publisher, or foreman or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published.

(b) The State will be responsible for payment of one half the cost of publication, and the publisher should bill the Bureau of Land Management for the other half in accordance with instructions contained in the advertising order accompanying the notice for publication.

§ 147.11 *Action by Bureau of Land Management.* (a) The publication of notice, conveyance, abstract of title and other evidence required of the State will, upon receipt in the Bureau of Land Management, be examined, and if found regular and in conformity with law, and there are no objections, title will be accepted to the offered land and patent will issue for the land selected in exchange.

(b) Should information available to the Bureau of Land Management disclose inequalities of value, the Director of the Bureau of Land Management will advise the State and afford it opportunity for adjustment so as to bring the exchange within the provisions of the law.

(c) In case an exchange is authorized upon an equal acreage basis, should available information show that the selected lands are mineral in character, the State will be required to file its consent to the reservation to the United States of all minerals in such lands. In such exchanges, when the offered lands are mineral in character and the State holds title thereto the State may, if desired, reserve the mineral rights in such offered lands in accordance with the provisions of paragraph 2 of subsection (c) of section 8 of the Taylor Grazing Act, as amended.

(d) Notices of additional requirements, rejection or other adverse action will be given, and the right of appeal, review, or rehearing recognized in the manner prescribed by the Rules of Practice, Part 221 of this chapter. Protests against exchanges should be filed in the district land office, from where they will be transmitted to the Bureau of Land Management for consideration and disposal.

(e) Should the application for exchange be finally rejected or the selection canceled for any reason, any abstract of title filed will be returned to the State, and the State will be advised of its right to apply for a quitclaim deed

under existing law for the land conveyed to the United States.

§ 147.12 *Granted lands unaffected by their inclusion within grazing districts.* The words in section 1 of the Taylor Grazing Act "Nothing in this act shall be construed in any way * * * to affect any land heretofore or hereafter surveyed which, except for the provisions of this act, would be a part of any grant to any State" were obviously intended to preserve school sections, both surveyed and unsurveyed, included within the boundaries of a grazing district established under the provisions of of the Taylor Grazing Act, in exactly the same status for the purpose of any grant to any State as the lands would have had had the Taylor Grazing Act not been passed and had the lands not been included in the grazing district.

CROSS REFERENCE: For State grants for educational purposes, see Part 270 of this chapter.

§ 147.13 *No indemnity right accrues by the inclusion of school sections within grazing districts.* (a) A grazing district is not a reservation within the meaning of the act of February 28, 1891 (26 Stat. 796; 43 U. S. C. 851, 852), and therefore school sections, surveyed or unsurveyed, within a grazing district are not for that reason only valid base for indemnity school land selections under said act of 1891. The inclusion of unsurveyed school sections within a grazing district will not prevent the title to such lands from vesting in the State upon the acceptance of the plat of survey thereof by the Director of the Bureau of Land Management.

(b) Granted school sections owned by a State within or without the boundaries of a grazing district may be assigned by the State as a basis for an equal value, or equal area exchange, and unsurveyed school sections within or without the boundaries of a grazing district may be assigned by the State as a basis for an equal area exchange.

§ 147.14 *Acts and regulations governing applications pending on June 26, 1936.* State applications for exchange pending at the date of the approval of the act of June 26, 1936, will be governed by the provisions of the act of June 28, 1934, as amended by the act of 1936, and the regulations in §§ 147.1–147.13.

PATENTS TO ISSUE TO THE STATE, SUBJECT TO PRIOR LEASES UNDER SECTION 15 OF THE TAYLOR GRAZING ACT

AUTHORITY: §§ 147.17 to 147.20 issued under R. S. 2478, 43 U. S. C. 1201.

§ 147.17 *Statutory authority.* The act approved August 24, 1937 (50 Stat. 748; 43 U. S. C. 315p), provides that the Secretary of the Interior in adjudicating State exchanges, under section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), involving lands embraced in outstanding leases under section 15 of said act (48 Stat. 1275, 49 Stat. 1978; 43 U. S. C. 315m) issued prior to the filing of the State exchange application, upon the request of any State may issue patent to the State, subject to such outstanding lease: *Provided*, That the United States shall not by reason of the issuance of any such patents be required to account to the State for any money due and collected prior thereto as rent for any part of the then-current annual rental period, except as provided by law.

§ 147.18 *State may request that patent issue subject to grazing lease.* Where a State application for exchange under the provisions of the Taylor Grazing Act approved June 28, 1934 (48 Stat. 1269) as amended by the act of June 26, 1936 (49 Stat. 1976), is found to embrace lands included in an outstanding lease issued under section 15 of said act, before final action is taken by the Bureau of Land Management with a view to the issuance of patent on such application, the State will be afforded an opportunity to request the issuance of patent for the land involved subject to such outstanding lease, and upon receipt of such a request by the State, further action will be taken with a view to the issuance of patent, should no objection appear of record.

CROSS REFERENCE: For patents, see Part 108 of this chapter.

§ 147.19 *Action on conflicting application for section 15 lease or for renewal of such lease.* Where an application for a lease or for the renewal thereof, under section 15 of the Taylor Grazing Act, conflicts with a pending application for a State exchange under section 8 of said act, the Bureau of Land Management may issue a lease or renewal lease for the lands in conflict, which lease shall provide for its termination as to the lands in conflict on the date when the pending conflicting State exchange application is approved for patenting.

§ 147.20 *Rental payments collected by United States.* In accordance with the proviso to the act of August 24, 1937, in cases where the United States has, prior to the issuance of such a patent, received payments for an unexpired portion of the then current annual rental period, no payment other than that provided for by section 10 of the Taylor Grazing Act, as amended (49 Stat. 1978; 43 U. S. C. 315i), will be required to be made to the State by the United States.

PART 148—EXCHANGES FOR THE CONSOLIDATION OR EXTENSION OF NATIONAL FORESTS

EXCHANGES OF PRIVATELY OWNED LANDS WITHIN NATIONAL FORESTS FOR NATIONAL FOREST LAND OR TIMBER

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148.2 Reservation of timber, minerals or easements.
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EXCHANGES OF PRIVATELY OWNED LANDS WITHIN NATIONAL FORESTS FOR NATIONAL FOREST LAND OR TIMBER

AUTHORITY: §§ 148.1 to 148.15 issued under R. S. 2478; 43 U. S. C. 1201.

§ 148.1 *Statutory authority.* The act of March 20, 1922 (42 Stat. 465, 16 U. S. C. 485) provides that when the public interests will be benefited thereby, the Secretary of the Interior is authorized, in his discretion, to accept on behalf of the United States title to any lands within national forests which, in the opinion of the Secretary of Agriculture, are chiefly valuable for national forest purposes, and in exchange therefor may patent not to exceed an equal value of such surveyed national forest land in the same State, or the Secretary of Agriculture may authorize the grantor to cut and remove an equal value of timber within the national forests in the same State; the values in each case to be determined by the Secretary of Agriculture.

§ 148.2 *Reservation of timber, minerals or easements.* The act of March 20, 1922, was amended by the Act of February 28, 1925 (43 Stat. 1090; 16 U. S. C. 486) by adding thereto section 2, which provides that either party to such an exchange may make reservations of timber, minerals, or easements, the values of which shall be duly considered in determining the values of the exchanged lands. The act provides that reservations in deeds to the United States shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the Secretary of Agriculture, and that where mineral reservations are made in lands conveyed by the United States, the patents thereto shall stipulate that whoever acquires the right to mine and remove

the reserved minerals may enter and use so much of the surface as may be required for all purposes incident to mining and removing the deposits; and may mine and remove the reserved minerals, upon payment to the owner of the surface for damages to the land or improvements on the land.

§ 148.3 *Preliminary negotiations.* Preliminary negotiations for an exchange hereunder will be conducted with local representatives of the Forest Service. Any owner of land subject to exchange who is 21 years of age, or over (or a corporation which is authorized to own and convey real property), may initiate negotiations for exchange thereof by filing an informal offer of exchange, with local national forest officers. This offer should describe the lands which will be conveyed to the Government and the national forest land selected in exchange therefor, or if national forest timber is selected in exchange, the volume of timber or value of timber which the owner desires and the national forest land on which it is located.

Land offered or selected must be specifically described according to Government survey subdivisions. As a rule nothing less than quarter-quarter sections or forty-acre tracts (or numbered lots) may be offered or selected, except where the exchange proponent, or the Government, does not own the balance of such subdivisions, or where a portion of a forty-acre tract or lot, offered the Government is not valuable for national forest purposes, or where the United States desires to retain ownership of a portion, or portions, of a forty-acre tract or lot, selected by the proponent because of the fact that it is chiefly valuable for national forest purposes. Selected land or timber must be entirely within national forest boundaries and in the same State in which the offered lands are located.

§ 148.4 *Notice to county of exchange offer.* As soon as an agreement has been reached between the proponent and the local national forest officers in proposed exchanges involving selected values in excess of $5,000, the Forest Service will cause a written notice to be served either personally or by mail on the appropriate county officials of the county or counties in which the offered land and the selected land or timber are situated. The notice will give the location and area of the land offered in exchange as well as the amount of stumpage, if any, to be cut on the offered land by the proponent and the period allowed for the removal thereof. The notice will also give the location and either the acreage of the land selected or the total volume or value of timber to be cut in exchange for the offered land, together with the period in which such cutting rights are to be exercised. The county officials will be allowed 15 days from receipt of notice in which to file, in writing, with the Forest Supervisor or regional forester, any protests or objections to the proposed exchange. A copy of the notice to the county, with evidence of service and any response to the notice will be forwarded to the Director, Bureau of Land Management.

§ 148.5 *Application; effective date; conditional approval.*[1] Upon an agreement being reached between the exchange applicant and the local national forest officers, those officers will obtain from the applicant an application over his signature which shall recite that the applicant is of the age of 21 years or over and that he owns the land offered in exchange, or is in the process of acquiring it or has a firm contract to acquire it, and shall describe the offered land together with any reservations and exceptions he wishes to make, and will transmit the application together with their recommendation thereon to the Forest Service. If the exchange is land for land, and minerals in the selected lands are not reserved, the application must be supported by a statement as to the non-mineral character of that land. The statement must be signed by the applicant or someone in his behalf and must show that the person who signs it is well acquainted with the character of the land selected; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not to his knowledge any valuable mineral of any character whatsoever within the limits thereof; that the land contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor; that said land is essentially non-mineral and nonsaline in character, and is not in any manner occupied or claimed adversely to the applicant. Where the application is made by a corporation, a certified copy of its articles of incorporation, and a copy of an authorization by the Board of Directors or other governing body to make the exchange, must be furnished in connection with the establishment of title (§ 149.9). If the application is approved, the Forest Service will forward it by a letter, in triplicate, to the appropriate land office of Bureau of Land Management, which will stamp the application to show the date and hour of its receipt and advise the Forest Service as to such date and hour. The letter of the Forest Service shall adequately describe the lands offered and selected and shall set forth any reservations, exceptions or outstanding rights to which the offered or selected lands are subject and, when proper, shall state that an examination has shown the offered lands to be chiefly valuable for national forest purposes and not occupied by adverse claimants; that the offered lands are at least equal in value to the lands or timber selected, and that the proposed exchange is in the public interest.

The authorized officer of Bureau of Land Management unless he has reasons to do otherwise will approve the exchange offer subject to submission of acceptable title to the offered land, to full compliance by the proponent with §§ 148.1 to 148.15, inclusive, and to any protest which may be filed, and will so notify the Forest Service. If the authorized officer of Bureau of Land Management does not give conditional approval to the application or take other action thereon within 30 days from the time of the filing of the application in the Bureau of Land Management, the exchange shall be considered as conditionally approved and the Forest Service will proceed as hereinafter provided.

A proposed exchange which is found by the Bureau of Land Management for any reason to be unsatisfactory will be rejected, subject to appeal or to the curing of the defect.

An application filed subsequent to the application for exchange which conflicts therewith and is supported by allegations of prior right, will be transmitted to the Bureau of Land Management with appropriate recommendation.

§ 148.6 *Authorization of publication.* Upon receipt of the conditional approval of the Bureau of Land Management, or after the expiration of the 30 days allowed for such approval by § 148.5, the Forest Service will notify the proponent, arrange for publication as required by § 148.7 and will request the proponent to furnish a recorded deed, abstract or other satisfactory evidence of title and other material, as hereinafter specified.

§ 148.7 *Publication and posting.* A notice of the exchange will be published once each week for four consecutive weeks in some newspaper or newspapers designated by the regional forester and having general circulation in the county or counties in which the land offered and the land or timber selected are situated. During the period of publication a similar notice of application, supplied by the regional forester of the Forest Service, shall be posted in the office of the Forest Supervisor of the national forest or forests involved and in the land office. The notice shall describe the lands offered to the Government and lands selected by the proponent or, where national forest timber is selected, the lands on which such timber is situated, and shall state that the purpose of such notice is to allow all persons claiming the land selected or having bona fide objections to the exchange an opportunity to file their protest with the regional forester, whose address will be given. The notice shall also state that any protests or objections must be filed within 30 days after date of first publication of the notice, which date must be set out in the notice. The proof of publication will consist of statements from the publisher or the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the published notice attached. The Forest Supervisor and the manager of the land office shall certify to the posting in their offices. The dates of such publication and posting must in all cases be given.

§ 148.8 *Action by Forest Service after publication; protests.* Title papers, proof of publication and other required material will be transmitted by proponent to the regional forester, who will examine such material for its adequacy and for the completeness of title. When compliance is found to be adequate and

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

the title papers are found to be in proper form, the regional forester will transmit title papers and other material to the Bureau of Land Management. Any protest filed with the regional forester as a result of publication will be transmitted at the same time with appropriate recommendations to the Bureau of Land Management for consideration and decision. Any decision of the authorized officer, Bureau of Land Management, will be subject to appeal pursuant to the Rules of Practice, Part 221 of this chapter.

§ 148.9 *Form and execution of deed.* The deed conveying the land offered as a basis of exchange must be executed and acknowledged in the same manner as a conveyance of real property is required to be executed and acknowledged by the laws of the State in which the land is situated. The deed should recite that the consideration for the conveyance to the United States of the land offered is the exchange therefor of not exceeding an equal value of national forest land or timber, depending upon whether the exchange is one of land for land, or land for timber. The act or acts under which the exchange is made should be cited in the deed.

Such revenue stamps as are required by law must be affixed to the deed by proponent and canceled.

Where the conveyance is made by an individual it must show whether the person conveying is married or single, and if married, the wife or husband of such person, as the case may be, must join in the execution of the conveyance in such a manner as to effectually bar any right of curtesy or dower, or any claim whatsoever to the land conveyed, or it must be fully shown that under the laws of the State in which the conveyed land is situated such wife or husband has no interest whatsoever, present or prospective, which makes her or his joining in the conveyance necessary.

Where the conveyance is by a corporation, it should be recited in the instrument of transfer that it was executed pursuant to an order or by the direction of the board of directors or other governing body, a copy of which order or direction should accompany such instrument of transfer, and should bear the impression of the corporate seal. Certified copies of the articles of incorporation of the corporation showing that it is authorized to own and convey real property should accompany the deed or be included among the title papers.

§ 148.10 *Requirements where applicant reserves mineral rights.* In the case of each and every offer to exchange made under the act of March 20, 1922 (42 Stat. 465; 16 U. S. C. 485), as amended by the act of February 28, 1925 (43 Stat. 1090; 16 U. S. C. 486), where the exchange proponent reserves the rights to any or all minerals in lands offered to the United States in such an exchange, the proponent will be required to attach to or incorporate as a part of the application for exchange the conditions set out in 36 CFR 251.15. Such conditions must also be incorporated in the deed of conveyance of the offered land to the United States.

§ 148.11 *What abstract must show; authentication required; taxes; certificates.* Each conveyance must be accompanied by a duly authenticated abstract of title, except as provided in § 148.12, showing that at the time the conveyance was recorded the title was in the party conveying and that the land was free from conflicting record claims, tax liabilities, judgment or mortgage liens, pending suits or other encumbrances.

The certificate of authentication of the abstract must be signed by the recorder of deeds or other proper official, under his official seal, or by such abstractor or company as may be satisfactory to the Bureau of Land Management. The certificates must show the title memoranda to be a full, true, and complete abstract of all matters of record or on file in the appropriate office or offices of the county or counties in which the offered land is located, including all conveyances, mortgages, or other encumbrances, judgments against the various grantors, mechanics' liens, lis pendens or other instruments which are required by law to be filed with the recording officers affecting in any manner whatsoever the title to the described land.

The authenticity of the tax records must be certified showing that all taxes levied or assessed against the land, or that could operate thereon as a lien, have been fully paid; or whether there is a tax lien although such tax is not assessed, due or payable; that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of the proper county office. In case taxes have been assessed or levied on lands conveyed to the United States and such taxes are not due and payable until some future date, the proponent, in addition to the certificate above required relative to taxes and tax assessments, may submit a sum equal to at least twice the amount of taxes paid on the land for the previous year or in lieu thereof furnish a bond in like amount with qualified corporate surety, in order to indemnify the United States against loss for the taxes assessed or levied but not yet due and payable.

The absence of judgment liens or pending suits against the various grantors which might affect the title of the land conveyed must be shown by the official certificate of the clerks of the courts of record, whose judgments, under the laws of the United States or the State in which the land is situated, would be a lien on the land conveyed.

§ 148.12 *Title insurance; certificate of title.* A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract when issued by a title company which is recognized by the Bureau of Land Management. A policy of title insurance, when furnished, must be in substantially the form approved by the Solicitor of the Department of the Interior and must be free from conditions and stipulations not acceptable to the Bureau of Land Management. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit, and where the interests of the Government will be sufficiently protected thereby.

§ 148.13 *Right reserved to reject exchange offer.* Applications to select either land or timber under the provisions of the act of March 20, 1922 (42 Stat. 465; 16 U. S. C. 485) will not defeat the right of the United States to withdraw or reserve the land for such purposes or uses as may be proper prior to the filing of the recorded deed to the offered land and evidence of valid title thereto with the Regional Forester.

§ 148.14 *Acceptance of title.* Title papers will be reviewed by the Bureau of Land Management, and, if title to the offered land is found to be acceptable and the application otherwise is found to be satisfactory, the Director of the Bureau of Land Management will accept the title and will so notify the Chief of the Forest Service, and where lands have been selected will issue patent. When only timber is selected, the Forest Service will issue the necessary permits for cutting thereof. The offered lands so conveyed, upon the acceptance of title, will become parts of the national forests within whose boundaries they are located.

If the Bureau of Land Management finds additional title curative material is necessary, it will request such material of the Forest Service, setting forth in detail the type of curative data or action necessary. It will be the responsibility of the Forest Service to obtain such material, or have such action taken, and to forward necessary documents or proof of action to the Bureau of Land Management.

§ 148.15 *Special acts authorizing forest exchanges.* Special acts providing for exchanges of lands in national forests are listed below.[1] Special regulations governing these acts have not been prepared (except as shown in the list), but exchanges thereunder must be made under §§ 148.1 to 148.15, inclusive, modified, however, to meet the limitations, conditions, and provisions of the acts mentioned.

LIST OF SPECIAL ACTS

Date of Act and Forest

3-13-08 (35 Stat. 42), Crow Creek National Forest.

2-18-09 (35 Stat. 626; 16 U. S. C. 494), Calaveras Big Trees.

5-7-12 (37 Stat. 108; 16 U. S. C. 494), Calaveras Big Trees.

7-31-12 (37 Stat. 241), State of Michigan.

8-22-12 (37 Stat. 323), Pecos-Zuni.

4-16-14 (38 Stat. 345; 16 U. S. C. 51), Sierra-Stanislaus.

3-3-17 (39 Stat. 1122; 16 U. S. C. 164, 166, 167), National Forests in Montana.

6-5-20 (41 Stat. 986; 16 U. S. C. 675-678), Harney.

3-4-21 (41 Stat. 1366), Rainier.

12-20-21 (42 Stat. 350), Shoshone.

2-2-22 (42 Stat. 362), Deschutes.

9-22-22 (42 Stat. 1018), State of Idaho.

9-22-22 (42 Stat. 1017; 16 U. S. C. 483, 484), All.

9-22-22 (42 Stat. 1036), Wenatchee, Olympic, Snoqualmie.

2-14-23 (42 Stat. 1245), Lincoln. (For regulations see Circ. 888, approved April 9, 1923, 49 L. D. 529.)

6-7-24 (43 Stat. 643), Forests in New Mexico.

1-12-25 (43 Stat. 739), Forests in New Mexico.

2-20-25 (43 Stat. 952), Plumas, Eldorado, Stanislaus, Shasta, Tahoe.

[1] See the table, "List of Special Acts."

2-28-25 (43 Stat. 1074), Snoqualmie.
2-28-25 (43 Stat. 1079), Mt. Hood.
3-3-25 (43 Stat. 1215; 16 U. S. C. 516), All.
3-3-25 (43 Stat. 1117), Custer.
3-4-25 (43 Stat. 1279), Umatilla, Wallowa, Whitman.
3-4-25 (43 Stat. 1282), Whitman.
4-21-26 (44 Stat. 303), All Forests in New Mexico and Arizona.
5-26-26 (44 Stat. 655; 16 U. S. C. 37-40), Absaroka, Gallatin, Yellowstone Park.
6-15-26 (44 Stat. 746), National Forests in New Mexico.
2-15-27 (44 Stat. 1099; 16 U. S. C. 508a), Black Hills and Harney.
3-2-27 (44 Stat. 1262), State of Oregon.
3-3-27 (44 Stat. 1378), Arapaho.
3-4-27 (44 Stat. 1412), Colville.
3-26-28 (45 Stat. 370), Manti.
4-10-28 (45 Stat. 415), Challis, Sawtooth.
4-16-28 (45 Stat. 431), Carson, Manzano, Santa Fe.
4-23-28 (45 Stat. 450), Crater.
5-17-28 (45 Stat. 598), Missoula.
1-30-29 (45 Stat. 1145), Montana.
2-7-29 (45 Stat. 1154), Lincoln. (For regulations see Circ. approved March 22, 1929, "K" 1327799.)
5-14-30 (Ch. 270, 46 Stat. 278), Fremont.
2-25-32 (47 Stat. 55), Cache.
6-30-32 (47 Stat. 451), Siuslaw.
3-4-33 (47 Stat. 1563), Modoc.
3-4-33 (47 Stat. 1569), Gunnison.
4-30-34 (48 Stat. 649), St. Joe.
6-13-35 (49 Stat. 338), Siskiyou.
6-13-35 (49 Stat 338), Willamette.
6-25-35 (49 Stat. 422; 16 U. S. C., Note 486), Lincoln.
8-2-35 (49 Stat. 508; 16 U. S. C., 485a), Chelan.
6-19-36 (49 Stat. 1534), Umatilla and Whitman.
7-27-37 (50 Stat. 534), Rogue River.
8-12-37 (50 Stat. 622), Columbia.
8-21-37 (50 Stat. 739), Snoqualmie.
2-12-38 (52 Stat. 28), Tahoe.
5-26-38 (52 Stat. 443), Kaniksu.
6-15-38 (52 Stat. 686), Black Hills.
6-22-38 (52 Stat. 835), Modoc, Shasta and Lassen.
6-22-38 (52 Stat. 836), Shasta and Klamath.
6-22-38 (52 Stat. 838), Plumas, Tahoe and Lassen.
8-10-39 (53 Stat. 1347), Kaniksu.
8-11-39 (53 Stat. 1412), Wenatchee.
1-17-40 (54 Stat. 14), Suislaw.
6-8-40 (54 Stat. 251), Ochoco.
6-17-40 (54 Stat. 402), Malheur, Umatillla and Whitman.
6-29-40 (54 Stat. 695), San Juan-Rio Grande.
6-5-42 (56 Stat. 311), Plumas.
12-23-44 (58 Stat. 924), Pike.

EXCHANGES WITH NEW MEXICO TO OBTAIN LANDS FOR NATIONAL FORESTS IN THAT STATE

AUTHORITY: §§ 148.20 to 148.33 issued under R. S. 2478; 43 U. S. C. 1201.

§ 148.20 *Statutory authority.* The act approved June 15, 1926 (44 Stat. 746) amended section 10 of the act approved June 20, 1910 (36 Stat. 563) so as to provide for exchanges of lands within national forests, by the State of New Mexico, for public lands of the United States within or outside of national forests in that State.

§ 148.21 *Preliminary negotiations and informal application.* (a) All preliminary negotiations relating to an exchange under the Act of June 15, 1926, are to be conducted with the local representatives of the Forest Service, and the State must file with the regional forester, Albuquerque, New Mexico, an informal application describing the land to be conveyed as well as that to be selected, which lands must be described by legal subdivisions, or by entire sections, and nothing less than a legal subdivision may be surrendered or selected. The lands selected in any one application should not exceed 6,400 acres. The conveyed lands must be within the exterior boundaries of a national forest, and the selected lands may be within a national forest or may be from the unreserved and unappropriated surveyed public lands within the State.

(b) The preliminary negotiations relating to a proposed exchange are to be conducted with the authorized officers of the Bureau of Land Management as well as with the representatives of the Forest Service, and the State must file with the land office having jurisdiction in the area in which the lands desired are situated, an informal application describing the lands to be selected and those to be offered by the State in exchange therefor.

§ 148.22 *Request for withdrawal of lands.* Where the lands proposed for selection by the State as aforesaid, under the provisions of the act of June 15, 1926, are outside of national forests and form a part of the unappropriated, unwithdrawn, unreserved, surveyed public lands, a list of such lands should be promptly forwarded by the State to the authorized officer of the Bureau of Land Management, with the request that a withdrawal thereof be made under the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141-143, 16 U. S. C. 471), as amended by the act of August 24, 1912 (37 Stat. 497; 43 U. S. C. 142, 16 U. S. C. 471), and in aid of said proposed selection by the State under the act of June 15, 1926.

CROSS REFERENCE: For withdrawals, restorations, and classifications, see Parts 295, 296 of this chapter.

§ 148.23 *Reservation of mineral, timber, etc., examination and appraisal of lands.* (a) The application for exchange should show in detail every reservation of mineral, timber, or easements previously granted or to be made by the State to which the offered lands are subject, and should also show the reservations of timber, minerals or easements which are acceptable to the State and are to be made by the United States.

(b) The act of June 15, 1926 requires that the value of the selected lands shall not exceed that of the offered lands, consideration being given to any reservations of timber, mineral, or easements which may be made by the State or the United States. The values of both offered and selected lands shall be determined by the Secretary of Agriculture. To meet that requirement of law, both the offered and selected lands will be examined and appraised by officers of the Forest Service, in conformity with the principles and procedure governing examinations of lands offered or selected under the provisions of land exchange laws as set forth in the National Forest Manual. If such examinations disclose inequalities of value, the State will be so advised and opportunity afforded for adjustments which will bring the exchange within the provisions of the law.

(c) After agreement as to values has tentatively been arrived at by the State officials and officers of the Forest Service, the authorized officer of the Bureau of Land Management will be furnished with two copies of each report and appraisal covering lands to be selected from the unreserved public domain, for comment and recommendations. If no objections to the proposed exchange are known to the authorized officer of the Bureau of Land Management, he will so endorse the reports, returning one copy to the regional forester and forwarding the other to the Director, Bureau of Land Management at Washington, D. C. if required. If the authorized officer has valid objections to the tentative agreement, the regional forester will endeavor to consider and adjust them. If the report meets with the approval of the authorized officer of the Bureau of Land Management, the regional forester will forward the copy of the report returned by the regional administrator together with the application and other related papers, to the Chief, Forest Service, at Washington, D. C. if required.

§ 148.24 *Joint appraisal where unreserved public land is selected.* If, in the case of selection of unreserved public lands of the United States, a joint examination for appraisal is requested through the national forest officers, arrangements for such examination may be made with the State Supervisor, Bureau of Land Management. Where, for any reason, other or further examination is found necessary or desirable by the Department of the Interior, the State Supervisor will be so instructed.

§ 148.25 *Action when Secretary of Agriculture determines that exchange will be in the public interest.* When it has been shown to the satisfaction of the Secretary of Agriculture, through the district forester and the Forest Service at Washington, D. C., that the exchange sought will be in the public interest and that the value of the selected land does not exceed that of the land offered in exchange, the Secretary of the Interior will be so advised. The letter of recommendation of the Secretary of Agriculture should specifically describe all reservations of mineral, timber or easements previously granted or to be made by either the State or the United States. The Bureau of Land Management will notify the manager that applications for such exchange may be allowed, if in conformity with the regulations.

§ 148.26 *Formal application.* All applications for exchange under the provisions of the act of June 15, 1926, must be filed, by the proper officers of the State, in the land office of the district in which the lands applied for are situated, accompanied by the following statements and certificates:

(a) A statement as to the nonmineral and nonsaline character of the land applied for, except where the land is subject to a reservation of mineral rights by the United States. The nonmineral statement should also show that said land is unappropriated and is not occupied by and does not contain improvements placed thereon by any Indian.

(b) A certificate of the selecting agent that the selection is made under and pursuant to the laws of the State.

(c) A statement that the land selected does not exceed in value that of the land offered in exchange.

§ 148.27 *When statement must be furnished as to springs or water holes.* Where the application is for public lands of the United States outside of national forest boundaries, there must be furnished a corroborated statement relative to springs and water holes upon the land applied for, in accordance with the regulations in §§ 292.1–292.9 of this chapter.

§ 148.28 *Fees.* Payment of fees will be required in the sum of $1.00 for each 160 acres, or fraction thereof, selected by the State.

§ 148.29 *Conveyance or relinquishment by State; certificate of nonencumbrance; abstract of title.* Where title has actually vested in the State as to the lands sought to be conveyed, each application for exchange must be accompanied by a deed (unrecorded), prepared in accordance with the laws of the State of New Mexico governing the conveyance of real property, executed by the Governor of the State and the Commissioner of Public Lands, with the approval of the State land board and the State superintendent of public instruction, as to the lands granted for the support of common schools; and as to institutional grant lands, with the approval of the governing body of the institution for whose benefit the lands so reconveyed were granted to the State. Where the legal title to school sections is retained in the United States under the provisions of section 6 of the enabling act of June 20, 1910 (36 Stat. 561), or where title to school sections has not vested in the State because of withdrawal of the lands prior to survey, the State must furnish a certificate showing surrender by the State of the right to make lieu selections under sections 2275 and 2276 R. S. (43 U. S. C. 851, 852), as amended, and of all claim, right or interest in or to said lands. All selection lists must be accompanied by certificates of the proper State officer and of the proper county recorder, showing that the offered lands have not been sold or otherwise encumbered by the State. In case, however, any of such lands have been sold by the State and title again acquired, an abstract of such title will be necessary.

§ 148.30 *Two classes of exchanges not to be in same list.* In order to simplify the work of keeping the records and of adjudicating exchanges under the act of June 15, 1926, the two classes of exchanges (where deeds of conveyance are required as to the lands offered in exchange, and where title to school sections is in United States) should not be made in the same selection list, but should be in separate lists.

§ 148.31 *Notice for publication.* If the selection appears regular and in conformity with the regulations in §§ 148.20 to 148.33, inclusive, the manager will accept the selection, assign the current serial number thereto, and will prepare notice for publication in accordance with § 270.10 of this chapter.

§ 148.32 *Recording of deed; completion of abstract; approval and certification of selection.* When upon examination by an authorized officer of the Bureau of Land Management it is found that all requirements have been complied with and it is considered that the State is entitled to the exchange sought, the deed will be returned to the State for recordation and retransmittal to the authorized officer and where abstract of title may have been required, such abstract will be returned to be brought down to show the title in the United States, free from all liens and encumbrances, including tax liens. Upon the return of the recorded deed and satisfactory abstract of title, the selections will be embraced in a clear list for approval, in the absence of other objection, with a view to the certification to the State of the selected lands.

§ 148.33 *Deed and abstract to be returned if selection is canceled.* Should the application for exchange be finally rejected or the selection canceled, for any reason, the unrecorded deed and the abstract of title will be returned to the State.

PART 149—EXCHANGES FOR THE CONSOLIDATION OR EXTENSIONS OF INDIAN RESERVATIONS OR INDIAN HOLDINGS

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149.84 Deed of conveyance of offered land or interest.

CROSS REFERENCES: For exchanges by States, under the Taylor Grazing Act, see Part 147 of this chapter. For exchanges for migratory bird or other wild life refuges, see Part 151 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of national forests,

see Part 148, of this chapter. For exchanges of privately owned lands, under the Taylor Grazing Act, see Part 146 of this chapter. For exchanges to eliminate private holdings from national parks and national monuments, see Part 150 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For Indian allotments and possessions, see Part 176 of this chapter. For land classifications, see Part 296 of this chapter. For Surveys, see Part 280 of this chapter. For Bureau of Indian Affairs, Department of the Interior, see Indians, 25 CFR Chapter I.

EXCHANGES OF PRIVATE LANDS WITHIN INDIAN RESERVATIONS

AUTHORITY: §§ 149.1 to 149.28 issued under sec. 1, 33 Stat. 211; 43 U. S. C. 149.

§ 149.1 *Statutory authority.* The act of April 21, 1904 (33 Stat. 211; 43 U. S. C. 149), provides:

That any private land over which an Indian reservation has been extended by Executive order, may be exchanged at the discretion of the Secretary of the Interior and at the expense of the owner thereof and under such rules and regulations as may be prescribed by the Secretary of the Interior, for vacant, nonmineral, nontimbered, surveyed public lands of equal area and value and situated in the same State or Territory.

§ 149.2 *Preliminary negotiations.* (a) Preliminary to making relinquishment and selection of other lands under the provisions of the foregoing act, the owner of any private land over which an Indian reservation has been extended by Executive order must file with the Director of the Bureau of Land Management an application requesting that he be permitted to surrender the lands by him owned and to select other lands in lieu thereof, pursuant to the provisions of the act of April 21, 1904 (33 Stat. 211; 43 U. S. C. 149), comformable to the rules and regulations adopted by the Secretary of the Interior. The land proposed to be surrendered must be accurately described by legal subdivisions if surveyed, or in the event that it is unsurveyed by such designation as will readily enable the Director of the Bureau of Land Management to identify it. There may accompany such applications a brief, or argument, setting forth such reasons as the petitioner may see proper to offer why the application to accept such land as a basis of selection under the aforesaid act should be entertained. This petition, with report thereon, will be submitted by the Director of the Bureau of Land Management to the Commissioner of Indian Affairs for report as to whether the lands are needed for the use of the Indians, and for such other recommendations as the Commissioner of Indian Affairs may deem proper. If the Director is of opinion, after considering the application that it is inadvisable for the Government to acquire the title to the land described therein, under the provisions of the aforesaid Act, he will deny the application.

(b) If, however, the Director decides to entertain the proposition, subject to the further exercise of his discretion, he will so order, and thereafter selections may be made by the petitioner, or applicant, under the rules, regulations, restrictions, limitations, and conditions in §§ 149.3 to 149.28.

§ 149.3 *Private lands subject to exchange.* Private lands subject to exchange under the provisions of the act of April 21, 1904 (33 Stat. 211; 43 U. S. C. 149) include all lands within the limits of an Indian reservation established by Executive order to which the right to a patent or its equivalent has been earned by full compliance with the laws of the United States governing the disposal of said lands.

§ 149.4 *Form and contents of deed to United States.* Relinquishment or reconveyance made in pursuance of the act of April 21, 1904 must be executed and acknowledged in the same manner as a conveyance of real property is required to be executed and acknowledged by the laws of the State in which the land is situated. Where the relinquishment or reconveyance is made by an individual it must show whether the person relinquishing is married or single; and if married, the wife or husband of such person, as the case may be, must join in the execution of the relinquishment or reconveyance in such manner as to effectually bar any right or estate or dower, curtesy, or homestead, or any other claim whatsoever to the land relinquished, or it must be fully shown that under the laws of the State in which the relinquished land is situated such wife or husband has no interest whatever, present or prospective, which makes her or his joinder in the relinquishment or reconveyance necessary. Where the relinquishment or reconveyance is by a corporation it should be recited in the instrument of transfer that it was executed pursuant to an order or by the direction of the board of directors or other governing body, a copy of which order or direction should accompany such instrument of transfer, which must follow in the matter of its execution strictly the laws of the State in which the land is situated relating to corporate conveyances, and should bear the impress of the corporate seal.

§ 149.5 *Authenticated abstract of title required.* Each relinquishment or reconveyance must be accompanied by a duly authenticated abstract of title showing that at the time the relinquishment or reconveyance was executed the title was in the party making the same, and that the land was free from conflicting record claims, tax liability, judgment or mortgage liens, pending suits, or other encumbrances.

§ 149.6 *Certificates required with abstract.* The certificate of authentication of the abstract must be signed by the recorder of deeds under his official seal and must show that the title memoranda is a full, true, and complete abstract of all matters of record or on file in his office, including all conveyances, mortgages, or other encumbrances, judgments against the various grantors, mechanics' or other liens, lis pendens, and all other instruments which are required by law to be filed with the recording officer, affecting in any manner whatsoever the title to the described land. The custodian of the tax records must certify that all taxes levied or assessed against the land or that could operate as a lien thereon have been fully paid and that there are no unredeemed tax sales and no tax deeds outstanding, as shown by the records of his office. The absence of judgment liens or pending suits against the various grantors which might affect the title of the land relinquished or reconveyed must be shown by the official certificates of the clerks of all courts of record whose judgments under the laws of the United States, or the State in which the land is situated, would be a lien on the land reconveyed or relinquished, without being transcribed other than on the court records.

§ 149.7 *Public lands subject to selection.* Selections under the provisions of the act of April 21, 1904 are restricted to surveyed nonmineral, nontimbered, vacant unreserved public lands situated in the same State as, and equal in area and value to, the lands relinquished.

§ 149.8 *Who can make selection.* Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney-in-fact; and when made by an agent or attorney-in-fact proof of authority must be furnished.

CROSS REFERENCE: For attorneys and agents, see Part 1 of this title.

§ 149.9 *Application to be filed; contents thereof.* Applications to select hereunder must be filed in the proper land office and must specifically describe the land desired to be surrendered and that sought to be selected. If more than minimum is selected, as provided for in § 149.16, corresponding base for each tract must be shown. The county and State, as well as the Indian reservation, and the land district wherein situated must be given of the land relinquished. It must, in each instance, be shown that the applicant is the owner of the land relinquished and that he desires to surrender the same to the Government and select in lieu thereof public lands under the provisions of the act of April 21, 1904 (33 Stat. 211; 43 U. S. C. 149); that the land surrendered and that selected therein described are of equal area and value; that the land selected is nonmineral, nontimbered, vacant, and unoccupied public land; that the applicant will, without cost to the Government, place the deed of relinquishment of record and extend the abstract of title to the date of the recordation thereof upon being notified so to do by the Bureau of Land Management; and that upon the request of the authorized officer, Bureau of Land Management, he will deposit with him a reasonable amount of money to enable the Bureau of Land Management to investigate and determine the legality of the selection.

§ 149.10 *Deed, abstract, and statements to accompany application.*[1] The application must be accompanied by a deed or relinquishment or reconveyance to the land tendered as the basis of ex-

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

change, duly executed, and a properly authenticated abstract of title to the land, by the required commissions, and proof that the relinquished land and that selected are equal in area and value; that the selected land is nonmineral, nontimbered, vacant, and unoccupied adversely to the selector therein; that the land relinquished and offered in exchange is not the basis of another selection, and satisfactory evidence that the authorized officer has, subject to the further exercise of his discretion, entertained the selector's preliminary application to reconvey the base land and select other lands in lieu thereof.

§ 149.11 *Execution of statements; showing required as to selected and relinquished lands.* The statement to support a selection under the act of April 21, 1904 must be made by the selector or by some credible person possessed of the requisite personal knowledge in the premises, and must be corroborated by at least one person who has no personal interest in the exchange and who is familiar with the character and condition and value of the land selected and the value of the land relinquished. This statement, duly corroborated, must show that the land selected is nonmineral and nontimbered in character; that it contains no salt springs or deposit of salt in any form sufficient to render it chiefly valuable therefor; that it is not in any manner occupied adversely to the selector; and that the lands selected and the lands relinquished are equal in area and value, and are situated in the same State.

§ 149.12 *Forms of applications and statements.* Application for selection under the act of April 21, 1904 and accompanying statements as to relinquished and selected land should be made on Forms 4–088 and 4–089 respectively, with necessary modifications, or their equivalents. All proofs and papers necessary to complete a selection must be filed at one and the same time, except as otherwise specially provided.

§ 149.13 *Publication of notice and posting required.* In all cases the manager will require the applicant, within 20 days from the filing of his application, to begin publication of notice thereof at his own expense in a newspaper to be designated by the manager as of general circulation in the vicinity of the land and published nearest thereto. Such publication must cover a period of 30 days, as explained in § 106.18, during which time a similar notice of the application must be posted upon each and every noncontiguous tract included in the application.

§ 149.14 *Contents of notice.* The notice should describe the land applied for and give the date of application, and state that the purpose thereof is to allow all persons claiming the land under the mining or other laws, desiring to show it to be mineral in character or adversely occupied, an opportunity to file objection to such application with the manager of the land office having jurisdiction over the area in which the land is situated and to establish their interest therein or the mineral character thereof.

§ 149.15 *Proof of publication and posting required.* Proof of publication shall consist of a statement of the publisher, or of the foreman or other proper employee, of the newspaper in which the notice was published, with a copy of the published notice attached. Proof of posting upon the land, and that such notice remained posted during the entire period required, shall be made by the applicant or some credible person having personal knowledge of the fact. The manager shall certify to posting in his office. The first and last dates of such publication and posting shall, in all cases, be given.

§ 149.16 *Restrictions in making selections.* Owners of lands over which an Indian reservation has been extended by Executive order will not be permitted to make selection, or selections, which isolate intervening tracts of less than 160 acres, nor to make selection for noncontiguous tracts of less than 160 acres unless all the adjoining lands have been disposed of or are not subject to selection. Any attempt on the part of the owner of land within a reservation to avoid this rule by making surrender to the Government by separate deeds or by a sale of part of the land to another person after the approval of this part will defeat the proposed transfer.

§ 149.17 *Fees to be paid.* Fees must be paid to the Bureau of Land Management, by the applicant at the time of filing his application in the land office at the rate of $2 each for each 160 acres or fraction thereof included in his application.

§ 149.18 *Time for filing adverse claims; when patent may issue.* Selections made under the act of April 21, 1904, will not be passed to patent until after four months following the filing of the application in the district land office. This is to enable any person claiming an adverse right to the selected land to have full opportunity to regularly assert said right.

§ 149.19 *Relinquished and selected land to be equal in area.* The land relinquished and the land selected must be, as nearly as practicable, equal in area, but the rules of approximation obtaining in other classes of entries will be observed.

§ 149.20 *Applications will not defeat right to withdraw land for public purposes.* Applications to select under the provisions of this act will not defeat the right of the Secretary of the Interior or of the President of the United States to withdraw or reserve the land for such proposed public purposes or uses as they may deem proper prior to the approval of the selection by the authorized officer of the Bureau of Land Management, and the authorized officer acting within the exercise of his discretion, may reject any and all applications at any time prior to final approval of the same for any reason appearing to him good and sufficient, notwithstanding the application may have been received and certified by the land office.

§ 149.21 *Rules of Practice to be followed.* Notices of additional or further requirements, rejections, or other adverse actions of managers, the Director, or the Secretary will be given, and the rights of appeal, recognized in the manner prescribed by the Rules of Practice, Part 221 of this chapter, except as herein otherwise provided.

§ 149.22 *Action on conflicting applications.* Applications to enter filed subsequent to and in conflict with applications to select under the act of April 21, 1904 will be rejected, except where such subsequent application to enter is supported by allegations of prior right.

§ 149.23 *Action by manager on applications.* Applications presented to the manager under the provisions of the act of April 21, 1904, not in substantial compliance with the requirements herein made, or not accompanied by the prescribed proofs, or if the land offered as a basis of exchange is not situated within the boundaries of an Indian reservation created by Executive order, will be rejected by the manager. All applications sufficient in form, accompanied by the required proofs, will be accepted.

§ 149.24 *Action by Bureau of Land Management.* If the authorized officer finds that the selection is defective or that the rules and regulations in §§ 149.1 to 149.27, inclusive, have not been complied with, he will reject the selection or require further proofs.

§ 149.25 *Recordation of deed and extension of abstract.* If upon examination of an application to select under the act of April 21, 1904, the authorized officer decides that it should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the State where the land is situated, and to have the abstract of title extended down to and including the date the deed of relinquishment or conveyance was recorded.

§ 149.26 *Applicant may be required to defray expense of additional investigation.* If the authorized officer be of opinion that further evidence as to value and character of the land involved is necessary, he may institute such an inquiry as he may deem advisable, and may require the applicant to deposit a sum of money to defray the expense of the investigation. In any case where deposit shall be required to defray the expense of an investigation it will be made with the authorized officer, to be held and disbursed by him or under his directions.

§ 149.27 *Approval of exchange is conditional.* Approval by the Director will be subject to and conditioned upon the bona fide compliance on the part of the applicant with all the regulations and requirements made by or under the direction of the Secretary of the Interior.

§ 149.28 *Authorized officer may withhold approval of, or reject, any application.* The authorized officer may, in the exercise of the discretion in him vested by law and by order of the Director of the Bureau of Land Management, withhold his approval from any application made under the provisions of the act of April 21, 1904 although the applicant may have complied with the prescribed

rules and regulations. If, in the opinion of the authorized officer, the approval of any application, made under the provisions of the said act, would be inimical to the public interests, such application will be rejected.

EXCHANGES OF LANDS IN WALAPAI INDIAN RESERVATION, ARIZONA

AUTHORITY: §§ 149.29 to 149.32 issued under 43 Stat. 954.

§ 149.29 *Statutory authority.* The act of February 20, 1925 (43 Stat. 954) authorizes reconveyances and relinquishments of privately owned State school lands and valid filings and claims, and lieu selections therefor, within the Walapai Indian Reservation in Mohave and Coconino Counties, Arizona, so that the lands retained for Indian purposes may be consolidated and held in a solid area, so far as may be possible.

§ 149.30 *Application necessary; procedure thereon.* (a) As the "exchanges" permitted under the act for the purpose of consolidations can be made only with the mutual consent of all persons interested, and be brought to the point where approvals may be had of the Bureau of Land Management, there should be full preliminary cooperation as a preventive of adverse action and as a means of aiding prompt and favorable action by the Government.

(b) A person or corporation, or the State of Arizona, desiring to reconvey and select lieu lands should file in duplicate an application with the manager definitely describing by Government surveys the lands wanted and the lands offered in exchange; and notice of such application must be given in compliance with Part 130 of this chapter, with the exception, that instead of beginning publication within 20 days of filing of selection, the selector will begin such publication within 30 days from date of service of notice by the manager that the application has been placed of record.

(c) In all cases where the application involves land occupied, claimed, or owned by an Indian, or where the land is occupied, claimed, or held by the Indians as a tribe, the manager will forward a copy of the application to the Indian superintendent; and in all such cases will furnish the superintendent with the serial number of the application, which serial number together with the name of the land office must be indorsed thereon as a means of identification and referred to in all correspondence concerning said application. It will be the duty of this official to examine the land proposed to be relinquished or reconveyed by the Indian applicant or on behalf of the tribe and the land proposed to be acquired by or for the Indians, and to submit reports of such examinations to the Commissioner of Indian Affairs with appropriate recommendation as to the allowance or disallowance of the application, a copy of which report must be forwarded to the manager.

(d) Applicants should specifically state in their applications that the same are made pursuant to the authority contained in the said act of February 20, 1925, and §§ 149.29 to 149.32, inclusive. A statement showing that the land asked for in exchange is not adversely claimed should accompany each application, and in cases where the land is covered by homestead or desert entry or application, proper relinquishments should be filed.

§ 149.31 *Unrecorded deed and abstract required; relinquishment of unperfected claim.* (a) There should also accompany the application referred to in § 149.30 a warranty deed duly executed according to the laws of Arizona by the proponent conveying to the United States the land to be given in exchange, but such deed need not be recorded. An abstract of title brought down to show good title in the proponent, free from all encumbrances, must also be filed. Such abstract of title must be authenticated by the proper State and Federal officers and show that the land is free from all judgment claims, or liens, including taxes, or such abstract may be authenticated by an abstractor or abstract company as provided by § 211.1 of this chapter. If the exchange is authorized the deed will be returned for recording and the abstract to be brought down to shown such recordation, whereupon patent will be issued in the regular order of business.

(b) Where the land relinquished is covered by an unperfected bona fide claim for which no certificate for patent is outstanding, there must be filed with the selection a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way to encumber the title to the land or any part thereof is on file or of record in his office; or if any such instrument or instruments be on file or of record therein, the certificate must show the facts. A selection in lieu of an unperfected claim not covered by patent certificate must in all respects conform to the law under which such unperfected claim is held, and will be subject to the payment of such fees and commissions as would be required under the statutes to complete the unperfected claim in lieu of which the selection is made.

§ 149.32 *Improvements on relinquished land.* The law makes no provision for reimbursing any persons for improvements on land relinquished or reconveyed. However, when any applicant receives notice that an exchange applied for has been authorized, he may, if he so desires, remove any buildings, fencing, or other movable improvements owned or erected by him on the land relinquished or conveyed: *Provided,* That such removal is accomplished within 90 days from receipt by him of said notice.

EXCHANGES FOR THE CONSOLIDATION OF INDIAN HOLDINGS, ETC., IN SAN JUAN, MCKINLEY, AND VALENCIA COUNTIES, NEW MEXICO

NOTE: Exchanges under §§ 149.35 to 149.43, inclusive, where the value of the selected land does not exceed $50,000 can be approved by the regional administrator [B. L. M. Order 427, 15 F. R. 5639, Aug. 23, 1950; 15 F. R. 5853, Aug. 30, 1950].

AUTHORITY: §§ 149.33 to 149.41 issued under sec. 13, 41 Stat. 1239.

§ 149.33 *Statutory authority.* Section 13 of the act of March 3, 1921 (41 Stat. 1239) authorizes the reconveyance to the United States of privately owned and State school lands and the relinquishment of valid homestead or other filings, including Indian allotment selections, in San Juan, McKinley, and Valencia Counties, New Mexico, and permits lieu selections therefor so that the holdings of such claimants and owners may be consolidated and held in solid areas.

§ 149.34 *Preliminary cooperation.* As the "exchanges" permitted under the act of March 21, 1921, for the purpose of consolidations can be made only with the mutual consent of all persons interested, and be brought to the point where approvals may be had of the Bureau of Land Management, there should be full preliminary cooperation as a preventive of adverse action and as a means of aiding prompt and favorable action by the Government.

§ 149.35 *Conferences by applicants; application and publication required.* (a) The question of whether the land wanted by each interest is vacant public domain or railroad land, whether it is State land or Indian allotments patented or selected therefor, or whether leased, etc., should first be ascertained by such persons as nearly as may be possible; also, some understanding should be had between all the interests indicating their attitude.

(b) A person or corporation, or the State of New Mexico, desiring to reconvey and select lieu lands should file in duplicate an application in the land office at Santa Fe, definitely describing by Government surveys the lands wanted and the lands offered in exchange; and notice of such application must be given in compliance with Part 130 of this chapter, with the exception, that instead of beginning publication within 20 days of filing of selection, the selector will begin such publication within 30 days from date of service of notice by the manager that the application has been placed of record.

§ 149.36 *Action by manager and Indian superintendent on applications.* (a) In all cases where the application involves land occupied, claimed, or owned by an Indian, the manager will forward a copy of the application to the proper Indian superintendent; and in all such cases will furnish the superintendent with the serial number of the application, which serial number together with the name of the land office must be indorsed thereon as a means of identification and referred to in all correspondence concerning said application. Copies of applications covering lands occupied, claimed, or owned by Indians in San Juan, McKinley, and Valencia Counties will be filed with the proper Indian superintendent. It will be the duty of the superintendent to examine the land proposed to be relinquished or reconveyed by all Indian applicants, and the lands proposed to be acquired by Indian applicants, and to submit reports of such examinations involving lands in their

respective jurisdictions, to the Commissioner of Indian Affairs, with appropriate recommendation as to the allowance or disallowance of the application, a copy of which report must be forwarded to the manager at Santa Fe.

§ 149.37 *Character of lands involved and report thereon; statement required.* (a) Privately owned or State school lands held in fee, mineral or nonmineral, may be exchanged for other lands mineral or nonmineral, if they are of approximately equal value. The school section lands offered in exchange must be those granted by the act of June 21, 1898 (30 Stat. 484), or by the act of June 20, 1910 (36 Stat. 557), and not those granted by the act of January 25, 1927 (44 Stat. 1026; 43 U. S. C. 870, 871), and a statement in accordance therewith should accompany each application by the State.

(b) A statement showing that the land asked for in exchange is not adversely claimed should accompany each application, except that in cases where the land is covered by an allotment, homestead or desert entry, a statement may be made to the effect that the claimant to such land has filed an application to relinquish or reconvey the land to the United States under the provisions of the act of March 3, 1921, if such be the fact. Where applications are submitted involving the reconveyance or relinquishment of lands selected by or patented to individual Indians, such applications may be considered jointly and not necessarily as separate applications; provided, in such cases, the lands to be acquired in exchange will consolidate the holdings of such Indians.

§ 149.38 *Restrictions in selecting lands; unrecorded deed and authenticated abstract required.* (a) The lands selected must, in conjunction with other property owned by the party conveying, be in a compact body, as near as may be possible, regardless of township lines; but no application will be considered involving lieu lands in any township wherein the selector owns no land and where the approval of such application will not effect a consolidation of the holdings of the applicant in such township or townships. Surveyed, unappropriated, and unreserved land, except as provided by the last paragraph of § 149.37, can be selected.

(b) There should also accompany the application a warranty deed duly executed according to the laws of New Mexico by the proponent conveying to the United States the land to be given in exchange, but such deed need not be recorded. An abstract of title brought down to show good title in the proponent, free from all encumbrances, must also be filed. Such abstract of title must be authenticated by the proper State and Federal officers and show that the land is free from all judgments, claims, or liens, including taxes, or such abstract may be authenticated by an abstractor or abstract company as provided for in § 211.1 of this chapter. If the exchange is authorized the deed will be returned for recording and the abstract to be brought down to show such recordation, whereupon patent will be issued in the regular order of business.

§ 149.39 *Procedure governing relinquishment of unperfected claim or trust patent.* (a) Where the land relinquished is covered by an unperfected bona fide claim for which no certificate for patent is outstanding, there must be filed with the selection a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way to encumber the title to the land or any part thereof is on file or of record in his office; or if any such instrument or instruments be on file or of record herein, the certificate must show the facts. A selection in lieu of an unperfected claim not covered by patent certificate must in all respects conform to the law under which such unperfected claim is held, and will be subject to the payment of such fees and commissions as would be required under the statutes to complete the unperfected claim in lieu of which the selection is made.

(b) If the land relinquished is covered by an unperfected claims, such as a homestead or desert entry, for which certificate for patent has not been issued and the law under which the claim was initiated requires that land taken thereunder must be in one body, the same requirement must be observed in making the lieu selection irrespective of lands otherwise owned or claimed. If the land relinquished is covered by an Indian allotment for which a trust patent has been issued, that trust patent should accompany the application for exchange and on the reverse side of the patent should be indorsed the relinquishment of the patentee witnessed by two persons or before a notary public or other official with a seal. If the trust patent has been lost or destroyed or for any reason can not be located, the relinquishment and application for exchange may be combined, including a statement as to the loss of the patent, or reason given why it can not be furnished. In cases of this character no deed will be necessary, but the selector must state that he has not sold, assigned, mortgaged, or contracted to sell, assign, or mortgage the land covered by the unperfected claim or relinquished allotment.

§ 149.40 *Selection not to be patented until right to patent on unperfected claim has been earned.* (a) A selection of land in lieu of an unperfected entry under the settlement laws if credit for residence on the unperfected claim be desired, must in addition to other proofs be accompanied by the statement of the selector, corroborated by two witnesses, showing when residence was established on the unperfected claim and the duration of such residence. In such a case, unless the selector has resided upon, cultivated, and improved the relinquished unperfected claim for the full period required by law to earn a patent thereto, he must establish and maintain a residence on the land selected and cultivate and improve the same for the full period required by law to earn a patent, less the time spent upon the relinquished unperfected claim.

(b) If the relinquished unperfected claim be not one held under the settlement laws, the statement as to the residence required by the preceding paragraph need not be furnished; but in either case the selector must state that he has not sold, assigned, mortgaged, or contracted to sell the land covered by the relinquished unperfected claim. No patent shall be issued for any lieu land selection until all parties in interest and involved in the exchange of their holdings with each other and with the Government shall have completed their selections and thereby and otherwise in accordance with applicable law and the regulations thereunder earned equitable title to the land involved therein.

§ 149.41 *Removal of improvements; action required before entry or settlement may be made on relinquished land.* The law makes no provision for reimbursing any persons for improvements on land relinquished or reconveyed. However, when any applicant receives notice that an exchange applied for has been authorized, he may, if he so desires, remove any buildings, fencing, or other movable improvements owned or erected by him on the land relinquished or conveyed: *Provided*, That such removal is accomplished within 90 days from receipt by him of said notice. Any land relinquished to the United States under §§ 149.33–149.41, which tracts would ordinarily become subject to entry under the public land laws, shall be withheld from all forms of disposal until further specific action is taken thereon to make the said lands subject to settlement or entry, or to any form of disposal; and until otherwise directed the land office will not allow any entry or application for such lands.

EXCHANGES OF LANDS IN APACHE, NAVAJO, AND COCONINO COUNTIES, ARIZONA, FOR THE CONSOLIDATION OF THE NAVAJO INDIAN RESERVATION, ETC.

AUTHORITY: §§ 149.62 to 149.77 issued under sec. 2, 48 Stat. 961.

§ 149.62 *Statutory authority.*[1] Section 2 of the act of June 14, 1934 (48 Stat. 961) authorizes the Secretary of the Interior to accept relinquishments and reconveyances of such privately owned lands in Apache, Navajo, and Coconino Counties, Arizona, as are desirable for and should be reserved for the use and benefit of the Navajo Tribe of Indians and to permit lieu selections therefor in the said counties of unappropriated, unreserved, nonmineral public lands of equal value. The said section contains special provisions respecting the exchange of lands included in Indian allotments and lands containing springs or living waters.

§ 149.63 *Form and contents of application.* Applications to select by the owners of the lands within the area described in the act of June 14, 1934 (48

[1] The act of May 9, 1938 (52 Stat. 300), making appropriations for the Department of the Interior for the fiscal year ending July 30, 1939, contains a provision designated as "Purchase of land for the Navajo Indians, Arizona (tribal funds)." The second proviso to such provision reads as follows: "That title may be accepted subject to a reservation of the oil, gas, and minerals to lands yet to be acquired through purchase or exchange under authority contained in this paragraph or in the act of June 14, 1934."

Stat. 960) should be filed in the proper land office. They need not be on any particular form but must state the date of the act, whether the applicant is the owner of the offered base land and specifically describe the land desired to be surrendered and that sought to be selected. The application should be accompanied with a statement wherein it is shown that the selected land is surveyed, unappropriated, unreserved, nonmineral public land of the United States in one of the three counties aforesaid, in Arizona. It should also state that a deed of relinquishment of the base land and an abstract of title thereto are also submitted and that the applicant will without cost to the Government place the deed of relinquishment of record and extend the abstract of title to the date of such recordation when called upon to do so.

§ 149.64 *Form and contents of statement which must accompany application.* The statement accompanying the application may be signed by the applicant or by some credible person who is familiar with the character, condition and value of the selected land and the value of the land relinquished. This statement must be corroborated by at least one person who has no personal interest in the exchange and who is familiar with the value of the land relinquished and that selected. The statement must describe the base and selected land and show the following: That there is not within the limits of the lieu land any known vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin or copper; that there is not any known deposit of coal or any placer deposit, oil or other valuable mineral; that said land contains no salt springs or known deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that said land is essentially non-mineral in character, has upon it no mining or other improvements and is not in any manner occupied adversely to the selector and that the selection is not made for the purpose of obtaining title to mineral lands. The statement must also show that the person who signs it is well acquainted with the value of the relinquished and selected land and that from personal observations and knowledge he states that the lands are of equal value and that the lieu land is not used by Indians.

§ 149.65 *Executed and acknowledged deed required.* The application must be accompanied with a deed of relinquishment or reconveyance to the United States of the land tendered as the basis of the exchange duly executed and acknowledge in the same manner as conveyances of real property are required to be executed by the laws of the State of Arizona.

§ 149.66 *Authenticated abstract and certificate required.* There must be filed a duly authenticated abstract of title to the relinquished land showing title thereto to be in the applicant. The certificate of authentication of the abstract must be signed by the recorder of deeds under his official seal and must show that the title memorandum is a full, true and complete abstract of all matters of record or on file in his office including conveyances, mortgages or other incumbrances. The custodian of tax records must certify that all taxes levied or assessed against the land or that could operate as a lien thereon have been paid in full and that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of his office. The absence of judgment liens for pending suits against the grantor which might affect the title to the land relinquished must be shown by the official certificates of the clerks of the courts of record whose judgments under the laws of the United States or the State constitute a lien on the land conveyed. The abstract may also be made by an abstract company or abstracter approved under § 211.1 of this chapter.

§ 149.67 *Publication and posting of notice.* If all be regular and the reports are satisfactory, the Bureau of Land Management will require the applicant at his expense within 30 days from receipt of notice to begin publication of notice for 4 consecutive weeks in a newspaper of general circulation in the vicinity of the selected lands. During this period a similar notice must be posted in the land office.

§ 149.68 *Form and contents of notice.* The notice should describe the selected land, give name of applicant, date of application and act under which made and allow all persons claiming the land under the mining or other laws and desiring to show that it is mineral in character or adversely occupied, an opportunity to file objection or to establish their interest therein or the mineral character thereof.

§ 149.69 *Proof of publication and posting.* Proof of publication will consist of the statement of the publisher or foreman or other employee of the newspaper with a copy of the published notice attached. The first and last dates of publication and posting must also be given.

§ 149.70 *Lands containing springs or living waters.* The act provides for the selection of lands containing springs or living waters in lieu of other lands of the same character or quality, notwithstanding that the selected lands may be included in a public water reserve if not otherwise reserved. However, the allowance of any such selection is within the discretion of the authorized officer of the Bureau of Land Management.

§ 149.71 *Procedure when applicant is Indian.* In all cases where the applicant for an exchange is an Indian, the application must be filed in duplicate and the manager will forward the duplicate to the proper Indian superintendent and will furnish said superintendent with the serial number of the application, which serial number together with the name of the land office, must be indorsed thereon as a means of identification and referred to in all correspondence concerning said applications. Copies of applications by Indians involving these lands should be forwarded to the appropriate office of the Bureau of Indian Affairs.

§ 149.72 *Approval of selection; deed to be recorded and abstract extended.* Upon the completion of a selection, and in the absence of objection then appearing, the selection will be approved by the authorized officer of the Bureau of Land Management. If and when so approved the deed and abstract of title will be returned to the applicant to have the deed recorded and the abstract of title extended to show recordation.

§ 149.73 *Acceptance of title to base lands.* Upon the acceptance of title to the base lands they will be held in trust for the Navajo Tribe of Indians and the Commissioner of Indian Affairs will be notified thereof.

§ 149.74 *Restriction on applications by non-Indians.* The manager will accept no applications, other than those by Indians, where the lands offered are south of the township line between Townships 20 and 21, in Navajo County.

§ 149.75 *Restriction in making allotments or Indian homesteads.* Pending the completion of exchanges and consolidations authorized by section 2 of the act of June 14, 1934 (48 Stat. 961), the manager will accept no applications for allotments, or Indian homesteads under the act of July 4, 1884 (23 Stat. 96; 43 U. S. C. 190), for public lands to Navajo Indians in the counties of Apache, Navajo and Coconino, and thereafter should allotments to Navajo Indians be made within the above-named counties, they shall be confined to land within the boundaries defined by section 1 of said act of June 14, 1934.

§ 149.76 *Selections by State in lieu of school lands in reservation.* Selections by the State of Arizona in lieu of school lands within the boundary of the Navajo Reservation as defined by section 1 of the act of June 14, 1934 (48 Stat. 960), will be made in accordance with the regulations governing the selection of lands by States contained in §§ 270.1 to 270.16 of this chapter, insofar as they apply to indemnity school land selections, and will also be subject to all other existing regulations pertaining to such selections except that no fees or commissions are required, and the offered and selected lands need not be of equal area as in ordinary indemnity school land selections but need only be approximately equal in value.

§ 149.77 *Valid rights unaffected by act of June 14, 1934.* The manager will be governed by the following direction contained in the proviso to section 1 of the act:

> All valid rights and claims initated under the public land laws prior to approval hereof involving any lands within the area so defined shall not be affected by this act.

EXCHANGES WITH THE STATE FOR THE EXTENSION OF PAPAGO INDIAN RESERVATION, ARIZONA

AUTHORITY: §§ 149.78 and 149.79 issued under R. S. 2478; 43 U. S. C. 1201.

§ 149.78 *Statutory authority.* The act of July 28, 1937 (50 Stat. 536; 25 U. S. C.

463a–463c) provides for the relinquishment by the State of Arizona in favor of the Papago Indians of lands within a certain area to be added to the Papago Indian Reservation, and for the selection of unreserved nonmineral public lands of equal area within the State, in lieu thereof.

§ 149.79 *Application for exchange; publication; fees.* Selections by the State of Arizona under section 3 of the act of July 28, 1937 (50 Stat. 536; 25 U. S. C. 463c) may be made either in accordance with the regulations in §§ 270.1–270.16 of this chapter governing the selections of lands by States, so far as they apply to indemnity school land selections, except that no fees or commissions will be required, or under section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), referred to in section 3 of the act of June 28, 1937, as 49 Stat. 842, and the regulations thereunder, §§ 147.1–147.16 of this chapter. No fee will be charged in connection with any exchange made under section 8 of the act of June 28, 1934, as amended, but the State will be required to pay one-half of the cost of publication thereof.

EXCHANGES WITH THE STATE FOR THE EXTENSION OF THE NAVAJO INDIAN RESERVATION, UTAH

AUTHORITY: §§ 149.80 and 149.81 issued under R. S. 2478; 43 U. S. C. 1201.

§ 149.80 *Statutory authority.* The act of March 1, 1933 (47 Stat. 1418; 43 U. S. C. 190a), provides for the inclusion of certain lands within the Navajo Indian Reservation in Utah and for exchanges by the State of school lands within such areas for public lands within the State.

§ 149.81 *Application for exchange; field examination; payment of fees not required.* (a) All such indemnity school selections must be made in accordance with the provisions of sections 2275 and 2276, Revised Statutes, as amended by the act of February 28, 1891 (26 Stat. 796; 43 U. S. C. 851, 852), as made applicable to the State of Utah by the act of May 3, 1902 (32 Stat. 188; 43 U. S. C. 853). Such selections must also be made in accordance with the regulations governing State selections, contained in §§ 270.1–270.16 of this chapter, and the State must furnish a statement as to springs and water holes on all selected lands in accordance with §§ 292.3, 292.8 of this chapter.

(b) The State must also furnish a statement to the effect that the land selected is approximately of the same value as that relinquished. Field examination will be made by the authorized officer, Bureau of Land Management, in order to determine whether or not the lands relinquished and those selected are considered to be of approximately equal value within the intent of the act. If the report should be adverse to the State, the State will be given opportunity to make selection of other lands or to make such showing as may be desired, and will be afforded the right of appeal, review, or rehearing recognized in the manner prescribed by the Rules of Practice, Part 221, of this chapter.

(c) No fees will be charged in connection with any selection made under this act.

EXCHANGES FOR THE CONSOLIDATION OF INDIAN HOLDINGS IN CERTAIN AREAS SET APART FOR THE PUEBLO INDIANS AND THE CANONCITO NAVAJO GROUP IN NEW MEXICO

AUTHORITY: §§ 149.82 to 148.84 issued under 63 Stat. 605; 25 U. S. C. 622.

§ 149.82 *Policy.* For the purpose of consolidating Indian lands, as authorized by section 2 of the act of August 13, 1949 (63 Stat. 605; 25 U. S. C. 622), private or State-owned lands or interests therein, including improvements and water rights, situated within the boundaries of the Indian area described in section I of the notice dated March 25, 1950, and published in the FEDERAL REGISTER (15 F. R. 1852), may be offered in exchange for lands or interests therein, including improvements and water rights, selected within the boundaries of such Indian area, or within the public domain area described in section II of the notice dated March 25, 1950 (15 F. R. 1855), or within any public domain in New Mexico.

§ 149.83 *Applications for exchange; consent of Indians.* (a) Except as modified by this section and § 149.84, applications for exchanges pursuant to §§ 149.82 to 149.84 must be filed, and the exchanges will be made, in accordance with §§ 146.2 to 146.8 of this chapter, covering exchanges of privately owned lands, and in accordance with §§ 147.2 to 147.12 of this chapter, covering exchanges of State-owned lands.

(b) The selected land or interest and the offered land or interest need not be in the same grazing district.

(c) Exchanges will be made only if the offered land or interest is similar in value to the selected land or interest.

(d) Each application for exchange must be accompanied by the written consent of the tribal authorities of the Pueblo or Navajo tribe within whose area either the offered or the selected land or interest is situated.

§ 149.84 *Deed of conveyance of offered land or interest.* The deed should recite that it is made "for and in consideration of the exchange of certain lands (or interests therein), as authorized by section 2 of the act of August 13, 1949 (63 Stat. 605)," and that the conveyance is made to the United States, as grantee in trust for the appropriate Pueblo Indian or Canoncito Navajo group.

PART 150—EXCHANGES TO ELIMINATE PRIVATE HOLDINGS FROM NATIONAL PARKS AND NATIONAL MONUMENTS

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AUTHORITY: §§ 150.1 to 150.28 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For exchanges by States, under Taylor Grazing Act, see Part 147 of this chapter. For exchanges for migratory bird or other wildlife refuges, see Part 151 of this chapter. For exchanges for recreational purposes, see Part 254 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For exchanges of privately owned lands, under Taylor Grazing Act, see Part 146 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For national parks and national

monuments, see Part 206 of this chapter. For American Battle Monuments Commission, see Parks, Forests, and Memorials, 36 CFR Chapter IV. For National Park Service, Department of the Interior, see Parks, Forests, and Memorials, 36 CFR Chapter I.

EXCHANGES TO ELIMINATE PRIVATE HOLDINGS WITHIN GLACIER NATIONAL PARK, MONTANA

§ 150.1 *Statutory authority.* The act of February 28, 1923 (42 Stat. 1324; 16 U. S. C. 164, 165) empowers the Secretary of the Interior to obtain for the United States the complete title to any or all lands held in private ownership within the boundaries of the Glacier National Park, by accepting from the owners of such lands complete relinquishment thereof and granting and patenting in exchange therefor an equal value of public land in the State of Montana.

§ 150.2 *Application, deed, abstract, statement, and fees required.*[1] Applications for an exchange under the act of February 28, 1923, must be filed in the land office having jurisdiction over the land selected, the application describing the land to be conveyed as well as the land selected, according to Government subdivisions. Nothing less than a legal subdivision may be surrendered or selected. The selected land must be entirely within the State of Montana. Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney in fact, and when made by an agent or attorney in fact proof of authority must be furnished. The application must be accompanied by the necessary relinquishment, abstract of title, statements, and fees, as set forth in §§ 148.1 to 148.15 of this chapter.

§ 150.3 *Action on application; field examination and report.* The authorized officer, if necessary, will have a field examination and report made of both the selected and the base lands to determine whether or not their value is equal within the meaning of the act of February 28, 1923, with reference to their character as mineral, prairie, grazing, agricultural, timber, desert land or otherwise, as the case may be, and as to springs or water holes thereon, if any. Should the report of the authorized officer show curable defects, the Bureau of Land Management will give the applicant an opportunity to amend his application, if possible, so as to cure the defects.

§ 150.4 *Publication and posting.* If the report is favorable and the selection appears regular and in conformity with the law and regulations, the authorized officer will notify the applicant and require him, within 30 days from receipt of notice, to begin publication of notice of his application in accordance with § 148.8, and in due time to submit proof thereof.

§ 150.5 *Protests.* Protests will be disposed of as provided under § 148.8.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 150.6 *Approval of application; relinquishment and abstract.*

(a) If the authorized officer decides that the application should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the laws of the State of Montana and to have the abstract of title extended down to and including the date the deed of relinquishment or conveyance was recorded.

(b) If the authorized officer be of the opinion that further evidence as to value and character of land involved is necessary, he may institute such inquiry as he may deem advisable.

(c) The authorized officer, in the exercise of his discretion, may withhold his approval from any application made under the provisions of the act of February 28, 1923, subject to the right of appeal pursuant to the Rules of Practice (Part 221 of this chapter), although the applicant may have complied with the rules and regulations applicable thereto.

EXCHANGES OF PRIVATELY OWNED PROPERTY WITHIN THE GLACIER NATIONAL PARK, MONTANA

§ 150.6a *Statutory authority.* The act of August 8, 1946 (60 Stat. 949), authorizes the Secretary of the Interior, when he deems such action to be in the best interests of the United States, to accept title to any non-Federal lands, interest in lands, buildings, or other property, real or personal, within the authorized boundaries of the Glacier National Park, as then or thereafter established, and in exchange therefor, to convey to the grantors of such property, or to their nominees, any Federally owned lands, interests in lands, buildings, or other property, real or personal, within the boundaries of the Glacier National Park, located in the State of Montana, and administered by the National Park Service, which the Secretary determines are of approximately equal value to the property being acquired. In order to facilitate the making of such exchanges, the Secretary is authorized to enter into agreements for the reservation in conveyances to the United States or for the grant in conveyances from the United States, of such estates for years, life estates, or other interests, as may be consistent with the purposes of the act, but all such limitations must be considered in determining the equality of the interests to be exchanged.

Sections 150.6a to 150.6m, inclusive, do not apply to exchanges which involve no interest in real property.

§ 150.6b *Informal application.* All preliminary negotiations relating to an exchange under the above act are to be conducted with the National Park Service. Any owner of property within the boundaries of the Glacier National Park who desires to take advantage of the privileges conferred by said act, must file with the Director, National Park Service, an informal application describing the privately owned property, which is offered to the United States and the property which is selected in exchange therefor. If the Director, National Park Service is of the opinion that the value of the property offered is equal to or more than the value of the selected property, and that the exchange should be consummated, he will so advise the applicant by letter, stating, among other things, his determination as to values, and will instruct the applicant to file in the proper land office, the letter, together with a formal application to exchange.

§ 150.6c *Formal application.* (a) The formal application, which must be filed in duplicate, should contain the full name and post office address of the applicant, a description of the property offered to the Government and the property selected in exchange therefor; a statement as to what, if any, reservations, easements, or rights-of-way are being made in the offered land; a statement that the applicant is the owner of the property offered in exchange, that he is legally capable of consummating the exchange, and that such property is not the basis of another selection or exchange; a statement by the applicant or some credible person possessed of the requisite knowledge, that the land selected is nonmineral in character, contains no salt springs or deposits of salt in any form to render it chiefly valuable therefor, and is not in any manner occupied or claimed adversely to the applicant; and a statement corroborated by two credible witnesses as to springs and water holes in accordance with §§ 292.1–292.9 of this chapter. The application should be accompanied by the letter received from the National Park Service signifying its approval of the consummation of the proposed exchange. Any application not accompanied by such a letter will be rejected. The offered and selected property in the formal application must be identical with the property referred to in the letter of the National Park Service and all lands should be described by legal subdivisions of the public land surveys, except where unsurveyed land is selected and in which case, the description thereof must conform to § 101.6 of this chapter. Where application is made to select unsurveyed land, such land must be surveyed, and the application and valuation must be adjusted to survey before patent can issue for such selected land.

(b) Where the application is filed by an individual he will be required to show he is 21 years of age, and otherwise capable of carrying through the transaction.

(c) Where the application is made by or in behalf of a corporation, a certified copy of the articles of incorporation must be furnished. If the corporation is organized under a State other than Montana the articles of incorporation must be accompanied by a certificate showing that the corporation is authorized to do business in the State of Montana.

§ 150.6d *Fees.* Fees must be paid by the applicant at the rate of $2 for each 160 acres, or fraction thereof, of the base lands offered and conveyed to the Government.

§ 150.6e *Action by Bureau of Land Management.* (a) Upon receipt of all the evidence required, examination will be made at as early a date as practicable and if the evidence is found defective an

opportunity will be given the parties in interest to cure the defects, if possible.

(b) If the authorized officer determines that the value of the offered property is equal to or more than the value of the selected property and that the application should be allowed, the exchange will be approved, subject to the submission of acceptable title to the offered property and to full compliance by the applicant with §§ 150.6a to 150.6m, inclusive, and subject to any protests or other valid objections which may appear.

§ 150.6f *Publication and posting of notice.* Upon approval of the application the applicant will begin publication of notice thereof, at his own expense, in some newspaper, designated by the Bureau of Land Management and having general circulation in the county, or counties, in which the property offered and the property selected are situated. Such notice must be published once each week for four successive weeks. The notice should describe the property applied for as well as the property offered in exchange and give the date of filing of the application, and state that the purpose thereof is to allow all persons claiming the property selected, or having bona fide objections to such application, an opportunity to file their protests with the proper district land office. Proof of publication shall consist of a statement of the publisher or of the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the published notice attached. The date of such publication and posting must be given in all cases.

§ 150.6g *Protests; additional papers to be filed; action by manager.* Should no protest be filed against the allowance of the selection within 30 days from the date of the first publication of notice, and no objections appear on the records of the land office, the manager will notify the applicant that he is allowed 60 days from receipt of notice within which to file the deed or other instrument conveying the offered property to the Government, together with such title evidence as may be required by §§ 150.6a to 150.6m, inclusive.

§ 150.6h *Deed or instrument of conveyance.* (a) The deed of conveyance or other instrument transferring title to the offered property to the United States must be executed, acknowledged and duly recorded in accordance with the laws of the State of Montana. Such revenue stamps as are required by law must be affixed to the instrument and canceled. The instrument should recite that it is made "for and in consideration of the exchange of certain property as authorized by the act of August 8, 1946 (60 Stat. 949)."

(b) Where such instrument is executed by an individual, it must show whether the person making the conveyance is married or single. If married, the wife or husband of such person as the case may be, must join in the execution and acknowledgement of the instrument in such manner as to bar effectually any right of curtesy or dower, or any claim whatsoever to the property conveyed, or it must be fully and satisfactorily shown that under the laws of the State of Montana in which the property conveyed is situated, such husband or wife has no interest whatsoever, present or prospective, which makes his or her joining in the instrument necessary. Where the instrument is executed by a corporation, it should recite that it was executed pursuant to an order or by the direction of the board of directors, or other governing body, and a copy of such order or direction must accompany such instrument and both should bear the impression of the corporate seal.

§ 150.6i *Abstract of title; title insurance; certificate of title.* (a) Where land or an interest in land is conveyed, applicant must file an abstract of title, a policy of title insurance or a certificate of title, as provided in this section.

(b) The abstract of title must show that the title memoranda contained therein are a full, true and complete abstract of all matters of record or on file in the offices of the recorder of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, pending suits, judgments, liens, lis pendens, or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the office of the clerks of courts of record affecting in any manner whatsoever the title to the land or property to be conveyed to the United States. The abstract of title may be prepared and certified by the recorder of deeds or other proper officer under his official seal, or it may be prepared and authenticated by an abstractor or by an abstract company, which is satisfactory to the Bureau of Land Management.

(c) A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract, in proper cases, when issued by a title company. A policy of title insurance when furnished must be free from conditions and stipulations not acceptable to the Bureau of Land Management. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit, and where the interests of the Government will be sufficiently protected thereby.

§ 150.6j *Taxes.* The applicant must furnish a certificate by the proper official of the county in which the property conveyed to the United States is situated, showing that all taxes levied or assessed against the property, or that could operate thereon as a lien, have been fully paid, or whether there is a tax due on such property that could operate as a lien thereon but which tax is not yet payable, and that there are no unredeemed tax sales and no tax deeds outstanding against such property. In case taxes have been assessed or levied on such property, and such taxes are not due and payable until some future date, the applicant, in addition to the certificate above required relative to taxes and tax assessments, may furnish a bond with a qualified corporate surety for the sum of twice the amount of taxes paid on the property for the previous year in order to indemnify the United States against loss for the tax as assessed or levied but not yet due and payable. In lieu of the bond the applicant may submit a sum similar to that required in the case of a bond, and if and when proper evidence is furnished showing the taxes on the property conveyed have been paid in full, the said sum will be returned to the applicant.

§ 150.6k *Further action by Bureau of Land Management.* The publication of notice, deed or other instrument of conveyance, abstract of title and other evidence required of the applicant will, upon receipt in the Bureau of Land Management, be examined, and if found regular and in conformity with law, and there are no objections, title will be accepted to the property conveyed to the United States and patent or other instrument of transfer will issue for the property selected in exchange. Notice of additional requirements, rejection or other adverse action will be given the applicant.

§ 150.6l *Conveyed property a part of the Glacier National Park.* All property conveyed to the United States pursuant to §§ 150.6a to 150.6m, inclusive, shall, upon acceptance of title, become a part of the Glacier National Park, and shall be subject to all laws applicable to such area.

§ 150.6m *Appeals.* Any party aggrieved by any action of the manager may appeal to the Director of the Bureau of Land Management and any party aggrieved by any action of the Director, Bureau of Land Management or the Director, National Park Service, may appeal to the Secretary, pursuant to Rules of Practice (Part 221 of this chapter).

EXCHANGES TO ELIMINATE PRIVATE HOLDINGS WITHIN BRYCE CANYON AND ZION NATIONAL PARKS, UTAH

§ 150.7 *Statutory authority.* Section 3 of the act of June 7, 1924 (43 Stat. 594; 16 U. S. C. 346, 402) authorizes the Secretary of the Interior, in his discretion, to exchange an equal value and approximately an equal area of unappropriated and unreserved public land in the State of Utah for alienated lands in the Utah National Park (name since changed to Bryce Canyon National Park) and the Zion National Park.

§ 150.8 *Application, deed, abstract, statement, and fees required.* Applications for an exchange under the act of June 7, 1924, must be filed in the land office having jurisdiction over the land selected, the application describing the land to be conveyed as well as the land selected, according to Government subdivisions. Nothing less than a legal subdivision may be surrendered or selected. The selected land must be entirely within the State of Utah. Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney in fact, and when made by an agent or attorney in fact proof authority must be furnished. The application must be accompanied by the necessary relinquishment, abstract of title, statements, and fees, required under §§ 148.1–148.15 of this chapter.

§ 150.9 *Action on application; field examination and report.* The author-

ized officer, if necessary, will have a field examination and report made of both the selected and the base lands to determine whether or not their value is equal within the meaning of the act of June 7, 1924, with reference to their character as mineral, prairie, grazing, agricultural, timber, desert land or otherwise, as the case may be, and as to springs or water holes thereon, if any. Should the report of the authorized officer show curable defects, the Bureau of Land Management will give the applicant an opportunity to amend his application, if possible, so as to cure the defects.

§ 150.10 *Publication and posting.* If the report is favorable and the selection appears regular and in conformity with the law and regulations, the authorized officer will notify the applicant and require him, within 30 days from receipt of notice, to begin publication of notice of his application in accordance with § 148.8 of this chapter, and in due time to submit proof thereof. The notice must be posted in the land office during the entire period of publication and the posting must be certified to by the manager.

§ 150.11 *Protests.* Protests will be disposed of as provided under § 148.8 of this chapter.

§ 150.12 *Approval of application; relinquishment and abstract.*

(a) If the authorized officer decides that the application should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the laws of the State of Utah and to have the abstract of title extended down to and including the date the deed or relinquishment or conveyance was recorded.

(b) If the authorized officer be of the opinion that further evidence as to value and character of land involved is necessary, he may institute such inquiry as he may deem advisable.

(c) The authorized officer in the exercise of his discretion, may withhold his approval from any application made under the provisions of the act of June 7, 1924, subject to the right of appeal pursuant to the Rules of Practice (Part 221 of this chapter), although the applicant may have complied with the rules and regulations applicable thereto.

EXCHANGES TO ELIMINATE PRIVATE HOLDINGS IN PETRIFIED FOREST NATIONAL MONUMENT, ARIZONA

§ 150.13 *Statutory authority.* The act of May 14, 1930 (46 Stat. 278; 16 U. S. C. 444, 444a), empowers the Secretary of the Interior, in his discretion, to obtain for the United States the complete title to any or all of the lands held in private ownership within the boundaries of the Petrified Forest National Monument, Arizona, by accepting from the owners of such lands complete relinquishment thereof, and by granting and patenting in exchange therefor, like public lands of equal value situated in Navajo and Apache Counties, Arizona.

§ 150.14 *Preliminary negotiations and informal application.* (a) All preliminary negotiations relating to an exchange under the act of May 14, 1930, are to be conducted with the Custodian of the Petrified Forest National Monument in Arizona, and any owner of land subject to exchange who desires to take advantage of the privileges conferred thereby must file with the said custodian an informal application describing the land to be conveyed to the United States, according to Government subdivisions.

(b) If the custodian finds the offered land to be within the Petrified Forest National Monument and the acquisition thereof by the United States will be in accord with the purposes of the act, he will request the Director of the National Park Service to so advise the Bureau of Land Management. The Director of the National Park Service, unless he has reasons to do otherwise, shall transmit to the Bureau of Land Management the informal application, together with an estimate of the value of the offered land and his recommendations in the premises.

CROSS REFERENCE: For National Park Service, see 36 CFR Chapter I.

§ 150.15 *Action by manager; formal application, evidence and report required.* (a) The land office manager will notify the applicant that 60 days from receipt of notice will be allowed within which to file in his office a formal application and the statements required in this section. Applicants under the act of May 14, 1930 will not be required to pay any fees or commissions.

(b) The formal application must describe the offered and selected lands, which lands must be within the limits and of the character prescribed by the act of May 14, 1930. The applicant must also furnish his statement or the statement of some credible person possessed of the requisite personal knowledge, showing that the land selected is chiefly valuable for grazing and raising forage crops, does not contain merchantable timber, is not susceptible of irrigation from any known source of water supply, is of the character similar to the offered land, is situated in Navajo or Apache Counties, Arizona, or in both, and it outside the limits of the Petrified Forest National Monument, is nonmineral in character, contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor, is not in any manner occupied or claimed adversely to the selector and that no spring or water hole exists therein. If such water hole does exist, a full showing must be made in accordance with §§ 292.3, 292.8 of this chapter. The applicant must also furnish a statement that he is the owner of the land to be relinquished and that the said land is not the basis of another selection or exchange.

(c) Upon approval of the application the manager will notify the applicant that within 60 days from notice, there must be furnished proof that notice of the exchange proposal describing the lands involved therein has been published once each week for 5 consecutive weeks in some newspaper or newspapers having general circulation in the county or counties in which the land relinquished and the land selected are situated, such newspaper or newspapers to be designated by the manager. The notice should describe the land to be relinquished as well as the land selected in exchange and give the date of filing of the formal application and act under which filed and should state that the purpose thereof is to allow all persons claiming the land selected or having bona fide objections to such application, an opportunity to file their protests in the district land office. Proof of publication shall consist of a statement by the publisher or of the foreman or other proper employee of the newspaper in which the notice was posted showing the dates of publication, together with a copy of the notice as published.

(d) The proof of publication notice should be accompanied by an unrecorded deed to the United States of the offered land and an abstract of title showing good title to the offered land in the applicant.

§ 150.16 *Completion of exchange record.* The applicant will be required to furnish evidence by proper authority showing that all taxes levied or assessed against the offered land or that could operate thereon as a lien, have been fully paid or to furnish indemnity for such taxes as are assessed but not yet payable.

The parties in interest to any exchange under this act shall be given opportunity to cure any defects which may appear of record.

§ 150.17 *Lands conveyed to be part of monument.* When title has been accepted to any lands conveyed to the United States under the act of May 14, 1930, the lands so conveyed shall become a part of the Petrified Forest National Monument.

EXCHANGES TO ELIMINATE PRIVATE HOLDINGS WITHIN CHACO CANYON NATIONAL MONUMENT, NEW MEXICO

§ 150.18 *Statutory authority.* The act of February 17, 1931 (46 Stat. 1165) empowered the Secretary of the Interior, in his discretion, to obtain for the United States the complete title to any or all alienated lands within the boundaries of the Chaco Canyon National Monument, New Mexico, by accepting from the owners of such lands complete relinquishment thereof and by granting to such owners in exchange therefor, surveyed, nonmineral and unreserved public lands of equal quality and acreage or of equal value situated elsewhere in New Mexico.

§ 150.19 *Character of lands subject to exchange.* Any person who owns lands within the boundaries of the Chaco Canyon National Monument, New Mexico, as now or hereafter defined, may under the act of February 17, 1931, exchange such land for surveyed, nonmineral and unreserved public lands in New Mexico, of equal quality and acreage or of equal value, provided that the Secretary of the Interior shall, on application or otherwise, designate public land subject to exchange under this act, which is in his opinion chiefly valuable for grazing and raising forage crops, does not contain merchantable timber, is not susceptible of irrigation from any known source of water supply, is not embraced in a valid claim and is of quality similar to the lands offered in exchange.

§ 150.20 *Who may exchange lands.* Under the act of February 17, 1931, a natural person, an association of persons or a corporation may be an applicant to exchange lands. Any owner of land within the boundaries of the Chaco Canyon National Monument in New Mexico, who desires to take advantage of the privileges conferred by the above act, may file a formal application to exchange in the land office wherein the lands selected in exchange are situated.

§ 150.21 *Application and statements required.* The formal application should set forth the name and address of the applicant and should recite that it is made under the act of February 17, 1931 (46 Stat. 1165). The application must describe by legal subdivision the land offered to the Government and the land selected in exchange. The application must show that the applicant is the owner of the land offered to the Government and that such land is not the basis of any other selection or exchange and the application must show wherein the selected land is of equal quality and acreage or of equal value to the land offered in exchange to the Government. The application should be corroborated by at least two disinterested persons having actual knowledge of the facts alleged therein. The applicant must also furnish his statement or the statement of some credible person possessed of the requisite personal knowledge, showing that the selected land is chiefly valuable for grazing and raising forage crops, does not contain merchantable timber, is not susceptible of irrigation from any known source of water supply, is not embraced in a valid claim or occupied adversely to the selector, is nonmineral in character and contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor, does not contain any spring or water hole and that no hot spring or medicinal spring having curative properties exists thereon. If any spring or water hole does exist on the selected land a full showing in accordance with § 292.3 of this chapter must be furnished, while if any hot spring or medicinal spring exists, a full showing under § 292.8 of this chapter must be furnished. Applicants under this act will not be required to pay any fees or commissions.

§ 150.22 *Joint field investigation and reports to be made.* Upon receipt of the application and statements in the Bureau of Land Management, the record will be examined and if there are no conflicts of record, the authorized officer shall make arrangements with the custodian of the Chaco Canyon National Monument to examine the offered and selected lands with a view to arriving at an exchange of equal quality and acreage or of equal value as contemplated by the act of February 17, 1931. If there are any conflicts of record they shall be eliminated before field examination is directed. The examination of the offered and selected lands shall be conducted jointly by the Bureau of Land Management and the National Park Service. This joint examination will be conducted for the purpose of establishing the equal value of the offered and selected lands involved in the exchange and to determine whether or not such lands conform to the requirements hereinbefore made, and whether or not the selected land is of the character which should be designated as subject to exchange under the above act. Upon completion of the field examination a joint report thereon, in duplicate, will be submitted to the two bureaus, respectively. In the event of a disagreement, each party making the investigation will submit a separate report to his respective bureau and send a copy thereof to the other bureau interested.

§ 150.23 *Action by Bureau of Land Management; evidence required.* When the record and field report are received in the Bureau of Land Management and an exchange of equal quality and acreage or of equal value has been established, the authorized officer of the said Bureau, unless he has reasons to do otherwise, shall designate all or part of the land selected by the applicant as subject to exchange under the act of February 17, 1931. The manager of the land office will thereupon notify the applicant that within 60 day from notice, there must be furnished proof that notice of the exchange proposal has been published for not less than 30 days in some newspaper or newspapers having general circulation in the county or counties in which the land to be relinquished and the land selected are situated. The manager shall designate the newspaper or newspapers in which the publication of notice is to be made. The notice should describe the land to be relinquished as well as the land selected in exchange and give the applicant's name and address, serial number and date of formal application and act under which filed and should recite that the purpose of the notice is to allow all persons claiming the land selected or having bona fide objections to such application an opportunity to file their protests, contests or objections in the district land office. Proof of publication shall consist of a statement by the publisher or other proper employee of the newspaper, showing the dates of publication, together with a copy of the notice as published.

§ 150.24 *Deed to United States and abstract of title.* The proof of publication of notice should be accompanied by an unrecorded deed of the offered land to the United States and an abstract of title showing good title to the offered land vested in the applicant. The applicant will be required to furnish evidence by proper authority showing that all taxes levied or assessed against the offered land or that could operate thereon as a lien, have been fully paid or to furnish indemnity for such taxes as are assessed but not yet payable.

§ 150.25 *Opportunity afforded to cure defects in record.* The parties in interest to any exchange under this act shall be given opportunity to cure any defects which may appear of record.

§ 150.26 *Lands conveyed to be part of Chaco Canyon National Monument.* When title has been accepted to any lands so conveyed to the United States under the act of February 17, 1931, the lands so conveyed shall become a part of the Chaco Canyon National Monument.

§ 150.27 *Driving stock across the monument.* Any applicant who desires to take advantage of the privilege of driving stock across the monument, conferred by section 1 of the act of February 17, 1931 (46 Stat. 1165), should place the matter before the National Park Service, requesting permission to drive stock across the monument at an accessible location, and such permission may be obtained with the approval of the Secretary of the Interior.

CROSS REFERENCE: For National Park Service rules and regulations, generally, see 36 CFR Part 1.

§ 150.28 *Reservations and rights for scientific research within monument.* Section 3 of the act of February 17, 1931 (46 Stat. 1166) permits the acceptance of title by the United States to sections 17 and 21, T. 21 N., R. 10 W., and sections 3, 11 and 13, T. 21 N., R. 11 W., New Mexico, subject to such reservations by any of the owners thereof, namely, the University of New Mexico, the Museum of New Mexico and the School of American Research, as will enable such owners to continue scientific research thereon; *Provided*, That such use shall not interfere with the administration of said area for national monument purposes, and provided further that upon relinquishment by any of such owners of the rights reserved, the Secretary of the Interior may in lieu thereof grant such owners similar rights with reference to other ruins and locations within said monument. When any of the above owners desire to make reservations in the lands last described, arrangements therefor should be made with the Director of the National Park Service, before the deed of the land to the United States is executed. When such reservations are made the Director of the National Park Service shall advise the Bureau of Land Management thereof, in order that the record may be complete and that proper notations may be made on the records of the Bureau of Land Management.

CROSS REFERENCE: For National Park Service regulations relating to scientific research in ruins and archaeological objects, see 36 CFR 1.16.

PART 151—EXCHANGES FOR MIGRATORY BIRD OR OTHER WILDLIFE REFUGES

EXCHANGES TO OBTAIN LANDS CHIEFLY VALUABLE FOR MIGRATORY BIRD OR OTHER WILDLIFE REFUGES

Sec.

151.1 Statutory authority.
151.2 Preliminary negotiations; informal application and procedure thereon.
151.3 Formal application; statements and fees required.
151.4 Procedure on formal application and statements.
151.5 Publication and posting of notice.
151.6 Deed to United States.
151.7 Abstract of title.
151.8 Taxes.
151.9 Action by Bureau of Land Management on complete record.
151.10 Quitclaim deed by United States.
151.11 Jurisdiction over land conveyed to United States.

AUTHORITY: §§ 151.1 to 151.11 issued under sec. 303, 49 Stat. 382; 16 U. S. C. 715d–2.

CROSS REFERENCES: For exchanges by States, under Taylor Grazing Act, see Part 147 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For exchanges of privately-owned lands, under Taylor Grazing Act, see Part 146 of this chapter. For exchanges to eliminate private holdings from national parks and national monuments, see Part 150 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For migratory bird or other wildlife refuge regulations of the Fish and Wildlife Service, see Wildlife, 50 CFR Chapter I.

§ 151.1 *Statutory authority.* (a) Section 303 of the act of June 15, 1935 (49 Stat. 382, 16 U. S. C., sec. 715d–2), and Reorganization Plan No. II of May 9, 1939 (53 Stat. 813, 1431, 1433; 5 U. S. C., secs. 133s, 133t), authorize the Secretary of the Interior, in his discretion and when the public interests will be benefited thereby, to accept on behalf of the United States title to any lands which in his opinion, are chiefly valuable for migratory bird or other wildlife refuges, and in exchange therefor to patent not to exceed an equal value of surveyed or unsurveyed, unappropriated and unreserved nonmineral public lands in the same State, the value in each case to be determined by him.

(b) Section 304 of the act of June 15, 1935 (49 Stat. 382; 16 U. S. C., 715e–1) permits the private owners of lands offered in an exchange to retain such rights of way, easements and reservations in such land as will not interfere with the use of the areas involved for the purposes of the act of June 15, 1935.

§ 151.2 *Preliminary negotiations; informal application and procedure thereon.* All preliminary negotiations relating to an exchange under the above act are to be conducted with the Fish and Wildlife Service. Any owner of land subject to exchange who desires to take advantage of the privileges conferred by the said act, must file with the local representatives of the Fish and Wildlife Service, an informal application describing the privately owned land which is offered to the United States and the public land which is selected in exchange therefor. The land offered to the United States must be chiefly valuable for migratory bird or other wildlife refuges, while the land selected in exchange must be unappropriated and unreserved nonmineral public land of the United States, which may be surveyed or unsurveyed. If the Director, Fish and Wildlife Service is of the opinion that the offered land is chiefly valuable for migratory bird or other wildlife refuges, he will advise the applicant thereof, together with his determination as to the values of the offered and selected lands giving the prices thereof and whether in his opinion the exchange should be consummated and shall instruct the applicant to file in the land office having jurisdiction over the selected land or for lands in a State in which there is no land office, with the Bureau of Land Management, Washington 25, D. C., except the applications for exchange in North or South Dakota shall be filed in the land office at Billings, Montana; applications for exchange in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for exchange in Oklahoma in the land office at Santa Fe, New Mexico, the said letter of information and instructions together with a formal application to exchange, the statements and filing fees more specifically referred to in the following section.

§ 151.3 *Formal application; statements and fees required.* The formal application should contain the full name and post office address of the applicant, a description of the land offered to the Government and the land selected in exchange therefor, a statement as to what, if any, reservations, easements or rights-of-way are being made in the offered land, and should be accompanied by the letter received from the Director, Fish and Wildlife Service with reference to the proposed exchange. The offered and selected lands in the formal application must be identical with the lands referred to in the letter of the Director, Fish and Wildlife Service, must be in the same State, and should be described by legal subdivisions of the public land surveys, except where unsurveyed land is selected and in which case the description thereof shall conform to § 101.6 of this chapter. Where application is made to select unsurveyed land, such land must be surveyed, the application and valuation must be adjusted to survey and the nonmineral character must be determined with reference to the survey, before patent can issue for such selected land. The application must be accompanied by a statement showing that the applicant is legally capable of consummating the exchange, that such offered land is not the basis of another selection or exchange, and that the selected land is unreserved, unappropriated, nonmineral land not occupied, claimed, improved or cultivated by any person adversely to the applicant. The application must be accompanied with a corroborated statement relative to springs and water holes on the selected lands, in accordance with existing regulations pertaining thereto in §§ 292.1–292.9 of this chapter. Payment of fees will be required at the rate of $2 for each selection of 160 acres or fraction thereof, and should be submitted with the formal application.

§ 151.4 *Procedure on formal application and statements.* The formal application, statements and letter to the applicant by the Director, Fish and Wildlife Service, will upon receipt in the Bureau of Land Management, be examined and if found regular and in conformity with the law and if in the opinion of the authorized officer, Bureau of Land Management, the public interests will be benefited and the application should be approved, the applicant will be required to submit proof of publication of notice, a deed of conveyance of the offered land duly recorded, an abstract of title showing that at the time the deed of conveyance to the United States was recorded the title to the lands covered by such deed was in the party making the conveyance, and a certificate as to the payment of taxes, all of which matters are more specifically referred to in §§ 151.5–151.8.

§ 151.5 *Publication and posting of notice.* The publication notice must give the name and post office address of the applicant, serial number and date of the application, act under which the application is filed, describe both the selected land and offered land as required above in the application, and state that the purpose of the notice is to allow all persons claiming the selected lands or having bona fide objection to such exchange an opportunity to file their protests or other objections in the land office, together with evidence to show that a copy of such protest or objection has been served upon the applicant. Such notice must be published at the expense of the applicant once a week for 4 consecutive weeks in some designated newspaper of general circulation in the county or counties in which may be situated the lands selected in exchange. In the event the newspaper is a daily, the publication should be made in the Wednesday issue thereof. Proof of publication of notice shall consist of a statement by the publisher, or foreman, or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published.

§ 151.6 *Deed to United States.* The deed of conveyance to the United States must be executed, acknowledged and duly recorded in accordance with the laws of the State in which the lands are situated. Such revenue stamps as are required by law must be affixed to the deed and canceled. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 303 of the act of June 15, 1935 (49 Stat. 382)." Where such deed is made by an individual, it must show whether the person making the conveyance is married or single. If married, the wife or husband of such person as the case may be, must join in the execution and acknowledgement of the deed in such manner as to bar effectually any right of curtesy or dower, or any claim whatsoever to the land conveyed, or it must be fully and satisfactorily shown that under the laws of the State in which the land conveyed is situated, such husband or wife has no interest whatsoever, present or prospective, which makes his or her joining in the deed of conveyance necessary. Where the deed of conveyance is by a corporation, it should be recited in the instrument of transfer that the deed was executed pursuant to an order or by the direction of the board of directors, or other governing body, and a copy of such order or direction must accompany such instrument of transfer and both should bear the impression of the corporate seal.

§ 151.7 *Abstract of title.* The abstract of title must show that the title memoranda contained therein are a full, true and complete abstract of all matters of record or on file in the office of the recorder of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances,

mortgages, pending suits, judgments, liens, lis pendens, or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the office of the clerks of courts of record affecting in any manner whatsoever the title to the land to be conveyed to the United States. The abstract of title may be prepared and certified by the recorder of deeds or other proper officer under his official seal, or it may be prepared and authenticated by an abstractor or by an abstract company, approved by the Bureau of Land Management, in accordance with § 211.1 of this chapter.

§ 151.8 *Taxes.* The applicant must furnish a certificate by the proper official of the county in which the land conveyed to the United States is situated, showing that all taxes levied or assessed against the land conveyed to the United States, or that could operate thereon as a lien, have been fully paid, or whether there is a tax due on such land that could operate as a lien thereon but which tax is not yet payable and that there are no unredeemed tax sales and no tax deeds outstanding against such land conveyed to the United States. In case taxes have been assessed or levied on lands conveyed to the United States, and such taxes are not due and payable until some future date, the applicant in addition to the certificate above required relative to taxes and tax assessments, may furnish a bond with qualified corporate surety for the sum of twice the amount of taxes paid on the land for the previous year in order to indemnify the United States against loss for the tax as assessed or levied but not yet due and payable. In lieu of the bond the applicant may submit a sum similar to that required in the bond, and if and when proper evidence is furnished showing the taxes on the land conveyed have been paid in full, the said sum will be returned to the applicant.

§ 151.9 *Action by Bureau of Land Management on complete record.* The publication of notice, deed of conveyance, abstract of title and other evidence required of the applicant will, upon receipt in the Bureau of Land Management, be examined, and if found regular and in conformity with law, and there are no objections, title will be accepted to the land conveyed to the United States and patent will issue for the land selected in exchange. The right of appeal, review, or rehearing may be taken in the manner prescribed by the Rules of Practice, Part 221 of this chapter. Protests against exchanges should be filed in the land office.

§ 151.10 *Quitclaim deed by United States.* In the event the application for exchange is finally rejected or the selection canceled for any reason, the abstract of title will be returned, and the applicant will be advised of his right to apply for a quitclaim deed under existing law for the land conveyed to the United States.

CROSS REFERENCE: For quitclaim deeds, see Part 108 footnote.

§ 151.11 *Jurisdiction over land conveyed to United States.* Land conveyed to the United States in an exchange under section 303 of the act of June 15, 1935 (49 Stat. 382; 16 U. S. C., 715d–2) shall, upon acceptance of title thereto, be held and administered by the Secretary of the Interior under the terms of section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U. S. C. 715i).

CROSS REFERENCE: Regulations and orders relating to migratory birds, see 50 CFR Part 6.

PART 152—EXCHANGES FOR THE BENEFIT OF PARTICULAR STATES

EXCHANGES FOR THE BENEFIT OF THE STATES OF NORTH DAKOTA, SOUTH DAKOTA, MONTANA AND WASHINGTON

Sec.

152.1 Statutory authority.
152.2 Application for public lands in exchange for State lands.
152.3 Exchanges by legal subdivisions, or by entire sections of equal value and approximately equal area.
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152.5 One selection may not be based on lands acquired under different grants.
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152.8 Deed for lands offered in exchange; abstract of title in certain cases.
152.9 Report.
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152.11 Amendment of application.
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EXCHANGES FOR THE BENEFIT OF THE STATE OF ARIZONA

152.13 Statutory authority.
152.14 Application for exchange of lands and accompanying evidence.
152.15 Exchanges to be made by legal subdivisions or by entire sections of equal value; fees not required.
152.16 Publication; deed of conveyance; abstract of title; certificates of nonencumbrance.
152.17 Approval and certification of selection; amendments; appeals.

EXCHANGES WITH THE STATE OF MINNESOTA TO OBTAIN LANDS IN NATIONAL PARKS, NATIONAL FORESTS, AND OTHER FEDERAL RESERVATIONS AND LAND UTILIZATION PROJECTS

152.20 Statutory authority.
152.21 Who shall determine whether an exchange will be in the public interest.
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152.23 State lands acceptable to United States and United States lands subject to State selection.
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152.26 Procedure after determination that the exchange will be in the public interest.
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152.28 Deed of conveyance of base lands.
152.29 Abstract of title.
152.30 Authentication required; certificates; taxes.
152.31 Title insurance.
152.32 Execution and filing of petitions for classification.
152.33 Publication and proof.
152.34 Action by Bureau of Land Management.
152.35 Deed and abstract to be returned if selection is rejected or canceled.

CROSS REFERENCES: For exchanges by States, under Taylor Grazing Act, see Part 147 of this chapter. For exchanges for migratory bird or other wildlife refuges, see Part 151 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For exchanges of privately-owned lands, under the Taylor Grazing Act, see Part 146 of this chapter. For exchanges of revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, Oregon, see §§ 115.94–115.111 of this chapter. For exchanges to eliminate private holdings from national parks and national monuments, see Part 150 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classification, see Part 296 of this chapter.

EXCHANGES FOR THE BENEFIT OF THE STATES OF NORTH DAKOTA, SOUTH DAKOTA, MONTANA, AND WASHINGTON

AUTHORITY: §§ 152.1 to 152.12 issued under R. S. 2478; 43 U. S. C. 1201.

§ 152.1 *Statutory authority.* The act of Congress approved May 7, 1932 (47 Stat. 150), amended the enabling Act of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889 (25 Stat. 676), so as to provide for exchanges by said States of the granted lands, for other lands, public or private.

§ 152.2 *Application for public lands in exchange for State lands.* Applications for public lands sought under the provisions of the act of May 7, 1932, must be filed, by the proper officers of the State, in the proper land office in the State, or for lands in North or South Dakota in the land office at Billings, Montana, accompanied by the following statements and certificates:

(a) A statement as to the nonmineral and nonsaline character of the land applied for, and showing that said land is unappropriated and is not occupied by and does not contain improvements placed thereon by any Indian.

(b) A certificate of the selecting agent showing that the selection is made under and pursuant to the laws of the State.

(c) A corroborated statement must be furnished relative to springs and water holes upon the land applied for, in accordance with existing regulations pertaining thereto in §§ 292.1–292.9 in the case of all similar State selections.

(d) A statement that the land relinquished and the land selected are equal in value and as near as may be of equal area.

§ 152.3 *Exchanges by legal subdivisions, or by entire sections of equal value and approximately equal area.* The exchange authorized must be made by legal subdivisions, or by entire sections, of equal value and as near as may be of equal area, and no more than approximately 640 acres may be allowed in any one selection list, which list must describe the land to be conveyed as well as the land selected. Nothing less than a legal subdivision may be surrendered or selected.

§ 152.4 *Fees.* Payment of fees will be required in the sum of $2 for each 160 acres or fraction thereof.

§ 152.5 *One selection may not be based on lands acquired under different grants.* The lands in any one selection list, offered in exchange, must be of lands charged to the same grant. For example, where university lands are offered in exchange, only university lands may be offered in the same selection list; where school lands are offered in exchange, only lands charged to the school-land grant may be offered in the same selection list; where lands under the normal school grant are offered in exchange, only lands charged to the grant for normal schools may be offered in the same selection list.

CROSS REFERENCE: For State grants for educational purposes, see Part 270 of this chapter.

§ 152.6 *Lands selected with reservation of coal to the United States.* Lands which have been withdrawn or classified as coal lands, or are valuable for coal, may be selected, provided such selection is made with a view to obtaining title with a reservation to the United States of the coal in such lands, and of the right to prospect for, mine, and remove the same, in accordance with the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), as supplemented by the act of April 30, 1912 (37 Stat. 105; 30 U. S. C. 90).

§ 152.7 *Lands selected with reservation to the United States of phosphate, nitrate, potash, sodium, oil, gas, or asphaltic minerals.* Lands withdrawn, classified, or valuable for phosphate, nitrate, potash, sodium, oil, gas, or asphaltic minerals may be selected, provided the selection is made with a view to obtaining title with a reservation to the United States of the phosphate, nitrate, potash, oil, gas, or asphaltic minerals in such lands; and of the right to prospect for, mine and remove the same, in accordance with the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123).

§ 152.8 *Deed for lands offered in exchange; abstract of title in certain cases.* Each application for exchange under the provisions of the act of May 7, 1932, must be accompanied by a deed (unrecorded), prepared in accordance with the laws of the State in which located, governing the conveyance of real property, conveying to the United States all right, title, and interest in and to the lands offered in exchange, and must be accompanied by certificates of the proper State officer and of the proper county recorder, showing that the lands offered have not been sold or otherwise disposed of or incumbered by the State. In case, however, any of the lands have been sold by the State and title again acquired, an abstract of such title will be necessary.

§ 152.9 *Report.* The authorized officer, if necessary, will have a field examination made of both the selected and the base lands to determine whether or not their value is equal within the meaning of the act of May 7, 1932, to determine the character of the selected land as to minerals, and to determine whether or not the selected land has value for springs or water holes withdrawn in Public Water Reserve No. 107, or by E. O. 5389, of July 7, 1930.

§ 152.10 *Publication and posting; return of deed for recording and abstract for completion; approval of selection.* If the report is favorable, the authorized officer, in the absence of objection, will authorize the acceptance of the selection, and direct the manager to prepare notice for publication of the selected land, in accordance with § 270.10. If, upon receipt in the Bureau of Land Management of proof of publication, it is considered that the State is entitled to such exchange, the deed will be returned to the State for recordation, and where abstract of title was required such abstract will be returned to be brought down to show the title in the United States, free from all liens and encumbrances, including tax liens. Upon the return of the recorded deed and satisfactory abstract of title, the selections will be embraced in a clear list and, in the absence of objection, certified to the State.

§ 152.11 *Amendment of application.* Should the report of the authorized officer be adverse to the State, opportunity will be given the State to amend the application or to make such showing as may be desired. Notice of additional requirements, rejection, or other adverse action, will be given, and the right of appeal, review, or rehearing recognized in the manner prescribed by Part 221 of this chapter.

§ 152.12 *Return of deed and abstract upon final rejection of application.* Should the application for exchange be finally rejected or the selection canceled, for any reason, the unrecorded deed and the abstract of title will be returned to the State.

EXCHANGES FOR THE BENEFIT OF THE STATE OF ARIZONA

AUTHORITY: §§ 152.13 to 152.17 issued under sec. 3, 48 Stat. 962.

§ 152.13 *Statutory authority.* Section 3 of the act of June 14, 1934 (48 Stat. 962), entitled "An Act to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes", provides for the relinquishment by the State of Arizona of school lands within Coconino, Navajo and Apache counties and the selection of public lands in lieu thereof equal in value and within the same counties.

§ 152.14 *Application for exchange of lands and accompanying evidence.* Applications for selection by the State of Arizona in lieu of any remaining school lands within Coconino, Navajo and Apache Counties, under the provisions of section 3 of the act of June 14, 1934, may be filed by the proper officers of the State, accompanied with the following statements and certificate:

(a) A statement as to the nonmineral and nonsaline character of the land applied for, showing that said land is unappropriated and is not occupied and does not contain improvements placed thereon by any Indian.

(b) A certificate of the selecting agent showing that the selection is made under and pursuant to the laws of the State.

(c) A corroborated statement relative to springs and water holes upon the land applied for, in accordance with §§ 292.1 to 292.9 of this chapter.

(d) A statement that the lands relinquished and the land selected are equal in value.

§ 152.15 *Exchanges to be made by legal subdivisions or by entire sections of equal value; fees not required.* The exchange must be made by legal subdivisions or by entire sections, of equal value, and administration will be facilitated if an application for exchange does not include more than approximately 6,400 acres of selected lands, the area of the base lands assigned thereto being dependent upon the value thereof as compared with the value of the selected lands. The application should describe the land to be conveyed as well as the land selected, and nothing less than a legal subdivision may be surrendered or selected. Payment of fees or commissions will not be required in connection with such applications.

§ 152.16 *Publication; deed of conveyance; abstract of title; certificates of nonencumbrance.* (a) Upon receipt of satisfactory reports, and no objection appearing, the Bureau of Land Management will issue notice for publication of the selection and will require the State to file proof of publication thereof, also a deed of conveyance of the offered lands, duly recorded, a certificate of the proper State officer showing that the offered lands have not been sold or otherwise encumbered by the State, and a certificate by the recorder of deeds or official custodian of the records of transfers of real estate, in the proper county, or by an abstracter or abstract company approved by the Bureau of Land Management, that no instrument purporting to convey or in any way encumber title to the offered land is of record or on file in his office. If, however, the offered lands were ever held in private ownership and were acquired by the State from such source, it will be necessary for the State to furnish an abstract of title showing that at the time the deed of conveyance to the United States was recorded the title to the lands covered by such deed was in the State making the conveyance, a certificate that the lands so conveyed were free from judgments or mortgages, liens, pending suits, tax assessments, or other encumbrances, and a certificate by the proper official of the county in which the lands conveyed are situated showing that all taxes levied or assessed against the lands conveyed to the United States, or that could operate thereon as a lien, have been fully paid or that no taxes have been levied, or whether there is a tax due on such lands that could operate as a lien thereon but which tax is not yet payable, and that there are no unredeemed tax sales and no tax deeds outstanding against such lands conveyed to the United States.

(b) The deed of conveyance to the United States must be executed, acknowledged and duly recorded in accordance with the laws of the State and

must be accompanied with a certificate of the proper State officer showing that the officer executing the conveyance is authorized to do so under the laws of the State. The deed should recite that it is made "for and in consideration of the exchange of certain lands as authorized by section 3 of the act of June 14, 1934 (48 Stat. 962)."

(c) Notice of the selection must be published at the expense of the State once a week for 4 consecutive weeks in some designated newspaper of general circulation in the county or counties in which the selected lands may be situated. In the event of the designation of a daily newspaper, the publication should be made in the Wednesday issue thereof.

(d) Proof of publication of notice shall consist of a statement by the publisher, or foreman, or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published. any protests against the selection should be filed in the land office.

§ 152.17 *Approval and certification of selection; amendments; appeals.* (a) Upon receipt in the Bureau of Land Management of satisfactory proof of publication of notice and deed of conveyance with the required certificates, should no objection appear of record, the exchange selection will be embraced in a clear list and approved.

(b) In the case of an unfavorable report opportunity will be given the State to amend the application or to make such showing as may be desired. Notice of additional requirements, rejection or other adverse action will be given and the right of appeal, review or rehearing recognized in the manner now prescribed by the Rules of Practice, Part 221 of this chapter.

EXCHANGES WITH THE STATE OF MINNESOTA TO OBTAIN LANDS IN NATIONAL PARKS, NATIONAL FORESTS, AND OTHER FEDERAL RESERVATIONS AND LAND UTILIZATION PROJECTS

AUTHORITY: §§ 152.20 to 152.35 issued under 56 Stat. 1042.

§ 152.20 *Statutory authority.* The act of December 7, 1942 (56 Stat. 1042), provides that when the public interest will be served thereby Minnesota lands owned by the State and continguous to or situate within the exterior boundaries of Federal reservations or certain land-use projects under the jurisdiction of the Secretary of the Interior or of the Secretary of Agriculture may upon selection by the State be exchanged for Minnesota lands of equal value owned by the United States and administered by one of the Secretaries mentioned.[1]

§ 152.21 *Who shall determine whether an exchange will be in the public interest.* An exchange of lands under this act may be made only after a determination that the proposed exchange will be in the public interest and that the offered and the selected lands are of approximately equal value. These questions will be determined by the Secretary of the Interior if he has jurisdiction of the selected lands and is to have jurisdiction of the offered lands. They will be determined by the Secretary of Agriculture if that Secretary has jurisdiction of the selected lands and is to have jurisdiction of the offered lands and if in addition he is to convey the selected lands. In all other cases, the determination will be made by the two Secretaries jointly.

§ 152.22 *Status of lands acquired from the State.* The lands acquired from the State will become part of the Federal reservation or of the land utilization project to which they may be contiguous or within the exterior boundaries of which they may be situate. They will be administered by the Secretary having jurisdiction of such reservation or project and will be subject to the laws, rules and regulations applicable thereto; except that lands becoming part of a national forest through an exchange of public lands of the United States shall be subject to the provisions of the act of February 1, 1905 (33 Stat. 628, 16 U. S. C. 472), in respect to the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying or patenting of lands reserved from the public domain.

§ 152.23 *State lands acceptable to United States and United States lands subject to State selection.* State and United States lands subject to exchange are as follows:

(a) The State may offer any lands owned by the State which are contiguous to or situate within the exterior boundaries of any Federal reservation under the jurisdiction of the Secretary of the Interior, whether national park or other type of reservation.

(1) In exchange for such lands the State may select any public or other United States lands in Minnesota of equal value whether under the jurisdiction of the Secretary of the Interior or under that of the Secretary of Agriculture.

(2) In such exchanges the State's title to the offered lands will be accepted by the Secretary of the Interior. The United States title to the selected lands will be conveyed by the Secretary having jurisdiction of the lands conveyed; except that conveyances of public domain in national forests shall be made by the Secretary of the Interior as provided for by the act of February 1, 1905 (33 Stat. 628, 16 U. S. C. 472).

(b) The State may also offer any lands owned by the State and contiguous to or situate within the exterior boundaries of any Federal reservation which is under the jurisdiction of the Secretary of Agriculture, whether national forest, land-use project under title III of the Bankhead-Jones Farm Tenant Act of July 22, 1937 (50 Stat. 522; 7 U. S. C. 1000–1029), or other type of reservation.

In exchange for such lands the State may select lands as follows:

(1) Any United States lands in Minnesota of equal value which are under the jurisdiction of the Secretary of Agriculture and which he has statutory authority to convey otherwise on behalf of the United States.[2]

(2) Any United States public lands in Minnesota of equal value which are under the jurisdiction of the Secretary of the Interior, which he has statutory authority to convey otherwise on behalf of the United States, and which are either:

(i) Surveyed, unappropriated and unreserved except as provided by Executive Order No. 6964, dated February 5, 1935; or

(ii) Situate in national forests.

In exchanges under subparagraph (1) of this paragraph the State's title to the offered lands will be accepted by the Secretary of Agriculture and United States title to the selected lands will be conveyed by him.

In exchanges under subparagraph (2) of this paragraph the State's title will be accepted by the Secretary of the Interior and United States title to the selected lands will be conveyed by him.

§ 152.24 *Preliminary negotiations and informal application.* All preliminary negotiations relating to a proposed exchange under the act of December 7, 1942 (56 Stat. 1042) are to be conducted with the local representatives of the Department having jurisdiction over the Federal reservation or land-use project to which the offered lands may be contiguous or within the exterior boundaries of which they may be situated. The State should file with such representatives of the Government an informal application describing the lands to be conveyed by the State and the lands desired in lieu thereof. The lands selected in any one application should not exceed 6,400 acres and should be specifically described according to Government subdivision. Nothing less than a legal subdivision may be offered or selected except where the State or the Government does not own the entire legal subdivision in question or where only a portion of a legal subdivision offered is valuable for Federal purposes, or where the United States desires to retain ownership of some portion of a selected subdivision because such portion is chiefly valuable for Federal purposes.

§ 152.25 *Reservations and conditions; examination and appraisal.* (a) Conveyances of offered and selected lands in exchanges under this act may be made subject to such reservations and conditions as the State of Minnesota and the United States respectively may severally prescribe. Such reservations and conditions must receive due consideration in the determination of the value of the lands for exchange purposes.

(b) The informal application for exchange should show in detail every reservation, easement or condition previously made or to be made by the State regarding the offered lands and should also show the reservations, easements or conditions regarding the selected lands which are to be made by the United

[1] It is understood that the term "Federal reservations" does not include Indian reservations and that the term "lands owned by the United States" does not include lands held by the United States for the benefit of Indians.

[2] Exchanges under (b) (1) are under the jurisdiction of the Secretary of Agriculture and are not covered by §§ 152.20–152.35.

States and which are acceptable to the State.

(c) To meet the requirements of the law that the lands exchanged be of equal value, both the offered and the selected lands will be examined and appraised in the field by the proper representatives of the Government. If such examination discloses inequalities of value the State will be so advised and opportunity will be afforded for adjustments which will bring the exchange within the provisions of the law. Where joint examinations and appraisals by representatives of both Departments and the State are necessary, arrangements therefor may be made by the representatives of the Departments.

(d) When the representatives of the State and of the United States shall have reached a tentative agreement regarding values, the regional administrator will transmit a copy of the report of examination and appraisal to the Bureau of Land Management in cases in which the Department of the Interior has jurisdiction over the selected lands or is to have jurisdiction over the offered lands. But in cases in which such jurisdiction is or is to be in the Department of Agriculture the authorized officer will send the report to the appropriate representative of that Department.

§ 152.26 *Procedure after determination that the exchange will be in the public interest.* When, in cases in which the selected lands are under the jurisdiction of the Secretary of the Interior or in which the offered lands are to be accepted by him, it has been determined to the satisfaction of the Secretary of the Interior, and to that of the Secretary of Agriculture as well when the interests of both Departments are affected, that the exchanges sought will be in the public interest and that the value of the selected lands does not exceed that of the offered lands, the Bureau of Land Management will notify the State officials that they may file in the Bureau of Land Management a formal application for such exchange.

§ 152.27 *Formal application together with deed, abstract, certificates, and statements.* The formal application should be filed in triplicate in the Bureau of Land Management by the proper State official. It should state under what act or acts it is made. It should describe the offered and the selected lands and should detail the desired reservations and conditions as prescribed in §§ 152.24 and 152.25, respectively. It should be accompanied by supporting documents as follows:

(a) A certificate by the selecting agent that the selection is made under and in pursuance of the laws of the State; that the selected lands are unappropriated and not occupied, claimed, improved or cultivated by any person adversely to the State; and that their value does not exceed that of the offered lands.

(b) A certificate by the selecting agent that the State has not tendered the offered lands as a basis for any other selection or exchange; that the State is the owner of the offered lands and that there is no outstanding instrument or entry of record impairing its title; said certificate also to state under what law the State acquired title from the United States; whether the State ever alienated the lands; and if so in what manner and under what legal authority the State reacquired ownership thereof.

(c) A corroborated statement relative to springs or water holes on the selected lands, in accordance with the regulations in §§ 292.1 to 292.9 of this chapter.

(d) A duly executed but unrecorded deed to the offered lands.

(e) A duly authenticated abstract of title to said offered lands in cases in which said lands were ever held in private ownership and were acquired by the State from such sources.

§ 152.28 *Deed of conveyance of base lands.* The deed of conveyance must be prepared in accordance with the laws of the State of Minnesota governing the conveyance of real property and must convey to the United States all right, title and interest in and to the offered lands. It should recite that it is made "for and in consideration of the exchange of certain lands as authorized by the Act of December 7, 1942 (52 Stat. 1042)." It must be accompanied by a certificate of the proper State officer showing that the officer executing the conveyance was authorized by the law of the State to do so, that at the time the conveyance was executed the title was in the State and that the offered lands have not been sold or otherwise encumbered by the State.

§ 152.29 *Abstract of title.* The abstract of title must show all matters which are of record in the county where the offered lands lie and which in any manner affect the title thereto.

§ 152.30 *Authentication required; certificates; taxes.* (a) The certificate of authentication of the abstract must be signed by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county under his official seal or by an abstracter or an abstract company approved by the Bureau of Land Management in accordance with § 211.1 of this chapter. The certificate must show that the title memoranda are a full, true, and complete abstract of all matters of record or on file in the appropriate office or offices of the county or counties in which the offered lands are situate, including but not limited to all conveyances, mortgages, liens, or other encumbrances, judgments against the various grantors, mechanics liens, lis pendens, or other instruments affecting in any manner the title to the offered lands and required by law to be filed with the recording officers.

(b) The custodian of the tax records must certify that all taxes and drainage charges that have been levied or assessed against the lands or that could operate as a lien thereon have been fully paid and that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of his office. He must also certify as to any tax lien which exists thereon even though at the date of the execution of the deed such tax may not yet have been assessed or have become due or payable.

§ 152.31 *Title insurance.* Title insurance issued by a company which is acceptable to the Department of the Interior may be offered in lieu of an abstract of title, provided the policy is free from conditions and stipulations not agreeable to the Department.

§ 152.32 *Execution and filing of petitions for classification.* When the State desires public domain lands affected by Executive Order No. 6964 issued February 5, 1935, but otherwise unreserved, its application will be subject to the regulations relating to the classification of lands and opening them to selection as prescribed in Part 296, of this chapter.

§ 152.33 *Publication and proof.* Within 30 days from the filing of the formal application for exchange the State will begin publication of notice thereof at the State's expense in some newspaper or newspapers designated by the Bureau of Land Management and having a general circulation in the county or counties in which the offered lands, and the lands selected are situate. The notice must be published once each week for four successive weeks. It should describe the offered and the selected lands in terms of legal subdivisions and state that the purpose of the notice is to afford to all persons claiming the selected lands or having bona fide objections to the proposed exchange an opportunity to file their protests in the Bureau of Land Management, accompanied with a showing that they have served a copy of such protest upon the State. Proof of publication will consist of a statement made by the publisher or foreman or other proper employee of the newspaper and showing the dates of publication and a copy of the published notice.

§ 152.34 *Action by Bureau of Land Management.* (a) The Bureau of Land Management will examine the proof of publication and will consider and act upon any protest filed against the exchange. If no protest be filed within 30 days from the date of the first publication of the notice and if it be found that all requirements have been met and that the State is entitled to the exchange sought, the Bureau of Land Management will return to the State the State's deed of conveyance to be recorded and the abstract of title to be extended to the date of the recordation of the deed, both documents to be retransmitted to the Bureau of Land Management within 30 days from the State's receipt thereof.

(b) If upon such return of the deed and the abstract all be found regular and in conformity with the law and if there be no objections, title to the offered lands will be accepted and United States patent will issue for the selected lands if they are under the jurisdiction of the Secretary of the Interior or under his authority to convey.

(c) Notice of additional requirements, of rejection or of other adverse action will be given and the right of appeal, review or rehearing will be recognized in the manner prescribed by the Rules of Practice, Part 221 of this chapter.

§ 152.35 *Deed and abstract to be returned if selection is rejected or canceled.* Should the application for exchange be

finally rejected or the selection for any reason be canceled, the unrecorded deed and the abstract of title will be returned to the State.

SUBCHAPTER H—GRAZING

PART 160—GRAZING LEASES

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AUTHORITY: §§ 160.1 to 160.23 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a. Statutes interpreted or applied are cited to text in parentheses.

§ 160.1 *Statutory authority.* Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only. Grazing leases for other public lands interminged with the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant lands which are located west of the Cascade Mountain Range Divide, or in and west of Range 5 East, or west of Klamath Lakes and Link River in Ts. 36 to 41 S., Rs. 6 to 9 E., inclusive, Willamette Meridian, Oregon, will be issued pursuant to and will be governed by the provisions of Part 115 of this chapter.

§ 160.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Area administrator" means the proper area administrator, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Authorized Officer" means the Governmental official who has been duly authorized to issue a grazing lease.

(f) "Field Office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office for the State, it means the office of the Director, Bureau of Land Management, Washington 25, D. C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 160.3 *Classes of applicants; preference rights.* The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less [1] for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[2]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

§ 160.4 *Qualifications of applicants.* An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided,* That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 160.5 *Application and lease.* An application for lease shall be executed on combined application and lease form (4–721) and filed in any field office of the Bureau of Land Management in the State in which the lands applied for are situated.[3] The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

§ 160.6 *No right conferred by application, prior to lease.* The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 160.7 *Protests.* Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest, and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 160.8 *Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.* (a) The signing officer may issue leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[4] if the use of the

[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

[2] By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[4] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U. S. C. sec. 501.) Those lands withdrawn for reclamation purposes which are not subject to the Cooperative Agreement of February 28, 1945, will, upon restoration from the reclamation withdrawal become subject to the provisions of paragraph (b) of this section.

land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with the § 295.7 (c) of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the signing officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored lands previously used by him. The preference right must be asserted and an application for lease on combined application and lease Form 4–721 (see § 160.5) must be filed not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The new lease will be dated as of the first day following the end of such current lease year, or as of the date of its issuance, in the discretion of the signing officer and for such term as he may determine.

(Sec. 15, 48 Stat. 1275, as amended; 43 U. S. C. 315m)

§ 160.9 *Action on defective application or where the lands applied for are not subject to grazing leasing.* Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, otherwise appropriated or reserved and not subject to lease under the act, or not public land, the authorized officer shall reject the application.

§ 160.10 *Disposition of protests and conflicting applications.* (a) The lease will be executed by the authorized officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The lease will provide for an allowance of forage for wildlife, and within the discretion of the authorized officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(b) In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the authorized officer as to the disposition of such conflicting applications or division of the lands.

(c) After a division of the range has been made either by agreement between applicants which is acceptable to the authorized officer or by determination of the authorized officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 160.11 *Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.* The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 160.12 *Leased lands subject to classification and disposition; compensation to lessee for loss of lands and for improvements.* (a) Lands embraced in a grazing lease are subject to classification and disposition under the provisions of sections 7 and 14 of the act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws: *Provided*, That before any application for such classification and disposition is allowed, evidence is furnished that the applicant has agreed to compensate the lessee for any grazing improvements placed on the lands under the authority of the lease or permit in an amount to be mutually agreed upon. If the parties are unable to agree as to the amount and time for payment for such improvements, the amount and time of payment shall be fixed by the authorized officer. The failure of the applicant to pay the lessee, in accordance with the agreement or the amount fixed by the authorized officer within the time allowed for payment, shall be just cause for cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

(c) The holder of a grazing lease shall be compensated, for the loss resulting from the use of lands embraced in the lease for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the department or agency of the Federal Government making such use.

§ 160.13 *Access to leased lands; temporary closing of leased area.* (a) The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

(b) The authorized officer may close temporarily to grazing portions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 160.14 *Rentals, refunds.* (a) The lessee shall pay the lease rental in the amount and manner specified in the lease. The rental shall be computed in conformity with the following rate tabulations, unless for sufficient reasons a different rate is authorized by the Director:

GRAZING RENTAL RATE TABULATION

Estimated grazing capacity in acres per animal unit month	Estimated grazing capacity in animal units year long per section	Yearly lease-rate per acre
107.00	0.5	$0.001
53.00	1.0	.002
36.00	1.5	.003
27.00	2.0	.004
21.00	2.5	.006
18.00	3.0	.007
15.00	3.5	.008
13.00	4.0	.009
12.00	4.5	.010
11.00	5.0	.011
9.00	6.0	.013
7.50	7.0	.016
6.50	8.0	.018
6.00	9.0	.020
5.50	10.0	.022
5.00	11.0	.024
4.50	12.0	.027
4.00	13.0	.030
3.75	14.0	.032
3.50	15.0	.034
3.25	16.0	.037
3.00	17.0	.040
2.75	19.0	.044
2.50	21.0	.048
2.25	24.0	.053
2.00	27.0	.060
1.75	30.0	.069
1.50	36.0	.080
1.25	43.0	.096
1.00	53.0	.120
0.50	107.0	.240
0.25	213.0	.480

One cow or one horse or five sheep or five goats constitute one animal unit. The rental charge will not in any case be fixed at less than $1.00 per annum. The rental may be adjusted to reflect changes in approved rates at the end of each three-year period to apply to the rental charges for the next three-year period.

(b) No refund of rentals properly paid in accordance with these regulations and the terms of the lease will be made because of a failure to use the grazing privileges granted by the lease, except that during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of the lease the Secretary of the Interior will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of rentals for such period of depletion or general epidemic.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

§ 160.15 *Term of lease.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

§ 160.16 *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on the combined application and lease form (4–721) at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

§ 160.17 *Construction and maintenance of improvements*—(a) *Permit required.* After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and and maintenance of fences.

(b) *Applications for permits and cooperative agreements.* Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on Form 4–1115 and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on Form 4–1119.

(c) *Action on the application.* Action will be taken on the application by the authorized officer. If the application is approved, the authorized officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 160.18 *Removal of improvements.* (a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 160.17 (b). The amount of such compensation shall be determined in accordance with the procedure set forth in § 160.12. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period, such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 160.19 *Cancellation of lease.* If one lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and canceled by the authorized officer.

§ 160.20 *Inspection of leased premises.* The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 160.21 *Assignment of lease; subleases.* No part of the leased lands may be subleased. The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form (4–721) properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 160.22 *Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.* (a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may ascertain from the authorized officer the status of the grazing lease and other pertinent information relating thereto.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on combined application and lease form (4–721). When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the authorized officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan, subject to such terms and conditions as are then provided by the regulations in this part, and by the authorized officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on combined application and lease form (4–721) to be recognized as the new lessee. If, in selling the property, the lending agency takes back a mortgage on the property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any action taken affecting the lease.

§ 160.23 *Appeals.* An appeal from any decision rendered may be taken to the Director and the Secretary, in accordance with the Rules of Practice (Part 221 of this chapter).

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

Sec.

161.1 Introductory; basic policy and plan of administration.
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AUTHORITY: §§ 161.1 to 161.17 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

§ 161.1 *Introductory; basic policy and plan of administration*—(a) *Purposes; general requirements.* Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the public domain will be required of all users.

(b) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner provided in this part. Provision will be made for other applicants so far as Federal range remains available.

(c) *Permits; temporary licenses; termination; revocation.* Permits within the meaning of section 3 of the act may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisons of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. During the period prior to the issuance of permits, the issuance of temporary licenses will be continued. Upon the issuance of a permit within any district or portion thereof, any outstanding license or part thereof which has been granted on the basis of the qualifications on which the permit is based will be terminated. Licenses and permits will be revocable for violations of the terms thereof or for a violation of any provision of the Federal Range Code for Grazing Districts, as provided in this part.

§ 161.2 *Definitions.* Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management, unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315—315m, 315n—315o-1), and all amendments thereto.

(b) The "Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) "Federal range" means land owned, leased, or otherwise controlled by the United States and administered by the Bureau of Land Management: *Provided*, That land under the control of another agency and administered by the Bureau of Land Management under cooperative agreement may be excluded from the scope of this definition by the agreement.

(d) "Property" means privately owned or controlled land or water used in range livestock operations.

(e) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(f) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(g) "Land dependent by use" means forage land which is of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the 5-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years in connection with substantially the same part of the public domain, now part of the Federal range, except that in any area placed within a grazing district after June 28, 1938, or in any area added to any existing grazing district after that date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be: *Provided*, That in any case in which a livestock operation used a base property or properties during the priority period in such manner as would, in the absence of other factors, serve to invest the property with the attribute of dependency by use, but such livestock operation subsequently ceased using such property or properties and used other base property or properties in such manner as to invest them also with dependency by use, only the latter property or properties shall be considered as dependent by use unless the former are dependent by use by reason of use by another livestock operation: *Provided further*, That in no event shall any land be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year from the date when the public land used in creating the dependency by use first became a part of a grazing district, except that in cases in which the lands used in creating dependency by use of a base property became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date.

The extent of the dependency by use of land shall be subject to the following:

(1) The dependency by use in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the public lands which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the dependency by use is diminished by withdrawal, appropriation, selection, or otherwise, the dependency by use shall diminish proportionately.

(3) Whenever dependency by use of more than one base property was created by the use of all or a part of certain range which was used jointly or at different seasons of the year by one or more other livestock operations in such a manner as to invest another base property or properties with the attribute of dependency by use, the relative dependency by use of each of the properties shall be proportionate to the average annual use made of the range by each of the operations.

(h) "Land dependent by location" means forage land which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(i) "Animal-unit month," as applied to lands that are base properties, means the amount of natural or cultivated feed necessary for the complete sustenance of one cow for a period of one month; as applied to Federal range, it means that amount of grazing privileges represented by the grazing of one cow for a period of one month. For the purpose of this definition, one cow will be considered the equivalent of one horse or five sheep or five goats.

(j) "Carrying capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(k) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(l) "Prior water" is water which, during all or a substantial part of the five-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used to service certain public range within the service area of the water for a livestock operation that was established, permanent, and continuing, and which, during the period of such use, normally involved the grazing of livestock on the same areas of public land for a certain period or periods of each year, except that in any area placed within a grazing district or added to an existing district after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be: *Provided*, That in any case in which a livestock

operation used a water or waters during the priority period in such manner as would, in the absence of other factors, serve to invest such water with the attribute of priority, but such livestock operations subsequently ceased using such water or waters and used other water or waters in such manner as to invest them also with priority, only the latter water or waters shall be considered as prior unless the former are prior because of use by another livestock operation: *Provided further*, That in no event shall any water be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district, except that in cases wherein such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

The extent of the priority of water shall be subject to the following:

(1) The priority in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the priority is diminished by withdrawal, appropriation, selection, or otherwise, the priority of the water shall diminish proportionately.

(m) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices and range management factors, will be considered.

(n) "Free-use applicant" means an applicant who resides in the immediate neighborhood of Federal range and who owns livestock kept for domestic purposes. "Livestock kept for domestic purposes" means livestock whose products are consumed or whose work is used directly and exclusively by the family of the applicant.

§ 161.3 *Qualifications of applicants*—(a) *Definition of qualifications.* An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has filed a declaration of intention to become a citizen: *Provided*, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a license or permit or any renewal thereof until he has actually attained citizenship, and any existing license or permit held by such person shall become void at the end of the grazing season during which the disqualification arises, or

(3) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under subparagraph (2) of this paragraph.

(b) *Effect of disqualification arising through operation of law.* Notwithstanding the above provisions of this section, the acquisition of rights in base property by an unqualified applicant through operation of law or testamentary disposition will not affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, to the extent based on such property, for a period of two years after such acquisition.

§ 161.4 *Classification of base properties.* For the purpose of determining the proper use of the base properties of all applicants and their relative dependence upon the Federal range, land and water conditions and other factors affecting livestock operations in the area will be considered and determined according to customary use and best practices for good range management. Base properties will be classified as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 161.5 *Rating and classification of Federal range*—(a) *Carrying capacity; seasons and maximum annual period of use.* For the purpose of stabilizing the livestock industry, determining the proper use of the Federal range, and other purposes, the carrying capacity of each administrative unit or area in a grazing district will be rated, and each will be classified for the proper season, or seasons, if necessary, of its use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range lying therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient carrying capacity of Federal range will be provided, following consultation with and the advice of wildlife interests, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Segregation of ranges for particular kinds of livestock.* When the proper use of the Federal range or an orderly administration of the act requires it, certain areas may be designated for use exclusively by a certain kind or class of livestock.

§ 161.6 *Issuance of licenses and permits*—(a) *Free-use licenses and permits.* Free-use licenses or permits first will be issued to free-use applicants for not to exceed the number of livestock kept for domestic purposes. Such livestock shall be grazed on Federal range in the immediate neighborhood of the residence of the licensee or permittee.

(b) *Regular licenses and permits; order of issuance; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(1) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(2) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(3) To other applicants, licenses or permits for the number of livestock for which range is available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

After licenses or permits have been issued on the basis of the foregoing, any licensee or permittee may, within the discretion of the range manager, and on written order by him, be allowed to use the amount of Federal range grazing privileges represented by his license or permit over any period of time within the season or seasons for which the Federal range is classified as proper for use: *Provided*,

(i) Such period does not exceed the maximum period of time for which any licensee or permittee is allowed to use the Federal range during any one year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range; and

(iv) Such use will not adversely affect other licensees or permittees.

(c) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following conditions and requirements:

(1) No license or permit will be issued to any applicant unless he is able to show that he possesses adequate feed to support his licensed or permitted livestock during the period of time for which they are to be off the Federal range.

(2) No license or permit will provide for the grazing of livestock of the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the carrying capacity of the range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal appropriation, selection, or otherwise, the license or permit may be reduced proportionately.

(6) If at any time during the life of a license or permit the holder thereof ceases to make substantial use of his base property in connection with his year-round livestock operation, the license or permit will be subject to a proportionate reduction.

(7) If at any time during the life of a license or permit the holder thereof loses ownership or control either of all or a part of his base property or of all or a part of such other lands or grazing privileges as are necessary to his year-around livestock operation, and fails within a reasonable time, as directed by the range manager after submission of the matter to the advisory board for recommendation, to obtain ownership or control of other base property, lands or grazing privileges sufficient to insure such a year-round operation, the license or permit will be subject to a proportionate reduction.

(8) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(9) In the event of failure for any two consecutive years either to offer a base property in an application for a license or permit, or to accept a license or permit offered pursuant to such an application, such base property will lose its dependency by use or priority.

(10) The failure for any two consecutive years to make substantial use of the grazing privileges, authorized under an accepted license or permit, may result in the loss of the dependency by use or priority of the base property in proportion to the failure to use such license or permit.

(11) Non use, in whole or in part, of a license or permit may be authorized by the range manager upon application by the licensee or permittee, after reference to the advisory board for recommendation, for the following reasons: Conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit because of a violation of any of the provisions of the Federal Range Code for Grazing Districts may result in the loss of the dependency by use or priority of the base property upon which the license or permit is based.

(13) In order to stabilize livestock operations dependent upon the Federal range, no readjudication of any license or permit will be made on the claim of any applicant or intervener with respect to the dependency by use or priority of the base property where such qualification, upon which the license or permit was issued, has been recognized for a period of three years or more, except in a case where such qualification would otherwise be subject to adjustment under the provisions of this part.

(d) *Applicants having more than one class of property; reductions; allotments; agreements.* Nothing contained in this section will prevent an applicant who owns or controls properties in more than one class from having such properties considered separately in the order and manner set forth in this section. If necessary to reach the carrying capacity of any parts of the Federal range after licenses or permits have been issued, reductions on an equal percentage basis will be imposed on licensees or permittees so far as their grazing activities involve the use of such parts. Reductions in all cases will be made by reducing the numbers of livestock or the time on the Federal range area involved, or by both methods: *Provided,* That the area administrator may recommend, for the approval of the Secretary of the Interior, a limit below which no license or permit in that area will be reduced. Allotments of Federal range will be made to licensees or permittees when conditions warrant, and divisions of the range by agreement or by former practice will be respected and followed where practicable. Increases in carrying capacity will be participated in by existing licensees and permittees to the extent of their respective qualifications. Licenses or permits to use any range available thereafter may be granted to other applicants.

(e) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land added to a grazing district, or otherwise made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U. S. C. 315m–1—315m–4), the revocation of a withdrawal, or the cancellation of relinquishment of a homestead entry or claim, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management. (48 Stat. 1270; 43 U. S. C. 315a, 315b)

(2) Where public lands are restored from withdrawal and the range manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on Form I–291 obtainable from the range manager, must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The range manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part.

(f) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U. S. C., App., 511 (1), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the range manager an application, in triplicate, the original of which shall be sworn to before a notary public or other officer authorized to administer oaths in the State in which the applicant resides, or before the officer in immediate command and holding a commission in the branch of the Service in which the applicant is engaged, which shall set forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, such a temporary license shall be revocable as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension or termination of a license or permit may be appealed by the applicant, licensee, or permittee to an examiner of the Bureau of Land Management, and from his decision to the Director of the Bureau and to the Secretary of the Interior, respectively. The procedure in such appeals shall conform as nearly as practicable to the procedure prescribed in § 161.9.

§ 161.7 *Transfers of base properties and licenses or permits*—(a) *Transfer of base property; effect.* A transfer of a base property, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if otherwise properly qualified, to all or to such part of a license or permit as is based on the property transferred, and

the original license or permit will be terminated or decreased by such transfer. In any instance in which a transfer, or a different vesting in any manner, of a leasehold interest in land may result in an interference with the stability of livestock operations or with proper range management, such land will lose its dependency by use or dependency by location, as the case may be, upon a finding to that effect by the authorized officer, after reference of the matter to the district advisory board for its recommendation.

(b) *Transfer of a license or permit; limitations; effects; consent of owner or encumbrancer.* Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow a license or permit based on ownership or control of land to be transferred to other land or a license or permit based on ownership or control of water to be transferred to other water within the same service area: *Provided*, That such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy: *Provided further*, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the base property from which the transfer is to be made, except that when the applicant for such transfer is a lessee without whose established livestock operations such property would not have dependency by use or priority, such consent will not be required. Upon the allowance of a transfer under this paragraph, the base property from which the transfer is made shall lose its dependency by use or priority to the extent of the license or permit transferred.

(c) *Transfer of dependency by use on same land.* Whenever a licensee or permittee owns or controls land dependent by use which has a carrying capacity in excess of that necessary for the support of the licensed or permitted livestock during that period of the year for which they are to be kept on such land, the excess land may be disposed of or may be used for purposes other than the support of such livestock; upon application by the licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow the dependency by use allocable to such land to be transferred to that part which continues to be used for the support of such livestock: *Provided*, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the land from which the transfer is to be made. Upon the allowance of a transfer under this paragraph, the land from which the transfer is made shall lose its dependency by use.

§ 161.8 *Fees; time of payment; refunds*—(a) *Free-use licenses and permits.* No fee will be charged for the issuance of a free-use license or permit.

(b) *Regular licenses and permits.* Each regular licensee or permittee will be charged for each head of livestock, for each month covered by the license or permit, a grazing fee for the use of the range and a range improvement fee. Range improvement fees, upon the recommendation of the district advisory board and approval of the Secretary, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any governmental agency—State or Federal, or any person, association, or corporation. Grazing and range improvement fees will be assessed on the basis of semi-monthly periods, beginning on the first and sixteenth day of the month and ending, respectively, on the fifteenth and the last day of the month. All livestock six months of age or over and allowed on the Federal range, will be counted at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No grazing or range improvement fees will be charged for livestock under six months of age. A minimum annual charge of $1.00 will be made on all regular licenses or permits.

NOTE: In accordance with the provisions of § 161.8 (b) of the Federal Range Code for Grazing Districts (Circular 1736, 14 F. R. 5509, September 7, 1949) notice is hereby given that effective May 1, 1951, and pursuant to the act of June 28, 1934 (48 Stat. 1275), as amended, a grazing fee of ten cents per animal-unit month and a range improvement fee of two cents per animal unit month will be charged each regular licensee or permittee for each month of the grazing period covered by the license or permit, as follows:

1. Grazing fee—10 cents per head for cattle and horses, 2 cents per head for sheep and goats.

2. Range improvement fee—2 cents per head for cattle and horses, two-fifths cent per head for sheep and goats.

Provided, That as to licenses or fee notices issued prior to January 15, 1951, no increase in fees shall be effected hereunder as to such licenses or fee notices until the next license or fee notice is issued.

(c) *Crossing permits.* Unless notice is otherwise given, a fee of one-half of a cent per head per day, for cattle and horses, and one-tenth of a cent per head per day, for sheep and goats, will be charged for a crossing permit, which will be issued upon application by any person showing the necessity of crossing the Federal range for proper and lawful purposes: *Provided*, That in cases where the trail to be used is so limited and defined that no material amount of forage will be consumed in transit the permit will be issued without charge: *Provided further*, That no fee will be charged for a crossing permit to the extent that it involves the use of a stock driveway created under section 10 of the stock-raising homestead act of December 29, 1916 (39 Stat. 862; 43 U. S. C. 300).

(d) *Payment of fees; reduction or increase in numbers; extension of periods of use.* All fees for crossing permits shall be paid at the time of the issuance of the permit. Payments of fees for regular licenses or permits shall be made prior to the beginning of each grazing period shown on the license or permit. Licenses or permits will be effective only when all fees due thereunder have been paid. No license or permit shall be issued or renewed until payment of all amounts found to be due to the United States under the Federal Range Code for Grazing Districts has been made. Upon application by a transferee of any property or part thereof on the basis of which a license or permit has been issued, a new license or permit representing that part of the grazing privileges to which he may thereby become entitled shall be issued to him. In case of such transfer the transferor shall not be entitled to a refund of any portion of the fees that have been properly paid and that are applicable to the period subsequent to the transfer.

(1) A licensee or permittee will be required to make payment of fees in accordance with the terms of the license or permit unless he notifies the range manager in writing, more than thirty days before the effective date of any grazing period shown, that he desires to make temporary use of the grazing privileges in a manner other than that shown in the license or permit. Such change will be allowed if due to annual fluctuations ordinarily occurring in livestock operations or to the necessity of conserving or protecting the range. When the requested change is due to financial reasons, such as foreclosure, or other reasons beyond the licensee's or permittee's control, it may be granted for one year or longer, after reference to the advisory board for recommendation, and the approval of the range manager. Fee notices in each case will issue accordingly.

(2) Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow an extension of the applicant's period or periods of use of the Federal range during any year or season thereof. A receipted supplemental fee notice covering the additional grazing privileges will constitute authority to use the range for the extended period.

(e) *Refunds.* No refund of fees properly paid will be made because of a failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Secretary of the Interior will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period as long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be made under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U. S. C. 95, et seq.).

(3) When a license or permit is suspended under section 501 (2) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1187; 50 U. S. C., App., 561 (2)), any fees that have been paid for

the period of suspension will be refunded and any fees that are or that may become due for such period will be remitted.

§ 161.9 *Procedure in applications, hearings and appeals*—(a) *Filing and consideration of applications; recommendations; service of notice.* Each year the authorized officer will set a date for each district in the area prior to which all applications for grazing licenses or permits in the district must be filed. Failure to file applications before such date will result in their rejection for that year unless reasonable justification for a belated filing is shown. Whenever an application is filed for a license or permit based in whole or in part on a property which has not served as a base for a license or permit during the grazing season immediately preceding such filing, all users who might be directly affected by favorable action on such application will be notified of its filing. All applications for grazing licenses or permits, except those of district advisers, will be considered first by the advisory board of the district in which the license or permit is sought. The advisory board will make its recommendation to the range manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the range manager will so notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice thereof will be served on the applicant personally either by the range manager or by such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notice will set out the reason or reasons set forth by the advisory board for the adverse recommendation and will name a place and date, not less than ten days thereafter, when protests against the recommendation will be heard: *Provided, however,* That in any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may, in its discretion, decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

(b) *Hearing of protests; reconsideration by advisory board; service of notice.* At the dates and places fixed for hearing protests any party in interest may appear, either in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the range manager. If such recommendation is favorable to the applicant, and the range manager approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the range manager approves, a notice giving the reason or reasons therefor will be served on the applicant either personally by the range manager or such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notices will constitute the range manager's final decisions for purposes of appeal.

(c) *Allowance or rejection of application by the range manager; modification; service of notice; appeal to examiner; intervention.* (1) The range manager is vested with the authority in the light of all facts and circumstances, after first having submitted an application to the district advisory board, to issue or to refuse to issue a grazing license or permit. If the action taken by the range manager on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, either personally by the range manager or by such person as may have been designated by him or by registered letter sent to the applicant at the address given in his application. The notice given the particular applicant will advise him of his privilege to file an appeal to an examiner. The appeal must be filed with the area administrator within fifteen days following the receipt of the notice. The appeal shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. Any party or parties who may be directly affected by the decision on the appeal will be notified by the area administrator of the filing of the appeal and advised that a written request to intervene in the appeal may be filed. Such a party shall be known and designated as an intervener. When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(2) The range manager, or any intervener may, within twenty days after receipt of notification that an appeal has been filed, file with the area administrator, after having served a copy on the appellant, a written motion that the appeal be dismissed for the reason that all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest.

(3) The appellant, or any other party in interest, may file a written answer within twenty days after service of motion upon him. The area administrator shall transmit the motion, the proofs of service, and the answers to the examiner who shall rule on the motion, and, if the motion is sustained, dismiss the appeal without prejudice to the appellant's privilege to appeal to the Director, pursuant to paragraph (j) of this section.

(d) *Cancellation of licenses or permits; service of appeal to examiner.* Licenses or permits will be subject to cancellation to the extent that they have been improperly issued. In any case in which it shall appear to the Bureau of Land Management that a license or permit confers grazing privileges in excess of those properly allowable under the act and the Federal Range Code for Grazing Districts, the range manager will notify the licensee or permittee that the license or permit is thereby held for cancellation either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such cancellation should not be made final. Such notice will set forth fully the reasons for the proposed cancellation and will be served on the licensee or permittee either personally by the range manager or by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. In case of failure of the licensee or permittee to show cause within the fifteen days allowed, the license or permit will be canceled to the extent indicated in the notice. The range manager will consider any cause shown and, if satisfied of its sufficiency, will close the case. If the range manager is not satisfied that sufficient cause has been shown, he will notify the licensee or permittee that the cancellation will be made final unless an appeal to an examiner of the Bureau of Land Management is filed within fifteen days from receipt of notice. Such notice will be served on the licensee or permittee either personally by the range manager or by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. The appeal must be filed with the area administrator and shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. So far as practicable, the appeal thereafter will follow the procedure prescribed in the following paragraphs of this section, except that any decision by the range manager or the examiner on a matter arising under this paragraph will not become effective pending the disposition of a timely appeal to the examiner, the Director or the Secretary of the Interior, as the case may be.

(e) *Authority of examiner.* (1) The examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses, to administer oaths, to call and question witnesses, and to make findings of fact, conclusions of law, and a decision. The examiner also shall have authority to take or to cause depositions to be taken whenever the ends of justice would be served thereby, in accordance with the procedure for taking depositions set out in the Rules of Practice (Part 221 of this chapter). The examiner may stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges, and the same parties or their predecessors in interest. The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted because of the absence of witnesses only in accordance with the rules of practice (Part 221 of this chapter). In other cases continuances may be granted only when the ends of justice will be served thereby.

(2) Continuances will not be granted unless it appears that they are clearly justified and that a timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the other parties. The other parties shall have five days to file an objection to the continuance if they so desire. The examiner will then rule on the request, and, if the request is granted, set a new date for the hearing.

(f) *Conduct of hearing before examiner.* The appellant, the range manager, and recognized interveners will stipulate as far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented and issues which clearly appear to be unnecessary to a proper disposition of the case will be excluded: *Provided,* That the party asserting such an issue may state briefly for the record the substance of the proof which otherwise would be offered in support of the issue. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties. The range manager, or his representative, will then state the grounds of the decision from which the appeal has been taken, together with such explanation as may be deemed necessary, and may call and examine witnesses on the issues involved. Upon the conclusion of this testimony the appellant shall present his case, following which recognized interveners may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy. All oral testimony shall be under oath, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. Objections to evidence will be ruled upon by the examiner and exceptions duly noted, and such exceptions will be considered upon an appeal from the decision of the examiner. In noting an exception to a ruling sustaining an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence. The examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof.

(g) *Witness fees.* Under the subpoena issued a witness will be entitled to a witness fee of $1.50 per day for the time in attendance at the hearing and the time necessarily spent in travel from his residence to the place of hearing and return, plus five cents per mile for the distance necessarily traveled. Witnesses who attend hearings so far removed from their residences as to prohibit return thereto from day to day will be allowed a per diem of $3.00 for expenses of subsistence in addition to witness fees for each day of actual attendance and for each day necessarily occupied in traveling to and from hearings. A subpoena may be served only in the county in which the hearing is to be held, and a witness cannot be compelled to appear outside of such county.

(h) *Findings of fact and decision by examiner; notice; submission to Director of the Bureau of Land Management.* As promptly as possible following the termination of the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law and will render a decision upon all material issues of fact, law and discretion presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. In any case, he must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any appeal. A copy thereof shall be sent by registered mail to the appellant and all interveners: *Provided, however,* That the Director of the Bureau of Land Management may require, in specific cases, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Part 221 of this chapter.

(i) *Notice of appeal to the Director of the Bureau of Land Management; furnishing copies of the record.* Within ten days after the receipt of the decision of the examiner any party desiring to appeal to the Director of the Bureau of Land Management shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the appellant and to the interveners, at a charge of five cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervener is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed in the office of the Director.

(j) *Effect of decision suspended pending appeal.* An appeal shall suspend the effect of the decision appealed from pending the decision on appeal. However (1) the officer making a decision, either initially or on appeal, may, in his discretion when the orderly administration of the range or other public interest requires, provide, in the decision or by order made before an appeal is taken therefrom, that the decision shall be in full force and effect pending the decision on appeal, and (2) the officer to whom an appeal is taken may, in his discretion when the orderly administration of the range or other public interest requires, by order provide that the decision appealed from shall be in full force and effect pending the decision on appeal. Any action taken by the range manager pursuant to a decision shall be subject to modification or revocation by the Director or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10 (c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(k) *Appeals to the Director of the Bureau of Land Management.* An appeal from the decision of the examiner to the Director of the Bureau of Land Management shall be filed, together with any brief desired in support thereof, within thirty days after date of receipt of the transcript of testimony, or, in the event the transcript of testimony is not requested, such appeal shall be filed within thirty days after receipt of the examiner's decision, in the office of the Director. A copy of the appeal and any brief in support thereof must be served on each party of record, either personally or by registered mail. Any party of record opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in said office a reply brief, if he so desires, a copy of which must be served upon the appellant in the same manner. Evidence of service of appeals and briefs must be furnished. The appeal in other respects shall be made in accordance with Part 221 of this chapter.

No adjudication of grazing privileges will be set aside on appeal if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(l) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Part 221 of this chapter.

(m) *Record as basis of decisions; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

§ 161.10 *General rules of the range*—(a) *Acts prohibited.* The following acts are prohibited on the Federal range:

(1) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, whether regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Allowing livestock to drift and to graze on Federal range, including stock driveways, without a license or permit, either regular or free-use.

(4) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(5) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(6) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law: *Provided*, That permits to carry on controlled burning of vegetative cover or brush may be issued by the Bureau of Land Management in proper cases, such permits to be subject to such conditions as the Bureau of Land Management may see fit to impose, and to all State laws and regulations concerning such burning.

(7) Maliciously molesting, or driving from the Federal range livestock lawfully grazing thereon under an appropriate license or permit.

(b) *Rules of fair range practice.* The following rules of fair range practice shall be complied with by all licensees and permittees, both regular and free-use:

(1) The provisions of statutory law of any State in which grazing districts are located with reference to the branding of livestock and sanitary requirements are hereby incorporated as a part of the Federal Range Code for Grazing Districts and all licensees and permittees shall comply with the provisions in effect in the State or States in which any part of the grazing district or districts in which their licenses or permits are to be effective are located.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than 5 miles per day for sheep or goats, and ten miles per day for cattle or horses: *Provided*, That an increased or decreased rate of travel may be prescribed in such permit if, in the discretion of the range manager, the circumstances in any given case so require.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, shall pay a proportionate share of the cost of managing livestock licensed or permitted within the range area in instances wherein associations for such management have been formed, and shall bed sheep and goats according to instructions issued by the Bureau of Land Management. Upon request by the majority of the users of any community allotment of Federal range, the Bureau of Land Management may prescribe the time for, breed, grade, and number of bulls to be turned onto such allotment; in the absence of such express requirements by the Bureau of Land Management, the provisions of State law on the subject shall be regarded as applicable.

§ 161.11 *Procedure for enforcement of rules and regulations*—(a) *Service of notice.* Whenever it appears that there has been any willful violation of any provision of the act or of the Federal Range Code for Grazing Districts, the range manager will cause the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management to be served with a written notice, which will set forth the act or acts constituting such violation and in which reference will be made to the provision or provisions of the act or the Federal Range Code for Grazing Districts alleged to have been violated. Such notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

(b) *Unlawful grazing on Federal range; removal of livestock; impoundment.* Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(c) *Amicable settlement of civil cases involving damage to Government property.* An offer of settlement will not constitute satisfaction of civil liability for the damage involved until finally accepted by the authorized officer, and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered and until payment of any amount due as grazing fees has been made.

(d) *Disciplinary action for violations.* (1) A license or permit may be reduced or revoked and renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit or for a violation of any of the provisions of the Federal Range Code. Before any license or permit is reduced or revoked, or renewal thereof denied, because of such a violation, however, the authorized officer will cause the licensee or permittee to be served with a written notice which will set forth the act or acts constituting the violation and an estimate of the amount of damage resulting therefrom. Such notice also will refer to the terms or conditions of the license or permit or to the provision or provisions of the Federal Range Code alleged to have been violated. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked and satisfaction of damages made. The notice may be served in person or by registered mail.

(2) The hearing before the examiner upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The licensee or permittee may appear in his own behalf or by counsel. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due the United States. If upon the hearing of the order to show cause the violation with which the licensee or permittee is charged is established to the satisfaction of the examiner, he will render a decision finding the amount of damages and directing the authorized officer to reduce or revoke the license or the permit, if the facts so warrant.

(3) Upon the failure of the person served in the notice to appear at the time and place designated in the notice, and in the absence of a good and sufficient showing to the examiner of a reason for his failure to appear, the examiner may direct the authorized officer to reduce or revoke the license or permit, as the violations charged in the notice and the amount of damages alleged may warrant.

(4) Appeal from the decision of the examiner on any matter under this section shall be made in accordance with the provisions of § 161.9 (j), (k), and (l), and appeal to the Secretary of the Interior from the decision of the Director shall be made under § 161.9 (m).

(e) *Bonds for violations.* Whenever a livestock operator commits a willful or wanton violation of any provision of these rules or has repeatedly committed violations, the authorized officer may require him to furnish a bond in an amount sufficient to cover all probable damage that may result from his violations during the ensuing year. The bond may be either a cash or a surety bond and will be in a form approved by the Bureau of Land Management. Upon the failure to furnish such bond when so required, the authorized officer is authorized to refuse to issue or renew a license or permit, or to revoke an existing license or permit.

§ 161.12 *District advisory boards*—(a) *Authorization for establishment; number of members; qualifications.* Section 18 of the act provides that there shall be an advisory board of local stockmen in each grazing district. The area administrator will fix the number of members to be elected to such board in each district, such number to be not less than five and not more than twelve, exclusive of a wildlife representative who will not be elec-

tive but will be appointed by the Secretary of the Interior. The area administrator may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct established by him, or both, provided that the free-use licensees or permittees in each district will be entitled to one representative, who shall be a free-use licensee or permittee. All district advisers shall be elected in the manner provided in this section and, excepting the wildlife representatives, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) *Elections; time and place of holding; notice.* An election of district advisers for each grazing district will be held within ninety days after the publication in the FEDERAL REGISTER of the order establishing the district, and annually thereafter. The area administrator may divide the district into voting precincts and will designate a voting place within or near each district or precinct. The range manager will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district, by posting in the office of the regional administrator and by posting in such other public places as may be necessary to give the matter proper publicity. No election shall be held to be invalid by reason of failure to give any of the foregoing notices unless it shall be made to appear that there was a failure to give substantial notice.

(c) *Elections; qualifications of electors.* Only those persons who are qualified to receive regular or free-use licenses or permits will be allowed to vote in any election held pursuant to section 18 of the act: *Provided,* That in any new grazing district hereinafter established and embracing areas not heretofore within any district, the electors will be those stockmen who, prior to the establishment of the district, were regularly accustomed to using the Federal range within said district. A minor may vote if otherwise qualified: *Provided,* That upon request by his natural or legal guardian his ballot may be cast by the guardian in the name of the minor. The judges at any election will be furnished by the representative of the Bureau of Land Management in charge with a list of all electors entitled to vote in the district. No one whose name does not appear on such list shall be allowed to vote: *Provided,* That anyone claiming that his name has been erroneously omitted from the list may obtain and mark a ballot which will be held uncounted until the range manager shall have had a further opportunity to determine whether or not the party was entitled to vote. If it is found that the party was entitled to vote, his ballot shall be counted, otherwise it shall be disregarded.

(d) *Elections; judges; nominations; ballots; registration; challenges.* The representative of the Bureau of Land Management in charge of an election will choose three qualified electors to act as election judges. The electors present may then place in nomination the names of the canditdates: *Provided,* That nominations for the representative of a given precinct must be made by one qualified to represent such precinct, but ballots may be cast for any other person qualified to represent a particular class or precinct. Voting shall be only by ballots cast personally by qualified electors and proxies will not be recognized. No elector shall receive a ballot until he has registered by signing opposite his name on the list of persons entitled to vote. Before receiving a ballot any elector may be challenged by any other elector qualified to vote in the district and thereupon the judges, or any of them, may require the elector challenged to answer such questions concerning his qualifications as a voter as may be deemed necessary. Upon his failure or refusal to answer such questions satisfactorily, he shall not be permitted to register or to receive a ballot. Each candidate may designate any qualified elector to remain within the polling places during the casting and counting of votes and the declaration of the results thereof, and such person may act as a challenger. Before any elector shall be permitted to deposit his completed ballot in the ballot box, the judges shall write "Voted" opposite his signature on the registration list.

(e) *Elections; method of voting.* Only one ballot may be cast by the holder or holders of any one license or permit, whether regular or free-use, or by a qualified elector or electors controlling any one base property. An elector eligible only for a free-use license or permit may cast a ballot for one free-use candidate only and for no other candidate. All other electors, regardless of the precincts in which they may reside or operate, shall cast one ballot each, on which shall be written the name or names of the total number of candidates to be elected in the district as representatives of the class of owners of livestock to which the elector belongs: *Provided,* That if he belongs to more than one such class he shall vote only for the candidates of the class in which he predominates in numbers of livestock, on the basis of one cow or horse being the equivalent of five sheep or goats. If a certain number are to be elected from each precinct, no ballot shall include the names of more candidates from any one precinct than are to be elected therefrom.

(f) *Elections; close of polls; results; ties; judges' certificates.* Polling places shall remain open on the day of the election from 2 p. m. to 5 p. m., or until those present at 5 p. m. shall have voted. Upon the closing of the polls the judges shall open the ballot box and count the votes. In case of a tie vote, a choice by lot shall be made by the judges in the presence of the tie candidates or of at least one representative designated by each such candidate for such purpose. As soon as the ballots have been counted, the judges shall make out a certificate of returns under their hands, stating the number of votes cast, the number of excess, unused or spoiled ballots, and, in both words and figures, the number of votes received by each candidate. The certificate, together with the ballots and the registration list of voters, shall be enclosed and sealed and forthwith delivered to the representative of the Bureau of Land Management in charge of the election.

(g) *Appointment by Secretary of the Interior; oath and term of office; removal; vacancies.* No person elected as a district adviser may assume office until he has been appointed by the Secretary of the Interior and has taken an oath of office. Persons elected as district advisers at the first election after the establishment of a grazing district shall be divided as evenly as may be into three classes by lot by the range manager. Those in class 1 shall hold office for one year, those in class 2 for two years, and those in class 3 for three years, and until their successors are elected and have qualified. Thereafter at each election the class whose term has expired shall be elected for a term of three years. The Secretary of the Interior may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or for the good of the service. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the regional administrator, shall be transmitted to the Director who shall consider the recommendation and if he concurs, transmit it to the Secretary for his consideration. A person appointed by the Secretary to fill a vacancy shall hold office until the next regular election, when a successor shall be elected to serve for the remainder of the unexpired term, if any, of the member causing the vacancy. Wildlife representatives shall hold office without term and until a successor may be appointed by the Secretary.

(h) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the regional administrator or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the representative of the Bureau of Land Management present, it may meet in executive session in considering applications for the granting of licenses or permits or any other business.

(i) *Functions and duties of district advisers.* District advisers shall advise or make recommendations on the following matters:

(1) The carrying capacity of the Federal range in the district.

(2) Applications under the Federal Range Code for Grazing Districts for grazing licenses or permits, either regular or free-use; *Provided,* That no board shall make a recommendation on an application by any of its members. Such an application shall be acted on in the first instance by the area administrator or the range manager.

(3) Proper rules of fair range practice.

(4) Allotments of range by classes of livestock or for community or individual use.

(5) Seasonal use of the Federal range or any part thereof.

(6) Applications for the construction or maintenance of improvements on the Federal range under section 4 of the act.

(7) Any recommendations made by local associations of stockmen in the district.

(8) Reservations of carrying capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(9) Special rules for the district, within the meaning of § 161.15.

(10) Any other matter which they may desire to bring to the attention of the Secretary of the Interior, or on which he may request their advice.

(j) *State Advisory Boards.* Each grazing district advisory board shall select from its members, at the first meeting of the board after an election, two members and two alternates to serve on a State Advisory Board for the State in which the district is located: *Provided*, That where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected.

(k) *National Advisory Board Council.* Each State Advisory Board shall select from its members, at its first meeting after its membership is designated or changed, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council.

(l) *Functions and duties of State Advisory Boards and National Advisory Board Council.* In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Advisory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope.

§ 161.13 *Local associations of stockmen*—(a) *Organization.* Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) *Articles of incorporation; constitution; by-laws.* Such associations shall be organized as corporations "not-for-profit," if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the Bureau of Land Management before the organization of the association shall be recognized by the Department of the Interior. The bylaws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) *Powers.* Such local associations should be authorized to exercise the following powers:

(1) To lease, or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(2) To make contributions in cash, property, material, or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(3) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by authority of the Secretary of the Interior.

(4) To act in an advisory capacity to the Secretary of the Interior in the administration of the Federal range lying within the district. All recommendations made by the association to the Secretary shall be subject to the provisions of the Federal Range Code for Grazing Districts and shall include the right of a hearing before an examiner of the Bureau of Land Management on the necessity and propriety of any action recommended and of appeal to the Secretary from the examiner's findings of fact and decision.

(5) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(6) To enter into cooperative agreements with the Secretary of the Interior or any officer designated by him for any of the foregoing purposes or for any other purpose authorized by the act.

(d) *Cooperative agreements for use of lands; obligation of all licensees and permittees to share cost.* Whenever the carrying capacity of Federal range is increased by reason of the acquisition of control of any lands by the Bureau of Land Management through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands, based on the number of livestock by which his license or permit is increased by reason of the administration of the association lands by the Bureau of Land Management, plus any authorized association assessments for other expenses. The range manager is authorized to refuse to issue a license or permit to any applicant or to cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such an agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

§ 161.14 *Construction and maintenance of improvements on the Federal range*—(a) *Statutory authorization.* Section 4 of the act provides:

> Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive.

(b) *Applicants for permits and cooperative agreements: qualifications.* An applicant for a permit or for a cooperative agreement or an arrangement to construct and maintain improvements of the character described in section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must satisfy the qualifications defined in § 161.3 (a).

(c) *Applications; form and contents; filing.* Applications for such permits, cooperative agreements, or arrangements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. If an application concerns the use and maintenance of improvements constructed and owned by a prior occupant under permit issued by the authority of the Secretary, it shall include also an itemized showing of their reasonable value at the time of filing the application and other evidence that the applicant has paid this amount to the prior occupant and has obtained title to the improvements free of all encumbrances, or a clear and concise explanation of the reasons for a lack of such agreement between the applicant and the prior occupant. When necessary properly to explain the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing their location in the grazing district. All applications shall be made on forms provided by the Bureau of Land Management, with such modifications as may be necessary, and shall be filed in triplicate with the range manager, who will submit them to the advisory board for consideration and recommendation prior to transmittal to the regional administrator for action.

(d) *Applications for construction of improvements; consideration; appeals.*

The area administrator, following the receipt of an application concerning the construction of an improvement, together with the recommendation of the advisory board and range manager, will act on the application and such action shall be final unless the applicant appeals to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and Secretary of the Interior shall be made in accordance with § 161.9 (c) and (e) through (n). Decisions not appealed from, and, in any event, the decision of the Secretary shall be final.

(e) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* An application to use and maintain improvements constructed and owned by a prior occupant, under permit issued by the authority of the Secretary, if accompanied by the evidence of ownership provided for in paragraph (c) of this section, shall be considered in the same manner as an application for the construction of improvements. Upon the filing of such an application showing that the applicant and the prior occupant have not agreed on the value of the improvements, the regional administrator will immediately, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, together with copies of the application and any accompanying papers and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or, if the prior occupant applies within thirty days from the date of service for a hearing, in the light of such evidence as the applicant and the prior occupant may desire to present in such hearing the area administrator will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and to the Secretary of the Interior shall be made in accordance with § 161.9 (c) and (e) through (n). Decisions not appealed from and, in any event, the decision of the Secretary shall be final. Upon the failure of the prior occupant to show cause or to apply within 30 days for a hearing, the reasonable value of the improvements will be determined by the regional administrator: *Provided*, That in the event of such default by the prior occupant the value determined shall not be less than the amount alleged by the applicant in his application and the decision of the area administrator in such cases shall be final. In any case when a decision has become final, payment by the applicant to the prior occupant of the amount determined and a showing that the improvements are free of all encumbrances shall be a condition precedent to favorable action on the application.

(f) *Approval of application.* Upon the approval of an application concerning the construction or use and maintenance of any improvements on the Federal range by the issuance of a permit or the approval of a cooperative agreement or other arrangement, the applicant may construct the improvements or use the improvements constructed and owned by the prior occupant, as the case may be.

§ 161.15 *Special rules for grazing districts.* Whenever it appears to an area administrator that local conditions in and district in his area make necessary the application of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the purposes of the act, he may recommend such a rule, supported by a factual showing of its necessity, to the Secretary of the Interior for approval.

§ 161.16 *Penal provision.* Under section 2 of the act any willful violation of the provisions of the act or of the rules and regulations thereunder (the Federal Range Code for Grazing Districts), after actual notice of the existence of the provisions of such act or such rules and regulations, is punishable by a fine of not more than $500.

§ 161.17 *Saving clause.* So far as practicable, and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 161.1 (a) of the Federal Range Code for Grazing Districts, the provisions of § 161.6 (b) of the Code will not be applied to the prejudice of the position of anyone who on September 23, 1942, was the holder of a grazing license or permit or who on that date had pending an application therefor.

PART 163—JOINT REGULATIONS RELATING TO GAME RANGES OR WILDLIFE REFUGES IN GRAZING DISTRICTS

Sec.

163.1 Protection of wildlife.
163.2 Acts not permitted on game ranges, or wildlife refuges.
163.3 Grazing.
163.4 Specimens for scientific, exhibition, or propagating purposes.
163.5 Scientific studies.
163.6 Removal of surplus animals.
163.7 Economic utilization of resources.
163.8 Fishing.
163.9 Exhibition and revocation of permits.

AUTHORITY: §§ 163.1 to 163.9 issued under sec. 10, 45 Stat. 1224, sec. 2, 48 Stat. 1270; 16 U. S. C. 715i, 43 U. S. C. 315a.

CROSS REFERENCES: For administration of game ranges or wildlife refuges in grazing districts, see Wildlife, 50 CFR Part 20. For Fish and Wildlife Service, Department of the Interior, see Wildlife, 50 CFR Chapter I. For protection of wildlife, regulations of the National Park Service, Department of the Interior, see Parks, Forests, and Memorials, 36 CFR 1.9 For regulations of the Forest Service Department of Agriculture, relating to wildlife, see Parks, Forests, and Memorials, 36 CFR Part 241.

§ 163.1 *Protection of wildlife.* It is not permitted to hunt, trap, catch, disturb, or kill, or attempt to hunt, trap, catch, disturb, or kill any wild bird or other animal, or to take or molest the nests or eggs of such birds, on any game ranges, or wildlife refuges, except when authorized by permit issued by or under the authority of the Secretary of the Interior: *Provided*, That duly authorized grazing permittees and employees of the Department of the Interior engaged in the control of predatory animals and rodents may trap or otherwise take such rodents, predatory animals, or predacious birds when in the opinion of the Director, Fish and Wildlife Service, control measures are necessary to reduce the numbers of such animals or birds in order to safeguard the perpetuation of other species of wildlife, to protect livestock, or to conserve grazing resources, or to retard soil erosion.

§ 163.2 *Acts not permitted on game ranges, or wildlife refuges.* The following acts are not permitted on lands of the United States within such game ranges, or wildlife refuges:

(a) Setting on fire, or causing to be set on fire any timber, brush, or grass, except as authorized by the resident officer in charge of such area.

(b) Building a camp fire in leaves, rotten wood, or other places where it is likely to spread; against large or hollow logs or stumps where it is difficult to extinguish it completely; or in any other dangerous place, or during windy weather, without confining it to holes or cleared spaces from which all vegetation or other inflammable material has been removed.

(c) Leaving a camp fire unattended or not completely extinguished.

(d) Disturbing, molesting, or interfering, by intimidation, threat, assault, or otherwise, with any person engaged in the management of wildlife or livestock on such ranges, or refuges, or the prevention of trespass thereon.

(e) Unless authorized by permit from the resident officer in charge, the carrying of a firearm, except by authorized Federal or State officers.

(f) Throwing or placing a burning cigarette, match, pipe heel, firecracker, or any ignited substance in any place where it may start a fire; or discharging any kind of fireworks on any part of such ranges, or refuges.

(g) The destruction, injury, defacement, removal, or disturbance in any manner, of any building, notice, sign, signboard, equipment, fence, post, road, trail, dike, dike embankment, dam, bridge, or other structure or of any other public property of any kind on such ranges, or refuges.

(h) Entering, occupying, or using, without permission from the officer in charge, any building of the United States on such areas used for administration purposes by the Department of the Interior, except in case of emergency to prevent human suffering.

(i) The entering or being upon such land with intent to destroy, molest, disturb, or injure property used, or acquired for use, by the United States, in the administration of such areas.

(j) The dumping of garbage, or other refuse or debris, or the draining or dumping of oil, acids or poisons in, or otherwise polluting any waters, waterholes, or streams within any such ranges, or refuges.

§ 163.3 *Grazing.* No cattle, sheep, horses, or other livestock are permitted to graze on the public lands within the

exterior boundaries of such game ranges, or refuges, except under permit of the authorized officer of the Department of the Interior and in accordance with such conditions as he may prescribe therein, and no grazing is permitted on lands within the exterior boundaries of such game ranges, or refuges, which have been or which hereafter may be acquired by the United States for the conservation of migratory birds and other wildlife, except under permit of the authorized officer of the Department of the Interior and in accordance with such conditions as he may prescribe therein.

§ 163.4 *Specimens for scientific, exhibition, or propagating purposes.* Specimens of plant and animal life or other natural objects on any range, or refuge, may be taken for scientific, exhibition, or propagating purposes, under special permit issued under authority of the Secretary of the Interior and countersigned by the Director, Fish and Wildlife Service, but no such permit shall be deemed to authorize the taking, possession, transportation, or sale of any wildlife, or the nests or eggs of birds, contrary to State or Federal law.

§ 163.5 *Scientific studies.* Any person may enter upon any such range, or refuge, for scientific study, the taking of photographs thereon, or for other like purposes, but must comply with this part for the protection of wildlife, and the rules in this chapter for the administration of grazing districts.

§ 163.6 *Removal of surplus animals.* Whenever it shall appear after investigation that the number of any species of game animal on any such range, or refuge, shall have increased beyond the numbers specified in the Executive order establishing the particular range, it shall be the duty of the Director, Fish and Wildlife Service, and the Director, Bureau of Land Management, Department of the Interior, jointly to determine the number of surplus animals it is desirable to remove from such range, or refuge, and upon such determination such surplus animals may be removed under such conditions and in the manner authorized or prescribed by the Director, Fish and Wildlife Service.

§ 163.7 *Economic utilization of resources.* Permits to cut and remove timber or firewood, occupy or cultivate areas, use any material of commercial value, or make other like use of any lands within the exterior boundaries of such ranges, or refuges, which lands have been or may hereafter be acquired by the United States for the conservation of migratory birds or other wildlife, not inconsistent with the objects for which such such ranges, or refuges, were established, may be issued by the Director, Fish and Wildlife Service, upon such terms and at such rates of charge, if any, as may be ascertained and determined by him to be commensurate with the value of the privilege given by such permits. Permits for like purposes as to other lands within such ranges, or refuges, may be issued in conformity with rules and regulations of the Department of the Interior covering such usage: *Provided*, That in order to safeguard the food and cover requirements for wildlife, permits to remove timber or firewood from the range, or refuge, shall not be issued until applications therefor have first been approved by the resident officer of the Fish and Wildlife Service and timber permittees shall make such disposition of brush, tops, lops, slashings, and other forest debris resulting from timber operations as such officer may prescribe.

§ 163.8 *Fishing.* Any person may enter upon any range, or refuge, for the purpose of fishing in accordance with the laws of the State in which such range, or refuge, is located, but must comply with the provisions of this part for the protection of wildlife, and the rules in this chapter for the administration of grazing districts.

§ 163.9 *Exhibition and revocation of permits.* Permits shall be exhibited for inspection at any reasonable time upon request of any officer or employee of the Department of the Interior engaged in the administration of such ranges, or refuges, or in the enforcement of laws and regulations applicable to wildlife. Any permit may be terminated at any time by agreement between the issuing officer and the permittee; it may be revoked by the Director, Bureau of Land Management, Department of the Interior, or his designated representative, if issued by or under his authority, or by the Director, Fish and Wildlife Service, or his designated representative, if issued by or under his authority, for noncompliance with the terms thereof or of the regulations in this chapter, for nonuse, or for violation of any law or regulation applicable to the game range, or wildlife refuge, or of any State or Federal law protecting wildlife or the nests or eggs of birds; and it is subject at all times to discretionary revocation by the Secretary under whose authority it was issued.

PART 165—LEASING OF STATE, COUNTY OR PRIVATELY OWNED LANDS IN GRAZING DISTRICTS

Sec.

165.0 Authority.
165.1 Lands which may be leased.
165.2 Evidence of ownership required.
165.3 Form of lease.
165.4 Period of lease.
165.5 Approval of the lease and renewal thereof.
165.6 Payment of rental.
165.7 Computation of fees.
165.8 Disposition of receipts.
165.9 Allocation of funds appropriated.
165.10 Improvements by the United States on leased lands.

AUTHORITY: §§ 165.0 to 165.10 issued under 48 Stat. 1270; 43 U. S. C. 315a.

§ 165.0 *Authority.* The act of June 23, 1938 (52 Stat. 1033; 43 U. S. C. 315m–1, 315m–4, inclusive), commonly known as the Pierce Act, authorizes the Secretary of the Interior in his discretion to lease, at rates to be determined by him, any State, county, or privately owned lands chiefly valuable for grazing purposes and lying within the exterior boundaries of grazing districts created under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U. S. C. 315 et seq.) when in his judgment, the leasing of such lands will promote the orderly use of the district and aid in conserving the forage resources of the public lands therein.

Pursuant to section 161 of the Revised Statutes (5 U. S. C. 22) and section 2 of the act of June 28, 1934 (43 U. S. C. 315a), the authorized officer of the Bureau of Land Management may approve leases under the Pierce Act on behalf of the United States in accordance with this part. Leases so approved need not be submitted for Secretarial approval.

§ 165.1 *Lands which may be leased.* When it is determined by the authorized officer that any State, county, or privately owned lands located within grazing districts are chiefly valuable for grazing, and are necessary to promote the orderly use, improvement, and development of grazing districts, steps should be taken to secure offers of leases of such lands from the owners thereof.

§ 165.2 *Evidence of ownership required.* Parties offering to lease lands to the United States under the provisions of this Act will be required to furnish evidence of ownership as follows:

(a) *Certificate of ownership for State or county lands.* Where State and county lands are offered for lease, a certificate from the proper State or county official will be required showing that title to the lands is in the State or county and that the officer or agency of the State or county offering them for lease is empowered by the laws of such State to lease such lands.

(b) *Certificate of ownership for private lands.* Where privately owned lands are offered for lease, the party offering them will be required to file with the local office of the Bureau of Land Management certificates from either the proper county officials, a licensed abstracter, or an administrative officer of the Bureau of Land Management whichever is required by an authorized officer, certifying that the records of the county in which the lands are situated show that the party offering the lands for lease is the record owner thereof or in legal control of such lands under appropriate recorded lease permitting the subleasing of the property, and including an itemized statement showing the nature and extent of any liens, tax assessments, mortgages, or other encumbrances.

§ 165.3 *Form of lease.* Leases under the Pierce Act should conform in general to Form 4-1142. This form is believed adaptable for use in all of the States within which grazing districts have been established under the Taylor Grazing Act. Leases under the Pierce Act must be executed by the lessor in the manner prescribed by the laws of the State within which the lands leased are situated.

§ 165.4 *Period of lease.* Leases may be made for such periods as are deemed proper by an authorized officer in promoting a proper land-use program in connection with the public range, not to exceed, however, the 10-year period as limited by the Pierce Act, beginning with the date of the approval of such lease.

§ 165.5 *Approval of the lease and renewal thereof.* Local negotiations for leasing of lands under this act will not be effective until the lease and any renewal thereof has been approved by an authorized officer of the Bureau of Land Management. Upon such approval the lease should be recorded in the land records of the county in which the land is situated.

§ 165.6 *Payment of rental.* The carrying capacity of the lands will be taken into consideration in negotiating the rental to be paid. Payment of rentals will be made annually by the United States at the end of the period for which licenses or permits to graze on the lands involved have been granted, or as soon thereafter as the moneys collected by the United States from its licensees or permittees for the use of such lands have been appropriated by the Congress in accordance with the provisions of the Pierce Act, and made available for such purpose, or moneys for the payment of such rentals have been made available through contributions under section 9 of the Taylor Grazing Act (48 Stat. 1273; 43 U. S. C. 315h).

§ 165.7 *Computation of fees.* The aggregate of the grazing fees collected for the use of the lands leased under the provisions of the Pierce Act must be sufficient to insure a return to the United States of an amount equal to the aggregate of the rentals paid for such lands and the aggregate of the grazing fees collected for the use of all of the lands leased in any one State must be at least equal to the aggregate of the rentals paid in that State.

§ 165.8 *Disposition of receipts.* All moneys received in the administration of lands leased under the Pierce Act will be deposited in the Treasury of the United States as provided in section 4 of that act and will be available when appropriated by the Congress for the leasing of lands. Distribution of such receipts, therefore, will not be made as provided in sections 10 and 11 of the Taylor Grazing Act (48 Stat. 1273; 43 U. S. C. 315i, 315j).

§ 165.9 *Allocation of funds appropriated.* Moneys received in the administration of lands leased under the Pierce Act, when appropriated by the Congress, will be allocated to the budgets of the regional administrators for disbursement in accordance with that act and the regulations in this part. Records of disbursements thereof will be maintained under existing procedure.

§ 165.10 *Improvements by the United States on leased lands.* The procedure in placing improvements on any lands leased under the Pierce Act will, so far as practicable, be the same as provided under Part 161 of this chapter.

SUBCHAPTER I—HOMESTEADS

PART 166—ORIGINAL, ADDITIONAL, SECOND, AND ADJOINING FARM HOMESTEADS, AUTHORIZED BY THE GENERAL PROVISIONS OF THE HOMESTEAD LAWS

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CROSS REFERENCES: For applications and entries, see Parts 101 to 108 of this chapter. For enlarged homesteads, see Part 167 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For homesites or headquarters, Alaska, see Part 64 of this chapter. For homesteads, Alaska, see Part 65 of this chapter. For homesteads on coal, oil, and gas lands, Alaska, see Part 66 of this chapter. For Indian allotments and Indian lands, see Parts 176, 177 of this chapter. For Indians and Eskimos, Alaska, see Part 67 of this chapter. For Kinkaid homesteads, see Part 169 of this chapter. For land classifications, see Part 296 of this chapter. For national forest homesteads, see Part 170 of this chapter. For soldiers' and sailors' homestead and preference rights, see Part 181 of this chapter. For stock-raising homesteads, see Part 168 of this chapter. For surveys, Alaska, see Part 78 of this chapter. For surveys and resurveys, see Parts 280, 281 of this chapter.

GENERAL REGULATIONS

AUTHORITY: §§ 166.1 to 166.14 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.1 *Examination of land by applicant; information as to available land.*[1] (a) Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

(b) As each applicant is required to state that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the statement that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

(c) Information as to whether a particular tract of land is subject to entry may be obtained from the manager of the land district in which the tract is located, either through verbal or written inquiry, but this officer must not be expected to give information as to the character and quality of unentered land or to furnish extended lists of lands subject to entry, except through plats and diagrams which he is authorized to make and sell as follows:

For a township diagram showing entered land only	$1.00
For a township plat showing form of entries, names of claimants, and character entries	2.00
For a township plat showing form of entries, names of claimants, character of entry, and number	3.00
For a township plat showing form of entries, names of claimants, character of entry, number and date of filing or entry, together with topography, etc	4.00

(d) Purchasers of township diagrams are entitled to definite information as to whether each smallest legal subdivision, or lot, is vacant public land. Managers are therefore required in case of an application for a township diagram showing vacant lands to plainly check off with a cross every lot or smallest legal subdivision in the township which is not vacant, leaving the vacant tracts unchecked. There is no authority for managers to charge and receive a fee of 25 cents for plats and diagrams of a section or part of a section of a township.

(e) If, because of the pressure of current business relating to the entry of lands, managers are unable to make the plats or diagrams mentioned above, they may refuse to furnish the same and return the fee to the applicant, advising him of the reason for not furnishing the plats requested; that he may make the plats or diagrams himself or have same made by his agent or attorney; and that he may have access to the plats and tract books of the land office for this purpose, provided such use of the records will not interfere with the orderly dispatch of the public business.

§ 166.2 *Kind of land subject to homestead entry.*[1] All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character, are not occupied for the purposes of trade or business, and have not been embraced within the limits of any withdrawal, reservation, or incorporated town or city; but homestead entries on lands within certain areas (such as lands in Alaska, lands withdrawn under the Reclamation Act, certain ceded Indian lands, lands within abandoned military reservations, agricultural lands within national forests, lands in western and central Nebraska, and lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, sodium, sulphur, or asphaltic minerals), are made subject to the particular requirements of the laws under which such lands are opened to entry.

CROSS REFERENCE: For lands in Alaska, see Parts 51, 52, 60–82, of this chapter. For lands occupied for purposes of trade or manufacturing, Alaska, see Part 81 of this chapter. For agricultural entries on mineral lands, see Part 102 of this chapter. For lands within abandoned military reservations, see Part 116 of this chapter. For national forest homestead entries, see Part 170 of this chapter. For ceded Indian lands, see Parts 176, 177 of this chapter. For mineral land regulations, see Parts 185, 187, 191–198 of this chapter. For regulations relating to reclamation, see Parts 230–234 of this chapter.

§ 166.3 *Ways in which claims may be initiated; area enterable.*[1] (a) Claims under homestead laws may be initiated by settlement on either surveyed or unsurveyed lands of the kind mentioned in the foregoing section. Claims may also be initiated on surveyed lands of that kind by the filing of a soldier's declaratory statement, or by the presentation of an application to enter.

(b) Under the law relating to ordinary lands a homestead entry is limited to 160 acres, but this area may sometimes be slightly exceeded where the tract is made up of irregular subdivisions.

§ 166.4 *Homestead qualifications and disqualifications.* Homestead entries may be made by any person who does not come within any one of the following classes:

(a) Married women, except as stated in § 166.5.

(b) Persons who have already made homestead entry, except as stated in §§ 166.67–166.85.

(c) Foreign-born persons who have not declared their intention to become citizens of the United States.

(d) Persons who are the owners of more than 160 acres of land in the United States.

(e) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs.

(f) Persons who have acquired title to or are claiming, under any of the agricultural public land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. Exception is made, however, as to an entry under one of the enlarged homestead acts, which may be allowed provided applicant's claims under the timber and stone, desert land, and preemption laws do not make up approximately 320 acres, and do not with the homestead claim aggregate more than 480 acres.

§ 166.5 *Conditions under which married woman may make homestead entry.* A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following conditions:

(a) Where she has been actually deserted by her husband.

(b) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is realy the head and main support of the family.

(c) Where the husband is confined in a penitentiary and she is actually the head of the family.

(d) Where the married woman is the heir of a settler or contestant who dies before making entry.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[1] Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to homestead settlement or entry until such appropriation is authorized by classification. See Part 296 and §§ 297.11 and 297.12 of this chapter.

(e) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage; and this last condition does not apply if each party has had compliance with the law for 1 year next before the marriage and neither one abandons the land prior to filing application for entry.

§ 166.6 *Entry by widow.* A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

§ 166.7 *Entry by Indians.* The act of July 4, 1884 (23 Stat. 96; 43 U. S. C. 190) expressly states that no fees or commissions shall be charged on account of Indian homestead entries, and a patent different in character from the citizen homestead patent is issued on entries made under said act or the act of March 3, 1875 (18 Stat. 420; 43 U. S. C. 189).

CROSS REFERENCES: For Indians and Eskimos, Alaska, see Part 67 of this chapter. For Indian allotments and Indian lands, see Parts 176, 177 of this chapter.

§ 166.8 *Fees and commissions required at the time of entry and proof; form of remittances.* (a) When a homesteader applies to make entry he must pay in cash to the manager a fee of $5 if his entry is for less than 81 acres, or $10 if he enters 81 acres or more. And in addition to this fee he must pay, both at the time he makes entry and final proof, a commission of $1 for each 40-acre tract entered outside of the limits of a railroad grant and $2 for each 40-acre tract entered within such limits. Where an entry is commuted no commissions are payable, except in connection with certain ceded Indian lands, as to which inquiry must be made specifically at the proper land offices. On all final proofs made before the manager, or before any other officer authorized to take proofs, the manager is entitled to receive 15 cents for each 100 words reduced to writing, and no proof can be accepted or approved until all fees have been paid.

(b) In all cases where lands are entered under the homestead laws in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming the commissions due to the manager on entries and final proofs, and the testimony fees under final proofs, are 50 percent more than those above specified, but the entry fee of $5 or $10, as the case may be, is the same in all the States.

(c) Forms of remittances that may be accepted include cash and currency, and checks, money orders and bank drafts made payable to the Bureau of Land Management that may be cashed without cost to the Government.

CROSS REFERENCES: For general regulations involving applications and entries, see Part 101 of this chapter. For proofs, see Part 108 of this chapter. For railroad grants, see Part 273 of this chapter.

§ 166.9 *Receipts for payment; notice to applicant.* A receipt for the money tendered in connection with an application to enter is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

§ 166.10 *Alienation of all or part of claim; mortgages; relinquishments.* (a) The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (43 U. S. C. 174), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

(b) A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned. A mortgagee who files notice of his interest in the district land office becomes entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting the land which is required to be given the original entryman or claimant.

(c) The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Department of the Interior subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes (43 U. S. C. 164), and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.

(d) Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of a filing or entry.

§ 166.11 *Liability of claim for debts of homesteader.* Under section 2296, Revised Statutes and Public Resolution No. 53, approved April 28, 1922 (42 Stat. 502; 43 U. S. C. 175), lands acquired under the provisions of the homestead laws and laws supplemental thereto and amendatory thereof do not become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

§ 166.12 *Completion of claim, where woman marries subsequent to entry.* The marriage of an entrywoman will not defeat her right to acquire title to the land if she continues to reside thereon and otherwise comply with the law; but ordinarily the failure of her husband to live upon the homestead with her is treated as an evidence of bad faith, requiring testimony for its rebuttal. Husband and wife can not maintain separate residences on their respective homestead entries, and if at the time of marriage each is holding an unperfected entry on which residence must be had in order to acquire title, they can not hold both entries unless they are entitled to the benefits of the act of April 6, 1914, as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U. S. C. 167), explained in § 166.62. (38 Stat. 312, 41 Stat. 1193; 43 U. S. C. 167).

§ 166.13 *Requirements of office holders.* Homestead entrymen are not entitled to any special privileges whatsoever in connection with their claims by reason of the fact that they are appointed or elected to public office, the duties of which require their residence elsewhere than on the homesteads. This also applies to civil-service employees.

§ 166.14 *Requirements when entrymen become insane.* Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee. However, if the entryman regains his sanity before the expiration of 3 years after the date of the entry, he is required to re-establish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

SETTLEMENT CLAIMS

AUTHORITY: §§ 166.15 and 166.16 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.15 *Initiation of settlement Claims.* Settlement is initiated through the personal act of the settler placing improvements upon the land or establishing residence thereon; he thus gains the right to make entry for the land as against other persons. A settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section, but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter he should define his claim by placing some improvements on each of the smallest subdivisions claimed. When settlement is made on unsurveyed lands the settler must plainly mark the boundaries of all lands claimed. Within a reasonable time after settlement actual residence must be established on the land and continuously maintained. Entry should be made within 3 months after settlement upon surveyed lands or within that time after the filing in the land office of the plat of survey of lands unsurveyed when settlement was made. Otherwise, the preference right of entry may be lost.

§ 166.16 *Application for survey of settlement claims.*[1] Application for the survey of unsurveyed lands may be addressed to the Area Administrator having local jurisdiction by any settler or settlers who can show the necessary qualifications. The applicant must show the location of the township by giving its approximate number, range, and meridian; that he is a bona fide settler therein; under what law he wishes to acquire the land; what the character of the land is, and for what it is suitable; the number of the settlers residing upon the land desired to be surveyed; when his residence began and to what extent he has cultivated and improved the land claimed; that his application for survey of the lands described is made in good faith and not at the instance or in the interest or for the benefit of any other person.

CROSS REFERENCES: For surveys, Alaska, see Part 78 of this chapter. For surveys and resurveys, generally, see Part 280, 281 of this chapter.

HOMESTEAD APPLICATIONS

AUTHORITY: §§ 166.17 to 166.21 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.17 *Execution of application.* (a) A homestead application for public lands in the continental United States must be prepared on blank forms prescribed for that purpose. The applicant must sign the application in the district embracing the land sought and state in the application that it was so signed.

(b) An application must be filed in the land office proper in the State or Territory, or if the lands are in a State in which there is no land office, must be filed with the Bureau of Land Management in Washington, D. C., except that applications for lands in North or South Dakota, must be filed in the land office at Billings, Montana; applications for land in Nebraska or Kansas must be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. An application is not acceptable if signed more than 10 days before being deposited in the mails for filing in the appropriate office.

§ 166.18 *Showing required of applicant.* Each application to enter and the statements accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual settlement and cultivation; and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make any agreement or contract in any way or manner with any person, or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself.

§ 166.19 *Certificate required of Indian applicant, under act of July 4, 1884.* (a) The manager will require an Indian homestead applicant under the act of July 4, 1884 (23 Stat. 96; 43 U. S. C. 190), to submit a certificate from the Commissioner of Indian Affairs that he is entitled, as an Indian, to make such an entry.

(b) When such an application is presented without this certificate the manager will suspend the same and notify the applicant that 90 days are allowed within which to submit such certificate as to the right to allotment, and that upon failure to submit the same within the time allowed the application will be rejected.

(c) Where an Indian has filed an allotment application and the application has been rejected for the reason that the applicant is not entitled as an Indian to an allotment, such action will not prejudice the right of such applicant to file a homestead application, provided that a certificate from the Commissioner of Indian Affairs, showing that the applicant is entitled to the benefits of the said act of July 4, 1884, is presented.

§ 166.20 *Requirements where Indian makes entry as citizen.* (a) A certificate from the Commissioner of Indian Affairs that the applicant is entitled, as an Indian, to make a homestead entry, should be required only of applicants under the act of July 4, 1884 (23 Stat. 96; 43 U. S. C. 190), from whom no fee or commissions are required.

(b) If an Indian making application under the general homestead act states that he is a citizen of the United States, the manager will allow such an Indian, if otherwise qualified, to make entry under that act, without further questioning and without requiring any certificate from the Commissioner of Indian Affairs.

§ 166.21 *Showing required with applications by settlers, widows, devisees, or heirs.* All applications by persons claiming as settlers must, in addition to the facts required in § 166.18, state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens; but they are not required to state facts showing any other qualifications of a homestead entryman, and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

RESIDENCE, CULTIVATION, AND IMPROVEMENTS REQUIRED FOR 3-YEAR AND COMMUTATION PROOFS

AUTHORITY: §§ 166.22 to 166.25 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.22 *Residence required for 3-year proof.* With the exception of adjoining farm homestead entries and entries allowed under certain laws not requiring residence, a homestead entryman must establish residence upon the tract entered within 6 months after date of the entry, unless an extension of time is allowed, as explained in § 166.26, and must maintain residence therefor a period of 3 years. However, he may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him or included in an entry against which he had initiated a contest resulting afterwards in its cancellation. Moreover, he may absent himself for a portion or portions of each year after making entry and establishing residence, as more fully explained in § 166.36.

§ 166.23 *Cultivation required for 3-year proof.* (a) Cultivation of the land for a period of at least 2 years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality.

(b) During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are the same as to homesteads under the general law and under the enlarged homestead acts, and the years in question begin to run, not from the establishment of residence, but from the date of the entry. The required area of cultivation may be reduced, under certain conditions, as set forth in § 166.40. Moreover, the requirements as to cultivation have been eliminated as to certain homestead claims initiated prior to February 5, 1937, as set forth in §§ 166.41–166.43.

§ 166.24 *Habitable house required for 3-year proof.* The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 166.25 *Requirements for commutation proof; contests after 14 months' residence.* (a) All original, second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

(b) The entryman, or his statutory successor, must show that substantially continuous residence upon the land was maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house on the claim and cultivation of the area commuted to the extent required under the ordinary homestead laws, that is, cultivation of one-sixteenth of the area during the second year of the entry, and one-eighth during the third entry year and until final commutation proof. However, the proof may be accepted where actual residence on the land for the required period of 14 months is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Bureau of Land Management be fully satisfied of entryman's good faith, and provided no contest or adverse proceedings shall have been initiated for default in residence, or other good cause, prior to filing of such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions explained in § 166.23, as to 3-year proof.

(c) Where a contest is initiated against an entry, prior to filing of notice to submit commutation proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended (43 U. S. C. 164, 169), and the homesteader's absence will not be excused upon the ground that he has complied with the law for 14 months and is under no obligation to further reside upon the land. However, a contest for abandonment can not be maintained if the absence after the 14 months' residence is pursuant to a leave of absence regularly and properly granted under the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 234), or under conditions which would have entitled the entryman to such leave upon formal application therefor, and such absence will not prevent the submission of acceptable commutation proof.

(d) An entryman submitting commutation proof may add together, to make up the 14 months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding 5 months of which he had given notices as provided by the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164).

(e) A person submitting commutation proof must, in addition to certain fees, pay the price of the land; this is ordinarily $1.25 per acre, but is $2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

(f) The claimant must show full citizenship, as in case of 3-year proof.

(g) The provisions of law explained in § 166.40 apply to commutation proof also.

(h) Commutation proof can not be made on homestead entries allowed under the act of April 28, 1904 (33 Stat. 547; 43 U. S. C. 224), known as the Kinkaid Act; entries under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.); entries under the Enlarged Homestead Act (35 Stat. 639; 43 U. S. C. 218); entries allowed on coal lands under the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213); second entries allowed under the act of June 5, 1900 (31 Stat. 269; 43 U. S. C. 217); second entries allowed under the act of May 22, 1902 (32 Stat. 203; 25 U. S. C. 423); when the former entry was commuted; or entries within forests under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509).

EXTENSION OF TIME TO ESTABLISH RESIDENCE

§ 166.26 *Application for extension of time.* (a) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence cannot be established on the land within 6 months after the date of the entry, additional time, not exceeding 6 months, may be allowed. An application for such extension must include the statements of the entryman, and two witnesses acquainted with the facts. The application should set forth in detail the grounds upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

(b) If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first 6 months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made the basis for such an application.

(R. S. 2478; 43 U. S. C. 1201)

REDUCTION IN RESIDENCE REQUIREMENTS BECAUSE OF CLIMATIC CONDITIONS

AUTHORITY: §§ 166.27 to 166.35 issued under 38 Stat. 704, as amended; 43 U. S. C. 231.

§ 166.27 *Statutory authority.* The act of February 25, 1919 (40 Stat. 1153; 43 U. S. C. 231), authorizes the manager of the district land office to grant to such homesteaders as make proper showing in their applications that the climatic conditions make residence on the homestead for 7 months in each year a hardship a reduction in the terms of residence to 6 months in each year over a period of 4 years, or to 5 months in each year over a period of 5 years; but the total residence required need not exceed 25 months, but less than 5 of which shall be in each year and proof must be submitted within 5 years.

§ 166.28 *Reduction of residence requirements to 6 months in each year.* (a) An entryman desiring to avail himself of the privilege accorded by the act of February 25, 1919, must, within 1 year after the allowance of his entry, file in the land office an application (preferably on the approved form) corroborated by two witnesses, setting forth the climatic conditions which would render it a hardship to reside upon the land for as much as 7 months in each year, and stating whether he wishes the requirement in his case to be fixed at 6 months' residence in 4 successive years or at 5 months' residence in 5 successive years. The statement of claimant and the witnesses need not be sworn to. If the showing is satisfactory, the manager will allow it. If it is not satisfactory, he will reject the application, subject to the usual right of appeal, and all appeals will be forwarded promptly.

(b) If the application requests a reduction to 5 months' residence in each year, the manager may, if proper, grant partial relief; that is, fix the residence period at 6 months in each year, his decision being subject to review by the Bureau of Land Management on appeal from his decision, of which the party will be notified with all promptness.

§ 166.29 *Reduction of residence requirements to 5 months in each year.* Where a homesteader has secured a reduction of the residence requirements to 6 months in each year, he may, at or before the termination of the second year of his entry, file application for further reduction; that is, to 5 months in each of 5 years.

§ 166.30 *Conditions under which residence requirements will be reduced.* To entitle a homesteader to the benefits of the act of February 25, 1919, he must show that the climatic conditions in the vicinity of the land entered are ordinarily, not in exceptional years, such as would render it a hardship for him to reside there for a greater part of each year than for 5 or for 6 months, as the case may be.

§ 166.31 *Residence each year required in one continuous period.* Under this provision of the act of February 25, 1919, there is no authority to allow two absence periods, but the 5 months' residence or the 6 months' residence, as the case may be, must be in one continuous period.

§ 166.32 *Statutory period for making proof.* Proof on an entry must be made within 5 years after its allowance, notwithstanding the fact that relief may have been granted under the act of February 25, 1919, but the homesteader need not wait until the termination of his fifth residence year before submitting proof, provided he has had the last required period of residence.

§ 166.33 *Commutation proof.* An entry which is otherwise subject to commutation may be commuted, notwithstanding the granting of relief to the homesteader under this provision of law; but the periods of actual residence on the land must aggregate at least 14 months, and cultivation of not less than one-sixteenth of the area during the second year of the entry and one-eighth during the third entry year and until final commutation proof must be shown,

unless a reduction has been granted in the requirements in that regard.

§ 166.34 *Credit for military service.* Credit on account of a period of military service will be allowed as on other entries, but at least 1 year's compliance with the homestead laws must be shown in every case.

CROSS REFERENCES: For soldiers' and sailors' homestead and preference rights, see Part 181 of this chapter.

§ 166.35 *Absence by settlers on unsurveyed lands.* A homestead settler on unsurveyed lands who makes the showing required by §§ 166.27–166.34, and who gives notice of the approximate location of the lands settled upon and claimed may be granted the benefits of the act of February 25, 1919 (40 Stat. 1153; 43 U. S. C. 231), providing for prolonged absences due to climatic conditions.

LEAVE OF ABSENCE FOR 5 MONTHS EACH YEAR

AUTHORITY: §§ 166.36 to 166.38 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.36 *Absences by homestead entrymen; notice of beginning and termination of absence.* During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for not more than two periods, aggregating as much as 5 months. In order to be entitled to such absences the entryman need not file applications therefor, but must each time he leaves the land file at the land office (by mail or otherwise) notice of the time of leaving; and upon his return to the land he must notify said office of the date thereof. If he has returned after an absence of less than 5 months and file notice of his return, he may, without any intervening residence, again absent himself, pursuant to new notice, for the remaining part of 5 months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than 5 months.

§ 166.37 *Absences by settler on unsurveyed land; notice of beginning and termination of absence.* Under the act of July 3, 1916 (39 Stat. 341; 43 U. S. C. 232), a settler upon unsurveyed, unreserved, and unappropriated public land is entitled to one or two leaves of absence during each residence year, aggregating not more than 5 months in each year, after establishing of residence, in the same manner and upon the same conditions as persons having entries of record. If he has returned after an absence of less than 5 months and filed notice of his return, he may, without any intervening residence, again absent himself, pursuant to new notice, for the remaining part of 5 months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than 5 months.

§ 166.38 *Notice of settlement claim.* The act of July 3, 1916, does not authorize the filing of a notice of a settlement claim except as included in a notice of absence from the land; unless the paper tendered shows the beginning or ending of an absence, the manager will decline to receive it.

LEAVE OF ABSENCE FOR 1 YEAR OR LESS, BECAUSE OF FAILURE OF CROPS, SICKNESS, OR OTHER UNAVOIDABLE CASUALTY

§ 166.39 *Application for leave of absence.* Leave of absence for 1 year or less may be granted by the manager of the land office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Application for such leave of absence must be signed by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located. It must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable. The period during which a homesteader is absent from his claim pursuant to a leave duly granted cannot be counted in his favor.

(R. S. 2478; 43 U. S. C. 1201)

REDUCTON IN REQUIREMENTS AS TO CULTIVATION

§ 166.40 *Conditions under which requirements as to cultivation may be reduced.* (a) The requirements as to cultivation may be reduced if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. When action is taken on an application for a reduction of the required area of cultivation, consideration will be given all the attendant facts and circumstances, and if it appears that at the date of the initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable or that there was a lack of good faith on the part of the claimant in making the entry, the application will be subject to rejection. An application for reduction must be filed at the proper land office on the form prescribed therefor, and should set forth in detail the special conditions on which the claim to a reduction is based.

(b) A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but notice of the misfortune and of its nature must be submitted to the manager of the land office, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

(c) No reduction in area of cultivation will be permitted on account of expense in removing the standing timber from the land. If lands are so heavily timbered that the entryman cannot reasonably clear and cultivate the area prescribed by the statute, such entries will be considered speculative and not made in good faith for the purpose of obtaining a home. The foregoing applies to lands containing valuable or merchantable timber and will not preclude the reduction of area of cultivation on proper showing in cases where the presence of stumps, brush, lodge pole pine, or other valueless or nonmerchantable timber prevents the clearing and cultivation of the prescribed area.

(d) Applications for reduction in area of cultivation will be acted upon by the manager of the land office, who may in appropriate cases defer action until final proof, but his decision in granting or refusing applications for reduction in area shall be subject to review, upon appeal, by the Director, Bureau of Land Management and by the Secretary of the Interior.

(R. S. 2478; 43 U. S. C. 1201)

ELIMINATION OF REQUIREMENTS AS TO CULTIVATION, IN CERTAIN CASES

AUTHORITY: §§ 166–41 to 166.43 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.41 *Statutory authority.* The act of March 31, 1938 (52 Stat. 149; 43 U. S. C. 237d), amended the act of August 19, 1935 (49 Stat. 659), so as to extend its provisions to applications made prior to February 5, 1935. As amended the act provides that, with certain specified exceptions, described in § 166.43, the provisions of the homestead laws requiring cultivation of the land entered shall not be applicable to existing homestead entries made prior to February 5, 1935, or thereafter if based upon valid settlement or application made prior to said date, and no patent shall be withheld for failur to cultivate such lands.

§ 166.42 *Proofs not to be rejected for failure to show cultivation.* In all cases where said acts apply, no proof shall be rejected solely for failure to show that the cultivation requirements of the homestead laws have been complied with.

CROSS REFERENCE: For proofs, see Part 106 of this chapter.

§ 166.43 *Entries to which law does not apply.* The law does not apply to homestead entries made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), and amendments thereof, known as the reclamation law; or under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), and amendments thereof, known as the law providing for entry of agricultural lands within national forests; or to homestead entries in the Territory of Alaska.

CROSS REFERENCES: For homestead entries, Alaska, see Part 65 of this chapter. For entry of agricultural lands within national forests, see Part 170 of this chapter. For homestead

entries subject to the reclamation law, see Part 230 of this chapter.

PROCEDURE GOVERNING SUBMISSION OF FINAL OR COMMUTATION PROOF

AUTHORITY: §§ 166.44 to 166.50 issued under 20 Stat. 472; 43 U. S. C. 251.

§ 166.44 *When proof may be made.* Either final or commutation proof may be made at any time when it can be shown that there is a habitable house upon the land and that the required residence and cultivation have been had. Proof must be submitted within 5 years. Failure to submit proof within the proper period is ground for cancelation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued.

CROSS REFERENCE: For equitable adjudication, see §§ 107.1 and 107.2 of this chapter.

§ 166.45 *Officers qualified to take proof; notice of intention to make proof.* Final or commutation proofs may be made before any of the officers mentioned in § 210.1 of this chapter as being authorized to administer oaths.

Any person desiring to make homestead proof should first forward a written notice of his desire to the manager of the land office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

§ 166.46 *Publication of proof notice.* (a) The manager will issue a notice naming the time and place for submission of proof and cause same to be published at entryman's expense for 30 days preceding submission of proof in the newspaper designated by the manager. The publication must be made once a week for five consecutive weeks, in accordance with § 106.18 of this chapter.

(b) The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The manager will be responsible for the correct preparation of the notice.

(c) On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is possible to do so, appear on the day mentioned in the notice.

§ 166.47 *Submission of proof in accordance with published notice.* Final proofs in all cases where the same are required by the general land laws or regulations of the Department, should be taken in accordance with the published notice; *Provided, however,* That such testimony may be taken within 10 days following the time advertised in cases where accident or unavoidable delays have prevented the applicant or his witnesses from making such proof on the day specified.

§ 166.48 *Citizenship requirements.* (a) When proof is submitted it must be shown that the homesteader is a citizen of the United States: *Provided, however,* That a homestead entrywoman who is a citizen when she makes her filing and thereafter marries an alien need not show that her husband is an American citizen, but must show that he is entitle to become one (38 Stat. 740; 43 U. S. C. 168).

(b) In all cases of applications for entry or proofs in support of entries by married women otherwise duly qualified to make such entry or proof, a showing must be made of the facts concerning the marital status and citizenship in accordance with Part 137 of the chapter.

§ 166.49 *Evidence of citizenship.* Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of foreign-born applicants should be received only when made in accordance with Part 137 of this chapter.

§ 166.50 *Who may submit proof.* (a) Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in §§ 166.14, 166.55, 166.64. Final proof can be made only by citizens of the United States.

(b) Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

PROOFS BY HOMESTEADERS WHO INTERMARRY

AUTHORITY: §§ 166.51 to 166.54 issued under 38 Stat. 312, as amended; 43 U. S. C. 167.

§ 166.51 *Conditions under which claims may be completed by residence on either entry.* Where a homestead entryman or settler and a homestead entrywoman or settler intermarry after each has fulfilled the requirements of the law for 1 year, the husband (under the provisions of the act of April 6, 1914 (38 Stat. 312) as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U. S. C. 167)) may elect on which of the entries the home shall be made, after which their residence there shall constitute compliance with the residence requirements as to both homesteads.

§ 166.52 *Entries and settlement claims affected.* The act of April 6, 1914, as amended, applies to entries and settlement claims initiated before or after its date, and before or after the date of the amendatory act; to become entitled to its benefits, it is required that each of the parties shall have complied with the requirements of the homestead laws for not less than 1 year next preceding their marriage. It is not necessary that either the husband or the wife shall have had an entry placed of record before the marriage.

§ 166.53 *Husband entitled to elect on which claim family shall reside.* The law confers upon the husband the privilege of electing on which of the two entries the family shall reside. His election must be supported by the statements of both the parties, describing their entries and showing the facts as to the residence, cultivation, and improvements already had in connection therewith. Only in cases where the tracts involved are situated in different districts will it be necessary that the election and statements be executed in duplicate; then copies of all papers must be filed in each office.

§ 166.54 *Requirements for proofs.* (a) Though the election be accepted, proofs on the entries will be submitted separately, as in other cases; it will be necessary to show residence on the selected homestead from approximately the date of the marriage, and on the entries of the respective parties before that time. The act of April 6, 1914, as amended, makes no change whatever in the requirements as to cultivation or improvements, as the case may be, or as to the necessity of having a habitable dwelling on the land; compliance with the homestead law in these regards must be shown as to each entry, precisely as though the marriage had not taken place. In no case can proof be made on a claim before an entry for the land involved shall have been duly placed of record in accordance with an approved survey.

(b) If proof be made on the entry selected as the home before title to the other is earned, residence may nevertheless be continued on the perfected entry and credited to the other. However, the act has no application to cases where the requirements of law have been fulfilled, and proof made, as to one of the entries prior to the marriage.

PROOF BY DESERTED WIFE ON HUSBAND'S ENTRY IN HER OWN NAME

AUTHORITY: §§ 166.55 to 166.61 issued under 38 Stat. 766; 43 U. S. C. 170.

§ 166.55 *Conditions under which deserted wife may make proof.* The act of October 22, 1914 (38 Stat. 766; 43 U. S. C. 170), provides where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than 1 year, she may submit proof (by way of commutation or otherwise), on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made, either by herself or by her husband.

§ 166.56 *Summons to homestead entryman.* Upon the wife's filing notice of intention to submit proof, together with a statement alleging desertion, as stated in § 166.55, and all information in her possession as to the entryman's whereabouts, including his last known post-office address and the address near the land where he received his mail, the manager will prepare and issue a summons in substantially the following form and deliver it to the wife for service:

To [here insert name] homestead entryman:

You are hereby notified that [here insert name], claiming that she is your wife, and that you have abandoned and deserted her for more than one year last past, has filed application to be allowed to submit proof

upon your homestead entry, serial No. ——, for [here insert description of the land], to the end that patent for the land may issue in her name. This proceeding is authorized by the provisions of an act of Congress approved October 22, 1914, and you will be allowed 30 days after notice hereof within which to file in this office your denial of the charges. If such denial be filed, you may, at the time to be set for taking of proof or on a date to be then fixed, offer testimony in support of such denial.

§ 166.57 *Personal service of summons.* Personal service of the summons must be made if possible; such service may be made by any person over the age of 18 years, or by registered mail. When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing delivery of the letter to the entryman; where service is made otherwise than by mail, proof thereof must be by written acknowledgment of the entryman, or by statement of the person serving the summons, showing its delivery to the entryman. If personal service can not be made, the summons must be sent by registered mail to the last known address of entryman and to the post office nearest the land, or to that near the land named by the wife in her preliminary statement; proof of such attempted service shall be by a statement of the person mailing the letter, to which should be attached the postmaster's receipts therefor.

§ 166.58 *Answer to summons.* Within 30 days after service of summons, the entryman may file his statement denying the charge of abandonment and desertion. The denial must bear evidence that a copy thereof has been served on the wife.

§ 166.59 *Notice for publication.* After the expiration of 30 days from personal service of the summons, or 40 days from the date of mailing, unless a denial by entryman be sooner filed, the manager will issue notice of intention to submit proof. The form in general use must be modified to show that the proof is to be submitted by the deserted wife, and must contain a paragraph as follows:

The entryman [here insert name] is notified that, by submission of said proof, his wife [here insert name] seeks to obtain patent for the land in her own name.

§ 166.60 *Hearing on charges of desertion.* If the entryman shall have filed denial of the alleged desertion and abandonment, and appears, in person or by agent or attorney, on the day set for the taking of proof, testimony may be submitted to determine the facts relative to the alleged desertion, and the final proof testimony will be taken in accordance with existing regulations. But the manager, for any reason deemed sufficient, may continue the hearing to a later date.

(a) At the hearing on the denial of desertion the entryman must pay the costs of taking the testimony.

(b) All hearings and subsequent proceedings shall be in accord with the Rules of Practice, Part 221 of this chapter, pertaining to contests.

§ 166.61 *Issuance of final certificate.* If entryman fails to deny the charge of desertion, or if same be sustained and the case closed, final certificate shall issue in the name of the deserted wife, provided the proof be in all respects sufficient.

HOMESTEAD RIGHTS OF WIDOWS, HEIRS, OR DEVISEES

AUTHORITY: §§ 166.62 to 166.66 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.62 *Right of entry on death of settler.* If a homestead settler dies without having filed application for entry, the right to enter the land covered by his settlement passes to his widow. If there be no widow, said right passes to his heirs or devisees.

§ 166.63 *Requirements of those who succeed to rights of settlers.* Persons who make entry as the widows, heirs, or devisees of settlers are not required to reside upon the land entered by them, but they must improve and cultivate it for such period as, added to the time during which the settler resided on and cultivated the land, will make the required period of 3 years, and the cultivation must be to the extent required by the law under which the proof is offered. Commutation proof may, however, be made upon showing 14 months' actual residence and cultivation had either by the settler or the heirs, devisee, or widow, or in part by the settler and in part by the widow, heirs, or devisee.

§ 166.64 *Right under entry on death of entryman.* If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be none, and the children if any are not all minors, then to his heirs or devisees. However, if all the heirs be minor children of the entryman or entrywoman, and their other parent be dead, the entry is not subject to devise. In such a case the right to a patent vests in the children at once upon proof only of the death of both parents and that they are the only children of the homesteader, provided, as to a male homesteader, that there be no widow. The law provides, in the alternative, that the executor, administrator, or guardian may, within two years after the death of the surviving parent, sell the land for the benefit of the children, in accordance with the law of the State where they are domiciled. In such cases it is required that there be furnished record evidence of an order for the sale made by a court of competent jurisdiction. In any event, publication and posting of notice of intention to submit proof or to ask issuance of patent to the purchaser is required.

§ 166.65 *Requirements of those who succeed to rights of entrymen.* Persons succeeding as widow, heirs, or devises to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of 3 years. They are allowed a reasonable time after the entryman's death within which to begin cultivation, proper regard being had to the season of the year at which said death occurred. If they desire to commute the entry they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived. They must in all cases show that they are citizens of the United States regardless of the question whether the entryman was himself a citizen. Moreover, the entry may not be completed by the widow, heirs, or devisee of a homestead entryman unless he himself had complied with the law in all respects to the date of his death, and they must also show, at the time of final proof, that there is a habitable house on the land.

§ 166.66 *Rights of heirs of contestants.* If a contestant dies after having secured the cancelation of an entry, his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancelation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case, to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

ADDITIONAL ENTRY AFTER PROOF ON ORIGINAL CLAIM; SECTION 6, ACT OF MARCH 2, 1889

AUTHORITY: §§ 166.67 to 166.69 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.67 *Statutory authority.* Section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 214), permits the entry, by a person otherwise qualified, who prior to the date of his application for additional entry has made homestead entry, submitted final proof thereon, and received receiver's final receipt,[1] for a quantity of land less than 160 acres, of so much additional land, either contiguous or noncontiguous to the land originally entered by him, as shall not with it exceed a total of 160 acres.

§ 166.68 *Application; showing required.* Applicants for additional homestead entries under section 6 of the act of March 2, 1889 must file applications to enter on the proper homestead form so modified as to describe, by number, section, township, and range, the original entry and give the date of issuance of register's (or manager's) final receipt thereupon. They are not required to show that they are still the owners or occupants of the land originally entered.

§ 166.69 *Residence, cultivation and proof required.* Upon allowance of the additional entry, entrymen will be required within the period prescribed by the homestead laws and regulations to establish residence upon the land entered and to reside upon and cultivate the land for the period required by the homestead laws, and within the period prescribed by statute, to submit proof of such residence and cultivation as in other homestead cases.

CROSS REFERENCE: For rules relating to the residence period prescribed by the homestead laws and regulations, see §§ 166.22 to 166.39.

[1] This receipt now is issued by the manager.

ADDITIONAL ENTRY FOR LAND CONTIGUOUS TO ORIGINAL ENTRY

AUTHORITY: §§ 166.70 to 166.73 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.70 *Statutory authority.* Section 2 of the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), as amended by the act of August 3, 1950 (64 Stat. 398; 43 U. S. C. 213) authorizes any person who theretofore entered, or might thereafter enter, less than 160 acres of land under the homestead laws who has not perfected the entry, or, if proof has been made, who still owns and occupies the land, to enter other and additional land lying contiguous to the original entry which, with the land first entered and occupied will not in the aggregate exceed 160 acres. Section 3 of the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), prohibits the submission of commutation proof of an entry made under that act.

§ 166.71 *Application; evidence required.* Applicants for additional entries under section 2 of the act of April 28, 1904, will be required to produce evidence that they own and reside upon the land embraced in their original entries, which shall be described by legal subdivisions and by reference to the number and date of the original entry, the evidence to consist of their own statements corroborated by the statements of two disinterested witnesses, signed in such cases in the county, parish, or land district in which the land applied for is situated. These statements and the homestead application and statements required to be made in connection therewith may be upon Form No. 4–018.

§ 166.72 *Final proof.* Before proof may be submitted as a basis for patent under the act of April 28, 1904, as amended, the entryman must show that he has cultivated an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and until the submission of final proof thereon. The cultivation may be performed on the original entry, on the additional entry, or on both, but where it is performed on the original entry it must be shown at the time of submission of final proof on the additional entry that the entryman still owns and occupies the original entry, and the cultivation must be in addition to that required and relied upon in making final proof on the original entry. No proof of residence will be required with respect to the additional entry.

The act of April 28, 1904, as amended, provides that final proof for the additional entry may be submitted only at the time of final proof for the original entry, or subsequent thereto, but it must be submitted within five years after the additional entry is made.

§ 166.73 *Cancellation of original entry.* An additional entry under the act of April 28, 1904, as amended, cannot be based on an original entry which has been canceled. If for any reason an original entry is canceled after the additional has been allowed, the additional will be canceled also.

SECOND ENTRY BY PERSON WHOSE FORMER ENTRY WAS LOST, FORFEITED, OR ABANDONED

AUTHORITY: §§ 166.74 to 166.77 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.74 *Statutory authority.* Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the act of September 5, 1914 (38 Stat. 712; 43 U. S. C. 182) which provides that the applicant must show to the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries.

§ 166.75 *Date of first entry immaterial; good faith of the applicant to be passed upon.* The question whether the first entry, or entries, were made before or after the passage of the act of September 5, 1914 is entirely immaterial. Moreover, it will be seen that the act imposes upon the Bureau of Land Management the duty of passing upon the good faith of the applicant, there being no hard and fast provision, as in the act of February 3, 1911 (36 Stat. 896) limiting its benefits to a clearly defined class of persons.

§ 166.76 *Showing required of applicants.* In order that the Bureau of Land Management may properly pass upon the right of an applicant for second entry, he must (besides filing in the proper land office an application to enter a specific tract) furnish his statement showing the following facts:

(a) Data from which his first entry (or entries) may be identified, preferably its series and number, as well as a description of the tract by section, township, and range.

(b) What examination of the land and what inquiries as to its character he made prior to filing his previous application (or applications) for entry and, in case of desert-land entries, what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation.

(c) With reference to a homestead entry, whether he established residence upon the tract, and, if so, how long he lived there and what cultivation he effected; as to a desert-land entry, whether he took possession of the tract, and, if so, how long he continued to exercise acts of ownership thereover.

(d) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(e) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(f) What consideration, if any, he received for abandoning or relinquishing the entry; also whether he sold the improvements on the tract, giving full details as to said sale, if any, including the date thereof and the consideration received.

CROSS REFERENCE: For second desert-land entries, see §§ 232.6, 232.7 of this chapter.

§ 166.77 *Statement of applicant; corroboration required.* The statement described in the preceding section must be signed by the applicant and must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts, or there may be several witnesses, each testifying on some material point; statements of witnesses must be signed by them. Appropriate blank forms will be furnished by the managers.

SECOND ENTRY BY PERSON WHO PAID INDIAN PRICE OF $1.25 PER ACRE, OR MORE, FOR LAND IN PRIOR ENTRY

AUTHORITY: §§ 166.78 to 166.83 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.78 *Statutory authority.* Under the act of June 21, 1934 (48 Stat. 1185; 43 U. S. C. 187a), any person who theretofore had made entry under the homestead laws on any lands embraced within any reservation ceded to the United States by the Indian tribes, and had paid for his land the sum of at least $1.25 per acre, upon proof of such facts, if otherwise qualified, is entitled to the benefit of the homestead law as though such former entry had not been made. The provisions of said act do not apply to any person who has failed to pay the full price for his former entry or whose former entry was canceled for fraud. In making any new homestead entry as authorized by said act or the prior similar acts of February 20, 1917 (39 Stat. 926), and February 25, 1925 (43 Stat. 981; 43 U. S. C. 187), such entry may not include any land to which the Indian title has not been fully extinguished.

§ 166.79 *Showing required as to prior entry.* A person claiming the right of second homestead entry pursuant to the provisions of the act of June 21, 1934, must furnish a description of the land included in his perfected entry or data from which it can be identified, and he must state that he paid $1.25 or more per acre for the tract, but it is not necessary that he name the precise price paid. If the former entry embraced tracts appraised at less than $1.25 per acre and tracts appraised at more than $1.25 per acre, a second entry hereunder is not allowable unless the aggregate sum of the appraised prices of the former entry equals $1.25 per acre or more.

§ 166.80 *Requirements as to completion of prior entry.* A second entry is not allowable unless the first entry was made prior to June 21, 1934, and unless satisfactory final proof has been submitted thereon and the entire price of the land included therein has been paid prior to the date of the application for second entry.

§ 166.81 *Second entry where prior entry was canceled.* The act of June 21, 1934, has no application if the first entry be canceled. Such cases will be governed by the general statutes allowing second entries.

§ 166.82 *Laws under which second entry right may be exercised.* A person who is entitled to the benefits of the act of

June 21, 1934, may at his option make second entry under either the general homestead law, or the Enlarged Homestead Act. Compliance with the law must be shown as though it were an original entry.

CROSS REFERENCE: For enlarged homesteads, see Part 167 of this chapter.

§ 166.83 *Land not subject to second entry.* The act of June 21, 1934, prohibits the allowance of any application to make a second homestead entry thereunder or under the act of February 20, 1917, or the act of February 25, 1925, if it includes any land to which the Indian title shall not have been fully extinguished.

SECOND ENTRY AFTER COMMUTATION OR PAYMENT OF INDIAN PRICE OF ORIGINAL CLAIM; ACTS OF JUNE 5, 1900, MAY 17, 1900, AND MAY 22, 1902

§ 166.84 *Statutes authorizing second entries.* Where a person commuted a homestead entry before June 5, 1900, or paid the Indian price of the land entered before May 17, 1900, his homestead right is restored. See acts of June 5, 1900, and May 22, 1902 (sec. 2, 31 Stat. 269; 43 U. S. C. 217, and sec. 2, 32 Stat. 203; 25 U. S. C. 423), and the act of May 17, 1900 (31 Stat. 179; 25 U. S. C. 421).

(R. S. 2478; 43 U. S. C. 1201)

ADJOINING FARM HOMESTEADS

§ 166.101 *Qualifications of applicants; requirements to complete entries.* An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. In connection with an entry of this character, there must be shown the required amount of residence and cultivation after the date thereof, but both residence and cultivation may be had on the original tract.

(R. S. 2478; 43 U. S. C. 1201)

HOMESTEAD SUBJECT TO MORTGAGE LOANS

AUTHORITY: §§ 166.86 and 166.87 issued under R. S. 2478, as amended; 43 U. S. C. 1201.

§ 166.86 *Mortgage loans on existing homestead entries; allowance of homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.* (a) A homestead entryman desiring a loan on an existing homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C., Supp. III, secs. 1006a, 1006b) should consult the Farmers Home Corporation of the Department of Agriculture.

(b) Where a homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land becomes subject to homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished by an applicant who is qualified for an initial loan and who has not exercised his homestead rights. An applicant for such land must first consult the Farmers Home Corporation. Such a homestead application must not be filed in the land office until the applicant has been selected and directed to do so by the Farmers Home Corporation.

(c) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed the arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(d) Decisions canceling homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(e) If the land in a relinquished or canceled homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled homestead entry was closed, the land will become subject to sale by the Farmers Home Corporation.

§ 166.87 *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

PART 167—ENLARGED HOMESTEADS

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AUTHORITY: §§ 167.1 to 167.35 issued under R. S. 2478, as amended; 43 U. S. C. 1201.

CROSS REFERENCES: For applications and entries, see Parts 101 to 108 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For Kinkaid homesteads, see Part 169 of this chapter. For land classifications, see Part 296 of this chapter. For national forest homesteads, see Part 170 of this chapter. For original, additional, second and adjoining farm homesteads, authorized by the general provisions of the homestead laws, see Part 166 of this chapter. For stock-raising homesteads, see Part 168 of this chapter.

GENERAL REGULATIONS

§ 167.1 *States in which enlarged homesteads may be made; character of land subject thereto.* (a) The act of February 19, 1909 (35 Stat. 639; 43 U. S. C. 218) (extended by later legislation to additional States), and the act of June 17, 1910 (36 Stat. 531; 43 U. S. C. 219), provide for the making of homestead entries for areas of not exceeding 320 acres of public land in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming designated by the Secretary of the Interior as

nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be "arid."

(b) The terms "arid" or "nonirrigable" land, as used in these acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as dry farming, and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

(c) Lands containing merchantable timber, or valuable minerals other than coal, phosphate, nitrate, potash, oil, gas, sodium, sulphur, or asphaltic minerals, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these acts. Entry may be allowed for the surface only of lands containing any of the minerals named. A legal subdivision will not be regarded as irrigable and excluded from designation under these acts because a minor portion of it is susceptible of irrigation unless said portion is at least one-eighth thereof. Where there is an application for additional entry after submission of final proof on the original the land covered by the original will not be regarded as irrigable, and excluded from designation, upon the ground that more than one-eighth of any subdivision is irrigable, unless said original embraces the equivalent of 20 or more acres of land in a reasonably compact body that can be thoroughly irrigated and reclaimed.

SETTLEMENT CLAIMS

§ 167.2 *Initiation of settlement claims under enlarged homestead law.*[1] Under the act of August 9, 1912 (37 Stat. 267; 43 U. S. C. 166, 223), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon.

APPLICATIONS TO ENTER

§ 167.3 *Form and execution of applications.*[2] (a) Applications to make entry under the Enlarged Homestead Acts must be submitted on forms prescribed by the Bureau of Land Management.

(b) The statement of an applicant as to the character of the land must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their statement should be modified accordingly.

[1] Any person qualified to make an original homestead entry for 160 acres is qualified to make entry under the Enlarged Homestead Acts for 320 acres.

§ 167.4 *Compactness; fees.* (a) A tract included in an entry under the Enlarged Homestead Act or in an entry under the general law, and an additional under said act, should be in compact form, and such claim may not be permitted to entirely surround a subdivision of unappropriated lands subject to entry under said act.[2]

(b) The Enlarged Homestead Acts provide that the fees shall be the same as those required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of $10 required under the general homestead law, the commissions will be determined by the area of the land embraced in the entry.

APPLICATION TO ENTER WITH PETITION FOR DESIGNATION

§ 167.5 *Statutory authority.* (a) Under the act of March 4, 1915 (38 Stat. 1162; 43 U. S. C. 220), a person may file an application for entry under the Enlarged Homestead Act of a tract of surveyed land which has not been designated thereunder, accompanied by a petition for its designation, or he may file application for additional entry, though part of the land involved has not been designated, accompanied by like petition. He thus secures a preference right of entry if the land be thereafter designated. An additional entry cannot be allowed unless the tract first entered, as well as the one sought to be added, is designated, and therefore petitions should in all cases cover so much of both tracts as has not already been designated.

(b) The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above acts the designation may be canceled; but where an entry is made in good faith under the provisions of these acts, such designation will not thereafter be modified to the injury of anyone who in good faith has acted upon such designation. Each entryman must furnish a statement giving the information required by section 2 of the Enlarged Homestead Acts.

§ 167.6 *Application authorized for original or additional entry.* The act of March 4, 1915 applies to cases where the party is seeking to make an original entry and to all cases where he seeks to make additional entry, regardless of the question whether proof has or has not been already submitted on his original filing.

§ 167.7 *Execution of application to enter and petition for designation; no right to occupy land obtained by filing same.* (a) Where a preference right under the act of March 4, 1915, is sought there must be filed at the proper land office the usual application for entry, original or additional, as the case may be, signed by the applicant and two witnesses, and the fee and commissions must be then paid; it must be accompanied by the applicant's statement, executed in duplicate and corroborated by at least two witnesses, setting forth the character of the land involved, both tracts, if additional entry is sought.

(b) This statement which will be entitled "Petition for Designation," must give the name and post-office address of the applicant and a description by legal subdivisions of all the land involved; in case of additional applications it should give the serial number (or numbers) of the old claim.

(c) In case of applications for entry under sections 1 to 5, commonly known as the general provisions of the Enlarged Homestead Act, the statement should set forth fully the conditions governing the irrigability of the land. If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given.

(1) The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon, such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it had been included in a desert-land entry, the reasons for lack of success should be stated.

(2) The statement should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(d) In cases of applications for entry under section 6 of the Enlarged Homestead Acts, applicable to Utah and Idaho, the statement should give information regarding the possibility of securing on the land a supply of water suitable for domestic use. If there are on the tract, or in its immediate vicinity springs or streams which would furnish such supply, a complete statement should be made as to the quantity, quality, and availability of the water. A statement should also be made as to the location, depth, elevation of water plane relative to the surface, depth at which water was first obtained, and other pertinent facts as to wells situated either in the vicinity of the tract or nearest thereto, and as to the relation of the tract thereto. If unsuccessful attempts have been made to secure a domestic water supply on the land itself, the facts concerning them should be set forth.

(1) If the tract has not theretofore been designated under sections 1 to 5 of

[2] An original entry under the Enlarged Homestead Acts may not exceed one and one-half miles in extreme length. (47 L. D. 370).

the act, applicants for designation under section 6 thereof should, in addition to the above, furnish the information required of applicants for designation under sections 1 to 5, as explained in this section.

(c) The filing of a statement, as above indicated, will not be conclusive as to the character of the land therein described, and the applicant may be required by the regional administrator to furnish additional evidence with regard thereto. Moreover, the filing of an application and petition does not give the party the right to fence the land or place other improvements thereon, and the erection of improvements will not confer upon him any right to equitable consideration of the application in the event the land is found not to be of the character contemplated by those provisions of the Enlarged Homestead Act under which the claim is filed.

CROSS REFERENCE: For original, additional, second and adjoining farm homesteads authorized by the general provisions of the homestead laws, see Part 166 of this chapter.

§ 167.8 *Action on applications.* The applications for entry (when regular) will be acted upon and disposed of as provided by Part 296 of this chapter.

§ 167.9 *Segregative effect of application; two applications by same applicant at same time not permitted.* No other appropriation of the land will be allowed before the application has been finally disposed of. Prior to final action on the application the party's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

ADDITIONAL ENTRY FOR CONTIGUOUS LANDS, BEFORE PROOF ON ORIGINAL CLAIM

§ 167.10 *Who may make additional entry; requirements for proof.* (a) Under section 3 of the Enlarged Homestead Acts a person who has entered less than 320 acres of land which is of the character described therein, and which has been designated for entry under those acts, may make entry of adjoining lands, also so designated, which will not, together with the tract first entered, exceed 320 acres in area. Where proof has not already been submitted on the original claim at the time application for additional entry is filed, residence upon and cultivation of the tract first entered will be accepted as equivalent to residence upon and cultivation of the additional. Credit for compliance with the law as to additional entry may be allowed from the date of the filing of the application to enter.

(b) Where a person makes entry under the general provisions of the homestead laws, and before submission of proof on said entry makes an additional entry under said section 3, the following rules govern the requirements as to the cultivation and residence to be shown by him on submission of proof:

(c) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivated, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for 1 year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in § 166.40 of this chapter are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(d) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for 1 year, increased to one-eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If cultivation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i. e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than 7 years from the date of the original entry.

CROSS REFERENCE: For proofs, see Part 166 of this chapter.

ADDITIONAL ENTRY FOR CONTIGUOUS LANDS, AFTER PROOF ON ORIGINAL CLAIM

§ 167.11 *Statutory authority.* The act of March 3, 1915 (38 Stat. 956; 43 U. S. C. 218, 219), amends sections 3 and 4 of the Enlarged Homestead Acts of February 19, 1909 (35 Stat. 639; 43 U. S. C. 218), and June 17, 1910 (36 Stat. 531; 43 U. S. C. 219), so as to permit an additional entry thereunder to be made, though proof has already been submitted on the original, provided the applicant still owns and occupies the tract first entered, and it defines the residence and cultivation required in connection therewith.

§ 167.12 *Who may make additional entry.* The act of March 3, 1915, confers the right of entry only upon one who "still owns and occupies the land" first entered; it is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. A statement showing continued ownership and occupancy must be inserted in Form 4.004a, in case of applications under this act. It should be observed that no change has been made in the requirement of law that the tracts be contiguous; and this would not be fulfilled by the fact that they corner on each other.

§ 167.13 *Conditions respecting residence.* The claimant is allowed credit for residence on the original tract and can not, in any event, be required to show residence continued for a greater period than is prescribed by section 2291 of the Revised Statutes. In other words, if the proof on the original entry has been accepted as sufficient under either the 5-year or the 3-year act, no further residence is needed; but, if the proof was by way of commutation, claimant must show such further residence, before or after the date of the additional entry, as will make up the aggregate amount required by the provisions of the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218).

§ 167.14 *Cultivation required.* The law regarding cultivation, with reference to additional entries made before submission of proofs on the originals, has no application to the entries allowed under the act of March 3, 1915. The claimant is required to show cultivation of the additional tract itself, to the extent and for the period required by the act of June 6, 1912, that is, one-sixteenth of its area during the second year of the entry, and one-eighth during the third and until submission of proof, which must occur within 5 years after the date of the additional entry.

CROSS REFERENCE: For cultivation requirements, see §§ 166.22–166.25, 166.40–166.43 of this chapter.

ADDITIONAL ENTRY FOR INCONTIGUOUS LANDS, AFTER PROOF ON ORIGINAL CLAIM

§ 167.15 *Statutory authority.* (a) Under section 7 of the Enlarged Homestead Acts, added thereto by the act of July 3, 1916 (39 Stat. 344; 43 U. S. C. 218), and the act of September 5, 1916 (39 Stat. 724; 43 U. S. C. 219), a person who has submitted final proof on a homestead entry for less than 320 acres of land of the character contemplated by said acts, has the right to enter sufficient land of similar character, not contiguous to his first entry, to make up therewith not more than 320 acres. He is required to have the same residence and cultivation and a habitable house on the additional entry as though it were an original filing, except where the second tract is within 20 miles of the first, in which case residence and a habitable house on either tract will be accepted.

(b) A qualified person who owns and continues to reside on his original entry may make entry for two or more incontiguous tracts within 20 miles of his original entry, if unable to secure in one tract the entire area he is entitled to enter; but one who no longer owns his original entry, or who seeks land not within 20 miles therefrom, can not be allowed to enter incontiguous tracts under this act.

§ 167.16 *Conditions under which additional entry may be made.* Section 7 of the Enlarged Homestead Acts has no application unless the first entry was made in one of the States where the Enlarged Homestead Act is in force, and the additional entry can not be allowed until both tracts shall have been designated thereunder. However, in considering allowance of the entry it is not material whether the applicant owns or occupies the original tract. A person whose two incontiguous entries do not make up 320 acres, who has submitted proof on the first and occupies his unperfected second claim, may amend the latter by adding land contiguous thereto, so as to aggregate that area, subject to the requirements of this act respecting residence and cultivation. Also the benefits of this act may be claimed by a person who has

made and perfected more than one homestead entry, but the aggregate area of the land thus acquired with that applied for is limited to 320 acres.

§ 167.17 *Qualifications required of applicant.* The only qualifications required of an applicant under section 7 of the Enlarged Homestead Acts are that he has not already made an additional entry thereunder, and that the tract applied for will not, with other lands which he has entered and acquired title to under any of the nonmineral public land laws, or which he is then claiming thereunder, make an aggregate of more than 480 acres.

§ 167.18 *Designation of original and additional tracts.* It is not necessary that any of the land be designated under the Enlarged Homestead Act when the application for additional entry is filed. The applicant must state that both tracts have been so designated, or he must file petition for designation of the undesignated land, as provided by the act of March 4, 1915 (38 Stat. 1162; 43 U. S. C. 220), and separate petitions must be filed for the different tracts if both be undesignated.

§ 167.19 *Showing required for proof.* (a) There must be shown in proof on the entry the usual residence and cultivation and the existence of a habitable house upon the land entered, exception to these rules being made only where said tract is within 20 miles of that embraced in the original entry and the entryman is residing on the latter. In that event the homesteader need not reside on the additional entry nor have a habitable house thereon, if he owns and resides upon the original tract when applying for said entry, and continues both ownership and residence until submission of proof.

(b) In the proof, to be submitted within 5 years after the date of additional entry, there must be shown residence on the additional tract, or on the original, if permitted under the 20-mile exception above explained, for not less than 3 years, subject to the privilege of being absent 5 months in each year, as provided by the 3-year homestead law; also cultivation of not less than one-sixteenth of the additional tract during the second year after the date of the entry, and of not less than one-eighth of its area during the third year and until submission of proof; but residence and cultivation for the requisite period after the date of the application and until the submission of proof will be accepted. Credit for military service will be allowed as in other cases.

§ 167.20 *Showing required in petition for designation.* (a) As in other cases, a petition for designation, filed in connection with an entry under section 7 of the Enlarged Homestead Acts, must consist of a statement, signed in duplicate by the applicant and at least two witnesses, setting forth a description by legal subdivisions of all the land involved, its character, and the conditions governing the irrigability of both tracts.

(b) If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given. The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated. The petition should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

§ 167.21 *Entries under section 6 of Enlarged Homestead Act.* The provisions of the acts of July 3 and September 5, 1916, do not apply to entries under section 6 of the Enlarged Homestead Act.

ADDITIONAL ENTRY AFTER PROOF FOR LESS THAN 160 ACRES, FOR DOUBLE THE AREA OF THE ADDITIONAL RIGHTS

§ 167.22 *Statutory authority.* The act of February 20, 1917 (39 Stat. 925; 43 U. S. C. 215), permits a person who has perfected a homestead entry for less than 160 acres and is entitled to an additional entry for sufficient land to make that area, to enter under the Enlarged Homestead Act a tract designated thereunder of an amount double that which he would be entitled to appropriate of land not so designated.

§ 167.23 *Designation required of additional tract.* The act of February 20, 1917, permits an additional entry under the Enlarged Homestead Act to be made for a tract designated as subject thereto, although the land included in the applicant's perfected entry be not thus designated; it is immaterial whether he owns the original tract, and the additional tract may be contiguous thereto or at any distance therefrom.

§ 167.24 *Description required of all former entries.* The application must contain a description of all entries theretofore made by the applicant or such data as will serve to identify them.

§ 167.25 *Area of additional right.* Under section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 214), a person who has partially exhausted his homestead right through a perfected entry is entitled to make an additional entry for so much land as will with the area of the completed entry make 160 acres. The act of February 20, 1917, supplements that legislation by providing that the additional land, if designated under the Enlarged Homestead Act, shall be estimated at only one-half its actual area in the calculation under the act of March 2, 1889. To illustrate: If the person has obtained title to 40 acres, he may make additional entry for not exceeding 240 acres of enlarged homestead land, that is, twice 120; if he has had 80 acres, he may still take 160 acres of such land; if he has had 120 acres, he may now take an additional 80 acres.

§ 167.26 *Petition for designation.* In connection with an application pursuant to the provisions of the act of February 20, 1917, a petition for designation of the land sought may be filed as provided in other cases of applications under the Enlarged Homestead Act, and the proceedings with relation to the application and petition will be as in other cases.

§ 167.27 *Right to additional area, when application cannot be allowed under section 3 or 7 of Enlarged Homestead Act.* Where an application is filed for additional entry under either section 3 or section 7 of the Enlarged Homestead Act, and the Secretary of the Interior or other authorized officer refuses to designate thereunder the tract included in the original perfected entry, the application may be allowed for so much of the land sought as the claimant is entitled to enter under the act of February 20, 1917, provided said land be designated as subject to the Enlarged Homestead Act.

§ 167.28 *Showing required for proof.* In proof on an entry allowed pursuant to the provisions of the act of February 20, 1917, there must be shown the existence of a habitable house upon the land entered and the usual residence and cultivation. Residence must be for not less than 3 years, subject to the privilege of being absent 5 months in each year, in two periods if desired. There must be cultivation of not less than one-sixteenth of the land entered during the second year after the date of the entry, and not less than one-eighth of its area during the third year and until submission of proof. However, credit for military service will be allowed as in other cases. Proof must be submitted within 5 years after the date of the entry.

DESIGNATION UNDER ENLARGED HOMESTEAD LAWS OF ENTERED LANDS WITHIN NATIONAL FORESTS, AS A BASIS FOR ADDITIONAL ENTRY OUTSIDE SUCH FORESTS

§ 167.29 *Statutory authority.* By act of March 4, 1923 (42 Stat. 1445; 43 U. S. C. 222), provision has been made whereby the Secretary of the Interior may designate under the Enlarged Homestead Act national forest lands embraced in subsisting or perfected homestead entries of 160 acres or less so that such forest homestead entries may be the basis for additional entries under said act.

CROSS REFERENCE: For national forest homesteads, see Part 170 of this chapter.

§ 167.30 *Intent and purpose of act of March 4, 1923.* The intent and purpose of the act of March 4, 1923, is to permit persons holding existing or perfected

homestead entries for lands within national forests of a character subject to designation which the applicant owns and on which he resides, to make additional entries for such a quantity of land outside of the national forest and within 20 miles of the original entry as when added to the area of the original entry will not exceed 320 acres, if under section 1 thereof.

§ 167.31 *Procedure for entry and proof.* The procedure in making and perfecting an entry under section 1 of the act of March 4, 1923, will be in all respects similar to that explained in §§ 167.1–167.14, covering additional entries under the Enlarged Homestead Acts, the only difference being that at the time of making the entry hereunder after proof on an original entry, the applicant must show ownership of and residence on the land in the original entry, instead of ownership and occupancy, and an additional hereunder may be made for land not adjoining that in the original entry. Residence on the original entry may be credited on both entries, but cultivation of the land in the additional entry must be as indicated in § 167.10.

NONRESIDENCE HOMESTEADS

§ 167.32 *Nonresidence homesteads in Utah.* (a) The sixth section of the act of February 19, 1909 (35 Stat. 640; 43 U. S. C. 218), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands need not reside thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act.

(b) During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. This requirement is made by the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 218). Proof may be submitted on entries of this class within 7 years after their dates.

(c) The rules relating to petitions for designation of lands apply to section 6 of the enlarged Homestead Act.

§ 167.33 *Nonresidence homesteads in Idaho.* The sixth section of the act of June 17, 1910 (36 Stat. 531, as amended by the act of August 10, 1917 (40 Stat. 275; 43 U. S. C. 219), provides that 1,000,000 acres of land in the State of Idaho which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon them possible, may be designated by the Secretary as subject to entry thereunder, without the necessity of residence upon such lands, by the entryman. One-sixteenth of the cultivatable area of the entry must be cultivated during the first year of the entry, one-eighth of the area during the second year, and one-fourth of the area during the third and each succeeding year. Under the act as amended it is required that "after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho."

ENLARGED HOMESTEAD SUBJECT TO MORTGAGE LOANS

§ 167.34 *Mortgage loans on existing homestead entries; allowance of homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C. Supp. III secs. 1006a, 1006b), should proceed in accordance with § 166.86 of this chapter.

§ 167.35 *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

PART 168—STOCK-RAISING HOMESTEADS[1]

FINAL PROOFS ON ORIGINAL AND ADDITIONAL ENTRIES

Sec.
168.1 Requirements for proof on original entry and on additional entry subject to section 3 of the stock-raising law.
168.2 Requirements for proof on additional entry subject to section 4 of the stock-raising law.
168.3 Requirements for proof on additional entry subject to section 5 of the stock-raising law.
168.4 Commissions.
168.5 Time limit in submitting proof; commutation.

RESERVATION TO THE UNITED STATES OF THE COAL AND OTHER MINERAL DEPOSITS; PROTECTION OF THE RIGHTS OF SURFACE ENTRYMEN AND OWNERS IN THE DISPOSAL OF THE RESERVED DEPOSITS

168.6 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.
168.7 Mineral reservation in patent; conditions to be noted on mineral applications.

AUTHORITY: §§ 168.1 to 168.7 issued under sec. 11, 39 Stat. 865; 43 U. S. C. 301.

CROSS REFERENCES: For applications and entries, see Parts 101 to 108 of this chapter. For enlarged homesteads, see Part 167 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For Kinkaid homesteads, see Part 169 of this chapter. For land classifications, see Part 296 of this chapter. For National forest homesteads, see Part 170 of this chapter. For original, additional, second, and adjoining farm homesteads, authorized by the general provisions of the homestead laws, see Part 166 of this chapter.

FINAL PROOFS ON ORIGINAL AND ADDITIONAL ENTRIES

§ 168.1 *Requirements for proof on original entry and on additional entry subject to section 3 of the stock-raising law.* (a) Original stock-raising entries, and additional entries subject to section 3 of the stock-raising law of December 29, 1916 (39 Stat. 863; 43 U. S. C. 293)[2] may be perfected by proofs submitted within five years after their dates on a showing of compliance with the provisions of the 3-year law (act of June 6, 1912, 37 Stat. 123; 43 U. S. C. 164, 169, 218), except that expenditures for improvements must be shown in lieu of the cultivation required by that act. The entryman must show that he has actually used the land for raising stock and forage crops for not less than 3 years, and that he has made permanent improvements upon the land, having an aggregate value of not less than $1.25 per acre, and tending to increase the value of the land for stock-raising purposes; and at least one-half of the improvements must be placed upon the tract within 3 years after the date of the entry.

(b) As to residence, this must be continued for 3 years, subject to the privilege of a 5 months' absence in each year, divisible into two periods, if desired, but credit on the residence period on account of military service during time of war will be allowed as on other homestead entries; where an entry has been made, additional to a pending entry, or to a perfected entry for a tract, still owned by the claimant, the residence may be had on either of the tracts involved for 3 years after the additional is allowed, or becomes allowable. In other cases such residence must be on the land additionally entered. It must appear at the time of proof that there is then a habitable house on the land; but it will not be counted in estimating the value of the permanent improvements required to be placed on the tract, as above stated. If the entry comprises two noncontiguous tracts, the residence may be on either.

(c) Where satisfactory final proof is received involving several homestead entries and one or more of the entries involved is under the Stock Raising Act,

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[1] The regulations under the stock-raising homestead law may be divided into three principal groups, as follows:

(a) Regulations relating to the designation and entry of public land for stock-raising homesteads.

(b) Regulations relating to the submission of final proofs on outstanding entries.

(c) Regulations relating to the reservation to the United States of the coal and other mineral deposits in the lands and the protection of the rights of surface entrymen and owners in the disposal of the reserved deposits.

In view of the general withdrawal of the public lands from entry and the restrictions on classifications provided by section 7 of the Taylor Grazing Act, as set forth in Part 296 of this chapter, the regulations referred to in item (a) have not been codified.

The regulations mentioned in items (b) and (c) were of general applicability and legal effect on December 31, 1948, and, therefore, such regulations have been included in this part.

[2] The stock-raising homestead law of December 29, 1916 (39 Stat. 862; 43 U. S. C. 291–301) was amended or supplemented by the acts of October 25, 1918 (40 Stat. 1016; 43 U. S. C. 293), September 29, 1919 (41 Stat. 287; 43 U. S. C. 294, 295), Mar. 4, 1923 (42 Stat. 1445; 43 U. S. C. 222) and June 6, 1924 (43 Stat. 469; 43 U. S. C. 292).

separate final certificate covering the stock-raising entry or entries will be issued.

§ 168.2 *Requirements for proof on additional entry subject to section 4 of the stock-raising law.* On submission of proof on an additional entry subject to section 4 of the stock-raising law (39 Stat. 863; 43 U. S. C. 294), the claimant must show residence on one of the tracts to the extent ordinarily required, but will be entitled to credit for residence on the original tract before or after the date of the additional entry; he must also show improvements on the additional tract or tracts to the value of $1.25 for each acre thereof. Proof on the additional entry may be submitted within 5 years after its allowance, when the requisite residence can be shown, but not before submission of proof on the original. Proof on the original entry must be submitted under the provisions of the law pursuant to which it was made, and within its life, as limited thereby; but, subject to that condition, one proof may be submitted on the two entries jointly.

§ 168.3 *Requirements for proof on additional entry subject to section 5 of the stock-raising law.* (a) In order to acquire title to the land embraced in an additional entry subject to section 5 of the stock-raising law (39 Stat. 863; 43 U. S. C. 295), it is necessary only that claimant show the expenditure on the additional tracts of $1.25 per acre for improvements of the kind described in § 168.1. At least half of such expenditures must be made within 3 years after allowance of the entry. Proof may be submitted at any time within 5 years after the entry is allowed.

(b) Where satisfactory proof has been submitted on the original entry the additional entry may be perfected under this section of the act regardless of the question whether it was 3-year, 5-year, or commutation proof.

(c) An additional entry made under the first proviso to section 3 of the act (39 Stat. 863; 43 U. S. C. 293) by one who owns but does not reside on his original entry may be amended to stand and be completed under section 5 of the act, on proper application and showing of facts, in the event bona fide residence is resumed on the original entry before the intervention of an adverse claim.

§ 168.4 *Commissions.* The commissions on submitting final proof amount to 3 percent on the Government price ($1.25 or $2.50 per acre, as the case may be), of the land in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and to 2 percent in the other States. For example, on an entry for 640 acres in Washington, not within granted railroad limits, and therefore $1.25 land, the payment on submitting proof would be $24, in addition to testimony fees and publication fees payable to a newspaper.

§ 168.5 *Time limit in submitting proof; commutation.* Proofs on entries under the act of December 29, 1916, must be submitted within 5 years after the dates of their allowance, and no such entry is subject to commutation.

RESERVATION TO THE UNITED STATES OF THE COAL AND OTHER MINERAL DEPOSITS; PROTECTION OF THE RIGHTS OF SURFACE ENTRYMEN AND OWNERS IN THE DISPOSAL OF THE RESERVED DEPOSITS

§ 168.6 *Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.* (a) Section 9 of the act of December 29, 1916 (39 Stat. 864; 43 U. S. C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(b) Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting.

(c) It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond on Form 4–684 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, which two competent individual sureties, or a bonding company which has complied with the requirements of the act of August 13, 1894 (28 Stat. 279; 6 U. S. C. 6–13), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U. S. C. 8, 9), and must be in the sum of not less than $1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with the manager of the land office of the district wherein the land is situate, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

(d) If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land no objections are made by such entryman or owner of the land and filed with the manager against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said manager, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the manager, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the manager be not timely filed by the person proffering the bond, the manager will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the manager adverse to the contentions of said homestead entryman or owners of the lands, said manager may, if all else be regular, approve the bond.

(e) The coal and other mineral deposits in the lands entered or patented under the act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry, unless the lands or the coal or other mineral deposits are, at the time of said allow-

ance, withdrawn or reserved from disposition.

CROSS REFERENCE: For mineral land regulations, generally, see Parts 185, 187, 191 to 193 of this chapter.

§ 168.7 *Mineral reservation in patent; conditions to be noted on mineral applications.* (a) There will be incorporated in patents issued on homestead entries under this act the following:

Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the act of December 29, 1916 (39 Stat. 862).

(b) Mineral applications for the reserved deposits disposable under the act must bear on the face of the same, before being signed by the declarant or applicant and presented to the manager, the following notation:

Patents shall contain appropriate notations declaring same subject to the provisions of the act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said act.

PART 169—KINKAID HOMESTEADS

ENTRY OF CERTAIN LANDS IN NORTHWESTERN NEBRASKA

Sec.

169.1 Lands subject to Kinkaid entry.
169.2 Additional entry contiguous to original; ownership and occupancy of original required.
169.3 Proof on original and additional entries required within statutory period.
169.4 Additional entry must be contiguous to original and compact in form.
169.5 Rule for determining compactness of form.
169.6 Additional entry contiguous or incontiguous to original; ownership and occupancy of original not required.
169.7 Second entry.
169.8 Improvements required.
169.9 Form of final proof.
169.10 Fees and commissions required.
169.11 Commutation prohibited.

AUTHORITY: §§ 169.1 to 169.11 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For applications and entries, see Parts 101 to 108 of this chapter. For enlarged homesteads, see Part 167 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For national forest homesteads, see Part 170 of this chapter. For original, additional, second and adjoining farm homesteads, authorized by the general provisions of the homestead laws, see Part 166 of this chapter. For stock-raising homesteads, see Part 168 of this chapter.

§ 169.1 *Lands subject to Kinkaid entry.*[1] It is directed by the act of April 28, 1904 (33 Stat. 547; 43 U. S. C. 24) commonly known as the Kinkaid Act, that in that portion of the State of Nebraska lying west and north of the line described therein, upon and after June 28, 1904, except for such lands as might be thereafter and prior to said date excluded under the proviso contained in the first section thereof, homestead entries may be made for and not to exceed 640 acres, the same to be in as nearly a compact form as possible, and must not in any event exceed 2 miles in extreme length.

§ 169.2 *Additional entry contiguous to original; ownership and occupancy of original required.* Under the provisions of the second section of the act of April 28, 1904, as amended by section 7 of the act of May 29, 1908 (35 Stat. 466; 43 U. S. C. 224), a person who within the described territory has made entry prior to May 29, 1908, under the homestead laws of the United States, and who owns and occupies the lands theretofore entered by him, and is not otherwise disqualified, may make an additional entry of a quantity of land contiguous to his said homestead entry, which, added to the area of the original entry, shall make an aggregate area not to exceed 640 acres; and he will not be required to reside upon the additional land so entered, but residence continued and improvements made upon the original homestead entry subsequent to the making of the additional entry will be accepted as equivalent to actual residence and improvements on the land covered by the additional entry. But residence either upon the original homestead or the additional land entered must be continued for the period of 3 years from the date of the additional entry, except that entrymen may claim and receive credit on that period for the length of their military service, not exceeding two years.

CROSS REFERENCE: For public land rights of soldiers and sailors, see Part 181 of this chapter.

§ 169.3 *Proof on original and additional entries required within statutory period.* A person who has a homestead entry upon which final proof has not been submitted, and who makes additional entry under the provisions of section 2 of the act of April 28, 1904 (33 Stat. 548; 43 U. S. C. 224), will be required to submit his final proof on the original entry within the statutory period therefor, and final proof upon the additional entry must also be submitted within the statutory period from date of that entry.

§ 169.4 *Additional entry must be contiguous to original and compact in form.* Such additional entry must be for contiguous lands, and the tracts embraced therein must be in as compact a form as possible; and the extreme length of the combined entries must not in any event exceed 2 miles.

§ 169.5 *Rule for determining compactness of form.* In accepting entries under the act of April 28, 1904, compliance with the requirements thereof as to compactness of form should be determined by the relative location of the vacant and unappropriated lands, rather than by the quality and desirability of the desired tracts.

§ 169.6 *Additional entry contiguous or incontiguous to original; ownership and occupancy of original not required.* By the first provisio of section 3 of the act of April 28, 1904 (33 Stat. 548; 43 U. S. C. 224), any person who made a homestead entry either within the Kinkaid territory or elsewhere prior to his application for entry under this act, if no other disqualification exists, will be allowed to make an additional entry for a quantity of land which, added to the area of the land embraced in the former entry, shall not exceed 640 acres, but residence upon and cultivation of the additional land will be required to be made and proved as in ordinary homestead entries. But the application of one who has an existing entry and seeks to make an additional entry under said proviso can not be allowed unless he has either abandoned his former entry or has so perfected his right thereto as to be under no further obligation to reside thereon; and his qualifying status in these and other respects should be clearly set forth in his application.

§ 169.7 *Second entry.* Under the act of April 28, 1904, no bar is interposed to the making of second homesteads for the full allowable area by parties entitled thereto under existing laws, and applications therefor will be considered under the instructions of the respective laws under which they are made.

§ 169.8 *Improvements required.* Upon final proof, which may be made after 3 years and within 5 years from date of entry, the entryman must prove affirmatively that he has placed upon the lands entered permanent improvements of the value of not less than $1.25 per acre for each acre, and such proof must also show residence upon and cultivation of the land for the 3-year period as in ordinary homestead entries, but credit for military service may be claimed and given.

§ 169.9 *Form of final proof.* In the making of final proofs the homestead-proof form will be used, modified when necessary in case of additional entries made under the provisions of section 2 of the act of April 28, 1904 (33 Stat. 548; 43 U. S. C. 224).

§ 169.10 *Fees and commissions required.* It is provided by section 3 of the act of April 28, 1904 (33 Stat. 548; 43 U. S. C. 224) that the fees and commissions on all entries under the act shall be uniformly the same as those charged under the law for an entry of 160 acres at the minimum price, viz: At the time the application is made, $14, and at the time of making final proof, $4, to be payable without regard to the area embraced in the entry.

§ 169.11 *Commutation prohibited.* Entries under the act of April 28, 1904, are not subject to the commutation provisions of the homestead law.

[1] While the Kinkaid Homestead Act authorizes original homestead entries for not exceeding 640 acres, and additional entries for an area sufficient with the area of the originals to make up 640 acres, the maximum area of land withdrawn by E. O. 6964, Feb. 5, 1935 which may be entered under said act and section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315f) is 320 acres. See Part 296 of this chapter.

PART 170—NATIONAL FOREST HOMESTEADS

Sec.

170.1 Statutory authority.
170.2 Examination, classification, and listing of lands for settlement and entry.
170.3 Classification directed; request for classification.
170.4 Classification notice to be posted and published.
170.5 Payment for publication of classification notice.
170.6 Preference-right claimants.
170.7 Survey required before proof.
170.8 Metes-and-bounds surveys authorized.
170.9 Application for survey; posting on land of copy of approved plat.
170.10 Commutation not allowed; requirements for proof.
170.11 Requirements as to posting of final proof notice, field notes and plats, where homestead entry survey is made.
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AUTHORITY: §§ 170.1 to 170.16 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For enlarged homesteads, see Part 167 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For forest lieu selections, see footnote to Part 130 of this chapter. For general orders of withdrawal, effect of, see footnote to Part 295 of this chapter. For Indian allotments in national forests, see § 176.15 of this chapter. For Kinkaid homesteads, see part 169 of this chapter. For national forest homesteads, Alaska, see § 65.28 of this chapter. For national forests, see Part 205 of this chapter. For original, additional, second, and adjoining farm homesteads under the general provisions of the homestead laws, see Part 166 of this chapter. For stock-raising homesteads, see Part 168 of this chapter. For national forest regulations of the Forest Service, Department of Agriculture, see Parks, Forests and Memorials, 36 CFR 211.

§ 170.1 *Statutory authority.* The act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), authorizes homestead entries for lands within national forests.

§ 170.2 *Examination, classification, and listing of lands for settlement and entry.* Both surveyed and unsurveyed lands within national forests which are chiefly valuable for agriculture and not needed for public use may, from time to time, be examined, classified, and listed under the supervision of the Secretary of Agriculture, and lists thereof will be filed by him with the Bureau of Land Management. The Bureau of Land Management will then declare the listed lands subject to settlement and entry.

§ 170.3 *Classification directed; request for classification.* By an act approved August 10, 1912 (37 Stat. 287; 16 U. S. C. 506), the Secretary of Agriculture was directed to select, classify, and segregate all lands within the boundaries of national forests that may be opened to entry under the homestead laws applicable thereto. Any person interested in securing a classification or review of a classification previously made by the Secretary of Agriculture should present his request to the supervisor of the national forest in which the land is located, and should state the reasons which he may have for believing the land has not been properly classified.

§ 170.4 *Classification notice to be posted and published.* When any lands have been declared subject to settlement and entry under the act of June 11, 1906, a list of such lands, together with a copy of the notice of restoration thereof to entry and authority for publication of such notice, will be transmitted to the manager for the district within which the lands are located. Upon receipt thereof the manager will designate a newspaper published within the county in which the land is situated and transmit to the publishers thereof the letter of authority and copy of notice of restoration, said notice to be published in the designated newspaper once each week for 4 successive weeks. The manager will also post in his office a copy of said notice, the same to remain posted for a period of 60 days immediately preceding the date when the lands are to be subject to entry. If no paper is published within the county, publication should be made in a newspaper published nearest the land.

§ 170.5 *Payment for publication of classification notice.* The cost of publishing the notice mentioned in the preceding section will not be paid by the manager, but the publisher's vouchers therefor, in duplicate, should be forwarded to the proper authorized officer, by the publisher, accompanied by a duly executed proof of publication.

§ 170.6 *Preference-right claimants.* (a) Any person qualified to make a homestead entry who, prior to January 1, 1906, occupied and in good faith claimed any lands listed under the Act of June 11, 1906, for agricultural purposes, and who has not abandoned the same and the person upon whose application such land was listed, has, each in the order named, the preferred right to enter the lands so settled upon or listed at any time within 60 days prior to restoration of the land. Should an application be filed by such settler during the 60-day period the manager will, upon his showing by a signed statement the fact of such settlement and continued occupancy, allow the entry. If an application is filed during the said period by the party upon whose request the lands were listed, the manager will retain said application on file in his office until the date of restoration or until an entry has been made by a claimant having the superior preference right. If no application by a bona fide settler prior to January 1, 1906, is filed within the preference-right period the manager will allow the application of the party upon whose request the lands were listed. If entry by a person claiming a settler's preference right is allowed, other applications should be rejected without waiting the expiration of the preferred period. Of the applicants for listing, only the one upon whose request a tract is listed secures any preference right. Other applicants for the listing of the same tract acquire no right by virtue of such applications.

(b) All applications by others than the classes above referred to, which are filed prior to the date of opening, should be rejected forthwith notwithstanding the fact that an attempted transfer of the preference right of entry may have been made. The terms and conditions under which applications may be filed by veterans of World War II and of the Korean conflict and by the general public will be set forth in the order of restoration.

CROSS REFERENCE: For restorations, see Part 295 of this chapter. For preference rights accorded to veterans of World War II and of the Korean conflict, see Part 181 of this chapter.

§ 170.7 *Survey required before proof.* When an entry embraces unsurveyed lands or irregular fractional parts of a subdivision of a surveyed section, a metes-and-bounds survey of such lands and fractional parts must be made at some time before the entryman applies to make final proof. Survey will not be required where the tract can be described by legal subdivisions or as a quarter or a half of a surveyed quarter-quarter section or rectangular-lotted tract, or as a quarter or half of a surveyed quarter-quarter-quarter-section or rectangular-lotted tract.

CROSS REFERENCES: For surveys, Alaska, see Part 78 of this chapter. For surveys generally, see Part 280 of this chapter.

§ 170.8 *Metes-and-bounds surveys authorized.* Under the act of August 10, 1912 (37 Stat. 287; 16 U. S. C. 506), and subsequent acts making appropriations for the Department of Agriculture, authority is given for the making of metes-and-bounds surveys by the forest officers under the direction of the authorized officer of the Department of the Interior.

§ 170.9 *Application for survey; posting on land of copy of approved plat.* Application for survey should be made by the entryman to the regional forester of the region in which the land lies, and upon execution of same and filing of the approved plat in the land office a copy of same will be sent to the entryman for posting upon the land during the period of publication, and upon receipt of his plat the entryman may apply to submit proof.

§ 170.10 *Commutation not allowed; requirements for proof.* (a) The commutation provisions of the homestead laws do not apply to entries made under the act of June 11, 1906, but all entrymen must make final proof of residence and cultivation within the time, in the manner and under the notice prescribed by the general provisions of the homestead laws, except that all entrymen who are required by §§ 170.7–170.9 to have their lands, or any portion of them, surveyed must, within 5 years from the date of their settlement, present to the manager their application to make final proof of all of the lands embraced in their entries.

(b) Entries made under the act of June 11, 1906, are subject to the provisions of sections 2291 and 2297, Revised Statutes, as amended by the 3-year Homestead Act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218).

CROSS REFERENCE: For residence and cultivation requirements, see §§ 166.22–166.43 of this chapter.

§ 170.11 *Requirements as to posting of final proof notice, field notes and plats, where homestead entry survey is made.* In all cases where a survey of any portion of the lands embraced in an entry made under the act of June 11, 1906 is required, the manager will, in addition to publishing and posting the usual final-proof notices, keep a copy of the final-proof notice, with a copy of the field notes and the plat of such survey attached, posted in his office during the period of publication, and the entryman must keep a copy of the final-proof notice and a copy of the plat of his survey prominently posted on the lands platted during the entire period of publication of notice of intention to submit final proof, and at the same time his final proof is offered he must file a statement showing the date on which the copies of the notice and plat were posted on the land and that they remained so posted during such period, giving dates.

§ 170.12 *Description of land by metes and bounds not required in proof notices.* (a) In publishing the notice of intention to submit final proof on entries for lands covered by homestead entry surveys the survey number should not be followed by the description by metes and bounds. The purpose of such omissions is to avoid a lengthy description, the cost of which often causes a real hardship to the entryman.

(b) As a plat of the survey is posted on the land and in the land office, it is deemed sufficient in such publications to give the homestead entry number, list number, survey number, acreage, and the approximate description by section, township, and range numbers.

§ 170.13 *National forest homesteads in southern California and in the Black Hills National Forest.* Section 1 of the said act of June 11, 1906, having been amended by the act of May 30, 1908 (35 Stat. 554; 16 U. S. C. 506), the only counties in southern California in which entries thereunder can not be made, are San Luis Obispo and Santa Barbara, to which counties the act of June 11, 1906, does not apply. Entries made of lands in the Black Hills National Forest can be made only under the terms and upon the conditions prescribed in sections 3 and 4 of the act of June 11, 1906, as amended by the act of February 8, 1907 (34 Stat. 883), and the Act of July 3, 1912 (37 Stat. 188).

§ 170.14 *Classification and listing for homestead entry of land in Custer National Forest.* The act of June 13, 1930 (46 Stat. 583; 16 U. S. C. 510a) prohibits the acceptance by the Secretary of Agriculture of applications for classifications and listing for homestead entry of Custer National Forest lands. The proviso of the act, however, vests in that officer discretionary authority to list limited tracts in that forest when in his opinion such action will be in the public interest and will not be injurious to other settlers or users of the national forest.

§ 170.15 *Conditions governing homestead settlements.* The act of June 11, 1906, does not authorize any settlements within forest reserves except upon lands which have been listed, and then only in the manner set forth in §§ 170.1–170.13, and all persons who attempt to make any unauthorized settlement within such reserves will be considered trespassers and treated accordingly.

§ 170.16 *Claims initiated prior to establishment of forest protected.* The act of June 11, 1906, provides that nothing shall be done to impair in any way the legal rights of any bona fide homestead settler who has or shall establish residence upon public lands prior to their inclusion within a forest reserve and maintains his settlement claim as required by law.

CROSS REFERENCE: For Indian allotments in national forests, Alaska, and generally, see §§ 67.7 and 176.15 of this chapter.

SUBCHAPTER J—INDIAN ALLOTMENTS AND INDIAN LANDS

PART 176—INDIAN ALLOTMENTS AND POSSESSIONS

INDIAN ALLOTMENTS ON THE PUBLIC DOMAIN

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AUTHORITY: §§ 176.1 to 176.20 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For Bureau of Indian Affairs, Department of Interior, see Indians, 25 CFR Chapter I. For regulations of the Bureau of Indian Affairs concerning leasing of Indian allotted and tribal lands for farming, grazing, and business: See Indians, 25 CFR Parts 171, 177. For regulations of the Bureau of Indian Affairs relating to enrollment and reallotment to Indians, see Indians, 25 CFR Parts 51, 52. For regulations of the Bureau of Indian Affairs relating to heirs and wills, see Indians, 25 CFR Part 81. For regulations of the Bureau of Indian Affairs, relating to the sale of Indian lands, patents in fee, competency certificates, see Indians, 25 CFR Part 241.

INDIAN ALLOTMENTS ON THE PUBLIC DOMAIN [1]

§ 176.1 *Statutory authority.* Section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 389; 25 U. S. C. 334), as amended by the act of February 28, 1891 (26 Stat. 794), and section 17 of the act of June 25, 1910 (36 Stat. 859; 25 U. S. C. 336), provides that where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and that such allotments to Indians on the public domain shall not exceed 40 acres of irrigable land, or 80 acres of nonirrigable agricultural land or 160 acres of nonirrigable grazing land to any one Indian.

§ 176.2 *Certificate that applicant is Indian and entitled to allotment.* Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and entitled to such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 176.5.

§ 176.3 *Who may apply for allotment.* An applicant for allotment under the fourth section of the act of February 8, 1887, as amended, is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was

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[1] The act of March 1, 1933 (47 Stat. 1418; 43 U. S. C. 190a) provides that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah.

Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended, until such settlement has been authorized by classification. See Part 296 and §§ 297.11 and 297.12 of this chapter.

recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.

§ 176.4 *Allotment applications.* (a) The applicant, upon receipt of the required certificate, will fill out the blank form of allotment application and present the same, properly executed to the manager of the land office for the district in which the land is situated. The statements attached to the applications for certificate and allotment must be signed by the applicant.[1]

(b) In case an allotment application is presented without the required certificate, the manager will suspend the same for a period of 90 days from notice to enable the applicant to obtain and file such certificate, and that officer will advise the applicant and the Commissioner of Indian Affairs by duplicate notice that unless such certificate is furnished within that time the allotment application will be finally rejected; unless prior to the expiration of the 90-day period the Commissioner of Indian Affairs shall ask for additional time within which to determine the applicant's Indian status.

(c) The filing of an application for allotment on public lands does not secure to an Indian a vested right.

§ 176.5 *Blank forms.* Blank forms for application may be had from the Bureau of Indian Affairs, and land office, or district forester's office.

§ 176.6 *Rights of heirs of Indian settlers and applicants.* (a) Allotments are allowable only to living persons or those in being at the date of application. Where an Indian dies after settlement and filing of application, but prior to approval, the allotment will upon final approval be confirmed to the heirs of the deceased allottee.

(b) In disposing of pending applications in which the death of the applicant has been reported, the heirs of an applicant who was otherwise qualified at the date of application should be notified that they will be allowed 90 days from receipt of notice within which to submit proof that the applicant personally settled on the land applied for during his or her lifetime, and while the land was open to settlement, and upon failure to submit such proof within the time allowed the application will be finally rejected.

(c) When it is sufficiently shown that an applicant was at the time of death occupying in good faith the land settled on, patent will be issued to his or her heirs without further use or occupancy on the part of such heirs being shown.

§ 176.7 *Certificate of allotment.* (a) When the manager accepts an application under the fourth section of the act of February 8, 1887, as amended, he will issue to the applicant a "certificate of allotment," on a prescribed form, showing the name in full of the applicant, post-office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land applied for.

(b) Where the application under investigation is that of a single person over 21 years of age, or of the head of a family, report will also be made as to the character of the applicant's settlement and improvements. A similar report will be made on applications filed in behalf of minor children as to the character of the settlement and improvements made by the parent, or the person standing in loco parentis, on his or her own allotment under the fourth section.

§ 176.8 *Facts as to settlement which must be shown in application; issuance of trust patent.* (a) The nature, character, and extent of the settlement, as well as the manner in which performed, must be fully set forth in the allotment application. In examining the acts of settlement and determining the intention and good faith of an Indian applicant, due and reasonable consideration should be given to the habits, customs, and nomadic instincts of the race, as well as to the character of the land taken in allotment.

(b) While the act contains no specific requirements as to what shall constitute settlement, it is evident that the Indian must definitely assert a claim to the land based upon the reasonable use or occupation thereof consistent with his mode of life and the character of the land and climate.

(c) To enable an Indian allottee to demonstrate his good faith and intention, the issuance of trust patent will be suspended for a period of 2 years from date of settlement; but in those cases where that period has already elapsed at the time of adjudicating the allotment application, and when the evidence, either by the record or upon further investigation in the field, shows the allottee's good faith and intention in the matter of his settlement, trust patents will issue in regular course. Trust patents in the suspended class, when issued, will run from the date of suspension.

(d) In the matter of fourth-section applications filed prior to the regulations in this part, where, by the record or upon further investigation in the field, it appears that such settlement has not been made as is contemplated by the regulations, such applications will not be immediately rejected, but the applicant will be informed that 2 years will be allowed within which to perfect his settlement and to furnish proof thereof, whereupon his application will be adjudicated as in other cases.

§ 176.9 *Character of land and area subject to allotment; minerals may be reserved.* (a) The law provides that allotments may include not to exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing land.

(b) Irrigable lands are those susceptible of successful irrigation at a reasonable cost from any known source of water supply; nonirrigable agricultural lands are those upon which agricultural crops can be profitably raised without irrigation; grazing lands are those which can not be profitably devoted to any agricultural use other than grazing.

(c) Where an Indian makes settlement in good faith upon lands not reserved therefrom, an allotment therefor can not be denied on the ground that the lands are too poor in quality. Also, where settlement was made in good faith, the presence of valuable timber does not warrant the rejection of the allotment.

(d) An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

§ 176.10 *Segregative effect of application.* (a) An allotment application under the fourth section of the act of February 8, 1887, as amended, filed prior to September 23, 1913, does not, in the absence of a certificate from the Indian Office showing that the applicant is an Indian entitled to allotment, segregate the land, and subsequent applications for the same land may be received and suspended to await final action on the allotment application.

(b) Where an allotment application under the fourth section, filed subsequent to September 23, 1913, is not accompanied by the requisite certificate from the Indian Office showing the applicant to be entitled to allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

(c) Where an allotment application under the fourth section, accompanied by a certificate from the Indian Office showing that the applicant is an Indian and entitled to allotment, as required, is found to be in all respects complete and is accepted by the district land officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

§ 176.11 *Application for unsurveyed lands.* (a) An allotment application under the fourth section of the act of February 8, 1887, as amended, for unsurveyed lands must conform to the following rules along the lines of those found in § 101.6 of this chapter.

(1) It must contain a description of the land by metes and bounds, with courses, distances, and references to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass, unless one or more of the bound-

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

aries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or objects need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, watercourses, or other natural objects will not be permitted.

(2) An allotment to a minor child need not be contiguous to that made by the head of a family; but it is required that each allotment made to an individual, whether the head of a family, a single adult, or a minor child, when such allotment embraces more than one legal subdivision, must be composed of contiguous tracts, as in ordinary disposition of the public domain under a settlement law. An additional allotment must be governed by the same rule.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished, or if this cannot be done, a statement must be filed setting forth a valid reason therefor.

(c) The address of the claimant must be given, and it shall be the duty of the manager, upon the filing of the township plat in the land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 90 days. In default of action by the party notified, the manager will promptly adjust the claim to the public land survey, if possible.

(d) Notice of the application describing the land as above directed must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application.

§ 176.12 *Allotments to minor children.* An Indian settler on public lands under the fourth section of the act of February 8, 1887, as amended, is also entitled upon application to have allotments made thereunder to his minor children, stepchildren, or other children to whom he stands in loco parentis, provided the natural children are in being at the date of the parent's application, or the other relationship referred to exist at such date. The law only permits one entitled himself under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in loco parentis. Orphan children (those who have lost both parents) are not entitled to allotments on the public domain unless they come within the last-mentioned class. No actual settlement is required in case of allotments to minor children under the fourth section, but the actual settlement of the parent or of a person standing in loco parentis on his own public-land allotment will be regarded as the settlement of the minor children.

§ 176.13 *Indian wives.* (a) Where an Indian woman is married to a white man or other person not entitled to an allotment under the fourth section of the act of February 8, 1887, as amended, and not a settler or entryman under the general homestead law, her right, and that of the minor children born of such marriage, to allotments on the public domain will be determined without reference to the quantum of Indian blood possessed by such women and her children but solely with reference as to whether they are recognized members of an Indian tribe or are entitled to such membership.

(b) An Indian woman married to an Indian man who has himself received an allotment on the public domain or is entitled to one, or has earned the equitable right to patent on any form of homestead or small holding claim, is not thereby deprived of the right to file an application for herself, provided she is otherwise entitled, and also for her minor children where her husband is for any reason disqualified.

(c) An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regared as the head of a family and may file applications for herself and for the minor children under her care.

(d) In every case where an Indian woman files applications for her minor children it must appear that she has not only applied for herself under the fourth section but has used the land in her own application in some beneficial manner.

§ 176.14 *Charges and protests against Indian allotments.* (a) The act of April 23, 1904 (33 Stat. 297; 25 U. S. C. 343), limits the jurisdiction of the Secretary of the Interior to cancel first or trust patents issued on Indian allotments to specific instances, without authority from Congress. In view of the fact that information respecting the classes defined in said act is obtainable from the records of the Department of the Interior no charges preferred as to those classes will be entertained. Third parties are never invited to attack Indian allotments with the hope or expectation of securing any advantage by reason of such attack. Such parties must assume and pay the expense of a hearing, but at the same time they acquire no preference right to enter the land in the event of the cancellation of the allotment, and this whether first or trust patent has issued or not. Section 2 of the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185), does not apply to proceedings of this character.

(b) However, where a party claims equitable rights to lands covered by an Indian allotment for which trust patent has been issued, on account of prior settlement and improvements, a hearing may be ordered with the view of recommending to Congress that such patent be canceled, if the showing made at the hearing justifies such action. In this class of cases, and in cases of charges preferred against allotments on which trust patents have not issued, the following rules will be observed:

(1) The charges must be filed in the proper land office in the form of a duly corroborated affidavit, clearly setting forth the specific grounds for such charges. The manager will give the Bureau of Indian Affairs full information thereof.

(2) Where it is charged that the lands applied for are not of the character subject to allotment, that the required settlement has not been made, that the contestant has a prior and better claim, and that the applicant for allotment is not seeking to obtain the land in good faith but is acting in the interest of another person not entitled thereto, the regional administrator will cause a preliminary investigation to be made as to the truth and merits of the charges, if such action is deemed necessary. The charges will be dismissed unless they appear to be probably true.

(3) If sufficient showing is made, a hearing will be had before the proper land officer after due notice to all parties. The taking of testimony and other proceedings in such hearings will be in accordance with the Rules of Practice, Part 221 of this chapter, governing proceedings before the manager.

(c) Nothing in the foregoing will prevent the Department from accepting an Indian's relinquishment of an unpatented allotment and directing its cancellation if, after the charges are filed, it is shown that the allotment ought to be canceled.

(d) Third parties are not privileged to intervene in proceedings to determine whether lands applied for are of the character subject to allotment or as to the right of the Indian to an allotment as this is a matter resting solely in the judgment of the Department.

§ 176.15 *Allotments within national forests.* (a) By the terms of section 31 of the act of June 25, 1910 (36 Stat. 863; 25 U. S. C. 337), allotments under the fourth section of the act of February 8, 1887, as amended, may be made within national forests.

(b) An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and Chief, Forest Service, to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

(c) Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

(d) In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and forward it to the Commissioner of Indian Affairs.

(e) The application must be filed with the manager of the land office for the district in which the land applied for is located. He will then forward the case to the Bureau of Indian Affairs for consideration. If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

(f) The provisions of said section are not limited to Indians occupying, living on, or having improvements on lands within a national forest at the date of the passage of the act, but apply also to Indians whose settlement, occupation, or improvements occurred subsequent to the passage of the act.

(g) The listing and opening to entry of lands under the provisions of the Forest Homestead Act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), do not preclude their being taken as an allotment under section 31.

(h) An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals. The rules governing the conduct of fourth-section applications under the act of February 8, 1887, as amended, apply equally to applications under said section 31.

CROSS REFERENCE: For national forest homestead regulations, see Part 170 of this chapter.

§ 176.16 *Sale, heirship, wills, etc.* The existing laws and regulations relating to the sale of allotted Indian lands, the determination of heirs, the issuance of patents in fee, the disposal of trust allotments by will, and the extension of the trust period, applicable to reservation allotments under the provisions of the act of February 8, 1887, as amended, are equally applicable to allotments made under the fourth section of said act.

CROSS REFERENCE: For the regulations of the Bureau of Indian Affairs relating to the sale of Indian lands, patents in fee, and competency certificates, see 25 CFR Part 241.

§ 176.17 *Notice of action.* Notice to Indian allottees, or to their parents, if minors, of any action adverse to their interests must be given by registered letter to the proper Indian superintendent, as well as to the party in interest.

§ 176.18 *Citizenship.* (a) Under section 6 of the act of February 8, 1887 (24 Stat. 390; 25 U. S. C. 349), every Indian born within the territorial limits of the United States, to whom allotments were made under that act, and every Indian who voluntarily takes up his residence separate and apart from any tribe of Indians and adopts the habits of civilized life is declared to be a citizen of the United States.

(b) The act of May 8, 1906 (34 Stat. 182; 8 U. S. C. 3), changed the time when an Indian became a citizen by virtue of the allotment made to him to the time when patent in fee should be issued on such an allotment.

(c) The act of June 2, 1924 (43 Stat. 253; 8 U. S. C. 3), conferred citizenship on all noncitizen Indians born within the Territorial limits of the United States, but expressly reserved to them all rights to tribal or other property. These rights include that of allotment on the public land, if qualified.

RELINQUISHMENTS OF ALLOTMENTS OR INDIAN HOMESTEADS

§ 176.19 *Action on relinquishments.* (a) Relinquishments of Indian allotments, if filed in a land office, will be transmitted to the Commissioner of Indian Affairs for consideration and recommendation. Where the application has not been approved, the Commissioner of Indian Affairs has authority to accept or reject the relinquishment, as he may deem proper. Where the allotment application has been approved, the acceptance or rejection must be concurred in by the Commissioner of Indian Affairs. On the acceptance of a relinquishment, the Bureau of Land Management will be notified of the fact. The land affected will not become subject to entry until after the manager has noted the fact of the relinquishment and cancellation on his records.

(b) The manager will, in case of a relinquishment, filed by an Indian, of an allotment application, or of a homestead entry, under the act of July 4, 1884 (23 Stat. 96; 43 U. S. C. 190), require the party to write at the foot of the regular form provided for relinquishments, or upon the back thereof, a clear statement of his reasons for desiring to make such relinquishment.

PUBLIC LANDS OCCUPIED BY INDIANS

§ 176.20 *Applications by others than Indian occupants to be suspended.* Managers will ascertain by any means in their power whether any public lands in their districts are occupied by Indians and the location of their improvements, and will suspend all applications made by others than the Indian occupants, upon lands in the possession of Indians who have made improvements of any value whatever thereon.

PART 177—RESTORED AND CEDED INDIAN LANDS

NOTE: The regulations governing the disposal of surplus lands in restored or ceded Indian reservations have not been included in this part, inasmuch as the only reservations in which considerable areas remained were withdrawn from disposal by orders of the Secretary of the Interior dated September 19, and November 2, 1934 (54 I. D. 559, 563), with a view to restoring such lands to permanent tribal ownership. The said orders affected undisposed of lands within the reservations listed below, except lands covered by valid existing rights or claims and lands in reclamation projects.

Reservations:	*Treaties, agreements, or acts under which the reservations were opened*
Arizona:	
San Carlos	Agreement of February 25, 1896, ratified by act of June 10, 1896 (29 Stat. 358).
California:	
Klamath River	Act of June 17, 1892 (27 Stat. 52).
Round Valley	Act of October 1, 1890 (26 Stat. 658).
Colorado:	
Utes	Act of June 15, 1880 (21 Stat. 199). See act of June 28, 1938 (52 Stat. 1209).
Idaho:	
Coeur d'Alene	Act of June 21, 1906 (34 Stat. 335).
Minnesota:	
Bois Fort	Act of January 14, 1889 (25 Stat. 642).
Deer Creek	Act of January 14, 1889 (25 Stat. 642).
Fond du Lac	Act of January 14, 1889 (25 Stat. 642).
Grand Portage or Pigeon River	Act of January 14, 1889 (25 Stat. 642).
Red Lake	Act of January 14, 1889 (25 Stat. 642).
White Oak Point	Act of January 14, 1889 (25 Stat. 642).
Leech Lake	Act of January 14, 1889 (25 Stat. 642).
White Earth	Act of January 14, 1889 (25 Stat. 642).
Montana:	
Flathead	Act of April 23, 1904 (33 Stat. 302).
Fort Peck	Act of May 30, 1908 (35 Stat. 558).
Crow	Act of April 27, 1904 (33 Stat. 352).
North Dakota:	
Fort Berthold	Act of June 1, 1910 (36 Stat. 455).
North and South Dakota:	
Standing Rock	Act of May 29, 1908 (35 Stat. 460).
Standing Rock	Act of February 14, 1913 (37 Stat. 675).
Oklahoma:	
Cheyenne & Arapaho	Act of June 17, 1910 (36 Stat. 533).
Kiowa, Comanche, and Apache	Act of June 5, 1906 (34 Stat. 213).
Wichita	Act of March 2, 1895 (28 Stat. 895).
Oregon:	
Umatilla	Act of March 3, 1885 (23 Stat. 340, 342).
South Dakota:	
Cheyenne River	Act of May 29, 1908 (35 Stat. 460).
Lower Brule	Act of April 21, 1906 (34 Stat. 124).
Pine Ridge	Act of May 27, 1910 (36 Stat. 440).
Rosebud	Agreement of September 14, 1901, ratified by act of April 23, 1904 (33 Stat. 254).
Rosebud	Act of March 2, 1907 (34 Stat. 1230).
Rosebud	Act of May 30, 1910 (36 Stat. 448).
Utah:	
Uintah and Ouray	Act of May 27, 1902 (32 Stat. 263, as amended).
Washington:	
Colville	Act of March 22, 1906 (34 Stat. 80).
Spokane	Act of May 29, 1908 (35 Stat. 458).
Wyoming:	
Wind River	Agreement of April 21, 1904, ratified by act of March 3, 1905 (33 Stat. 1016).

DISPOSITION OF SURPLUS COAL LANDS IN INDIAN RESERVATIONS

§ 177.1 *Conditions governing disposal of lands and coal deposits.* (a) The act of Congress approved February 27, 1917 (39 Stat. 944; 30 U. S. C. 86–89), authorizes agricultural entries on surplus coal lands in Indian reservations.

(b) With the exception of the lands of the Five Civilized Tribes, the act applies

to all Indian reservations that have been or which may be restored, where the surplus lands are or may be divided into mineral and nonmineral classes.

(c) It recognizes that such surplus coal lands have two distinct values, coal and nonmineral or agricultural. It provides for the disposition of the two estates therein created, the coal deposits and the nonmineral, and directs that the proceeds derived from both be placed to the credit of the Indians in the manner provided for other surplus lands. But while the estates may be so separated, no disposal of the coal deposits only may be made in advance of the disposition of the nonmineral estate.

(Sec. 1, 39 Stat. 945; 30 U. S. C. 86)

CROSS REFERENCE: For agricultural entries on mineral lands, generally, see Part 102 of this chapter.

SUBCHAPTER K—MILITARY AND NAVAL SERVICE

PART 181—SOLDIERS' AND SAILORS' HOMESTEAD RIGHTS

CREDIT ALLOWED FOR MILITARY OR NAVAL SERVICE

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PERIODS OF SERVICE FOR WHICH CREDIT MAY BE GIVEN

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CREDIT ALLOWED FOR MILITARY OR NAVAL SERVICE

AUTHORITY: §§ 181.1 to 181.4 issued under R. S. 2478; 43 U. S. C. 1201.

§ 181.1 *Veterans entitled under homestead laws to credit for military or naval service.* (a) Any officer, soldier, seaman, or marine who served for not less than 90 days in the Army or Navy of the United States during the Civil War and who was honorably discharged and has remained loyal to the Government, and who makes a homestead entry, is entitled under section 2305 of the Revised Statutes (43 U. S. C. 272), and the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218), to have the term of his service in the Army or Navy, not exceeding 2 years, deducted from the 3 years' residence required under the homestead laws.

(b) Similar provisions are made in the acts of June 16, 1898 (30 Stat. 473; 43 U. S. C. 240), and March 1, 1901 (31 Stat. 847; 43 U. S. C. 271, 272), for the benefit of like persons who served in the war with Spain, or during the suppression of the insurrection in the Philippines. The act of February 25, 1919 (40 Stat. 1161; 43 U. S. C. 272a, 278), as amended by act of April 6, 1922 (42 Stat. 491; 43 U. S. C. 233, 272, 273), makes similar provisions for the benefit of like persons who rendered military or naval service in connection with the Mexican border operations or during the war with Germany. Public Resolution No. 79, approved December 28, 1922 (42 Stat. 1067; 43 U. S. C. 186, 272a), extends these privileges to citizens of the United States who served with the allied armies during the World War and who were honorably discharged and resumed their citizenship in the United States. The act of April 7, 1930 (46 Stat. 144; 43 U. S. C. 243) makes similar provisions for the benefit of like persons who rendered 30 days or more military service in the Indian wars from January 1, 1817, to December 31, 1898.

§ 181.2 *Residence, cultivation, and improvements required.* (a) A soldier or sailor of the classes above mentioned who makes entry as such must begin his residence and cultivation of the land entered by him within 6 months from the date of filing his declaratory statement, but if he makes entry without filing a declaratory statement he must begin his residence within 6 months after the date of the entry. Thereafter he must continue both residence and cultivation for such period as will, when added to the time of his military or naval service (under enlistment or enlistments covering war periods), amount to 3 years; but if he was discharged on account of wounds or disabilities incurred in the line of duty, or honorably discharged but subsequently awarded compensation by the Government for wounds received or disabilities incurred in line of duty in accordance with the act of October 6, 1917 (40 Stat. 398, 405), as amended by the act of August 9, 1921 (42 Stat. 147, 153), credit for the whole term of his enlistment may be allowed, notwithstanding he may not have served 90 days. However, no patent will issue to such soldier or sailor until there has been residence by him for at least 1 year.

(b) A soldier with 19 months or more military service will be required to reside on the land at least 7 months during the first entry year; with more than 12 and less than 19 months, he must reside on the land 7 months during the first year and such part of the second year as, added to his excess over 12 months' service, will equal 7 months, and must cultivate one-sixteenth of the area the second year; with 7 and not more than 12 months, he must reside upon the land 7 months during each of the first and second years, and cultivate one-sixteenth of the area the second year; with 90 days and less than 7 months he must reside upon the land 7 months during each year for the first and second years, and such part of the third year as, added to his service, will equal 7 months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation unless he was discharged for disabilities or wounds received in line of duty, in which event he would be given credit for the term of his enlistment, not, however, for more than 2 years. If he delays the submission of proof beyond the period of residence re-

quired, the cultivation necessary for the years elapsing before the submission of proof must be shown. He may apply for and receive a reduction in the area to be cultivated, in the same manner and under the conditions required of other applicants. Where the entry is made under the stock-raising provisions of the homestead law, the above rule with respect to residence will be applicable, but the soldier must make the improvements on the land required of other persons under that law, and show in lieu of cultivation that the actually used the land for raising stock and forage crops during the period that he was required to reside on the land. He must show, in any entry under the homestead laws, that he had a habitable house on the land at the date of submitting proof.

§ 181.3 *Commutation proof.* No credit for military service can be allowed where commutation proof is submitted.

§ 181.4 *Showing required as to military service.*[1] A party claiming the benefit of his military service must file with the manager a certified copy of his certificate of discharge, showing when he enlisted, when he was discharged, and the organization in which he served, or the statements of two reputable, disinterested witnesses, corroborative of the allegations contained in his statements on these points, or if neither can be procured, his own statement to that effect.

PERIODS OF SERVICE FOR WHICH CREDIT MAY BE GIVEN

AUTHORITY: §§ 181.5 to 181.9 issued under R. S. 2478; 43 U. S. C. 1201.

§ 181.5 *War periods; how period of service is computed.* (a) In determining the rights of parties under sections 2304–2309 of the Revised Statutes (43 U. S. C. 239, 271, 272, 274, 277, 278), the Civil War is held to have lasted from April 15, 1861, to August 20, 1866; the Spanish War and Philippine insurrection from April 21, 1898, to July 15, 1903. The operations in Mexico or along the borders thereof began May 9, 1916, and continued until the beginning of the war with Germany, April 6, 1917, which was officially terminated March 3, 1921, by Public Resolution No. 64 of that date (41 Stat. 1359).

(b) No credit for military service can be given unless the soldier or sailor served for at least 90 days between the dates above mentioned, unless discharged for disabilities or wounds received in line of duty or died while in the service.

(c) In computing the period of service of a soldier "who has served in the Army of the United States," within the meaning of that phrase as used in section 2304 of the Revised Statutes, the entrance of the soldier into the Army will be considered as dating from the time of voluntary entrance of privates into the Army, Navy, or Marine Corps, or appointment of officers (including those appointed from the Officers' Training Corps); in the case of a person enlisted in the Naval Reserve, from the time he was called into active service; in the case of a drafted man, from the time he was mustered into the service; in the case of members of the Federalized National Guard, from the time they were mustered into the United States service, and the law has no application to other State troops; in the case of members of the Red Cross, only from the time they actually became identified with and a part of the military or naval forces of the United States, and the law does not apply to other members of the Red Cross.

(d) An entryman having enlisted and served 90 days during any one of the wars above mentioned is entitled under section 2305 of the Revised Statutes as amended to credit for the full term of his service under that enlistment, although such term did not expire until after the war ceased.

(e) The period of service for which credit may be claimed under section 2305, Revised Statutes, upon the submission of proof by a member of the Naval Reserve Force or of the Federalized National Guard, who was called into active service during the Mexican border operations or during the war with Germany, terminated upon the date of his discharge, and not upon the date that he was ordered to inactive duty.

§ 181.6 *No credit for less than 90 days' service; credit to disabled veteran.* A person who served for less than 90 days in the Army or Navy of the United States during said wars is not entitled to have credit for military service on the required period of residence upon his homestead, unless he was discharged because of disabilities incurred in line of duty in which event he is entitled to have deducted the whole term of his enlistment without reference to the length of time he may have served, but no patent shall issue unless the residence and other requirements have been fulfilled for a period of at least 1 year.

§ 181.7 *Entry by veteran whose family is on land applied for.* A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing upon the land applied for, and the application and accompanying statements may be executed before the officer commanding the branch of the service in which he is engaged. The soldier's family in this connection is restricted to his wife and minor children. Such soldier or sailor is not required to reside personally upon the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is 3 years old or until it has been commuted. If the soldier has had war service he may claim credit therefor under the 3-year homestead law.

§ 181.8 *Credit allowed on entries under enlarged and stock-raising laws.* A soldier is entitled to the same credit for military service in connection with homestead entries under the Enlarged Homestead Act of February 19, 1909 (35 Stat. 639; 43 U. S. C. 218), and its amendments, and the Stock Raising Act of December 29, 1916 (39 Stat. 862; 43 U. S. C. 291–301), and its amendments, as is allowed in connection with ordinary homestead entries, but the improvements required by the Stock Raising Act must be placed upon the land as prescribed by the act.

CROSS REFERENCE: For enlarged homestead and stock-raising homestead regulations, see Parts 167, 168 of this chapter.

§ 181.9 *Special privileges not subject to sale or transfer; persons who may exercise such privileges.* The special privileges accorded soldiers or sailors, as above indicated, are not subject to sale or transfer, and can only be exercised by the soldier or sailor himself; but the unmarried widow of a soldier or sailor of the Mexican border operations or of the war with Germany, or the unmarried widow or minor orphan children of a veteran of the Civil War, the Spanish-American War, or the Philippine insurrection, is entitled to the same privileges, under the homestead laws, as the deceased soldier or sailor if he died possessed of a homestead right. The adult child of a soldier has no special privileges in connection with the homestead laws on account of his father's military service.

HOMESTEAD RIGHTS OF WIDOWS AND MINOR ORPHAN CHILDREN OF DECEASED SOLDIERS AND SAILORS

§ 181.10 *Privileges accorded widows and minor orphan children.* (a) If a soldier or sailor makes an entry or files a declaratory statement, and dies before perfecting the same, the right to perfect the claim, including the right to claim credit for the soldier's military service, passes to the persons named in section 2291, Revised Statutes (43 U. S. C. 164); that is, to his widow, or, if there be no widow, to his heirs or devisees.

(b) In case of the death of a veteran of the Civil War, the Spanish War, or the Philippine insurrection, who would be entitled to a homestead under the provisions of section 2304 of the Revised Statutes (43 U. S. C. 271), but who died prior to the initiation of a claim thereunder, his widow, or in case of her death or remarriage, his minor orphan children, by a guardian, duly appointed and officially accredited at the Department of the Interior, may make the filing and entry in the same manner that the soldier or sailor might have done, subject to all the provisions of the homestead laws in respect to settlement and improvements; and the whole term of service, or in case of death during the term of enlistment, the entire period of enlistment in the military or naval service will be deducted from the time otherwise required to perfect the title to the same extent as might have been allowed the soldier.

(1) Where a homestead entry is made under section 2307, Revised Statutes (43 U. S. C. 278), by the widow or minor orphan children of a deceased soldier or sailor of the Civil War, the Spanish War, or the Philippine insurrection, compliance with law both as to residence and improvements is required to be shown to the same extent as would have been required of the soldier or sailor in making entry under section 2304, Revised Statutes, except that credit will be given upon

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

the 3-year period for the entire term of the enlistment, not exceeding 2 years, where the soldier or sailor died during the term of his enlistment.

(c) In case of widows, the prescribed evidence of military service of the husband must be furnished, with a statement of widowhood, giving the date of her husband's death.

(1) In case of minor orphan children, in addition to the prescribed evidence of military service of the father, proof of death or remarriage of the mother must be furnished. Evidence of death may be the testimony of two witnesses or a physician's certificate. Evidence of marriage may be certified copy of marriage certificate, or of record of same, or testimony of two witnesses to the marriage ceremony.

(2) Minor orphan children must make a joint entry through their duly appointed guardian, who must file certified copies of the powers of guardianship.

(d) In the case of the death of any person who would be entitled to a homestead under the provisions of the act of February 25, 1919 (40 Stat. 1161; 43 U. S. C. 272a, 278), because of service in the war with Germany or during the Mexican border operations, but who died prior to having initiated a claim thereunder, pursuant to the provisions of the act of September 21, 1922 (42 Stat. 990; 43 U. S. C. 278), his widow, if unmarried and otherwise qualified, may make entry of public lands under the provisions of the homestead laws of the United States and shall be entitled to all the benefits enumerated in the said act of February 25, 1919, subject to the provisions and requirements as to settlement, residence, and improvements contained in the said act. In such case, the whole term of service will be deducted from the time otherwise required to perfect title to the same extent as may have been allowed the soldier.

(1) Where a homestead entry is made under the act of September 21, 1922, by the widow of a deceased soldier or sailor of the war with Germany or the Mexican border operations, compliance with law, both as to residence and improvements, is required to be shown to the same extent as would have been required of the soldier or sailor in making entry under the act of February 25, 1919.

(2) In the case of such entry, the widow must furnish the prescribed evidence of military service of the husband, with a statement of widowhood, giving the date of her husband's death, and that she is still unmarried.

(3) Where the widow of a deceased soldier or sailor makes entry pursuant to the act of September 21, 1922, and dies prior to perfection of title, leaving only a minor child or children, patent shall issue to the said minor child or children, upon proof of her death and of the minority of the child or children, without further showing of compliance with the law. The proof may consist merely of signed statements setting forth the facts and duly corroborated. The usual publication and posting of notice of intention to make proof is required in such case.

(4) If the widow of a deceased soldier or sailor makes and perfects the entry pursuant to the foregoing, the final certificate will issue to her, by name, as widow of the deceased soldier or sailor. If the entry is made by the widow and perfected by the minor orphan children as above set forth, the final certificate will issue to such child or children, by name, as minor orphan child or children of (giving the name of the widow), widow of (name of deceased soldier or sailor).

(R. S. 2478; 43 U. S. C. 1201)

CITIZENSHIP

§ 181.11 *Requirements as to citizenship.* All homestead applicants who are not native-born citizens of the United States must have declared their intention to become citizens of this country, and before submitting proof must be fully naturalized.

(R. S. 2478; 43 U. S. C. 1201)

SOLDIERS' DECLARATORY STATEMENTS

AUTHORITY: §§ 181.12 to 181.14 issued under R. S. 2478; 43 U. S. C. 1201.

§ 181.12 *Persons entitled to file declaratory statements; showing required; fees; entry.* (a) Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any person entitled to the benefit of sections 2304 and 2307, Revised Statutes (43 U. S. C. 271, 278), as explained above. Veterans of the Civil War, the Spanish War, or the Philippine insurrection may file declaratory statements of this character, either in person or through an agent acting under power of attorney, but the entry must be made in person and not through an agent within 6 months from the filing of the declaratory statement, and residence must also be established within that time. Veterans of the World War may file such declaratory statements in person, but not through agent.

(1) The party entitled to file a declaratory statement may make entry in person without filing a declaratory statement if he so desires.

(2) The soldier's declaratory statement, if filed in person, must be accompanied by the prescribed evidence of military service and the statement of the person filing the same, giving his residence and post-office address, and setting forth that the claim is made for his exclusive use and benefit for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person; that he has not theretofore made a homestead entry or filed a declaratory statement under the homestead law (or if he has done so, he must show his qualifications to make a second or additional homestead entry); that he is not the proprietor of more than 160 acres of land in any State or Territory; and that since August 30, 1890, he has not entered or acquired title under the agricultural land laws of the United States, nor is he claiming under said laws a quantity of land which with the tracts applied for would make more than 320 acres, or, in the case of a claim under the enlarged homestead laws, 480 acres.

(b) In case of filing a soldier's declaratory statement by agent, the statement must further declare the name and authority of the agent and the date of the power of attorney or other instrument creating the agency, adding that the name of the agent was inserted therein before its execution. It should also state in terms that the agent has no right or interest, direct or indirect, in the filing of such a declaratory statement.

(1) The agent must file (in addition to his power of attorney) his own statement to the effect that he has no interest; either present or prospective, direct or indirect, in the claims; that the same is filed for the sole benefit of the soldier, and that no arrangement has been made whereby said agent has been empowered at any future time to sell or relinquish such claim, either as agent or by filing an original relinquishment of the claimant.

(c) Where a soldier's declaratory statement is filed in person, the statement of the soldier or sailor must be signed by him in the land district in which the land lies, and show that it was so signed. Where a declaratory statement is filed by an agent, the agent's statement must be signed by him in the land district and show that it was so signed, but the soldier's statement may be signed anywhere.

The fee to be paid to the manager of the land office where the declaratory statement is filed is $2, except in the Pacific States, where it is $3.

(d) A homestead entry under a declaratory statement can not be made through an agent, and the entry must be made and settlement on the land commenced within 6 months after the filing of the declaratory statement. Residence, cultivation, and improvements must be shown to the same extent as though no declaratory statement had been filed.

§ 181.13 *Segregative effect of declaratory statement.* The filing of a declaratory statement will not be held to bar the admission of filings and entries by others, but any person making entry or claim during the period allowed by law for the entry of the soldier will do so subject to his right; and the soldier's application, when offered within such time, will be allowed as a matter of right, and the intervening claimant will be notified and afforded an opportunity to be heard.

§ 181.14 *Filing of statement exhausts homestead right.* A soldier will be held to have exhausted his homestead right by the filing of his declaratory statement, it being manifest that the right to file is a privilege granted to soldiers in addition to the ordinary privilege only in the matter of giving them power to hold their claims for 6 months after selection before entry, but is not a license to abandon such selection with the right thereafter to make a regular homestead entry independently of such filing. This is clear from the statutory language. Section 2304, Revised Statutes (43 U. S. C. 271), provides: "A settler shall be allowed 6 months after locating his homestead and filing his declaratory statement in which to make entry and commence his settlement and improvement"; and section 2309, Revised Statutes (43 U. S. C. 277), requires him "in person" to "make

his actual entry, commence settlement, and improvement on the same, and thereafter fulfill all the requirements of the law." These must be done on the same lands selected and located by the filing.

SPECIAL PRIVILEGES ACCORDED VETERANS OF WORLD WAR I

§ 181.15 *Leaves of absence for hospitalization or vocational training.* The act of September 29, 1919 (41 Stat. 288), as amended by section 2 of the act of April 6, 1922 (42 Stat. 491; 43 U. S. C. 233), grants to ex-service men of World War I who made or may make entry under the homestead laws or who initiate valid homestead claim by settlement or application, and thereafter enter upon a course of training under the Vocational Rehabilitation Act or are furnished hospital treatment by the Government for wounds received or disabilities incurred in line of duty, a leave of absence from the homestead for the purpose of taking such course, or to receive hospital treatment by the Government, and allows the time while so engaged to be credited as constructive residence upon and cultivation of the homestead, subject to the condition that before title by patent may be granted the claimant shall have resided upon, improved, and cultivated the homestead for a period of at least 1 year. A person who is entitled to the benefits of this act should forward to the land office notice of his absence from the land and of the fact that he has been admitted to take a course of vocational training under the act of June 27, 1918 (40 Stat. 617), or that he is receiving hospital treatment by the Government, together with a certificate to that fact by the proper official. He should also file notice of his return to the land so that the manager may make due notation on his records.

(R. S. 2478; 43 U. S. C. 1201)

CREDIT ALLOWED FOR SERVICE IN INDIAN WARS

AUTHORITY: §§ 181.18 and 181.19 issued under R. S. 2478; 43 U. S. C. 1201.

§ 181.18 *Veterans entitled to credit; showing required.* (a) The act of April 7, 1930 (46 Stat. 144; 43 U. S. C. 243), allows those persons who come within the provisions of the act of March 3, 1927 (44 Stat. 1361; 38 U. S. C. 381, 381a–381d), granting pensions to certain soldiers who served in the Indian wars from 1817 to 1898, to deduct the period of their established military service in the Indian wars from the period of compliance with the requirements of the homestead law ordinarily required or to deduct the full term of enlistment if discharged on account of wounds received or disabilities incurred in line of duty; subject, however, to the condition that no patent shall issue to any such entryman who has not resided upon, improved, and cultivated his homestead for a period of at least 1 year.

(b) It must be established that there was at least 30 days service in some military organization between January 1, 1817, and December 31, 1898, inclusive, and it is immaterial whether or not the person was regularly mustered into the service of the United States, if the service was under authority or by the approval of the United States or any State or Territory in any Indian war or campaign, or in connection with or in the zone of any active Indian hostilities in any States or Territories of the United States.

(c) The homesteader should furnish in support of his claim for credit for military service, a certified copy of his certificate of discharge or, where same is not possible, his statement, corroborated as far as possible, giving all data available regarding his military service which will be of aid in establishing the same.

(d) From such data the authorized officer of the Bureau of Land Management will ascertain whether the Veterans' Administration has, in connection with a claim for pension under the act of March 3, 1927, adjudicated the matter of military service and if so the finding of the said administration will be binding upon and accepted by the officer. Where there is no data on file, nor any adjudication on the point of military service by the Veterans' Administration, the officer will endeavor to secure a verification thereof by reports from the records of the Department of the Army, where there are such records, or by reports from the records of the General Accounting Office showing payment by the United States. Where there is no regular enlistment or muster into the United States military service, or when there is no record of service or payment for same by satisfactory evidence from the muster rolls on file in the several States or Territorial archives, or where no record of service has been made in the Depatment of the Army or the General Accounting Office and there is no muster roll or pay roll on file in the several States or Territorial archives showing service of the applicant, or when same has been destroyed by fire or otherwise lost, or where there are muster rolls or pay rolls on file in the several States or Territorial archives but applicant's name does not appear thereon, the homesteader may make proof of such military service by furnishing through the authorized officer evidence satisfactory to the Veterans' Administration.

CROSS REFERENCE: For Veterans' Administration, see 38 CFR Chapter I.

§ 181.19 *Unmarried widow or minor children entitled to credit; showing required.* (a) The act of March 3, 1933 (47 Stat. 1424; 43 U. S. C. 243a), extends the benefits of the act of April 7, 1930 (46 Stat. 144; 43 U. S. C. 243), explained in § 181.18 to the unmarried widow of a soldier who served in an Indian War mentioned in said act of April 7, 1930, and who died possessed of a homestead right or who may be considered as restored to such right under existing laws. If such widow shows her qualifications and makes her homestead entry, in perfecting title to the land included therein she may deduct the period of her deceased husband's military service from the 3 years' residence required, subject to compliance with the requirements of the law for at least 1 year.

(b) The widow must make the same showing to establish evidence of the military service as the husband would have been required to make had he become a homestead applicant for public land. Therefore evidence of military service must be furnished as explained in § 181.18 and in addition the widow must file a statement showing that she is the soldier's unmarried widow and that at the time of his death he was possessed of the right to make a homestead entry or that the existing laws may be invoked to restore such right. If he ever made a homestead entry data sufficient to enable the authorized officer to identify the same must be furnished.

(c) If such widow makes a homestead entry and dies prior to perfection of the title to the land included therein, leaving only a minor child or children, patents will issue to such minor child or children upon proof of her death and of the minority of the child or children, without further showing of compliance with law, but publication and posting of notice of intention to submit proof must be had and evidence thereof filed in support of the request for the issuance of the patent to the child or children of such deceased homesteader.

RIGHTS OF PUBLIC LAND CLAIMANTS UNDER THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

AUTHORITY: §§ 181.20 to 181.34 issued under sec. 507, 54 Stat. 1188; 50 U. S. C., App., 567.

§ 181.20 *Statutory authority; duration of act.** The act of October 17, 1940 (54 Stat. 1178), known as the "Soldiers' and Sailors' Civil Relief Act of 1940," extends relief and benefits to persons in the military service, including those set forth in §§ 181.21–181.34. Section 604 of the act provides that the act shall remain in force until May 15, 1945, but that should the United States be then engaged in a war, the act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for 6 months thereafter. It also provides that wherever under any section or provision of the act a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date therein fixed for the termination of the act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting, or other transaction.

§ 181.21 *Definitions.* The following definitions, contained in section 101 of the Soldiers' and Sailors' Civil Relief Act of 1940, are adopted as definitions for the purpose of §§ 181.20–181.34:

(a) The term "persons in the military service" shall include the following persons and no others: All members of the

* By section 14 of the act of June 24, 1948 (62 Stat. 623), as amended (50 U. S. C. App. Sup. 464) all of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 were continued in effect until "repealed or otherwise terminated by subsequent act of the Congress."

Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy.

(b) The term "military service" shall signify Federal service on active duty with any branch of service above referred to as well as training or education under the supervision of the United States preliminary to induction into the military service and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(c) The term "period of military service" and equivalent terms, shall include the time between the following dates: For persons in the active service on October 17, 1940, it shall begin with that date; for persons entering the active service after the date mentioned, it shall begin with the date of entering the active service. It shall terminate with the date of discharge from active service or death while in the service, but in no case later than the date when the Soldiers' and Sailors' Civil Relief Act of 1940 ceases to be in force.

§ 181.22 *Claims protected from forfeiture.* No right to any public land owned or controlled by the United States, initiated or acquired under any laws of the United States, including the general mining and mineral leasing laws, by any person prior to entering the military service will during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon, or for failure to do any other act required by or under such laws.

§ 181.23 *Rights not affected.* No public land claimant in the military service will be denied the right to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering the military service.

§ 181.24 *Notice of military service.* The claimant must give notice of his military service on Form 4–975,[1] which is made a part of §§ 181.20–181.34, or its substantial equivalent, to the proper land office in the State or Territory, or for notice concerning lands in a State in which there is no land office to the Bureau of Land Management, Washington 25, D. C., except that the applications for lands in North or South Dakota to the land office at Billings, Montana; for lands in Nebraska or Kansas to the land office at Cheyenne, Wyoming; and for lands in Oklahoma, to the land office at Santa Fe, New Mexico, on or before April 17, 1941, or within 6 months after his entrance into the military service, in order to obtain the relief and benefits extended by the Soldiers' and Sailors' Civil Relief Act of 1940, in connection with an application, entry, lease, permit or license, or settlement or other right or claim initiated or acquired under the public land laws prior to entering the military service (except a mining location). The notice should be sent by registered mail, unless it is filed in the proper office personally, by the claimant or his agent. The holder of a mining location must give notice of his military service before the close of the assessment year, which ends at noon of July 1 of each year, in accordance with § 181.29 (b).

§ 181.25 *Execution of affidavits.* A person in the military service may execute any affidavit or submit any proof required by law or the regulations of the Bureau of Land Management, in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which he is engaged. Such affidavit will be as binding in law, and with like penalties, as if taken before a manager of a land office.

§ 181.26 *Rights of minors.* Any person under 21 years of age who serves in the military service while the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, will be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over 21 possess under such laws. Any requirement as to the establishment of residence within a limited time will be suspended as to entry by such person until 6 months after his discharge from the military service. An application for entry by such person need not be under oath but must be signed by him.

§ 181.27 *Homesteads.* Homestead claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture, as provided in § 181.22:

(a) *Credit for military service.* Any person having a valid homestead settlement claim, or any person who has made homestead application for public lands which is allowed after the date of the filing thereof, or any homestead entryman whose application has been allowed, who after such settlement, application or entry enters the military service, is entitled, in the administration of the homestead laws, to have his military service construed to be equivalent to residence and cultivation upon the tract settled upon or entered, for the period of such service. Moreover, if he is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability will be deducted from the required length of residence, without reference to the time of actual service. No patent will issue, however, until he has resided upon, improved and cultivated his homestead for a period of at least 1 year. He will be entitled during each year's required residence to a 5 months' leave of absence, in like manner as any other homesteader. In order to obtain the credit mentioned, notice of military service must be given in accordance with § 181.24.

(b) *Credit for physical disabilities due to military service.* Any person entitled to credit for military service who is honorably discharged and because of physical incapacity due to such service is unable to return to the land, may make proof, regardless of whether or not 1 year's residence, improvements, and cultivation have been had, without further residence, improvements, or cultivation, at such time and place as the manager of the proper land office may authorize, and receive a patent to the land entered.

(c) *Farm labor by homesteader during war.* (1) During the pendency of any war in which the United States may be engaged while the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, any homestead entryman will be entitled to a leave of absence from his entry for the purpose of performing farm labor. The act does not authorize such leave of absence, if the United States does not engage in war. The time actually spent in farm labor will be counted as constructive residence, if within 15 days after leaving his entry to engage in such labor the entryman files in the proper land office a notice of absence from the land, and if at the expiration of the calendar year the entryman files in the proper office a written statement corroborated by two witnesses giving the date or dates when he left the entry, the date or dates of his return, and the place where and the person for whom he was engaged in farm labor during the period or periods of his absence.

(2) The provisions in subparagraph (1) of this paragraph will not excuse any homestead entryman from making improvements or performing the cultivation upon his entry required by law, and they will apply only to persons whose applications were allowed or filed prior to October 17, 1940.

(d) *Widow, heirs, and minor children of homesteader.* If any person having a valid settlement claim or a pending or allowed homestead application dies while in the military service or as a result of such service his widow, if unmarried, or in the case of her marriage or death, his minor children or his or their legal representatives, may submit final proof without showing further residence, cultivation or improvements. If the deceased claimant had a valid homestead settlement claim for which application had not been filed, a homestead application based thereon must be presented. If the claim is on unsurveyed land, a homestead application can not be presented until the land has been surveyed. In such case, request for survey should be made as promptly as possible, accompanied by a duly corroborated statement showing when the settlement claim was made, the periods during which deceased claimant resided upon and cultivated the land, and the facts as to his military service. The death of the claimant while in the military service or as a result of such service will be construed to be equivalent to a performance of all requirements as to residence and cultivation upon the homestead claim. Upon the submission of satisfactory proof,

[1] Filed with the Federal Register Division as a part of the original document.

patent wil be issued to the person or persons entitled thereto.

(e) *Contest of homestead.* (1) On and after October 17, 1940, and as long as the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, no application to contest a homestead entry made or applied for prior to the entrance of the entryman into the military service, will be allowed, or adverse proceedings against such entry ordered, on the ground of abandonment, unless there is an allegation therein that the entryman's alleged absence from the land was not due to his military service. No allegation of abandonment will be sustained against a homestead settler or entryman in connection with such contest, unless it is proved at the hearing, if one be had, that the claimant's alleged absence from the land was not due to such military service.

(2) The manager will reject an application to contest a homestead entry on the charge of abandonment, if he finds that it was filed during the period of the entryman's military service, or during any period of hospitalization of the claimant because of wounds received or disability incurred in the line of duty. If any charge other than or in addition to abandonment is made, or if the claimant enters the military service or is hospitalized after the contest application is filed, the proceedings will be suspended for the period of such service or hospitalization.

§ 181.28 *Desert-land entries.* Desert-land claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture, as provided in § 181.22:

(a) *Credit for military service.* No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into the military service, will be subject to contest or cancellation for failure to make or expend the sum of $1 per acre per year in improvements on the land or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in the military service or during a period of 6 months thereafter or during any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land will be exclusive of his period of service and the 6-months' period and any such period of hospitalization. In order to obtain the benefits mentioned, notice of military service must be given in accordance with § 181.24.

(b) *Credit for physical incapacities due to military service.* Any person who is entitled to credit for military service who is honorably discharged and because of physical incapacities due to his military service and who is unable to accomplish reclamation of and payment for the land, may make proof without further reclamation or payment and receive patent for the land entered or claimed.

(c) *Contest of desert-land entry.* (1) On and after October 17, 1940, and as long as the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, no application to contest a desert-land entry made or applied for prior to the entrance of the claimant into the military service will be allowed, or adverse proceedings against such entry ordered, for failure of the claimant to make or expend the sum of $1 per acre per year in improvements upon the claim, or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in the military service, or during a period of 6 months thereafter, or during any period of hospitalization because of wounds or disability incurred in the line of duty, unless there is an allegation therein that the alleged default did not occur during such military service or hospitalization. No allegation of such default will be sustained against a desert-land claimant in connection with such contest unless it is proved at the hearing, if one be had, that the alleged default did not occur during such military service or hospitalization, as indicated.

(2) Any contest proceedings involving a desert-land entry, brought either before or after the claimant enters the military service, will be suspended for the period of such service and for 6 months thereafter, and during any period of hospitalization of the claimant because of wounds or disability incurred in the line of duty.

§ 181.29 *Mining claims.* The relief and benefits extended because of military service and the requirement as to notice of such service, made by section 505 of the Soldiers' and Sailors' Civil Relief Act of 1940, in connection with mining claims, are as follows:

(a) *Claims protected from forfeiture.* The provisions of section 2324 of the Revised Statutes, which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year, will not apply during the period of the claimant's military service, or until 6 months after the termination of such service, or during any period of hospitalization because of wounds or disability incurred in the line of duty, to claims or interests in claims which are owned by such person and which have been regularly located and recorded. No mining claim nor any interest in a claim which is owned by such a person and which has been regularly located and recorded will be subject to forfeiture for nonperformance of the annual assessment labor during the period of such military service, or until 6 months after the termination of such service, or of such hospitalization.

(b) *Notice of military service.* The holder of a mining location who desires to obtain the relief and protection mentioned in paragraph (a) of this section, must, before the expiration of the assessment year during which he enters the military service, file or cause to be filed in the county recording office in which the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold the mining claim under section 505 of the Soldiers' and Sailors' Civil Relief Act of 1940. The notice may be given on Form 4–975 [3] which is made a part of §§ 181.20–181.34.[4]

§ 181.30 *Installment payments for land, under homestead and other entries.* Where under the law under which a particular entry was made, installment payments for the land become due during the period of the military service, such period will not be considered a part of the aggregate period of time originally allowed for the completion of such payments and the time for the making of the payments will be appropriately extended. Where the term of the military service is 1 year or less, the time of payment of each installment maturing during or after such term will be extended for 1 year; where the term of service is between 1 and 2 years, the extension will be for 2 years; and similar extensions will be granted for longer terms of service. The payment so extended will be due upon the same day of the year as is now required and no interest will be charged during the period of the suspension.

§ 181.31 *Relief under leases, permits, licenses, etc.* (a) No mineral or grazing lease, or any mineral, timber, or other permit or license, or any application for such lease, permit or license, or any right or claim which has been applied for or acquired under the public land laws by any person prior to entering the military service, will, during the period of such service, be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or to make any improvements thereon, or his failure to do any other act required by or under such laws.

(b) Where during the period of the military service, the claimant or his agent continues to operate or to make use of the land in accordance with the terms of the lease, permit, or other right, the rentals, royalties, and other obligations will become due and payable as provided by such instrument. If in a particular case the ability of the claimant to make such payment has been affected materially by reason of his military service, a showing of the facts may be made and such relief as may be deemed appropriate will be granted.

§ 181.32 *Suspensions of leases, permits, licenses, etc.* (a) The regulations in this section for the suspension of leases, permits, licenses, etc. are based on the general protection accorded all claims, contained in section 501 of the Soldiers' and Sailors' Civil Relief Act of 1940, the specific authority for the suspension of leases and permits issued under the Federal mineral leasing laws, contained in section 506 of the act, and the general authority conferred on the Secretary of the Interior, to issue rules

[3] Filed as a part of the original document.

[4] If application for patent to the mining claim has been made, notice of the military service must also be filed in the proper district land office, or if there is no such office in the State, it must be filed in the Bureau of Land Management, in accordance with § 181.24.

and regulations, contained in section 507 of the act.

(b) Any person having a mineral lease or permit, a grazing lease, or any lease, permit, license or other right involving the public lands, under the administration of the Bureau of Land Management, including claims the suspension of which is not specifically authorized by any section of the act, who enters the military service may, at his election, suspend all operations under such instrument for a period of time equivalent to the period of his military service and 6 months thereafter. The term of the lease or permit will not run during the period of such suspension, no rentals or royalties for the period of the suspension will be charged, and no use of the land during such period by the claimant or his agent under such instrument may be made.

(c) In order to obtain the benefits mentioned, notice of military service must be given in accordance with § 181.24.

(d) The suspension of a lease, permit, license, etc., will not be construed to supersede the terms of any contract for the operation thereof.

§ 181.33 *Service with allies.* Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which it engages while the Soldiers' and Sailors' Civil Relief Act of 1940 is in force, will be entitled to the relief and benefits afforded thereby, if such service is similar to military service as defined in such act and in § 181.21, and if they are honorably discharged and resume United States citizenship, or die in the service of the allied forces, or as a result of such service (Sec. 512, 54 Stat. 1190).

§ 181.34 *Statutes superseded; statute repealed.* Section 605 of the Soldiers' and Sailors' Civil Relief Act of 1940 makes the provisions of section 4 of the joint resolution approved August 27, 1940 (54 Stat. 860), and the provisions of section 13 of the Selective Training and Service Act of 1940, inapplicable to any military service performed after October 17, 1940. Paragraph 3 of section 503 of the act first mentioned repeals the act of July 28, 1917 (40 Stat. 248).[6]

[6] Section 4 of Public Resolution No. 96 of August 27, 1940, extended the benefits of certain provisions of the Soldiers' and Sailors' Civil Relief Act of March 8, 1918 (40 Stat. 440–448), including section 501, to all National Guard, Reserve and Retired Personnel, ordered into the military service under authority of its provisions, so long as such personnel are in such service and for 60 days thereafter.

Section 13 of the Selective Training and Service Act of 1940 extended the same benefits to persons who are inducted into the land or naval forces under the authority of its provisions and to all members of any reserve component of such forces then or thereafter on active duty for a period of more than one month.

The act of July 28, 1917 (40 Stat. 248), extended certain relief to homestead entrymen or settlers who enter the military or naval service of the United States in time of war. The Soldiers' and Sailors' Civil Relief Act of 1940 extends substantially the same relief to those who are entitled to its benefits.

PUBLIC LAND RIGHTS OF VETERANS OF WORLD WAR II AND OF THE KOREAN CONFLICT, AND OF OTHER PERSONS ENTITLED TO CREDIT FOR SERVICE OF SUCH VETERANS

AUTHORITY: §§ 181.35 to 181.47 issued under sec. 6, 45 Stat. 1061, sec. 5, 58 Stat. 748; 43 U. S. C. 617e, 283.

§ 181.35 *Statutory authority.* (a) The act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended, grants to veterans of World War II and of the Korean conflict, certain benefits in connection with the public lands, in addition to those conferred on veterans of World War II by the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178, 1186; 50 U. S. C. App. 560–572), as amended, and the regulations thereunder, contained in §§ 181.20 to 181.34.

(b) The benefits conferred by the act of 1940 in connection with the public lands relate for the most part to rights initiated or acquired under the public land laws prior to the entrance of the claimant into the military or naval service. The benefits granted by the act of 1944, as amended, are set forth in §§ 181.35 to 181.46.

§ 181.36 *Credit for military or naval service in connection with homestead entries and home sites in Alaska; computation of service.* (a) Any person who has served in the military or naval forces of the United States for a period of at least 90 days on or after September 16, 1940, and prior to the termination of the Korean conflict as determined by Presidential proclamation or concurrent resolution of the Congress and is honorably discharged from the military or naval forces, and who subsequent to such discharge makes entry under the general homestead laws is entitled to have the period of such service, not exceeding two years, construed to be equivalent to residence and cultivation upon the land for the same length of time. Where application is made under the Alaska Home Site Act of May 26, 1934 (48 Stat. 869; 48 U. S. C. 461), the veteran is not required to cultivate the land and he may claim credit on the period of residence required by that act for the period of the military or naval service in like manner as is provided in the case of homestead entries. Any person who has served in the military or naval forces of the United States on or after September 16, 1940, and prior to the termination of the Korean conflict will similarly be entitled to credit for two years' service without regard to the actual length of such service, (1) if such person is discharged on account of wounds received or disability incurred between those dates in the line of duty, or (2) if such person is regularly discharged and subsequently is furnished hospitalization or is awarded compensation by the Government on account of such wounds or disability.

(b) In computing the period of such service, the entrance of the veteran into the service will be considered as dating from the time of commencing active duty with the armed forces of the United States. Service with State troops or in the National Guard prior to the mustering of such troops into the service of the United States will not be included.

(c) An honorable discharge within the meaning of the act of September 27, 1944, as amended shall mean: (1) Separation from the service by means of an honorable discharge, or by the acceptance of resignation or a discharge under honorable conditions; or (2) release from active duty under honorable conditions to an inactive status whether or not in a reserve component, or retirement. Any person who obtains an honorable discharge as herein defined shall be entitled to the benefits of the act of September 27, 1944, even though such person thereafter resumes active military duty.

§ 181.37 *Evidence required of military or naval service.* A person claiming the benefit of military or naval service must file with his application, if a preference right of entry is claimed, and with his final proof, if the entry or Alaska homesite claim is not based on a preference right application, a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his respective branch of the service which shows clearly an honorable discharge as defined in § 181.36, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service.[7]

§ 181.38 *Home sites in Alaska under act of May 26, 1934.* While a veteran who establishes a home site claim in Alaska under the act of May 26, 1934 (48 Stat. 869; 48 U. S. C. 461) is not required to cultivate the land, he must as a basis for purchase, reside upon the land in a habitable house for the periods specified in § 181.39. Credit may be allowed for military or naval service in connection with these claims as set forth in §§ 181.40 to 181.43, relating to such credit in the case of homestead entries. In order to secure a preference right of application upon the opening or restoration of surveyed public land in Alaska, the veteran must file an application in accordance with § 64.13 of this chapter.

§ 181.39 *Residence and cultivation required on homesteads.* (a) Before satisfactory final proof may be submitted on a homestead entry, a veteran will be required to comply with the homestead laws for a period of at least one year and for such additional period as, added to the term of the military or naval service, equals three years. During this period a veteran with 19 months' or more military service will be required to reside on the land at least seven months during the first entry year; with more than 12 and less than 19 months, he must reside on the land seven months during the first entry year and such part of the second year, as added to his excess over 12 months' service, will equal seven months, and must cultivate one-sixteenth of the area the second year; with seven and not more

[7] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

than 12 months, he must reside upon the land seven months during each of the first and second entry years, and cultivate one-sixteenth of the area the second year; with 90 days and less than seven months, he must reside upon the land seven months during each year for the first and second years, and such part of the third as, added to his service, will equal seven months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation. A veteran will not be required to cultivate the land after he has met the requirements as set forth above: *Provided*, He promptly files notice of intention to submit proof. If, however, he delays the submission of proof beyond the period for which residence is required, the cultivation necessary during each annual cultivable season elapsing or reached before the submission of proof must be shown. He may apply for and receive a reduction in the area required to be cultivated, the same as other entrymen. In computing the required periods of residence, set forth above, there has been excluded the five months' absence each year from the land which may be taken by a homestead entryman in not more than two periods during each year after establishing residence, by giving notice to the manager as set forth in § 166.38 of this chapter. The veteran must have a habitable house on the land at the date of submitting homestead proof.

(b) As the only requirement prescribed by section 2 of the act of April 28, 1904 (33 Stat. 527, 43 U. S. C. 213) as amended by the act of August 3, 1950 (64 Stat. 398; 43 U. S. C. Sup. 213) for the submission of final proof on an additional homestead entry for less than 160 acres subject to that section is the cultivation of the prescribed area for one year, as set forth in § 166.72 of this chapter (Circ. 1765, September 11, 1950), and as section 1 of the act of September 27, 1944 (58 Stat. 747) as amended by the act of May 31, 1947 (61 Stat. 123, 43 U. S. C., Sup. III, 279), granting to veterans of World War II credit for military or naval service not exceeding two years in connection with homestead entries, requires a veteran to meet the requirements of the homestead laws for a period of at least one year, a veteran in order to submit satisfactory final proof on such an additional homestead entry must meet the requirements of cultivation for the additional entry for a period of at least one year. Section 2 of the act of April 28, 1904, as amended, requires that cultivation of the land be continued until final proof is submitted. A qualified veteran or other person entitled to credit for military service who does not submit proof upon the expiration of the one year period may be allowed credit for the period of military service, not exceeding two years, for any subsequent required period of cultivation.

§ 181.40 *Credit for service of spouse of homestead entryman or entrywoman.* When the homestead entry is made by a husband or wife whose spouse is entitled to service credit under this part, such credit will, with the written consent of the spouse entitled thereto, be available to the husband or wife making the entry, in addition to any service credit to which he or she individually may be entitled. The total period for which service may be allowed may not, however, exceed 2 years.

§ 181.41 *Homestead entry by surviving spouse, or minor orphan children, of a deceased veteran; evidence required—*(a) *Survivors.* The surviving spouse or the minor children of any person who dies as the result of wounds received or disability incurred in line of duty while serving in the military or naval forces of the United States during the period set out in § 181.36 shall be entitled to credit for two years' residence and cultivation on a homestead entry. The surviving spouse or the minor children of any person who dies after performing service that would be a basis for credit under the provisions of § 181.36 shall be entitled to the amount of credit which would have been allowable to such person. The credit provided by this section shall be available to the surviving spouse, or, in the case of the death or marriage of the surviving spouse, to the minor child or children, upon application therefor by a guardian duly appointed and officially credited at the Department of the Interior. If both spouses have performed service for which credit is given, the surviving spouse, or, in the case of the death of both spouses, the minor children, may utilize the combined credit of both spouses. An entry made by such surviving spouse or guardian shall be subject to the requirement of residence and other compliance with the provisions of the homestead laws for the period for which credit cannot be claimed.

(b) *Prescribed evidence.* (1) In the case of a spouse of a deceased veteran, the prescribed evidence of military service of the veteran must be furnished together with a statement showing (i) the facts as to any homestead entry made by him, (ii) the date of the veteran's death, and (iii) that the spouse has not remarried.*

(2) Where a homestead entry is made in behalf of the minor child, or children, of a veteran, in addition to the prescribed evidence of military service of the veteran, satisfactory evidence must be furnished showing (i) the facts as to any homestead entry made by the veteran, (ii) the death of the veteran and the death or remarriage of the other parent, and (iii) the name, address, and age of each such minor. Evidence of death may be the testimony of two witnesses or a physician's certificate. Evidence of marriage may be a certified copy of the marriage certificate or the record of same, or testimony of two witnesses to the marriage ceremony.

§ 181.42 *Rights of minor orphan children, or widow, or heirs or devisees of deceased veteran.* (a) Upon the death of a veteran entitled to claim credit for military or naval service as set forth in § 181.36, his rights under a homestead entry pass, if there is no widow, to his minor orphan child, or minor orphan children, if any. Patent under the entry will issue to such minor or minors, upon proof of such facts, without any proof of compliance with the law in the matter of residence, cultivation or improvements.

(b) Upon the death of such a veteran, his rights under a homesite claim in Alaska, established under authority of the act of May 26, 1934, pass to his minor orphan child, or minor orphan children, if any. Patent under the claim will issue to them, upon proof of such facts, without any proof of compliance with the law in the matter of residence or improvements.

(c) Where the widow, heirs or devisees of a homestead entryman succeed to his rights under his entry, she or they, are not required to reside upon the land, but, in order to submit satisfactory proof, must continue cultivation for such period as, added to the term of the military or naval service, meets the requirements as to cultivation, as set forth in § 181.39. The widow, heirs, or devisees must also show that she, or they, are citizens of the United States, that the entryman complied with the law in all respects to the date of his death, and that there is a habitable house on the land.

(d) Where the heirs or devisees of a homesite claimant, in Alaska, succeed to his rights under his claim, they must, in order to perfect the claim by purchase under §§ 64.7 to 64.15 of this chapter, continue residence upon the land in a habitable house for such period as, added to the term of the military or naval service, meets the requirements as to residence, as set forth in § 181.39. In addition, they must show that they are citizens of the United States.

§ 181.43 *Rights of minor veteran under the homestead laws.* A person who has served or may serve in the military or naval forces of the United States for a period of at least 90 days during the period set out in § 181.36 and has received an honorable discharge, as defined in § 181.36, and who is under 21 years of age, is entitled to the benefits, rights and privileges, with respect to homestead entries and applications, conferred by the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended, and §§ 181.35 to 181.46.

§ 181.44 *Preference right of application on restoration or opening of surveyed public lands; preference right of settlement on restoration or opening of unsurveyed public lands in Alaska.* (a) From September 27, 1944, to September 26, 1959, inclusive, upon revocation of any order or withdrawal of surveyed public lands or the filing of a plat of survey or resurvey opening lands to application or entry, the order or notice taking such action will afford all persons of the classes entitled to credit under the provisions of §§ 181.35 to 181.45, a preferred right for a period of not less than ninety days, of application under the homestead or desert-land laws, the Small Tract Act of June 1, 1938 (52 Stat. 609) as amended (59 Stat. 467; 43 U. S. C. 682a), or the

*See footnote to § 181.37.

Alaska Home Site Act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461), subject to the requirements of applicable law.

(b) During the above-mentioned period, on the revocation of any order of withdrawal of unsurveyed public lands in Alaska, persons entitled to the preference-right provisions mentioned above, will have a preference for a 90 day period before the lands are opened to settlement by the general public, to settle on such lands under the homestead laws and to make homesite settlement on such lands under the act of May 26, 1934.

§ 181.45 *Cases in which preference-right provisions apply.* The preference-right provisions extend, subject to the exceptions stated in the next section, to all cases where the lands are withdrawn or withheld from application under the public land laws, and by an order are opened or restored to such application. Thus, the preference-right provisions apply (a) where lands not subject to application become subject thereto by reason of the filing of township plats of survey or resurvey, (b) where lands are restored from an order of withdrawal or reservation, (c) for small-tract application only, where lands not classified for entry under the Small Tract Act of June 1, 1938, cited above, are so classified by an authorized officer of the Department of the Interior on his own motion, (d) where lands are restored from segregation under the Carey Act, (e) where lands patented to a State under the Carey Act are reconveyed to the United States by the State, (f) where lands are reconveyed to the United States as a result of court proceedings or a demand for reconveyance, (g) where lands are conveyed to the United States by a State or a private owner in an exchange of lands, except where the acquired lands are situated in a national forest, a national park or an Indian reservation, or in any other reservation which precludes the filing of an application therefor under the public land laws, (h) where lands in national forests are opened under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), and (i) where Indian or other lands withheld from application are opened thereto.

§ 181.46 *Cases in which preference-right provisions do not apply.* The preference-right provisions do not apply where (a) lands were open to application on September 27, 1944, and they continue to occupy the same status, (b) lands are embraced in an entry which is canceled by contest, or by reason of the expiration of the statutory period, (c) lands are embraced in an entry or selection and under the law the lands become subject to application upon the filing of a relinquishment of the entry or selection in the land office, except lands in entries made under the act during the preference right period, which are relinquished before the expiration of the period, as to which excepted lands application may be made only by veterans during such period, (d) a revocation of an order of withdrawal is made in order to assist in a Federal land program other than one authorized by the homestead or desert-land laws or by the Small Tract Act of June 1, 1938, as amended, (e) lands are subject to prior existing valid settlement rights or preference rights conferred by existing laws or equitable claims subject to allowance and confirmation and (f) the lands are eliminated from national forests and are covered by the claims of holders of permits issued by the Department of Agriculture whose permits have been terminated only because of such elimination and who own valuable improvements on such lands (act of June 3, 1948, 62 Stat. 305; 43 U. S. C. 284).

§ 181.47 *Preference right accorded to veterans in connection with certain reclamation lands.* Under the terms of section 9 of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1063), as amended by the act of March 6, 1946 (60 Stat. 36, 43 U. S. C. 617h), all persons who served in the Army, Navy, Marine Corps, or Coast Guard during World War II, the War with Germany, the War with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the regular Army or Naval Reserve, will have a preference right for a period of three months to enter lands reclaimed by irrigation and reclamation under that act, subject to such qualifications as to industry, experience, character, and capital, as are deemed necessary to give reasonable assurance of success by the prospective settler. Such exclusive preference right is also given by the act cited to veteran settlers on lands watered from the Gila Canal in Arizona and on lands watered from the All-American Canal in California.

SUBCHAPTER L—MINERAL LANDS

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CROSS REFERENCES: For Bureau of Mines, Department of the Interior, see 30 CFR Chapter 1. For leases and sale of minerals, restricted Indian lands, see 25 CFR Chapter 1, Subchapter R. For regulations of the Forest Service, Department of Agriculture relating to mineral lands and mining claims, see 36 CFR Part 251.

SUBPART A—LOCATIONS

AUTHORITY: §§ 185.1 to 185.4 issued under R. S. 2478; 43 U. S. C. 1201.

GENERAL STATEMENT

§ 185.1 *Lands subject to location and purchase.* Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase, as are also lands in national forests in the public-land States, lands entered or patented under the stock-raising homestead law (title to minerals only can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably, and lands within the railroad grants for which patents have not issued.[1]

§ 185.2 *Definition of mineral under mining laws.* Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of coal, oil, gas, oil shale, sodium, phosphate, potash, and in Louisiana and New Mexico sulphur, belonging to the United States, can be acquired under the mineral leasing laws, and are not subject to location and purchase under the United States mining laws.

§ 185.3 *Manner of initiating rights under locations.* Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of mineral, by locating the lands upon which such discovery has been made. A location is made by staking the corners of the claim,[2] posting notice of location thereon and complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc.[3]

§ 185.4 *Who may make locations.* Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

SUBPART B—NATURE OF MINING CLAIMS

AUTHORITY: §§ 185.5 to 185.32 issued under R. S. 2478; 43 U. S. C. 1201.

§ 185.5 *Classes of claims.* Mining claims are of two distinct classes: Lode claims and placers.[4]

LODE CLAIMS

§ 185.6 *Lodes located previous to May 10, 1872.* The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, Revised Statutes (30 U. S. C. 26, 33),[5] by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 185.7 *Lodes must not have been adversely claimed.* It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the

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[1] Mining locations may be made in the States of Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, also in the Territory of Alaska.

Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law. (a) The mining laws were extended to the Death Valley National Monument, California, by the act of June 13, 1933 (48 Stat. 139; 16 U. S. C. 447), with a reservation of surface rights. They have also been extended to the Mount McKinley National Park and the Glacier Bay National Monument, both in Alaska. See 36 CFR 1.17 (c) and Part 69 of this chapter. (b) Mining locations in the Olympic National Park, Washington, made prior to June 29, 1943, are governed by §§ 185.33a to 185.33g. (c) Mining locations in the Organ Pipe Cactus National Monument may be made pursuant to §§ 185.33h to 185.33o.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation. See § 185.37.

For mining claims in national forests, see § 185.33.

Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, located in Oregon, are subject to mining location in accordance with provisions of §§ 185.37a to 185.37e.

[2] Except placer claims described by legal subdivision.

[3] As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

[4] In addition, there are tunnel sites and mill sites. A mile-site location should be made in substantially the same manner as a lode or placer claim (54 I. D. 255).

[5] Sections 2322 and 2328 were incorporated into the Revised Statutes from sections 3 and 9, respectively, of the act of May 10, 1872 (17 Stat. 91, 94; 30 U. S. C. 26, 33).

party so adversely claiming is in no way impaired by the act of that date.

§ 185.8 *Length of lode claims.* From and after May 10, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

§ 185.9 *Extent of surface ground.* With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the act of May 10, 1872, provides that the lateral extent of locations of veins or lodes made after said date shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

§ 185.10 *Restriction on width of claims by local laws.* No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.

§ 185.11 *Defining of locations by claimants.*[6] Locators can not exercise too much care in defining their locations at the outset, inasmuch as section 5 of the act of May 10, 1872 (17 Stat. 92; 30 U. S. C. 28) requires that all records of mining locations made subsequent to the date of said act shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

§ 185.12 *Discovery required before location.* No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 185.13 *Discovery work.* The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface.

§ 185.14 *Location notice; monumenting.* (a) The location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

(b) In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument[7] of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

§ 185.15 *Location notices to be recorded.* The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

§ 185.16 *Annual assessment work.* In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that $10 shall be expended annually in labor or improvements for each 100 feet in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than $100 worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of January 22, 1880, the first annual expenditure became due and must have been performed during the calendar year succeeding that in which the location was made. By the act of August 24, 1921 (42 Stat. 186; 30 U. S. C. 28), it was provided that the assessment period should thereafter commence at 12 o'clock meridian on the first day of July succeeding the date of the location of the claim. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

§ 185.17 *Failure to perform annual assessment work.* Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

§ 185.18 *Determination of right of possession between rival claimants.* The annual expenditure of $100 in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes (30 U. S. C. 28), is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (38 Stat. 792; 30 U. S. C. 131), under which regulations were issued March 31, 1915 (Circ. 396), solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

§ 185.19 *Annual assessment work not required after patent certificate.* Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

§ 185.20 *Failure of a co-owner to contribute to annual assessment work.* Upon the failure of any one of several co-owners to contribute his proposition of the required expenditures, the co-owners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his inter-

[6] Section 5 of the act of May 10, 1872, now section 2324, Revised Statutes (30 U. S. C. 28), requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced."

[7] As to the importance of monuments, and as to their paramount authority, see the act of April 28, 1904 (33 Stat. 545; 30 U. S. C. 34), which amended section 2327 R. S.

est in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must state that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

TUNNEL SITES

§ 185.21 *Possessory right of tunnel proprietor.* The effect of section 2323, Revised Statutes (30 U. S. C. 27), is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited as aforesaid.[8]

§ 185.22 *Location of tunnel claims.* To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

[8] Section 2323 of the Revised Statutes provides: "Failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

§ 185.23 *Recording of notices.* A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

PLACER CLAIMS

§ 185.24 *Maximum allowable acreage.* (a) By section 2330 of the Revised Statutes (30 U. S. C. 36), it is declared that no location of a placer claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

(b) Section 2331 of the Revised Statutes (30 U. S. C. 35) provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

(c) The foregoing provisions of law are construed to mean that after July 9, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that is, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§ 185.25 *Discovery.* But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

§ 185.26 *Locations authorized in 10-acre units.* By section 2330 of the Revised Statutes (30 U. S .C. 36), authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

§ 185.27 *Manner of describing 10-acre units.* A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

§ 185.28 *Conformity of placer claims to the public land surveys.* (a) All placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L. D. 250.)

§ 185.29 *Annual expenditures.* The annual expenditure to the amount of $100, required by section 2324, Revised Statutes (30 U. S. C. 28), must be made upon placer as well as lode locations.

§ 185.30 *Building-stone placers.* The act of August 4, 1892 (27 Stat. 348; 30 U. S. C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.

CROSS REFERENCE: For entry on stone lands, see Part 285 of this chapter.

§ 185.31 *Saline placers.* (a) Under the act approved January 31, 1901 (31 Stat. 745; 30 U. S. C. 162),[9] extending the mining laws to saline lands, the provisions of

[9] This act was superseded by the Mineral-Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), whereby saline (sodium) deposits were made subject to disposal by leases instead of mining locations. As to locations initiated prior to February 25, 1920, see § 195.30 of this chapter.

the law relating to placer-mining claims are extended to all States and the Territory of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder."

(b) Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, That he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

(c) In order that the conditions imposed by the proviso, as set forth in paragraph (b) of this section, may duly appear, the application for patent must contain or be accompanied by a specific statement by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

§ 185.32 *Petroleum placers.* The act of February 11, 1897 (29 Stat. 526), provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.[10]

SUBPART C—AREAS SUBJECT TO SPECIAL LAWS [11]

NATIONAL FORESTS

§ 185.33 *Mining claims in national forests.* The act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.[12]

(R. S. 2478; 43 U. S. C. 1201)

MINING CLAIMS IN THE OLYMPIC NATIONAL PARK, WASHINGTON

AUTHORITY: §§ 185.33a to 185.33g issued under sec. 2, 52 Stat. 1242; 16 U. S. C. 252.

§ 185.33a *Statutory authority.* (a) By the act of Congress approved June 29, 1938 (52 Stat. 1241; 16 U. S. C. 251–255), the Mount Olympus National Monument was abolished and certain described lands, including the lands in the Monument, were reserved, withdrawn from disposal, and dedicated and set apart as a public park to be known as the Olympic National Park. The act provides that valid existing claims shall not be affected thereby.

(b) Section 2 of the act provides:

That in the areas of said park lying east of the range line between ranges 9 and 10 and north of the seventh standard parallel, and east of the range line between ranges 4 and 5 west, Willamette meridian, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws for a period of five years from the date of approval of this Act, with rights of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 185.33b *Mining locations during 5-year period.* Under the provisions of section 2 of the act the lands within the area described in that section are, for a period of 5 years from the date of the act, open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made within the 5-year period will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior. No prospecting may be done or locations made on the land after the expiration of the 5-year period from the date of this act, but the right to remove mineral deposits from valid locations made during the 5-year period may be maintained thereafter by complying with the requirements of the United States mining laws and §§ 185.33a–185.33g.

§ 185.33c *Cutting of timber.* The locator of a mining claim within the area described in section 2 of the act may cut timber within the boundaries of his claim for mining and domestic uses only with the permission of the superintendent of the park or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims shall be disposed of by the locator in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

§ 185.33d *Construction of trails and roads.* Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the park upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the superintendent of the park, so long as it is used by the permittee or his successors.

§ 185.33e *Occupation and use of surface.* Occupation and use of the surface of a mining claim is restricted by section 2 of the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this section of the act will be entitled to such right. A locator or patentee shall not be entitled to the exclusive use of any hot or mineral springs which may be within the boundaries of his claim, or to any use of such springs for other than mining purposes. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this park. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the park.

CROSS REFERENCE: For regulations of the Secretary of the Interior affecting this park, see 36 CFR Part 26.

§ 185.33f *Termination of right to use of surface of mining claims.* The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to section 2 of the act will terminate when

[10] This act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

[11] Mining locations may be made in the States of Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, also in the Territory of Alaska.

Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law. See footnote to § 185.1.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation. See § 185.37.

[12] Locators must comply with forest regulations. See 36 CFR 200.26 and 251.12.

For mining rights in the following national forests, see statutes indicated: In the Prescott National Forest, Arizona, 47 Stat. 771, 16 U. S. C. 482a (sec. 185.34 of this chapter); in the Mount Hood National Forest, Oregon, 48 Stat. 773, 16 U. S. C. 482b–482d; in the Lincoln National Forest, New Mexico, 53 Stat. 817, 16 U. S. C. 482e–482g; in the Coronado National Forest, Arizona, 54 Stat. 52, 16 U. S. C. 482h; in the Plumas National Forest, California, 16 U. S. C. 482i; and in the Harney 16 U. S. C. 678a–678b.

Mining claims cannot be located on lands in national forests acquired under the act of March 1, 1911 (36 Stat. 962ff; 16 U. S. C. 513–519) known as the Weeks Act. See §§ 200.31 to 200.36 of this chapter.

the minerals are mined out or the claim is abandoned. Any locator of an unpatented claim who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim, and his right of occupation and use of the surface of the claim considered at an end.

§ 185.33g *Title to minerals only.* Applications for patents and final certificates issued thereon for mining claims located under section 2 of the act should be noted "Olympic National Park Lands", and all patents issued for such claims will convey title to the minerals to the act and §§ 185.33a–185.33g.

MINING WITHIN THE ORGAN PIPE CACTUS NATIONAL MONUMENT IN ARIZONA

AUTHORITY: §§ 185.33h to 185.33o issued under 55 Stat. 745; 16 U. S. C. 450z.

§ 185.33h *Statutory authority.* By the act of Congress approved October 27, 1941 (55 Stat. 745; 16 U. S. C. 450z), all mineral deposits of the classes and kinds then subject to location, entry and patent under the United States mining laws within the Organ Pipe Cactus National Monument in Arizona, were made, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 185.33i *Mining locations.* The lands within the Organ Pipe Cactus National Monument as established by Proclamation No. 2232 dated April 13, 1937 (50 Stat. 1827), are open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals.

§ 185.33j *Occupation and use of surface.* Occupation and use of the surface of a mining claim is restricted by the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this monument. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the monument.

§ 185.33k *Termination of right to use of surface of mining claims.* The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to this act will terminate when the minerals are mined out or the claim is abandoned.

§ 185.33l *Title to minerals only.* Applications for patents and final certificates issued thereon for mining claims located under the act should be noted "Organ Pipe Cactus National Monument Lands," and all patents issued for such claims will convey title to the minerals only, and contain appropriate reference to the act and these regulations.

§ 185.33m *Destroying vegetation prohibited.* The locator of a mining claim within the monument area shall refrain from destroying or disturbing vegetation within the boundaries of his claim except as is necessary for the proper development thereof for mining purposes.

§ 185.33n *Construction of trails and roads.* Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the officer in charge, so long as it is used by the permittee or his successors.

§ 185.33o *Lands containing certain features not subject to location.* Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas are not subject to location.

CITY OF PRESCOTT WATERSHED, ARIZONA

§ 185.34 *Minerals in city of Prescott watershed in Arizona.* (a) The act of January 19, 1933 (47 Stat. 771; 16 U. S. C. 482a) applies to approximately 3,600 acres in the city of Prescott municipal watershed, within the Prescott National Forest, Arizona. Rights acquired under mining locations made after the date of the act on any of the described lands are limited to the right to occupy and use so much of the surface of the land covered by the location as is reasonably necessary to carry on prospecting and mining, including the taking of mineral deposits and timber required by or in the mining operations; and patents for such locations shall convey title to the mineral deposits and a limited right to cut and remove timber for mining purposes, such patent to reserve to the United States all title in or to the surface of the lands and products thereof.

(b) The manager will note on the face of all applications for patent for mining claims embracing any of the described lands that the same are subject to the conditions, provisions, limitations, and reservations of the act, except applications for claims located prior to the date of the act and as to which the applicants expressly request patent under the provisions of the general mining laws. Patents issued subject to the act will contain appropriate conditions with respect to cutting of timber and reservation of surface in the United States.

(c) Under section 3 of the act (47 Stat. 771; 16 U. S. C. 482a), valid claims existing at the date of the act and thereafter maintained may be perfected under this act or under the law under which they were initiated, as the claimant may desire. Such claimant may, therefore, continue the development of his claim under the provisions of the act and secure patent for the mineral deposits only under its provisions, or he may continue to hold under the general mining laws and secure patent which will convey to him the surface as well as the minerals in the claim.

(R. S. 2478; 43 U. S. C. 1201)

CROSS REFERENCE: For patents, generally, see Part 108 of this chapter.

WITHDRAWN LANDS

AUTHORITY: §§ 185.35 and 185.36 issued under R. S. 2478; 43 U. S. C. 1201.

§ 185.35 *Mineral locations in stock driveway withdrawals.* (a) Under authority of the provisions of the act of January 29, 1929 (45 Stat. 1144; 43 U. S. C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals, in lands within stock driveway withdrawals made before or after May 4, 1929.

(b) All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

(c) While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

(d) All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

(e) No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

(f) Prospecting for minerals and the location of mining claims on lands included in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

(g) Mining claims on lands within stock driveway withdrawals, located prior to May 4, 1929, and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and conditions of the act and the regulations in this section.

(h) Every application for patent for any minerals located subject to this act

must bear on its face, before being executed by the applicant and presented for filing, the following notation:

Subject to the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144).

Like notation will be made by the manager on the final certificates issued on such a mineral application.

(i) Patents issued on such applications will contain the added condition:

That this patent is issued subject to the provisions of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, ocupancy and use of the land as permitted to an entryman under said act.

§ 185.36 *Mineral locations in reclamation withdrawals.*[15] (a) The act of April 25, 1932 (47 Stat. 136; 43 U. S. C. 154), authorizes the Secretary of the Interior in his discretion to open to location, entry and patent under the general mining laws with reservation of rights, ways and easements, public lands of the United States which are known or believed to contain valuable deposits of minerals and which are withdrawn from development and acquisition because they are included within the limits of withdrawals made pursuant to section 3 of the reclamation act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 416).

(b) Application to open lands to location under the act may be filed by a person, association or corporation qualified to locate and purchase claims under the general mining laws. The application must be executed in duplicate and filed in the land office of the district in which the lands are situated, must describe the land the applicant desires to locate, by legal subdivision if surveyed, or by metes and bounds if unsurveyed, and must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits.

(c) When the application is received in the Bureau of Land Management, if found satisfactory, the duplicate will be transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Bureau of Reclamation makes an adverse report on the application, it will be rejected subject to right of appeal.

(d) If in the opinion of the Bureau of Reclamation the lands may be opened under the act without prejudice to the rights of the United States, the report will recommend the reservation of such ways, rights and easements considered necessary or appropriate, and/or the form of contract to be executed by the intending locator or entryman as a condition precedent to the vesting of any rights in him, which may be necessary for the protection of the irrigation interests.

[15] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

CROSS REFERENCE: For Bureau of Reclamation regulation concerning waiver of mineral rights, see § 401.24 of this title.

PAPAGO INDIAN RESERVATION

§ 185.37 *Mineral locations in Papago Indian Reservation, in Arizona.* (a) The act of June 18, 1934 (48 Stat. 984; 25 U. S. C. 461–479), as amended by the act of August 28, 1937 (50 Stat. 862; 25 U. S. C., 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Papago Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.

(b) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining laws and regulations thereunder, with the additional requirements hereinafter prescribed.

(c) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Papago Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(d) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(e) At the time of filing with the manager an application for mineral patent for lands within the Papago Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe a sum equal to $1 for each acre and $1 for each fractional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(g) The act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not acquired, such sums due as annual rentals but not paid during the period of patent application shall be deducted from the sum deposited in lieu of annual rental. Applications for refund shall be filed in the office of the manager and should follow the general procedure in applications for repayment.

(h) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of the said act of August 28, 1937, except under permit from the Secretary of the Interior approved by the Papago Indian Council.

(i) A mining location may not be located on any portion of a 10 acre legal subdivision containing water reservoirs, charcos, water holes, springs, wells or any other form of water development by the United States or the Papago Indians except under a permit from the Secretary of the Interior approved by the Papago Indian Council which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Papago Indians.

(j) The term "locator" wherever used in this section shall include and mean his successors, assigns, grantees, heirs, and all others claiming under or through him.

(R. S. 2478; 43 U. S. C. 1201)

MINERAL LOCATIONS IN REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS

AUTHORITY: §§ 185.37a to 185.37e issued under R. S. 2478; 43 U. S. C. 1201.

§ 185.37a *General provisions.* (a) The act of April 8, 1948 (62 Stat. 162) reopens the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (hereinafter referred to in this section as the O. and C. lands) in Oregon, except power sites, to exploration, location, entry, and disposition under the United States Mining Laws. The act also validates mineral claims, if otherwise valid, located on the O. and C. lands during the period from August 28, 1937, to April 8, 1948.

(b) The procedure in the locating of mining claims, performance of annual labor, and the prosecution of mineral patent proceedings in connection with O. and C. lands is the same as provided by the United States Mining Laws and the general regulations in this part, and is also subject to the additional conditions and requirements hereinafter set forth.

§ 185.37b *Requirements for filing notices of locations of claims; descrip-*

tions. (a) Where prior to April 8, 1948, a mining claim has been located upon O. and C. lands, the owner thereof must file for record, not later than October 5, 1948, in the land office of the land district in which the claim is situated, a copy of the notice of location of the claim. With respect to all mining claims located on O. and C. lands on or after April 8, 1948, the owner thereof must file for record, within 60 days of the date of such mining location, in the appropriate land office, a copy of the notice of location of the claim.

(b) If the location affects surveyed lands and the copy of location notice does not describe those legal subdivisions, section, township and range partly or wholly covered by the mining claim, the copy must be accompanied by a statement of the owner of the claim describing the legal subdivisions affected.

(c) If the location affects unsurveyed lands and the copy of location notice does not show the land described therein connected by course and distance to the nearest corner of the public land surveys and does not give the probable legal subdivisions affected if the lands were surveyed, the copy must be accompanied by a statement of the owner of the claim giving that information or satisfactory reasons for not doing so.

(d) The name and address of each owner of the claim should be furnished with the other data required by this section.

§ 185.37c *Requirement for filing statements of assessment work.* The owner of any unpatented mining claim located upon O. and C. lands must also file for record in the land office in which the claim is situated, within 60 days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year, or, as to compliance in lieu thereof, with any applicable relief act.

§ 185.37d *Restriction on use of timber; application for such use.* The owner of any unpatented mining claim located upon O. and C. lands on or after August 28, 1937, shall not acquire title, possessory or otherwise, to the timber, now or hereafter growing upon such claim. Such timber may be managed and disposed of under existing law or as may be provided by subsequent law. The owner of such unpatented mining claim, until such time as the timber is otherwise disposed of by the United States, if he wishes to cut and use so much of the timber upon his claim as may be necessary in the development and operation of his mine, shall file a written application with the district forester for permission to do so. The application shall set forth the estimated quantity and kind of timber desired and the use to which it will be put. The applicant shall not cut any of the timber prior to the approval of the application therefor.

§ 185.37e *Applications for final certificates and patents.* Applications for patents and final certificates in connection with mining claims located upon O. and C. lands on or after August 28, 1937 must be noted "Mining claims on O. and C. lands, under the act of April 8, 1948." All patents issued on such claims located on or after August 28, 1937, shall contain an appropriate reference to the act of April 8, 1948, and shall indicate that the patent is issued subject to the conditions and limitations of the act.

CROSS REFERENCE: For other regulations governing the revested and reconveyed lands, see Part 115 of this chapter.

SUBPART D—PROCEDURE TO OBTAIN PATENT

AUTHORITY: §§ 185.38 to 185.72 issued under R. S. 2478; 43 U. S. C. 1201.

LODE CLAIMS

§ 185.38 *Application for survey.* The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground.[24]

§ 185.39 *Survey must be made subsequent to recording notice of location.* The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.[25]

§ 185.40 *Plats and field notes of mineral surveys.* When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

§ 185.41 *Particulars to be observed in mineral surveys.* (a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.43

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

§ 185.42 *Certificate of expenditures and improvements.* (a) The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the manager a certificate of the office cadastral engineer that not less than $500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to $500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and mill-site claim in the same survey the expenditure of $500 must be shown upon the lode claim.

§ 185.43 *Mineral surveyor's report of expenditures and improvements.* (a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of

[24] Application for authorization of survey should be made to the cadastral engineer of the appropriate Area Cadastral Engineering Office. In States for which there is no area office, applications for survey should be made to the Director of the Bureau of Land Management, Washington, D. C.

[25] All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.

§ 185.44 *Supplemental proof of expenditures and improvements.* If the value of the labor and improvements upon a mineral claim is less than $500 at the time of survey the mineral surveyor may file with the cadastral engineer supplemental proof showing $500 expenditure made prior to the expiration of the period of publication.

§ 185.45 *Amended mineral surveys.* (a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the Bureau of Land Management office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

§ 185.46 *Mineral surveyors may not act in certain matters.* The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit the proper cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

CROSS REFERENCE: For practitioner disqualifications, see § 1.5 of this title.

§ 185.47 *Parties who may not assist in making surveys.* The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

§ 185.48 *Contract for surveys.* (a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.[31]

(b) Neither the cadastral engineer nor the area administrator has jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i. e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

§ 185.49 *Appointment of mineral surveyors.* (a) Pursuant to section 2334 of the Revised Statutes (30 U. S. C. 39), each area administrator will appoint as surveyors for the survey of mining claims applicants found to be competent, to the extent needed to meet the demand for that class of work. Each appointee shall qualify as prescribed by the area administrator and shall furnish a performance bond of not less than $5,000 before entering on duty. Each mineral surveyor shall be eligible to survey mining claims in the States within the region in which he is appointed and in adjoining States. Each area administrator shall maintain a register showing the names and addresses of mineral surveyors appointed for the area and eligible for the survey of mining claims. The area administrator shall furnish the area administrator of each adjoining area with a copy of such register, and shall advise them of any changes therein.

(b) A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

§ 185.50 *Payment of charges of the public survey office.* With regard to the platting of the claim and other office work in the Bureau of Land Management office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

§ 185.51 *Plat and notice to be posted on claim.* The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey.

§ 185.52 *Proof of posting on the claim.* After posting the said plat and notice upon the premises the claimant will file with the proper manager a copy of such plat and the field notes of survey of the claim, accompanied by the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, a copy of the notice so posted to be attached to and form a part of said statement.

§ 185.53 *Application for patent.* (a) At the time the proof of posting is filed, as required by § 185.52, the claimant must file an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.[32]

(b) Every application for patent, based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source ma-

[31] All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

[32] Blank forms of applications for mineral patents are not furnished by the Bureau of Land Management.

The application should be filed in duplicate. See 52 L. D. 190.

terials in the lands covered by his application.

CROSS REFERENCE: For definition of fissionable source materials, see Atomic Energy Commission's regulation, 10 CFR 40.2.

§ 185.54 *Evidence of title.* (a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to Form 4–1246.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

(R. S. 2478; 43 U. S. C. 1201)

§ 185.55 *Evidence relating to destroyed or lost records.* In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 185.56 *Publication in newspaper.* Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the manager will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim. If the notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semiweekly or triweekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

§ 185.57 *Contents of published notice.* The notices published as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 185.58 *Manager to designate newspaper.* The manager shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 185.59 *Proof by applicant of publication and posting.* After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 185.60 *Payment of purchase price and statement of charges and fees.* Upon the filing of the statement required by the preceding section, the manager will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of $5 for each acre and $5 for each fractional part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the manager of the land office, and a patent shall be issued thereon if found regular.

§ 185.61 *Trustee to disclose nature of trust.* Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

§ 185.62 *Allowance of entry; transfers subsequent to application not recognized.* No entry will be allowed until the manager has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations.[2] Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

§ 185.63 *Failure to prosecute application with diligence.* The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

§ 185.64 *Resumption of patent proceedings after suspension due to adverse claim or protest.* The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

MILL SITES

§ 185.65 *Application for patent.* (a) Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims. Section 2337 of the Revised Statutes (30 U. S. C. 42) provides for the patenting of mill sites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

§ 185.66 *Mill sites applied for in conjunction with a lode claim.* Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must

[2] If the proof is found regular, certificate should issue even though a protest may have been filed but the claimant should be advised that patent will be withheld by the Bureau of Land Management pending a report by the authorized officer upon the bona fides of the claim.

be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being $5 for each acre and fractional part of an acre embraced by such lode and mill site claim.

§ 185.67 *Mill sites for quartz mills or reduction works.* In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at the price named in the preceding section.

§ 185.68 *Proof of nonmineral character.* In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable, from acquaintance with the land to testify understandingly.

PLACERS

§ 185.69 *Application for patent.* (a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) The price of placer claims is fixed at $2.50 per acre or fractional part of an acre.

CROSS REFERENCE: For patents, generally, see Part 108 of this chapter.

§ 185.70 *Proof of improvements for patent.* The proof of improvements must show their value to be not less than $500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 185.71 *Data to be filed in support of application.* (a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes (30 U. S. C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses.[39]

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 185.72 *Applications for placers containing known lodes.* Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnesses.

[39] The proof showing must be made in duplicate. See 51 L. D. 265 and 52 L. D. 190.

SUBPART E—GENERAL

AUTHORITY: §§ 185.73 to 185.100 issued under R. S. 2478; 43 U. S. C. 1201.

CITIZENSHIP

§ 185.73 *Citizenship of corporations and of associations acting through agents.* The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application for patent.

§ 185.74 *Citizenship of individuals.* (a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

POSSESSORY RIGHT

§ 185.75 *Right by occupancy.* (a) The provisions of section 2332, Revised Statutes (30 U. S. C. 38), greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

(b) When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation

with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

§ 185.76 *Certificate of court required.* There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid other than that which has been finally decided in favor of the claimant.

§ 185.77 *Corroborative proof required.* The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

ADVERSE CLAIMS

§ 185.78 *Filing of claim.* (a) An adverse claim must be filed with the manager of the land office where the application for patent is filed or with the manager of the district in which the land is situated at the time of filing the adverse claim. The claim may be filed by the adverse claimant, or by his duly authorized agent or attorney in fact cognizant of the facts stated.

(b) Where an agent or attorney in fact files the adverse claim he must furnish proof that he is such agent or attorney.

(c) The agent or attorney in fact must sign the statement of the adverse claim within the land district where the claim is situated, stating that it was so signed.

§ 185.79 *Statement of claim.* (a) The adverse claim must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the statement of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

(b) In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: Provided, however, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

§ 185.80 *Action by manager.* Upon the adverse claim being filed within the 60-day period of publication, the manager will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

§ 185.81 *Patent proceedings stayed when adverse claim is filed; exception.* When an adverse claim is filed as aforesaid, the manager will endorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

§ 185.82 *Termination of adverse suit.* (a) Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the manager a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes (30 U. S. C. 30), and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

(b) Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

(c) After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

§ 185.83 *Certificate required when no suit commenced.* Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

FEES

§ 185.84 *Fees.* The fee payable to the Bureau of Land Management for filing and acting upon applications for mineral-land patents is $10, to be paid by the applicant for patent at the time of filing, and the like sum is payable by an adverse claimant at the time of filing his adverse claim.

CHARGES FOR NEWSPAPER PUBLICATION

§ 185.85 *Charges not to exceed legal rates.* (a) The charge for the publication of notice of application for patent in a mining case in all districts, exclusive of Alaska, shall not exceed the legal rates allowed by the laws of the several States for the publication of legal notices wherein the notice is published, and in no case shall the charge exceed $7.50 for each 10 lines of space occupied. Such charge shall be accepted as full payment for the publication for the entire period required by law.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the heading and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko, Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims, Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34, T. 46 N., R. 58 E., M. D. B. and M., bears south 41°54' west 7285.63 feet, thence north 20°14' west 1500 feet to corner No. 2 of said lode; thence north 69°46' east 569 feet to corner No. 3 of said lode; thence south 20°14' east 417.5 feet to corner 2, Altitude No. 1; thence north 69°46' east 1606.1 feet to corner No. 3, Altitude lode; thence south 20°14' east 1500 feet, to corner No. 4 of said lode; thence south 69°46' west 1606.1 feet, to corner No. 1, Altitude No. 1 lode; thence north 20°14' west 417.5 feet to corner No. 4, Altitude No. 3;

thence south 69°46' west 869 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and in Book 15, pages 52 and 53, mining locations, Elko County, Nevada, John E. Robbins, Manager.

(c) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State, and shall not exceed $12 for five publications in a weekly newspaper, or $15 for publication in a daily newspaper for 30 days. Such charge shall be accepted as full payment for all the matter so published and for the full period required.

PROTESTS, CONTESTS, CONFLICTS, AND SEGREGATIONS

§ 185.86 *Protest against mineral applications.* At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes (30 U. S. C. 29, 30). (See Turner v. Sawyer, 150 U. S. 578–586, 37 L. ed. 1189–1191.)

§ 185.87 *Procedure in contest cases.* The Rules of Practice, Part 221 of this chapter, in cases before the United States the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

§ 185.88 *Presumption as to land returned as mineral.* Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

§ 185.89 *Procedure to dispute record character of land.* (a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirment. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

§ 185.90 *Testimony at hearings to determine character of lands.* (a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thorougly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof, whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

(b) The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

(c) The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

§ 185.91 *Segregation of mineral from non-mineral land.* Where a survey is necessary to set apart mineral from non-mineral land, the appropriate authorized officer will have special instructions prepared outlining the procedure to be followed in the required survey. The survey will be executed at the expense of the United States.[21]

§ 185.92 *Effect of decision that land is mineral.* The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with this part.

§ 185.93 *Non-mineral entry of residue of subdivisions invaded by mining claims.* (a) The manager will accept and approve any application (if otherwise regular), to make a non-mineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the non-mineral applicant does not desire to contest, or by approved mining claims of established mineral character, the manager will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims.

(b) The manager will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the non-mineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the non-mineral appropriation of the remainder, will be made to the manager of the land office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

TEMPORARY DEFERMENT OF ASSESSMENT WORK UNDER CERTAIN CONDITIONS

§ 185.94 *Statutory authority.* The act of June 21, 1949 (63 Stat. 214; 30 U. S. C. Sup. 28b-e), provides for the

[21] Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from non-mineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 185.95 *Conditions under which deferment may be granted.* The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 185.96 *Filing of petition for deferment, contents.* (a) In order to obtain temporary deferment, the claimant must file with the manager of the land office for the district in which the lands are situated or with the area administrator for the State if there is no land office in the State, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one copy thereof a copy of the notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one year period for which deferment is requested.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

§ 185.97 *Notice of action on petition to be recorded.* The claimant must file or record, in the office in which he filed or recorded his notice of petition, a copy of the order or decision disposing of the petition.

§ 185.98 *Period for which deferment may be granted.* If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 185.99 *When deferred assessment work is to be done.* All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and shall be in addition to the annual assessment work required by law for such year.

PATENTS FOR MINING CLAIMS

§ 185.100 *Land descriptions in patents.* The land description in a patent for a lode mining claim, for a millsite, or for a placer claim not consisting of legal subdivisions, shall hereafter consist of the names and survey numbers of the claims being patented and those being excluded, or of the names of the excluded claims if they are unsurveyed, or of the legal subdivisions of excluded land covered by homestead or other nonmineral entry. The land description shall refer to the field notes of survey and the plat thereof for a more particular description and the patent shall expressly make them a part thereof. Where shown by the mineral entry the patent shall give the actual or approximate legal subdivision, section, township and range, the name of the county and of the mining district, if any, wherein the claims are situated. A copy of the plat and field notes of each mineral survey patented will be furnished to the patentee.

PART 187—LEASES OF GOLD, SILVER, AND QUICKSILVER

LEASES OF GOLD, SILVER, AND QUICKSILVER TO OWNERS OF CONFIRMED PRIVATE LAND CLAIMS

Sec.
187.1 Statutory authority.
187.2 Application by grantee or his successor in title.
187.3 Form and contents of application; abstract of title required.
187.4 Rate of royalty; investment required.
187.5 Execution of lease.
187.6 Bond.
187.7 Form of lease.

AUTHORITY: §§ 187.1 to 187.7 issued under sec. 3, 44 Stat. 710; 30 U. S. C. 293.

CROSS REFERENCE: For leases and sale of minerals, restricted Indian Lands, see 25 CFR chapter I, Subchapter R.

§ 187.1 *Statutory authority.* The act of Congress approved June 8, 1926 (44 Stat. 710; 30 U. S. C. 291–293) authorizes the Secretary of the Interior to lease to the grantee, or those claiming through or under him gold, silver, and quicksilver deposits, or mines or minerals of the same, on lands in private land claims confirmed pursuant to decrees of the court of private land claims with reservation of such minerals or mines.

§ 187.2 *Application by grantee or his successor in title.* Applications for leases shall be filed in the land office of the district in which the lands are situated, by the owner of the land under the confirmed title; that is, the original grantee or his record transferee or successor in title, and may include all or any part of the grant for which the applicant holds title at the date of the application.

§ 187.3 [1] *Form and contents of application; abstract of title required.* Applications shall give name and address of the applicant, describe the land in which the deposits occur, by legal subdivisions of the public surveys, if so surveyed, otherwise by metes and bounds, or if for the entire area in the grant, the name of the grant, area, and date of patent will suffice. The mineral deposits must also be fully described, giving character, mode of occurrence, nature of the formation, kind, and character of associated minerals, if any, proposed mining methods, estimate of amount of investment necessary to successful operation of the mine or mines contemplated, estimated amount of production of gold, silver, and quicksilver, or any of them, and such other pertinent information the applicant may desire to set forth, including what he considers a reasonable royalty rate under the lease. The applicant must also file with his application a duly authenticated abstract of title showing present ownership of the land, or a certificate of the county recorder of deeds that the record title stands in the applicant's name.

§ 187.4 *Rate of royalty; investment required.* When an application is received by the Bureau of Land Management, it will be considered, and if found sufficient to authorize issuance of lease thereunder, a rate of royalty, not less than 5 percent nor more than 12½ percent of the value of the output of gold, silver, or quicksilver at the mine, will be fixed and the amount of investment under the lease will be determined and prescribed.

§ 187.5 *Execution of lease.* When a lease has been authorized, forms of lease in accordance with the terms prescribed will be furnished to the applicant, who will be allowed 30 days from notice within which to execute and return the lease to the land office and to furnish the required bond.

§ 187.6 *Bond.* A bond with approved corporate surety in the sum of $2,000 will be required as a guarantee to the making of the investment fixed in the lease and compliance with the other terms and conditions thereof, but a larger bond may be fixed if that amount is determined to be inadequate for the purpose for which given.

§ 187.7 *Form of lease.* Leases will be issued in accordance with the form prescribed in 52 L. D. 21.

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES, AND LICENSES

GENERAL PROVISIONS

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191.1 Purpose of the leasing acts.
191.2 Lands and deposits to which mineral leasing act does not apply.
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ROYALTY AND RENTAL RELIEF; SUSPENSION OF OPERATIONS AND PRODUCTION

191.25 Waiver, suspension, or reduction of rental or minimum royalty or reduction of royalty on mineral leases.
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LEASING OF MINERALS DEVELOPED BY GOVERNMENTAL AGENCY TO AID IN PROSECUTING WORLD WAR II

191.40 Leases to Governmental agency or its assigns.

AUTHORITY: §§ 191.1 to 191.40 issued under sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301; 30 U. S. C. 189, 271. Interpret or apply sec. 5, 44 Stat. 1058, as amended; 30 U. S. C. 285.

GENERAL PROVISIONS

§ 191.1 *Purpose of the leasing acts.* The act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950), the act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281–287) and the act of April 17, 1926 (44 Stat. 301; 30 U. S. C. 271–276) as amended, hereinafter called "the act," provide for the leasing of oil and gas, coal, potassium, sodium, phosphate, and oil shale, and lands containing such deposits owned by the United States in the public domain and deposits of sulphur and the public lands containing such deposits in the States of Louisiana and New Mexico, except as stated in § 191.2.[1]

§ 191.2 *Lands and deposits to which mineral leasing act does not apply.* The mineral leasing act does not apply (a) to lands containing the mineral deposits named in § 191.1 where such lands are situated in (1) national parks and monuments; (2) Indian reservations; (3) incorporated cities, towns and villages, or (4) naval petroleum and oil shale reserves; nor (b) to lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U. S. C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

§ 191.3 *Who may hold leases and permits.* Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

§ 191.4 *Rights of aliens.* Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases, if the laws of their country do not deny similar or like privileges to citizens of the United States. A corporation is required to file a certified copy of its articles of incorporation and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied.

§ 191.5 *Reserved or segregated lands.* With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

§ 191.6 *Special stipulations for lands where surface control is under jurisdiction of the Department of Agriculture or for lands in reclamation projects.* Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands the surface control of which is under the jurisdiction of the Department of Agriculture will be required to consent to the inclusion therein of the stipulation on Form 4–216. Where the land has been withdrawn for reclamation purposes the offeror or applicant may be required to consent to the inclusion of a stipulation on Form 4–467 if the land is potentially irrigable, or Form 4–467 (a) if the land is within the flow limits of a reservoir site, or Form 4–467 (b) if the land is within the drainage area of a constructed reservoir. Other conditions may be imposed, if deemed necessary, to protect land withdrawn for reclamation purposes.

§ 191.7 *Multiple development or other disposition of land.* The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of the leased lands with a reservation of the mineral deposits to the United States.

§ 191.8 *Interests held in common.* An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

§ 191.9 *Survey of lands for leasing.* Unsurveyed lands containing oil shale, and unsurveyed lands embraced in applications for lease based upon discovery of valuable deposits of potassium, sodium or sulphur under a prospecting permit, must be surveyed by the Government at the expense of the applicant prior to the issuance of a lease of the lands. To secure such a survey, the applicant must obtain from the appropriate cadastral engineer an estimate of the cost of the survey and deposit with him the estimated amount. After the survey has been accepted and the plat filed in the land office the application will be adjusted to the resulting subdivisions and the cost of the survey will be ascertained by prorating the total cost of surveying the township to the area to be leased. The amount thus ascertained will be credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor or his authorized representative. The survey of unsurveyed lands for any coal lease, or for a competitive lease for phosphate, potassium, sodium, oil, or gas, or sulphur will be made at the expense of the Government prior to the issuance of a lease of the lands.

§ 191.10 *Simultaneous applications or offers for lease.* Where applications or offers received by mail or filed over the counter at the same time are in conflict, the right of priority of filing will be determined by public drawing in the manner provided in § 295.8 (b) of this chapter.

§ 191.11 *Filing fees.* Offers for noncompetitive oil and gas leases and all applications for prospecting permits, licenses, or noncompetitive leases, ex-

[1] Coal deposits in Alaska are not covered by these acts but may be disposed of under the act of October 20, 1914 (38 Stat. 742; 48 U. S. C. 434), as amended by the act of March 4, 1921 (41 Stat. 1363; 48 U. S. C. 444), relating solely to Alaska, and the regulations in §§ 70.2 to 70.29 of this chapter.

cepting phosphate lease applications, must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

§ 191.12 *Payments of rentals and royalties.* Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the manager of the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be paid to the Bureau of Land Management, Washington 25, D. C., except the payments for lands in North or South Dakota shall be made to the land office at Billings, Montana; for lands in Nebraska or Kansas, to the land office at Cheyenne, Wyoming; and for lands in Oklahoma, to the land office at Santa Fe, New Mexico. All remittances shall be made payable to the Bureau of Land Management.

§ 191.13 *Bonds with individual sureties.* Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the United States Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located. There also must be furnished a certificate by a judge or clerk of a court of record, a United States attorney, a United States Commissioner, or a United States postmaster, as to the identity, signature, and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on Form 4–215.

§ 191.14 *Reinstatement of rejected applications for lands restored from withdrawal or use for war purposes.* Hereafter, upon publication of a revocation of a withdrawal or of a use permit made or granted in connection with the prosecution of World War II, a mineral permit or lease applicant whose application was rejected solely because of the subsequent withdrawal of the land for use in connection with the prosecution of the war or because, either before or after the application was filed, a permit was granted to use the land for war purposes, may apply for and obtain a reinstatement of his application. If the application for reinstatement is for lands restored from a withdrawal it must be filed prior to the date fixed for the filing of applications by the general public; if for land affected by the revocation of permits, within 60 days from the date of publication of such revocation. No application for reinstatement will be considered unless it is timely filed and accompanied by the proper filing fee and the full amount of the first year's rental.

ROYALTY AND RENTAL RELIEF; SUSPENSION OF OPERATIONS AND PRODUCTION

§ 191.25 *Waiver, suspension, or reduction of rental or minimum royalty or reduction of royalty on mineral leases.* (a) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, oil shale, oil, or gas and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the oil and gas supervisor for oil and gas leases or the office of the mining supervisor for coal, phosphate, potassium, sodium, oil shale and sulphur leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(2) Each application involving coal, phosphate, potassium, sodium, oil shale and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells or mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 191.26 *Suspension of operations and production.* (a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the regional oil and gas supervisor for oil and gas leases, and in the office of the regional mining supervisor for all other leases.[1] As to oil and gas leases, no suspension of operations and production will be granted on any lease in the absence of a well capable of production on the leasehold, except where the Secretary directs a suspension in the interest of conservation. Complete information must be furnished showing the necessity for such relief.

(b) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(d) No lease will be deemed to expire by reason of a suspension of production only pursuant to any direction or assent of the Secretary.

(e) If there is a well capable of producing on the leased premises and all operations and production are suspended pursuant to any direction or assent of the Secretary, the commencement of drilling operations only will be regarded as terminating the suspension as to operations but not as to production, and as terminating the period of suspension to be added to the term of the lease as provided in paragraph (b) of this section and the period of suspension of rental and minimum royalty payments as provided in paragraph (c) of this section. However, as provided in paragraph (d) of this section, the term of the lease will not be deemed to expire so long as the

[1] By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the regional oil and gas supervisors and the regional mining supervisors are authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

suspension of production remains in effect.

(f) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, oil shale or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation.

§ 191.27 *Applicability of relief.* The relief authorized under §§ 191.25 and 191.26 may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

LEASING OF MINERALS DEVELOPED BY GOVERNMENTAL AGENCY TO AID IN PROSECUTING WORLD WAR II

§ 191.40 *Leases to Governmental agency or its assigns.* Except as otherwise provided by law, any mineral deposits (other than for oil and gas) and public lands containing such deposits which are subject to disposition under the provisions of the act, the production from which has been used by any Federal agency in connection with the prosecution of World War II, may be leased to the agency controlling the facilities using such production, or to any purchaser or lessee of such facilities, by negotiation, or by requiring the agency, its purchaser or lessee to meet the highest competitive bid received under sealed bids for such lease.

PART 192—OIL AND GAS LEASES

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AUTHORITY: §§ 192.1 to 192.161 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

GENERAL PROVISIONS

§ 192.1 *Applicability of amendatory act to existing leases.* Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U. S. C. 181) applies to leases issued prior to the date of that act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

§ 192.2 *Helium.* The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium.

§ 192.3 *Acreage limitations on leases.* (a) No person, association, or corporation, except as in the act provided, may hold more than 15,360 acres in any one state, whether directly through the ownership of leases or interests in leases, or indirectly as a member of an association, or associations, or as a stockholder of a corporation, or corporations, holding leases or interests therein or both. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior and all operating, drilling, or development agreements approved under section 17 (b) of the act, other than communitization agreements, and all leases issued under sections 18 and 19 of the act shall not be included in computing accountable acreage under section 27 of the act.

(b) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(c) No lease will be issued and no transfer will be approved until it has been shown pursuant to the requirements of § 192.42 (e) (4) that the lessee or transferee is entitled to hold the acreage. Any party found to hold or control accountable acreage computed in accordance with the principles above set forth in excess of the prescribed limitations shall be given thirty days within which to file proof of the reduction of his holdings or control so as to conform with the prescribed limitation.

§ 192.4 *Acreage limitations on options.* (a) Acreage held under a nonrenewable option, valid only for two years or such longer perid as may be authorized by the Secretary, for the purpose of geological or geophysical exploration, shall not be chargeable under § 192.3, but no optionee, except as permitted by the act of August 8, 1946, may hold options at any one time for more than 100,000 acres in any one State.

(b) No such option shall be taken for more than two years without the prior approval of the authorized officer, except that an option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and two years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application

should be filed in the proper office as prescribed in § 192.42 (b), accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application by the Secretary.

(c) Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

(d) It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 192.20) duly executed by the parties and submitted to the Bureau of Land Management for final approval prior to the expiration of the two-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

(e) No acreage shall be chargeable under options taken prior to June 1, 1946, on which geological or geophysical exploration has been actually made if exercised on or before August 8, 1950, but no such option not so exercised will be recognized by the Bureau, thereafter, for any purpose.

(f) Each optionee must file with the Director, Bureau of Land Management, within 90 days after December 31 and June 30 of each year, a statement showing as of the prior December 31 and June 30, respectively, (1) name of optioner and serial number of lease, application or offer for lease subject to the option, (2) date and expiration date of each option, (3) number of acres covered by each option, and (4) aggregate number of options held in each State and total acreage thereof.

(g) If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

§ 192.5 *Lands within one mile of naval petroleum or helium reserves.* No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

§ 192.6 *Boundaries of known geologic structures and productive limits of producing oil or gas fields and deposits.* The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946. Maps or diagrams showing the boundaries of known geologic structures of producing oil or gas fields and of the productive limits of producing oil or gas deposits will be placed on file in the appropriate land office, and office of the oil and gas supervisor. Any lessee or his operator may apply to have a determination made as to whether or not the land upon which he intends to drill a well is inside or outside the productive limits of a producing oil or gas deposit. The application should be accompanied by all available geologic data which in his opinion have a bearing on the matter.

§ 192.7 *Agreements to compensate for drainage.* Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 192.8 *Protection of leased lands from drainage.* (a) Where land in any lease is being drained of its oil or gas content by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR, 221.21.

(b) A period equal to that for which compensatory royalty is paid in lieu of drilling on any Federal lease under this section or § 192.7 shall be added to its primary term where there is no producing well on the lease.

§ 192.9 *Leases for wildlife refuge lands.* No noncompetitive oil and gas lease under the act will be issued for lands within a wildlife refuge (a) unless those lands are subjected to an approved cooperative or unit plan, and (b) unless the lease contains a provision which prohibits drilling or prospecting on the refuge lands except when consented to by the Secretary of the Interior upon the advice of the Fish and Wildlife Service. Subject to the same two conditions, competitive leases also may issue for refuge lands. Even if these conditions are not met, competitive leases may nevertheless issue if Fish and Wildlife Service reports that oil and gas development may be conducted without destroying the usefulness of the lands as a sanctuary for wildlife, or, in the absence of such a report, wherever the Secretary determines that the national interest in securing the contemplated oil and gas production outweighs the importance of maintaining the refuge as a sanctuary for wildlife.

COOPERATIVE CONSERVATION PROVISIONS

§ 192.20 *Cooperative or unit plans.*[1] The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation). The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges.

§ 192.21 *Application for approval of plan.* The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226, "Unit or Cooperative Agreements". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey, for the region in which the unit area is situated.

§ 192.22 *Communitization or drilling agreements.* (a) The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the oil and gas supervisor and executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

(c) The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the in-

[1] For the extension of leases committed to a unit plan, see § 192.122.

terests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

§ 192.23 *Approval of operating, drilling or development contracts without regard to acreage limitations.* (a) The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipe-line companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

(b) A contract submitted for approval under this provision should be filed with the appropriate land office manager, Bureau of Land Management, together with enough copies to permit retention of 5 copies by the Department after approval. It should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

§ 192.24 *Combinations for joint operation or refinery, or for transportation of oil.* Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases. An application under this section, together with enough copies to permit retention of 5 copies by the Department after approval should be filed with the Director, Bureau of Land Management. The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.[1]

§ 192.25 *Subsurface storage of oil or gas.* (a) In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

ISSUANCE OF LEASES

§ 192.40 *Classes and term.* All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field, such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ per cent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, within a six-mile square, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent. All leases, except those issued as renewals of 20-year leases, will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities.

§ 192.40a *Dating of competitive and noncompetitive oil and gas leases.* All competitive and noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

§ 192.41 *Leases for lands wholly or partly within unit areas.* (a) Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

(b) In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

§ 192.42 *Offer to lease, and issuance of lease.* (a) To obtain a non-competitive lease an offer to accept such lease must be made on Form 4–1158, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided*, That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. Form 4–1158 or a valid reproduction of the official form will also constitute the lease when signed by the manager of the land office.

(b) Five copies of Form 4–1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in States for which there are no land offices, with the Bureau of Land Management, Washington 25, D. C., except that offers for lands or mineral deposits in the following States should be filed at the land office named: North or South Dakota, land office at Billings, Montana; Nebraska or Kansas, at Cheyenne, Wyoming; Oklahoma, at Santa Fe, New Mexico. If less than five copies are filed, the offer will not be rejected, if not otherwise subject to rejection, until 30 days from filing have elapsed and if during that period the remaining required copies are filed, the offeror's priority will date from the date of the first filing. If the additional copies are not filed within the 30-day period, the offer will be rejected and returned and will afford no priority to the offeror. Should the additional copies be filed after the 30-day period but before the offer has been rejected, the offeror will have a priority as of the later filing date. The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) The offeror shall mark one of the copies first filed at the top with the word "original". If that is not done, the manager will so mark one copy. If there is any variation in the land descriptions among the five copies, the copy marked "original" shall govern as to the lands covered by the lease.

(d) Each offer must be filled in on a typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. Each offer must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within a six-mile square. Each offer must be for an area of not more than

[1] Rights-of-way for oil and gas pipe lines may be granted as provided for in §§ 244.48 to 244.52 of this chapter.

2,560 acres except where the rule of approximation applies, and may not be for less than 640 acres except in any one of the following instances:

(1) Where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey.

(2) Where the land is surrounded by lands not available for leasing under the act, except that where the tract was isolated as the result of a partial relinquishment of a lease, no lease offer will be received for the relinquished land other than one filed under the conditions prescribed in subparagraph (1) of this paragraph for a period of 60 days from and after the date of filing of the partial relinquishment.

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge, except as provided in paragraph (g) of this section, even though the offer should be rejected or withdrawn in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(3) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (f) (2) of this section), evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror; and in addition, if such offeror is an individual, a statement over the offeror's signature setting forth the offeror's citizenship and whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 chargeable acres.

(4) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 acres. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(5) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statement as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(6) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(f) If the offeror is a corporation the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding 20 percent or more of the stock of the corporation. When the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate showing of citizenship and holdings of stockholders owning or controlling 20 percent or more of the stock of any class must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(g) (1) Except as provided in subparagraph (2) of this paragraph an offer will be rejected and returned to the offeror and will afford the applicant no priority if:

(i) The land description is insufficient to identify the lands or the lands are not entirely within a 6-mile square.

(ii) The total acreage exceeds 2,560 acres, except where the rule of approximation applies or is less than 640 acres or the equivalent of a section and is not within the exceptions in paragraph (d) of this section.

(iii) The full filing fee and the first year's rental do not accompany the offer, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision.

(iv) The offer is signed by an agent in behalf of the offeror and the offer is not accompanied by a statement over the offeror's own signature with respect to holdings and citizenship and by the statements and evidence required by paragraph (e) (4) of this section.

(v) The offer is signed by a guardian or trustee in behalf of a minor and is not accompanied by the evidence required by paragraph (e) (5) of this section.

(vi) Less than five copies of the offer are filed and the copies lacking are not received in the land office before the expiration of 30 days from the date of receipt of the copies first filed.

(vii) There is noncompliance with item 5 (a) and (e) of the Special Instructions. The offeror will be given an opportunity to file a new offer within 30 days from service of the rejection, and the fee and rental payments on the old offer will be applied to the new offer if the new offer shows the serial and receipt numbers of the old offer. The advance rental will be returned unless within the 30-day period another offer is filed.

(2) An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(i) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(ii) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the authorized officer or so much over that amount as may be included under the rule of approximation.

(iii) An offer completed in pencil or script.

(iv) An offer on a lease form not currently in use.

(v) An offer or a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

(h) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, Form 4–1163, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(i) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(j) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless before the issuance of the amendment to Form 4–1158 the land office receives a withdrawal of the offer as to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on Form 4–1158 describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied

to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 192.40a.

(k) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer, and bond form, if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(m) No lease shall be issued before final action has been taken on (1) any prior offer to lease the land, (2) any subsequent offer to lease the land that is based upon an alleged preferential right, and (3) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offerer or petitioner is found to be qualified and entitled to receive a lease on the land.

§ 192.43 *Opening of lands to further filings, where a noncompetitive oil and gas lease is canceled or relinquished.* Where a noncompetitive lease is canceled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancellation or relinquishment on the tract book of the land office or on the tract book of the Bureau of Land Management, if there is no land office for the State, the lands shall be open to further oil and gas lease offers. Offers received in the same mail or over the counter at the same time, will be considered simultaneously filed and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the procedure prescribed in § 295.8 of this chapter.

§ 192.44 *Pending applications.* Applications filed prior to the effective date of the regulations in this part will be processed in accordance with the regulations in effect immediately prior to such date and leases will continue to be issued in such cases on Form 4–213, except:

(a) An applicant may, without losing his priority, file Form 4–1158 "Offer and Lease Form" for the land described in his application, pursuant to § 192.42, but without paying the required filing fee, and

(b) From the date of issuance of the regulations in this part until their effective date, Form 4–1158, or unofficial copies thereof, which are exact reproductions on one page of both sides of the official approved one page form, if available, may be filed instead of filing new applications under the prior regulations.

COMPETITIVE LEASES

§ 192.50 *Designation and offer of lands for lease by competitive bidding.* The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible, and offered for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale.

§ 192.51 *Notice of lease offer.* Notice of the offer of lands for lease will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer, Bureau of Land Management may authorize. The notice will be published at the expense of the Government.

§ 192.52 *Qualifications of successful bidder.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the manager of the land office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4). If the successful bidder is a corporation, it must also file a statement similar to that required by § 192.42 (f).

§ 192.53 *Award of lease.* Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office. If the lease be awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of his bonus bid, the first year's rental, and file a bond as required in § 192.100. If any bid be rejected, the deposit will be returned. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

If two or more units are awarded to any bidder, such units, where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 192.54 *Form of lease.* Competitive leases will be issued on Form 4–213 and the rentals and royalties payable thereunder will be set forth in Schedule "B" affixed thereto and made a part thereof.

EXCHANGE AND RENEWAL LEASES

§ 192.60 *Application to exchange lease for a new lease.* Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 192.80, 192.81 and 192.82. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate land office and must show full compliance by the applicant with the terms of the lease and applicable regulations.

§ 192.61 *Application for renewal.* (a) Twenty year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 192.80, 192.81 and 192.82. An application to renew should be filed in triplicate, in the proper office as prescribed in § 192.42 (b), at least 90 days, but not more than six months, prior to the expiration of its term. Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 per cent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

§ 192.62 *Action on application.* If the outstanding obligations in excess of five per cent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the costs of operations, including the payment of overriding royalties or payments out of production, shall be determined by the authorized officer of the Bureau of Land Management to constitute such a burden such royalties and payments shall be reduced to not more than 5 per cent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 192.63 *Form of lease.* Renewal and exchange leases will be issued on Form 4–213. The rentals and royalties payable thereunder will be set out on Schedule C or D as may be appropriate, which schedule is attached thereto and made a part thereof.

LEASES ON PATENTED OR ENTERED LAND

§ 192.70 *Preference right of patentee or entryman to a lease.* (a) An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

(b) Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

§ 192.71 *Lands in entries or claims not impressed with a reservation of oil and gas.* (a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be required to consent to a reservation of the oil or gas to the United States or to contest the mineral finding. If he does neither, the entry will be canceled or his settlement rights denied. If he consents, or contests the finding and is unsuccessful, a lease will be granted to the offeror, unless the entryman or settler has a preference right, but if the entryman or settler prevails in a contest, the offer will be rejected.

§ 192.72 *Showing required of oil and gas offerors for unsurveyed lands.* Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

RENTALS AND ROYALTIES

§ 192.80 *Rentals.* Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued under section 17 of the act, wholly outside of the known geologic structure of a producing oil or gas field:

(1) For the first lease year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(2) For the second and third lease years, no rental.

(3) For the fourth and fifth years, 25 cents per acre or fraction thereof.

(4) For the sixth and each succeeding year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(b) On leases wholly or partly within the known geologic structure of a producing oil or gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan that contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days notice to the lessee that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the leased lands, rental of $1.00 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section, shall apply to the acreage not within a participating area, except that the rental for the second and third lease years for such acreage shall be 25 cents per acre or fraction thereof.

(3) If issued competitively, an annual rental, prior to a discovery on the leased lands, of $1.00 per acre or fraction thereof, unless a different rate of rental is prescribed in the lease.

(c) On leases issued in any other way, an annual rental of $1.00 per acre or fraction thereof.

§ 192.81 *Minimum royalty.* On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee

files an election under section 15 of the act of August 8, 1946, a minimum royalty of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year.

§ 192.82 *Royalty on production.* (a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½ %.
Over 110 but not over 130 the royalty shall be 18% of all production.
Over 130 but not over 150 the royalty shall be 19% of all production.
Over 150 but not over 200 the royalty shall be 20% of all production.
Over 200 but not over 250 the royalty shall be 21% of all production.
Over 250 but not over 300 the royalty shall be 22% of all production.
Over 300 but not over 350 the royalty shall be 23% of all production.
Over 350 but not over 400 the royalty shall be 24% of all production.
Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

§ 192.83 *Limitation of overriding royalties.* Any agreement to create overriding royalties or payments out of the production of any lease which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production shall be suspended when the average production per well per day averaged on the monthly basis is (a) as to oil, 15 barrels or less and (b) as to gas, 500,000 cubic feet or less. The limitations in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

BONDS

§ 192.100 *Amount of bonds required of lessee.* (a) The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $1 per acre annual rental but in no case less than $1,000 nor more than $5,000, conditioned on compliance with all the terms of the lease, and such a bond must also be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field.

(b) Until a general lease bond is filed a noncompetitive lessee will be required to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights. In all other cases where a bond is not otherwise required, a $1,000 bond must be filed for compliance with the lease obligations not less than 90 days before the due date of the next unpaid annual rental, but this requirement may be successively dispensed with by payment of each successive annual rental not less than 90 days prior to its due date.

(c) All leases shall provide that where a $5,000 bond is not already being maintained a general lease bond in the penal sum of $5,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations. An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $5,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bonds affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

(d) Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 191.14 of this chapter may be furnished for the protection of the entryman or owner of surface rights. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

(e) In lieu of bonds required under any of the preceding paragraphs the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which

must be $150,000 for full nation-wide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 913; 30 U. S. C. 351–359), or at the rate of $35,000 for each unit of coverage. A unit of coverage shall be all the lands in any one State or Territory held by the principal under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State or Territory constitutes two units. In lieu of a surety bond a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond.

§ 192.101 *Form of bonds.* Bonds furnished by lessees will be on Form 4–208g; those furnished by operators on Form 4–238; bonds furnished in lieu of other bonds, pursuant to § 192.100 (e), will be on Form 4–1167 for surety bonds or on Form 4–1168 for personal bonds.

CONTINUATION OR EXTENSION OF LEASE [3]

§ 192.120 *Single extension as to lands not in a producing field.* (a) The record title holder of any noncompetitive lease, maintained in compliance with the law and the regulations of this part, may, by filing his application therefor within the period of 90 days prior to the expiration date of the lease, obtain a single extension of the primary term of the lease for an additional five years, unless then otherwise provided by law, as to all of the leased lands or any legal subdivision thereof which, on the expiration date of the lease, are not within the known geologic structure of any producing oil or gas field or have not been withdrawn from leasing. A withdrawal, however, will prevent an extension only (1) if notice thereof was mailed to the lessee by registered mail at least 90 days prior to the expiration date of the lease and (2) if actual drilling operations on the leased lands were not commenced prior to the effective date of such withdrawal, or, if so commenced, have not been diligently prosecuted until and including such expiration date.

(b) The application for extension must be filed on Form 4–1238, "Application for Extension of Oil and Gas Lease," [4] or unofficial copies of that form in current use and should be accompanied by the payment of the sixth year's rental, unless previously paid: *Provided*, That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the lessee: "This form is submitted in lieu of official Form 4–1238 and contains all of the provisions thereof as of the date of filing of this application." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. Form 4–1238 or a valid reproduction of the official form, will also constitute approval of the extension when signed by an authorized officer.

(c) If during the 90 day period prior to the expiration date of the lease, the record title holder files an application or request for an extension not on the prescribed form or unofficial copies thereof, or fails to file the prescribed number of copies, or pay the sixth year's rental, a notice will be issued allowing him 30 days to do so. The application will be rejected if such filing or payment is not made within the time allowed.

§ 192.121 *Continuation of lease as to lands within producing fields and on termination of production.* (a) Any noncompetitive lease or portion thereof which is not subject to a single extension of five years solely because the lands are within the known geologic structure of a producing oil or gas field at the date of expiration of the primary term of the lease shall continue in effect for a period of two years from the expiration date of the primary term of the lease where drilling operations are being diligently prosecuted on such date and, upon discovery, for so long thereafter as oil or gas is produced in paying quantities.

(b) Any lease issued under the act upon which production is had during its primary term or any extensions thereof, shall not terminate when the production ceases if diligent drilling operations are in progress on the leased land during the period of nonproduction.

§ 192.122 *Extension for term of cooperative or unit plan.* (a) Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

(b) Any other lease issued under any section of the act committed to any such plan that contains a general provision for the allocation of oil or gas shall continue in effect as to the land committed so long as the lease remains subject to the plan, provided oil or gas is discovered under the plan prior to the expiration date of the primary term of such lease.

§ 192.123 *Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement.* Any lease or portion thereof eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

ASSIGNMENTS OR TRANSFERS

§ 192.140 *Assignments or transfers of leases or interests therein.* Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by §§ 192.141 and 192.142. No assignment will be approved if the assignee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved. An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence.

§ 192.141 *Requirements for filing of transfers.* (a) (1) Except as to assignments of record title, all instruments of transfer of a lease or of an interest therein, including assignments of working or royalty interests, and operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (c) (4), (5) and (f).

(2) To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties. Form 4–1175, "Assignment affecting Record Title to Oil and Gas Lease", or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided*, That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of official Form 4–1175 and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. Form 4–1175, or a valid reproduction of the official form, will also constitute approval

[3] For extension of lease (a) because of suspension of operations and production, see § 191.26 of this chapter; (b) by payment of compensatory royalty, see § 192.8; (c) committed to communitization or drilling agreement, see § 192.22; (d) used for subsurface storage, see § 192.25; (e) segregated by assignment, see § 192.144.

[4] Filed with the Federal Register Division as part of the original document.

of the assignment when signed by the manager of the land office.

(3) An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 192.145 must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application, and the statement required by § 192.42 (e) (3).

(c) If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nation-wide bond on either form, 4–1167 or 4–1168, applicable to the State and the act under which the lease issued, no additional showing is necessary by such party as to the bond requirement. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. Assignments of record title interests must be filed in triplicate. A single copy of any additional information specified in Instructions, Form 4–1175,[1] relating to citizenship and qualifications of corporations, will be sufficient. A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 192.42 (l).

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

(f) Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be cancelled as provided in § 192.161.

§ 192.142 *Separate assignments required for transfer of record title to leases.* A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 192.143 *Effect of assignment of particular tract.* When an assignment is made of all or part of the record title to a portion of the acreage in a lease, the assigned acreage becomes segregated into a separate and distinct lease. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease through an application filed in his own name and the assignment after its approval will be the basis of a new record.

§ 192.144 *Extension of leases segregated by assignment.* (a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases assigned out of leases which are in their extended term because of production shall continue in effect for two years and so long thereafter as oil or gas is produced in paying quantities.

§ 192.145 *Royalty interests in oil and gas leases and assignments thereof.* Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of the second sentence of section 27 of the act. Assignments of such interests must be filed for record purposes in the appropriate land offices in accordance with the applicable provisions of § 192.41. All assignments of royalty interests must be filed for the record, but those of 1 percent or less will be approved only upon specific request and then only after discovery. Any assignment of 1 percent or less if filed for the record will be deemed to be valid whether formally approved or not.

TERMINATION OF LEASES

§ 192.160 *Relinquishments of leases or portions thereof.* A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 192.161 *Cancellation of lease.* Any lease not known to contain valuable deposits of oil or gas may be canceled by the authorized officer of the Bureau of Land Management, after giving notice in accordance with section 31 of the act, whenever the lessee fails to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, if such default continues for the period prescribed in that section after service of notice thereof. Leases known to contain valuable deposits of oil or gas may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

PART 193—COAL LEASES, PERMITS, AND LICENSES

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AUTHORITY: §§ 193.1 to 193.30 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

CROSS REFERENCE: For coal permits and leases in Alaska, see Part 70 of this chapter.

[1] Filed with the Federal Register Division as part of the original document.

GENERAL

§ 193.1 *Statutory authority.* Sections 2 to 8, inclusive, of the act of February 25, 1920 (41 Stat. 438 et seq., 30 U. S. C. 201, 202–208), as amended, authorize the Secretary of the Interior to:

(a) Divide into leasing units and award leases of coal lands and coal deposits owned by the United States, outside of Alaska:

(b) Issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits; and

(c) Issue limited licenses or permits to prospect for, mine and take for use coal from public lands.

§ 193.2 *Area and limitation on holdings.* A single lease or permit may embrace not exceeding 2,560 acres except where the rule of approximation applies. A permit will comprise contiguous tracts, or tracts in reasonably compact form, if good reasons appear for not including a contiguous area. A lease will comprise contiguous tracts, except in cases where it appears that noncontiguous tracts can be practically worked as a single mine or unit. No person, association or corporation, except as in the act provided, may hold at any one time more than 5,120 acres in any one State, whether directly through the ownership of coal leases and permits or interests in such leases and permits, or indirectly as a member of an association or associations, or as a stockholder of a corporation, or corporations, holding such leases and permits or interests therein or both.

§ 193.3 *Qualifications of applicants.* (a) Leases and prospecting permits may be issued to citizens of the United States, associations of citizens, and corporations organized under the laws of the United States or any State or Territory thereof, including a company or corporation operating a common-carrier railroad, and to municipalities. Limited licenses or permits for the mining of coal may be issued to citizens, associations of citizens and municipalities.

(b) Every applicant for coal permit or lease, other than a company or corporation operating a common-carrier railroad, must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate 5,120 acres in any one State.

(c) Every company or corporation operating a common-carrier railroad must make a statement that it needs the coal for which it seeks a permit or lease for its own use for railroad purposes; that it operates main or branch lines in the State in which the lands involved are located; that the aggregate acreage in the permits, leases and applications therefor in which it is interested directly or indirectly does not exceed 10,240 acres; and that it does not hold more than one permit or lease for each 200 miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

(d) Every applicant for lease or permit must also furnish a showing as to the need for additional coal production which cannot otherwise be reasonably met, or, if such a showing of need cannot be made, a statement of the reasons why a lease or permit is desired.

§ 193.4 *Equitable rights; holders of leases or permits affecting certain lands or coal deposits in Oklahoma.* (a) Equitable rights of persons who, prior to February 25, 1920, occupied and improved or claimed coal lands in good faith may be recognized in awarding leases of such lands. In the case of an award of a lease to such a person the rents and royalties will be established at rates not less than the minimum provided for leases under the act.

(b) A holder of a lease or permit, including a lease under temporary extensions, outstanding on May 24, 1949, covering certain coal lands or coal deposits in Oklahoma which the Choctaw and Chickasaw Nations agreed to convey to the United States in a contract ratified by the act of June 24, 1948 (62 Stat. 596), who has maintained or acted diligently to maintain the lease or permit in good standing, may obtain a lease for the same lands or deposits without competitive bidding, provided that he files an application for a lease under this part prior to the expiration date of the current lease.

§ 193.5 *Permits, leases and licenses for lands disposed of with reservation of coal.* Where lands included in a permit, lease or license have been or may be disposed of with reservation of the coal deposits, a permittee, lessee or licensee must make full compliance with the law under which such reservation was made. See the acts of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81); June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85); December 29, 1916 (39 Stat. 862; 43 U. S. C. 291–301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U. S. C. Sup. III, 54), and other laws authorizing such reservations.

§ 193.6 *Requirements when lands are within a withdrawal.* Where any part of the lands embraced in an application for coal lease, permit or license is within a withdrawal which does not preclude disposition of the coal deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a coal lease, permit or license. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease, permit or license.

COAL LEASES

§ 193.7 *Leasing units.* (a) No coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be established either upon application or when it is deemed advisable that additional coal units be established.

(b) All material factors, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

(c) Leasing units may include, in whole or in part, unsurveyed land, but a survey of the land will be made and the leasing unit conformed to such survey prior to the execution of a lease thereof.

§ 193.8 *Form of lease.* Leases shall be issued on Form 4–696.

§ 193.9 *Minimum expenditure and lease bond.* (a) An actual bona fide expenditure for mine operation, development, or improvement purposes, on or for the benefit of the leased land, of the amount that may be determined will be a condition in each lease as the minimum basis on which it will be granted, with the requirement that not less than one-third of such expenditure shall be made during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years.

(b) Prior to the issuance of a lease, the lessee shall furnish a bond executed by the lessee with approved corporate surety on Form 4–1113, or the lessee's personal bond on Form 4–1114, in such sum as may be required but in no event less than $1,000, and conditioned upon compliance with all of the terms and provisions of the lease. Personal bonds must be accompanied by a deposit of securities such as specified in § 193.22. If the amount of the bond is fixed at $1,000, the lessee may, instead, furnish a bond on Form 4–1113 with two qualified individual sureties, as provided in § 191.13 of this chapter. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate, personal or individual surety bond, in any case where the Director, Bureau of Land Management, deems it proper to do so.

§ 193.10 *Minimum production.* Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the fourth year of the lease, except when operation is interrupted by strikes, the elements, or casualties not attributable to the lessee, unless, on application and showing made, operations shall be suspended when market conditions are such that the lease cannot be operated except at a loss or for the other reasons specified in section 39 of the act.[1] Operations under the lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on the minimum production for one year in advance, in which case operations may be suspended for that year.

[1] See showing required under § 191.26 of this chapter.

§ 193.11 *Application for lease.* (a) Applications shall be filed in the proper land office in the State, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. No specific form is required, but the application should cover the following points:

(1) The applicant's name and address.

(2) A statement as to citizenship: In case of an individual, whether native born or naturalized and, if naturalized, date of naturalization, court in which naturalized, and number of certificate, if known; if a woman, whether she is married or single; if married, the facts as to the citizenship of her husband, and the date of her marriage if both are not native born citizens. Associations are required to file a certified copy of their articles of association and the same showing as to the citizenship and holdings of their members as required of an individual and specified herein. A corporation is required to file a certified copy of its articles of incorporation, and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 per cent of the voting stock, or of all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied. If 20 per cent or more of the stock of any class is owned or controlled by or on behalf of any one stockholder, a separate showing of his citizenship and holdings must be furnished. A municipality must submit evidence of: (i) The law, charter and procedure taken by which it became and exists as a legal body corporate; (ii) that the taking of a permit or lease is authorized under such law or charter; and (iii) that the action proposed has been duly authorized by the governing body of such municipality.

(3) A statement of the interests, direct or indirect, in other coal leases, permits or applications therefor on public lands in the State in which the lease is desired, identifying same by land office and serial number, and that such interests, when added to the acreage covered by the application, do not exceed in the aggregate 5,120 acres in the State. A railroad company or corporation operating a common carrier must state that its interests, together with the acreage covered by the application, do not exceed in the aggregate 10,240 acres.

(4) Description of the lands for which a lease is desired by legal subdivisions or, if unsurveyed, by metes and bounds connected with a corner of the public surveys by course and distance and where possible, description of the lands by the approximate subdivisions of the future survey.

(5) The showing specified in § 193.3 (d).

(6) A statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities and the character and extent of the coal deposits so far as known.

(7) The contemplated investment for the development and equipment of a producing mine of a stated average daily output.

(b) The application must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement[1] as to citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

§ 193.12 *Offer of lands or deposits for lease by competitive bidding.* If the lands or deposits are found to constitute an acceptable leasing unit and subject to coal lease, they will be offered for such lease on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bidding as provided in the notice of sale. If it be found that the area covered by an application does not constitute an acceptable leasing unit, the area may be adjusted, by appropriate additions and eliminations, to constitute an acceptable leasing unit which may be offered for lease.

§ 193.13 *Notice of lease offer.* Notice under the preceding section of the offer of the lands or deposits for lease will be given by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will be published at the expense of the Government. A copy of the notice will be posted in the proper land office during the period of publication. Such notice will show the day, hour, and place of sale, whether the sale will be at public auction or by sealed bids, the method of submitting sealed bids, the rental and rate of royalty to be charged, the minimum investment and the minimum production requirement, and the description of the land. If the sale is by public auction, the offer will be made at the land office for the district in which the lands are situated, or at such other place as may be fixed in the notice. In such case the notice will also specify that sealed bids may be submitted which will be opened and read at the time and place specified for the auction. The right is reserved by the Bureau of Land Management, in the public interest, to reject any and all bids, and should a bid be rejected, the deposit made by the bidder will be returned. All bidders at any public sale of leases are warned against committing any act of intimidation, combination or unfair management to hinder or prevent bidding thereon, in violation of 18 U. S. C. 1860.

§ 193.14 *Sale; bidding requirements; action by successful bidder.* Before bidding is commenced by those persons present, the manager or other officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of sale. The successful bidder must on the day of sale deposit with the manager of the land office or other officer conducting the sale and each sealed bid must be accompanied by the following: Certified check, money order, or cash, for one-fifth of the amount bid and evidence of qualifications of the bidder as prescribed in § 193.11 (a) (2) and (3) and (b), if a current showing in that regard has not been filed in connection with the application for lease of the lands or deposits. If the land is surveyed, the successful bidder will be allowed 30 days from receipt of lease forms within which (a) to file in the proper land office a lease, duly executed by him on form 4–696, and the bond required by § 193.9, and (b) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with requirements of paragraphs (a) and (b) in this section until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder fails to comply after due service of notice, that portion of his deposit representing the minimum required to be deposited with the bid shall be held as liquidated damages and disposed of as other receipts under the Mineral Leasing Act.

§ 193.15 *Modifications and leasing of additional land or coal deposits.* (a) Under section 3 of the act (30 U. S. C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States, but in no event shall the area embraced in such modified lease exceed in the aggregate 2560 acres, except where the rule of approximation applies. The lessee shall file his application for modification in duplicate in the proper land office describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

No filing fee is required. Upon determination that the modification is justified and the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe. If, however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they may be offered as provided in § 193.13.

(b) Under section 4 of the act (30 U. S. C. 204), upon satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within three years thereafter, an additional tract of land or coal deposit may be leased. Application shall be filed in duplicate in the proper land office and shall contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested and the proposed method of entry into such lands. If the lands or coal deposits or any part thereof are found to constitute an acceptable leasing unit they will be offered for leasing as provided in § 193.13. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease which must not exceed 2560 acres; otherwise, a separate lease may be issued.

(c) Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file the consent of surety and the acceptance by the lessee of the applicable regulations.

§ 193.16 *Readjustment of terms and conditions at end of twenty-year periods.* The terms and conditions of a lease are subject to readjustment at the end of each twenty-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty-year period.

§ 193.17 *Relinquishment of lease.* Upon payment of all rentals, royalties and other debts due and payable to the lessor and upon payment of all wages or money due and payable to the workmen employed by the lessee, and upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease. The lessee may also surrender any legal subdivision of the area included within the lease, but in no case shall such lease be so terminated in whole or in part until and unless the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered thereby in accordance with the regulations and terms of the lease. A surrender must be by a relinquishment filed in triplicate in the proper land office. A relinquishment upon its acceptance shall take effect as of the date it is filed.

§ 193.18 *Cancellation of lease.* If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 193.16, or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default shall continue for 30 days after service of written notice thereof by the lessor, than the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

COAL PROSPECTING PERMITS

§ 193.19 *Character of lands.* Permits shall be issued on Form 4–694 for a period of two years to qualified applicants to prospect unclaimed, undeveloped lands where prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

§ 193.20 *Rights conferred.* A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right, the permittee shall be authorized to remove from the premises only such coal as may be necessary in order to determine the workability and commercial value of the coal deposits in the land.

§ 193.21 *Application for permit.* An application for a permit must be filed in duplicate in the manner and in the office specified in § 193.11. Each application must be accompanied by a filing fee of $10.00 which will be retained as a service charge even though the application should be rejected or withdrawn either in whole or in part. No specific form of application is required, but in addition to the requirements of § 193.11 (a) (1), (2), (3), (4) and (5) and (b), it should cover the following points:

(a) Condition of coal occurrences, so far as determined; description of workings, and outcrops of coal beds, if any, and reason why the land is believed to offer a favorable field for prospecting for coal.

(b) Detailed plan and method of conducting prospecting or exploratory operations on the land, estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

(c) Brief statement of applicant's experience in coal-mining operations, if any, together with one or more references as to his reputation and business standing.

§ 193.22 *Permit bond.* The applicant must furnish a corporate surety bond on Form 4–1130 or his personal bond on Form 4–1131 conditioned upon compliance with all the terms of the prospecting permit. The bond shall be in the sum of $500 except where the lands applied for have been entered or patented with the coal reserved to the United States pursuant to the act of June 22, 1910 (36 Stat. 583, 30 U. S. C. 83–85), in which event, a bond on the same form in the sum of $1,000 will be required. Personal bonds must be accompanied by a deposit of negotiable Federal securities equal at their par value to the amount of the bond. The bond may be filed with the application which will expedite action thereon, or within 30 days after receipt of notice by the applicant that the permit will be granted when the bond is filed. The permittee may, in place of a bond of the two types specified above, submit one on Form 4–1130 with two qualified sureties as provided in § 191.13 of this chapter.

§ 193.23 *Extension of permits.* (a) Coal permits may be extended for a period of two years if the permittee has been unable with the exercise of reasonable diligence to determine the existence or workability of the coal deposits, or for others reasons which may warrant an extension. An application for extension must be filed in duplicate only within the period beginning 90 days prior to the date to which the permit is limited. The application must be filed in the office specified in § 193.11 and must show what efforts, if any, the permittee has made to comply with the terms of his permit and the reasons for failure fully to comply therewith, such showing to be corroborated, if possible, by a statement of at least one disinterested person having actual knowledge of the facts. The application must also show how much additional time is considered necessary to complete prospecting work. Extension will be limited to such period, not exceeding the two years authorized, as may be determined to be allowable under the circumstances in each particular case. Upon failure of permittee to file such an application within the specified period, the permit will expire without notice to the permittee and upon notation of such expiration in the land office tract books, the lands will become subject to new applications for coal permits or leases.

(b) Until the cancellation or termination of a coal permit is noted on the records of the land office or on the records of the Bureau of Land Management if the lands involved are in a State in which there is no land office, no other person will be permitted to gain any right to the same class of deposits by the filing of an application therefor, and such application shall be rejected.

§ 193.24 *Reward for discovery.* A permittee who shows, that prior to the expiration of his permit, the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in a reasonably compact form. An application for preference right lease must be filed in duplicate in the office specified in § 193.11 promptly after commencement of commercial op-

erations, but in no event later than the expiration of the period to which the permit is limited. The application must describe the land desired, set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit, show that coal was discovered in commercial quantities before the date of the expiration of the permit and show any change in the information contained in the application for permit. The application must be accompanied by the rental for the first year of the lease, which shall be 25 cents for each acre or fraction thereof. The lease, if issued, will be in accordance with the provisions of §§ 193.8 to 193.10, inclusive, and will be dated the first day of the month following the date the application is filed unless the applicant requests that it be dated the first day of the month within which it is filed. If the permit expires and the application for lease is finally rejected royalty for coal mined to the date of receipt of notice by the permittee of such rejection will be charged in accordance with the royalty terms of the permit and such mining of the coal will not constitute a trespass.

TRANSFERS OF PERMITS AND LEASES; OVERRIDING ROYALTIES

§ 193.25 *Transfers, including subleases.* (a) Permits and leases may be transferred, in whole or in part to any person, association, or corporation qualified to hold such leases and permits. The approval of a transfer of only part of the lands described in a permit or lease will create a new permit or lease which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease. Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval at the office specified in § 193.11 within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by § 193.11 (a) (2) and (3) and (b). If the instrument fails to describe the true consideration, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection. If a bond is necessary it must be furnished. Transfers of record title interest must be filed in triplicate. A single executed copy of all other instruments of transfer is sufficient. A transfer will take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

(b) The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The account under the permit or lease must be in good standing before approval of a transfer will be given.

§ 193.26 *Limitation on overriding royalties.* An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

LIMITED COAL LICENSES

§ 193.27 *Purpose of license.* Coal licenses may be issued for a period of two years to individuals and associations of individuals to mine and take coal for their own local domestic need for fuel, but in no case for barter or sale, without the payment of any rent or royalty. Licenses may be issued to municipalities to mine and dispose of coal without profit to their residents for household use. Under such a license a municipality may not mine coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

§ 193.28 *Area and duration.* (a) A license to an individual or association, in the absence of unusual conditions or necessity, will be limited as to area to a legal subdivision of 40 acres or less and may be revoked at any time. Such license will expire by limitation at the end of 2 years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the 2-year period.

(b) Licenses to municipalities are limited as to area by the act, as follows: Not to exceed 320 acres for a municipality of less than 100,000 population, not to exceed 1,280 acres for a municipality of not less than 100,000, and not more than 150,000 population, and not to exceed 2,560 acres for a municipality of 150,000 population or more. Licenses to municipalities will expire by limitation at the end of 4 years from date of issuance, unless renewed; but every such licensee must make to the Bureau of Land Management, an annual report of all operations conducted under such license.

§ 193.29 *Application for license.* Application for a limited license to mine coal for domestic needs must be filed, in quadruplicate, on Form 4–694a, or its substantial equivalent in the office specified in § 193.11 and be accompanied by a $10 filing fee. A municipality must file with the application a showing of (a) the law or charter and procedure taken by which it became and exists a legal body corporate, (b) that the taking of a license is authorized under such law or charter and (c) that the proposed action has been duly authorized by the governing body of the municipality.

§ 193.30 *Licenses to relief agencies.* (a) The Bureau of Land Management, may grant authority to a recognized established relief agency of any State, upon its request, to take government-owned coal deposits within the State in localities where needed to supply families on the rolls of such agency who require coal for fuel for their homes and who are unable to pay for same.

(b) Tracts shall be selected at points convenient to supply the families in the locality thereof, and each family shall be restricted to the amount of coal actually needed for its use, which in no case shall exceed 20 tons annually.

(c) Coal may be taken from such tracts only by those given written authority by the relief agency, and all mining shall be done pursuant to permission and all Federal and State laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

(d) The local relief agency may take coal from available land prior to issuance of license but not earlier than 5 days after it has filed in the land office of the district wherein the land is situated an application for license. No filing fee will be required. In the absence of objections and if the application is otherwise regular, a license will be granted. Pending action on the application for license, the relief agency may continue to take the coal.

PART 194—POTASSIUM PERMITS AND LEASES

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Sec.
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AUTHORITY: §§ 194.1 to 194.28 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189. Interpret or apply sec. 5, 44 Stat. 1058, as amended; 30 U. S. C. 285.

§ 194.1 *Purpose of regulations.* In order to provide more adequately for the proper development in different areas and for conservation of the potassium resources on the public domain so as to assure sufficient supplies of potassium and associated minerals to meet current and future needs of the United States and to guard against monopoly, the regulations in this part, superseding existing regulations on the subject, are hereby promulgated. "Potassium deposits" used in the regulations in this part shall include the "associated deposits" described in the act of February 7, 1927, unless the context otherwise requires.

POTASSIUM PROSPECTING PERMITS

§ 194.2 *Statutory authority.* Section 1 of the act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281), authorizes the Secretary of the Interior, under such rules and regulations as he may prescribe, to issue prospecting permits, for a period not to exceed 2 years, for the exploration of the land described therein for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium.

§ 194.3 *Qualifications of applicants.* Permits may be issued to (a) citizens of the United States, (b) associations of such citizens, (c) or a corporation organized under the laws of any State or Territory thereof. If applicants who have filed for the same land are found to be qualified under the applicable regulations and orders, the issuance of a permit for such land will be in accordance with the order in which the applications were filed.

§ 194.4 *Area and description.* A permit may be issued for not more than 2,560 acres of public lands of the United States in reasonably compact form, by legal subdivisions if surveyed; if unsurveyed, by metes and bounds description.

§ 194.5 *Rights under permit.* The permit will confer upon the recipient the exclusive right to prospect for potassium deposits in the lands. In the exercise of this right the permittee shall be authorized to remove from the premises only such material as may be necessary to experimental work and the demonstration of the existence in commercial quantities of any such deposits.

§ 194.6 *Form and contents of application.*[1] (a) Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except that applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. No specific form of application is required, but it should cover, in substance, the following points:

(1) Applicant's name and address.

(2) Proof of citizenship of applicant by stating in the case of an individual, whether native-born or naturalized, and, if naturalized, date of naturalization, court in which naturalized and number of the certificate, if known; if a woman, whether single or married, and if married, date of marriage and citizenship of the husband; if a corporation, by filing a certified copy of its articles of incorporation and showing, to the extent reasonably ascertainable, the name, residence, citizenship of, and amount of stock held by each stockholder, including the name of the country to which each alien stockholder owes allegiance.

(3) A statement of all holdings by the applicant of permits and leases under this act and pending applications therefor, and interests directly and indirectly held in such permits and leases. If the applicant is a corporation, a separate showing of the holdings of any stockholder owning 5 percent or more of the stock of any class must be furnished; and the holdings of any other stockholder must be furnished on request.

(4) Description of the land for which permit is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case, if deemed necessary a survey sufficient to identify and segregate the land may be required before the permit is granted; also a statement that to the best of the applicant's knowledge the land is not being held or claimed by others.

(5) Reasons why the land is believed to offer a favorable field for prospecting, including a statement of the prospective value of the land for other minerals.

(6) Applicant's consent to be bound by the lease acreage limitation prescribed in § 194.26, and his agreement that he will not exercise his preference right to a lease for any land embraced in any potassium prospecting permit which, together with leases or interests in leases already held by him would exceed 15,360 acres.

(b) An application executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

§ 194.7 *Reward for discovery.* A permittee who shows to the satisfaction of the authorized officer that, prior to the expiration of his permit, he has made a discovery of valuable potassium deposits within the area of the permit, is entitled, under section 2 of the act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 282), to the extent that he has not waived his preference right pursuant to § 194.6 (a) (6) to a lease, substantially in accordance with Form 4–126, of any or all of the permit land chiefly valuable therefor, the area to be taken in compact form. Such a discovery must be one which demonstrates the existence of potassium deposits in commercial quantities. In addition, the permittee shall disclose in such showing any change in the information contained in his application for the permit. The lease will be issued at such royalty rate and acreage rental as may be fixed pursuant to sections 2 and 3 of the act. If the land is unsurveyed, the applicant, after he has been awarded the right to a lease, but before the issuance thereof, will be required to deposit with the area cadastral engineering officer the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

§ 194.8 *Royalty under permit.* Until the permittee obtains a lease, which when granted shall in this respect be retroactive to the date of the filing of his application, he shall pay to the United States 12½ per centum of the gross value of all potassium compounds and related products secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition.

§ 194.9 *Bonds.* (a) Where an application includes reserved deposits in lands theretofore entered or patented with reservation of potassium deposits to the United States pursuant to the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), or where the lands constitute a portion of a reclamation project, the applicant will be required prior to issuance of the permit to furnish a bond with qualified corporate surety in the sum of $1,000 or such other amount as may be fixed, conditioned against damage to the crops and improvements of the surface owner, or damage to the reclamation project or water supply thereof.

(b) A bond with qualified corporate surety in the sum of $1,000, or such other amount as may be fixed, conditioned against failure of the permittee to comply with the provisions of paragraph 6 of the permit, may be required either before or after the permit is issued, where the conditions are such as to warrant requiring such bond.

§ 194.10 *Form of permit.* Permit will be issued on Form 4–128.

§ 194.11 *Extensions of time under permits.* (a) By the act approved May 7, 1932 (47 Stat. 151; 30 U. S. C. 287), the Secretary was authorized to grant an extension of time for a period of 2 years on any prospecting permit issued under the act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281–286).

(b) A permit may be extended only if the permittee has drilled at least one adequate test well on the permit area during the 2-year period for which the permit

[1] For amount of filing fee required with application, see § 191.11 of this chapter. 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

was granted. The application for extension must be filed in the land office having jurisdiction over the land involved within the 90-day period prior to the expiration of the 2-year period for which the permit issued. The application should show what efforts the permittee has made to comply with the terms of his permit, such showing to be corroborated, if possible, by a statement of at least one disinterested person having actual knowledge of the facts. The application should also show what plans have been made for continuing exploratory work and contain information tending to show that the exploratory program may be completed within the period of the proposed extension.

(c) In any case where the permittee is required to maintain a bond under his permit, he must furnish with his application for extension a properly executed assent by the surety to the extension of his bond to cover the life of the permit, if extended, or furnish a new bond.

(d) Since the life of a potassium prospecting permit may be extended beyond the 2 years for which granted, it is a bar to other filings under this act for the same land until its cancellation has been noted on the records of the district land office.

COMPETITIVE POTASSIUM LEASES

§ 194.12 *Statutory authority.* Section 3 of the act of February 7, 1927 (44 Stat. 1057, as amended by section 9 of the act of June 3, 1948 (62 Stat. 292; 30 U. S. C. 283), authorizes the Secretary under such general regulations as he may adopt, to lease, for the production of potassium deposits public lands known to contain such deposits in commercial quantity and character and found in some or any of the forms described in said act. Invitations to bid for such leases may be made by the authorized officer in accordance with the procedure hereinafter set forth. Every lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such reasonable adjustment of the terms and conditions thereof may be made therein as may be prescribed by the authorized officer unless otherwise provided by law at the expiration of such periods.

§ 194.13 *Qualifications of applicants.* Applications for leases containing the information required in § 194.17 may be filed in the proper land office as prescribed in § 194.6, by citizens of the United States, associations of such citizens, or corporations organized under the laws of any State or Territory thereof, the qualifications of the applicant in this respect to be fully covered by the application. The filing of such an application will not give the applicant a preference right to a lease.

§ 194.14 *Area and descriptions.* Leases are authorized by the terms of the act for an area not exceeding 2,560 acres, but will be granted only for such area as may be shown to the satisfaction of the authorized officer to contain commercially valuable potassium deposits and will be limited to lands reasonably compact in form.

§ 194.15 *Royalty and rentals.* (a) The rate of royalty will be fixed prior to the offer of lands for lease, but in no case can the royalty rate be less than 2 percent of the quantity or gross value of the output of the potassium compounds and other related products at the point of shipment to market.

(b) The rentals fixed by the act are to be paid annually in advance—25 cents per acre or fraction of an acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth years, respectively, and $1 per acre for each year thereafter, such rental for any year being credited against royalties accruing for that year.

§ 194.16 *Leases for potassium deposits and associated minerals.* Under section 4 of the act of February 7, 1927 (44 Stat. 1058; 30 U. S. C. 284), potassium leases may also provide for the development of sodium, magnesium, aluminum, or calcium deposits, in any of the forms described in said section, associated with the potassium deposits, on terms and conditions not inconsistent with the sodium provision of the act of February 25, 1920, as amended. The terms of the lease, including rate of royalty, rentals, and production requirements, will be in accord with the provisions of both acts.

§ 194.17 *Applications to lease lands known to contain potassium deposits.* (a) Applications for leases should be filed in the proper land office as prescribed in § 194.6. No specific form of application is required, and no blanks will be furnished, but it should cover, in substance, the following points:

(1) Applicant's name and address.

(2) Proof of citizenship of applicant in accordance with § 194.6 (b), the qualification of an applicant for lease being the same as to citizenship as required of an applicant for prospecting permit.

(3) A statement of applicant's holdings in accordance with § 194.6 (c).

(4) A description of the land for which lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed in which latter case the description should be connected to a corner of the public land surveys, or to some permanent landmark, if a public survey corner is not available. When the land is surveyed, the survey will be an extension of the public surveys over the tract applied for and the leased land will be conformed to the legal subdivisions of such survey.

(5) Evidence that the land is valuable for its potassium content, with a statement as to the character and extent and mode of occurrence of the potassium deposits in the lands applied for; also the prospective value of the land for magnesium, aluminum, sodium, bromine, iodine, calcium, oil and gas, or other substances, and the ability of the applicant to produce commercially the potassium deposits in the land in conformance with conservation and sound business practices.

(6) Detailed method of the process of mining and production to be employed, the diligence with which such operations will be carried on, the contemplated investment in mining development, reduction and refinery works and the amount of capital available therefor.

(b) An application executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

§ 194.18 *Disposition of applications.* (a) If the offer of the lands or deposits for lease is authorized, the lands or deposits will be advertised for lease to the bidder offering the highest bonus therefor, *Provided*, That upon a satisfactory showing by the owner of an adjacent lease bidding at the sale that because of the depletion of the potassium deposits then under his control, the offered lands are essential to the continuation of his mining operations the authorized officer, upon a finding that the public interest would best be served thereby, may award the lands or deposits to the owner of such adjacent lease upon payment of the highest amount bid as bonus.

§ 194.19 *Notice of lease offer.* (a) The manager will publish notice of the offer of the lands or deposits for lease for a period of 30 days, or such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands are situated, or in such other paper or papers as the authorized officer may direct. Notice must also be posted in the land office during the period of publication. The notice for publication and posting shall state the place where and the date and hour on which bids will be received and shall describe the land, the terms, including rental, royalty and minimum investment, and whether the sale of lease will be made by sealed bids or at public auction at the time fixed to the qualified bidder offering the highest bonus for the privilege of leasing the lands or deposits on the terms set forth.

(b) Publication of the offer will be made at the expense of the Government.

(c) All bidders at any public sale of leases are warned against committing any act by intimidation, combination, or unfair management to hinder or prevent bidding thereat, in violation of 18, U. S. C. 1860.

§ 194.20 *Auction of lease.* Where the lease is to be sold at public auction the manager at the time fixed in the notice, will offer the land or deposits for lease in that manner at his office on the terms and conditions fixed in the notice to the qualified bidder of the highest amount offered as a bonus for the privilege of leasing the land. The high bidder must deposit with the manager on the day of sale a certified check or cash, for one-fifth of the amount of his bid.

§ 194.21 *Right to reject bids.* The right is reserved to reject any and all bids; and should a bid be rejected, the deposit made by the bidder will be returned.

§ 194.22 *Action by bidder.* The high bidder will be allowed 30 days from date of auction, or, where the sale is by sealed bids, 30 days from receipt of notice that his bid has been accepted within which (a) to file in the land office (1) a lease, duly executed by him following the form prescribed by § 194.24; (2) evidence of qualifications as prescribed by § 194.17, unless such evidence has theretofore been filed; (3) the bond required by section 2 (c) of the lease, which may be either a corporate surety bond or United States bonds in lieu thereof pursuant to the act of July 30, 1947 (61 Stat. 646; 6 U. S. C. 15); and (b) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease. In case of default, the amount deposited by the bidder will be forfeited.

§ 194.23 *Form of lease.* The lease will be issued on Form 4–126.

§ 194.24 *Operations.* Prospecting and mining operations under permits and leases will be governed by operating regulations, approved by the Secretary. Before beginning operations permittees and lessees should consult with the district mining supervisor of the Geological Survey for the area in which operations are to be conducted and obtain from him a copy of the operating regulations.

§ 194.25 *Limitation on holdings.* (a) No person, association, or corporation will be granted, either directly, or indirectly, or by approval of assignments, in any one State, permits for an area which when added to the area already held under permits issued under the 1927 act exceeds in the aggregate 51,200 acres, and, except as hereinafter provided, leases for an area which when added to the area already held under leases issued under the 1927 act exceeds in the aggregate 15,360 acres.

(b) Any person, association, or corporation holding acreage approximating 15,360 acres of Federal land in a single mining unit and refining development, upon a showing that the leased deposits extend into adjoining Federal lands may, upon application to and approval of the Secretary, be granted a lease for an additional acreage of not to exceed 2,560 acres if the authorized officer shall determine that such increase will result in conservation of natural resources and will provide for the most economical and efficient recovery as a single unit of a mineable deposit without waste.

(c) The authorized officer may, upon a finding that the granting of such leases would be in the public interest, grant to any such lessee, leases for additional acreage not to exceed 10,240 acres in all as a separate mining unit, and may include in such additional leases a provision requiring the construction of additional refining facilities.

§ 194.26 *Assignments of leases and permits; subleases.* Leases may be assigned or subleased and permits may be assigned or transferred in whole or in part to qualified persons or corporations upon first obtaining consent of the authorized officer. Assignments, subleases, or transfers of permits and leases, whether by direct assignment, operating agreement, working or royalty interest, or otherwise, when submitted, must be filed in triplicate within 90 days from the date of execution and must contain all of the terms and conditions agreed upon by the parties thereto. If the consideration expressed in the agreement fails to describe the true consideration, an accompanying statement must be submitted setting forth the consideration in full. The statement will be treated as confidential and not for public inspection.[2]

§ 194.27 *Overriding royalties.* (a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interests at any time exceeds one percent of the gross value of the output at the point of shipment to market, they shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so (1) in order to prevent premature abandonment, or (2) in order to make possible the economic mining of marginal or low grade deposits on the leased lands or any part thereof. Where there is more than one overriding royalty interest any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or in the absence of such agreement in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest shall not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

APPLICATIONS AND CLAIMS EXCEPTED FROM OPERATION OF ACT OF FEBRUARY 7, 1927

§ 194.28 *Completion of pending applications and prior claims.* By section 6 of the act of February 7, 1927 (44 Stat. 1058; 30 U. S. C. 286) the act of October 2, 1917 (40 Stat. 297), is repealed, with provision that the repeal shall not affect pending applications for permits or leases filed prior to January 1, 1926, or valid claims existing at the passage of the act and thereafter maintained in compliance with the law under which initiated, which claims may be perfected under such law, including discovery.

As to potassium mining claims, only those claims may be patented which were initiated prior to and were valid existing claims on October 2, 1917, and have since been duly maintained as such.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

PART 195—SODIUM PERMITS AND LEASES[1]

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195.30 Claims initiated prior to February 25, 1920.

AUTHORITY: §§ 195.1 to 195.30 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

CROSS REFERENCES: For Forest Service, land uses, see 36 CFR Part 251. For Geological Survey, see 30 CFR Chapter II. For operation and safety regulations of the Geological Survey, see 30 CFR Part 231. For surveys, generally, see Part 280 of this chapter.

SODIUM PROSPECTING PERMITS

§ 195.1 *Statutory authority.* The act of Congress approved February 25, 1920 (41 Stat. 437), as amended by the act approved December 11, 1928 (45 Stat. 1019; 30 U. S. C. 261, 262), authorizes the Secretary of the Interior, under such rules and regulations as he may prescribe, to issue prospecting permits, for a period

[1] On July 28, 1933, the Secretary of the Interior approved the following recommendation of the Director of the Geological Survey, which recommendation was concurred in by the Commissioner of the General Land Office:

"By reason of the intimate association of potassium and sodium compounds in deposits containing these substances all lands withdrawn, classified, or reported as valuable for potassium are hereby reported as actually or prospectively valuable for sodium. Moreover, in order to facilitate the more orderly administration of lands of the United States containing deposits of potassium and/or sodium, I recommend that, within the meaning of the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124), all lands heretofore withdrawn, classified, or reported as valuable for potassium be considered, in the administration of the public land laws, as withdrawn, classified, or reported as valuable for sodium also, and that all applications to locate, select, enter, or purchase such lands, and any patents issued therefor, be made subject to a reservation in the United States of potassium and sodium deposits."

not to exceed 2 years, for the exploration of the land described therein for sodium in any of the forms named in said act.

§ 195.2 *Qualifications of applicants.* (a) Permits may be issued to (1) citizens of the United States, (2) an association of such citizens, (3) or a corporation organized under the laws of any State or Territory thereof.

(b) In accordance with the provisions of section 27 of the act of February 25, 1920, as amended by the act of April 30, 126 (44 Stat. 373; 30 U. S. C. 184), and acts supplemental thereto, every applicant for sodium permit, or lease must show that, with the area applied for, his or its interest or interests in such permits, leases and other applications therefor, directly and indirectly, will not exceed in the aggregate 5,120 acres in any one State.[2]

§ 195.3 *Lands to which applicable.* The permit thus issued may include not more than 2,560 acres of public lands of the United States in reasonably compact form, by legal subdivisions if surveyed; if unsurveyed, by metes-and-bounds description.

§ 195.4 *Rights under permit.* The permit will confer upon the recipient the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium on the lands embraced therein. In the exercise of this right the permittee shall be authorized to remove from the premises only such material as may be necessary to experimental work and the demonstration of the existence of such deposits or any of them in commercial quantities.

§ 195.5 *Reward for discovery.* If the permittee within the 2 years specified shall discover valuable deposits of one or more of the forms of sodium as described in said act within the area covered by his permit, such discovery shall entitle him to a lease of any or all of the land embraced in the permit containing such deposits and chiefly valuable therefor, the area to be taken in compact form. The discovery of a valuable deposit of sodium under this permit shall be construed as the discovery of a deposit which yields commercial sodium in commercial quantities.

§ 195.6 *Camp sites in addition to land in permit.* In addition to land embraced in the permit the authorized officer may, in his discretion, issue to the permittee, during the life of the permit, the exclusive right to use a tract of unoccupied, nonmineral public land, not exceeding 40 acres in area, for purposes connected with and necessary to the development of the deposits covered by the permit, subject to the payment of an annual rental of not less than 25 cents per acre.

§ 195.7 *Form and contents of application.*[3] (a) Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except that applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. No specific form of application is required, but it should cover, in substance, the following points, namely:

(1) Applicant's name and address.

(2) Qualifications of petitioner to take a lease under the act including (i) statement of his interests, direct or indirect, in other sodium leases, permits or applications therefor on public lands in the State in which the permit is desired, identifying the same by land office and serial number, and (ii) proof of citizenship—in the case of an individual, by a statement as to whether native-born or naturalized and, if naturalized, date of naturalization, court in which naturalized and number of certificate, if known; if a woman whether she is married or single, and if married, the date of her marriage and citizenship of her husband. Corporations are required to file a certified copy of their articles of incorporation, a showing as to residence and citizenship of the stockholders and if any stock is held by aliens a showing to the extent reasonably ascertainable, of the name, country to which each such alien owes allegiance, and amount of stock held by each.

(3) A statement of all holdings by the applicant of permits and leases under the sodium provisions of the act of February 25, 1920, and pending applications therefor and interests, directly or indirectly, held in such permits and leases.

(4) Description of the land for which the permit is desired, by legal subdivisions, if surveyed, and by metes and bounds, if unsurveyed, in which latter case, if deemed necessary, a survey sufficient more fully to identify and segregate the land may be required before the permit is granted; also a statement whether the land is vacant and unclaimed.

(5) Reasons why the land is believed to offer a favorable field for prospecting.

(6) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such explorations will be prosecuted.

(7) Statement of the applicant's experience in operations of this nature, together with references as to his character, reputation, and business standing.

(b) The application must be signed by the applicant or his attorney in fact, and if executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

§ 195.8 *Issuance of permit.* On the receipt of the application, if found in compliance with the terms of the act, a permit will issue.

§ 195.9 *Bonds.* (a) Where an application includes reserved deposits in lands theretofore entered or patented with a reservation of sodium to the United States, pursuant to the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), or where the lands constitute a portion of a reclamation project, the applicant will be required prior to issuance of the permit to furnish a bond with qualified corporate surety in the sum of $1,000, or such other amount as may be fixed, conditioned against damage to the crops and improvements of the surface owner, or damage to the reclamation project or water supply thereof.

(b) A bond with qualified corporate surety in the sum of $1,000, or such other amount as may be fixed, conditioned against failure of the permittee to comply with the provisions of paragraph 5 of the permit (§ 195.10), may be required either before or after the permit is issued, where the conditions are such as to warrant requiring such bond.

§ 195.10 *Form of permit.* The permit will be issued on Form 4–466.

§ 195.11 *Expiration of sodium prospecting permits.* Permits to prospect for sodium under the act of February 25, 1920, are issued for terms of 2 years without provision for extensions of time. If application for lease, based on claim of discovery within the 2-year period, is not filed, the permit expires by limitation fixed by both the law and the terms of the permit, and is no longer a bar to the allowance of other filings for the land which it embraced. No formal action to terminate the permit is necessary or will ordinarily be taken.

SODIUM LEASES

§ 195.12 *Statutory authority.* Section 24, as amended by the act of December 11, 1928 (45 Stat. 1019; 30 U. S. C. 261, 262), authorizes the Secretary of the Interior to lease public lands containing valuable deposits of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium.

§ 195.13 *Qualifications of applicants.* Applications for leases in the form provided may be filed in the proper land office as prescribed in § 195.7 by citizens of the United States, associations of such citizens, or corporations organized under the laws of any State or Territory thereof; the qualifications of the applicant in this respect to be fully covered by the application.

§ 195.14 *Area and descriptions.* Leases are authorized by the terms of the act for an area not exceeding 2,560 acres, but will be granted for such area as may be shown to the satisfaction of the authorized officer to contain valuable deposits of sodium, and will be limited to lands reasonably compact in form and described by legal subdivisions of the public land surveys, if surveyed, or if unsurveyed, by survey made at the expense of the applicant if the application for lease is otherwise found satisfactory.

§ 195.15 *Notice of lease offer.* (a) The manager will publish notice of the offer

[2] See 62 Stat. 291; 30 U. S. C. 184.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

of the lands or deposits for lease for a period of 30 days in a newspaper of general circulation in the county in which the lands or deposits are situated. Such notice shall state the place where and the date and the hour on which bids will be received, and shall describe the land, the amount of royalty and rental to be charged, the minimum investment required, and whether the sale of lease will be made by sealed bids or public auction at the time fixed to the qualified bidder offering the highest bonus for the privilege of leasing the lands or deposits on the terms therein set forth. A copy of the notice will also be posted in the district land office during the period of publication thereof. Publication of the offer will be at the expense of the Government.

(b) All bidders at any public sale of leases are warned against committing any act by intimidation, combination, or unfair management, to hinder or prevent bidding thereat, in violation of 18 U. S. C. 1860.

§ 195.16 *Auction of lease.* Where the lease is to be sold at public auction the manager, at the time fixed in the notice, will offer the land or deposits for lease in that manner at his office on the terms and conditions fixed in the notice to the qualified bidder of the highest amount offered as a bonus for the privilege of leasing the land. The high bidder must deposit with the manager on the day of sale a certified check or cash, for one-fifth of the amount of his bid.

§ 195.17 *Right to reject bids.* The right is reserved to reject any and all bids; and should a bid be rejected, the deposit made by the bidder will be returned.

§ 195.18 *Action by bidder.* The high bidder will be allowed 30 days from date of auction or, where sealed bids have been submitted, 30 days from receipt of notice that his bid has been accepted within which to file in the land office (a) a lease, duly executed by him in the form herein prescribed; (b) evidence of qualifications as prescribed by § 195.24, unless such evidence has theretofore been filed; (c) the bond required by section 2 (b) of the lease, or United States bonds in lieu thereof under the act of February 24, 1919 (40 Stat. 1148; 6 U. S. C. 15); and to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease, together with the required filing fee of $2, for each 160 acres of land, or fraction thereof, but in no case less than $10. In case of default, the amount deposited by the bidder will be forfeited, and disposed of as other receipts under this act.

§ 195.19 *Operations.* Prospecting and mining operations under permits and leases will be governed by operating regulations, approved by the Secretary of the Interior. Administration of the operating regulations and supervision of operations on permits and leases will be under the direction of the Geological Survey. Before beginning operations permittees and lessees should consult with the mining supervisor of the Geological Survey for the area in which operations are to be conducted and obtain from him a copy of the operating regulations.

§ 195.20 *Royalty and rentals.* (a) The rate of royalty will be fixed prior to the issuance of the lease, but in no case can the royalty rate be less than 2 percent of the quantity or gross value of the output of the sodium compounds and other related products, at the point of shipment to market.

(b) The rentals fixed by the act are to be paid annually in advance—25 cents per acre or fraction of an acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth years, respectively, and $1 per acre for each year thereafter, such rental for any year being credited against royalties accruing for that year.

§ 195.21 *Form and contents of application.*[*] (a) Applications for leases should be filed in the proper land office, as prescribed in § 195.7. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(1) Applicant's name and address.

(2) Qualifications of petitioner to take a lease under the act including: (i) Statement of his interests, direct or indirect, in other sodium leases, permits or applications therefor on public lands in the State in which the lease is desired, identifying the same by land office and serial number, and (ii) proof of citizenship—in the case of an individual by a statement as to whether native-born or naturalized and, if naturalized, date of naturalization, court in which naturalized and number of certificate, if known; if a woman whether she is married or single, and if married, the date of her marriage and citizenship of her husband. Corporations are required to file a certified copy of their articles of incorporation, a showing as to residence and citizenship of the stockholders and if any stock is held by aliens a showing to the extent reasonably ascertainable of the name, country to which each such alien owes allegiance and amount of stock held by each.

(3) A statement of all holdings by the applicant of permits and leases under the sodium provisions of this act, pending applications therefor, and interests directly or indirectly held in such permits and leases.

(4) Description of land for which the lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case the description should be connected to some corner of the public-land surveys where practicable, or to some permanent landmark. If the land is unsurveyed, the applicant, after he has been awarded the right to a lease, but before the issuance thereof, will be required to deposit with the district cadastral engineer of the public survey office of the district in which the land is located the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public-land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

(5) Evidence that the land is valuable for its sodium content, except so much thereof as is necessary for the extraction and reduction of the leased minerals, with a statement as accurate as may be of the character and extent and mode of occurrence of the sodium deposits in the lands applied for.

(6) Proposed method, so far as determined, as to the process of mining and reduction to be adopted, the diligence with which such operations will be carried on, and the contemplated investment in reduction works and development, and the capital available therefor.

(b) The application must be signed by the applicant or his attorney in fact, and if executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

§ 195.22 *Form of lease.* The form of lease will be substantially the same as that set forth in 52 L. D. 658–662.

CAMP SITES AND REFINING WORKS WITH SODIUM PERMITS AND LEASES

§ 195.23 *Statutory authority.* Section 25 of the act of February 25, 1920 (41 Stat. 447; 30 U. S. C. 263), provides that in addition to areas which may be included in prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding 40 acres in area for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

§ 195.24 *Applications.* Application may be made by the permittee or lessee identifying by serial number his permit or lease, setting forth in detail the specific reasons why it is necessary for the applicant to have the use of an additional tract of land for a camp site, refining works, or other purposes, connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

§ 195.25 *Description of land in application.* The application should contain a description of the lands by legal subdivisions, if surveyed, or, if not surveyed, by the approximate description thereof as it will appear when surveyed, for which the right of use is desired, together with a statement of the particular reasons why it is especially adapted thereto, either in point of location, topography, or otherwise, and that it is unoccupied, nonmineral land.

§ 195.26 *Use permits.* Use permits granted under this part will be for indeterminate periods, dependent in that respect upon the existence of the permit or

[*] See footnote to § 195.7.

lease made the basis of the right authorized by section 25; upon the termination of such permit or lease all rights secured hereby will also cease and terminate, and such condition shall be expressly recognized and stated in the application.

§ 195.27 *Form of application.*[1] No blank forms of application will be furnished to applicants, but they will be guided by §§ 195.23–195.29 as to the essential requirements of the application.

§ 195.28 *Rental.* The rental of not less than 25 cents per acre must be paid the manager of the proper land office as soon as applicant is notified of the allowance of the permit, and a like sum each year thereafter in advance.

§ 195.29 *Form of use permit.* The form of use permit will be substantially the same as that set forth in 52 L. D. 663.

SODIUM CLAIMS EXCEPTED FROM OPERATION OF MINERAL LEASING ACT

§ 195.30 *Claims initiated prior to February 25, 1920.* Section 37 of the act of February 25, 1920 (41 Stat. 451; 30 U. S. C. 193) provides that thereafter the deposits of coal, phosphate, sodium, oil, oil shale, and gas referred to and described in the act may be disposed of only in the manner provided by the act, "except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under said laws, including discovery." As to sodium claims, those claims initiated under the pre-existing law may go to patent which, at the date of the act, were valid mining locations, duly made and maintained as such on lands subject to such location at the date initiated.

PART 196—PHOSPHATE LEASES AND USE PERMITS

PHOSPHATE LEASES

Sec.

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AUTHORITY: §§ 196.1 to 196.20 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189. Interpret or apply secs. 9–12, 41 Stat. 440, 441; 30 U. S. C. 211–214.

§ 196.1 *Statutory authority.* Sections 9 to 12, inclusive, of the act approved February 25, 1920 (41 Stat. 440; 441; 30 U. S. C. 211–214), as amended, authorizes the Secretary of the Interior to lease any phosphate deposits of the United States and lands belonging to the United States containing deposits of phosphates and associated or related minerals, hereinafter called "leased deposits." Invitations to bid for such leases will be made in accordance with the procedure hereinafter set forth. Leases will be issued on Form 4–1110 for periods of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each 20 year period such reasonable readjustment may be made of the terms and conditions thereof as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods.

§ 196.2 *Size of leasehold and limitation of acreage holdings.* (a) Except where the rule of approximation applies, a lease may not include over 2,560 acres in reasonably compact form. Each lease shall describe the land involved by legal subdivisions of the public land surveys. No person, association or corporation, may hold at any one time, either directly or indirectly, leases that exceed in the aggregate 5,120 acres in any one State, or 10,240 acres in the United States.

(b) A lessee, upon a showing that the leased deposits extend into adjoining Federal lands may, upon application to be filed in the Land Office, be granted, subject to the acreage limitation under paragraph (a) of this section, a lease for additional acreage, if the Manager, after consultation with the Mining Supervisor, shall determine that the increased acreage will result in conservation of natural resources and will provide for the most economical and efficient recovery of a minable deposit without waste. In applying this paragraph, fringe acreage in an area not of interest to more than one operator, and lacking sufficient reserves of phosphate deposits to warrant independent development, may be leased noncompetitively either by separate lease or by adding to an existing leasehold (within the aggregate limitation of 2,560 acres), subject to a bonus of not less than $1.00 an acre, a minimum royalty, and such other terms and conditions as may be determined at the time the lease offer is made. If, however, the fringe acreage has sufficient reserves to warrant independent development, or, if, following appropriate inquiry of operators in the area and consultation with the Mining Supervisor, the Manager determines that there is competitive interest therein, the lands will be offered competitively under § 196.11.

§ 196.3 *Qualifications of applicants.* Leases may be issued to (a) citizens of the United States, (b) associations of citizens, and (c) corporations organized under the laws of the United States or of any State or Territory thereof.

§ 196.4 *Minimum expenditure and lease bond.* (a) An actual bona fide expenditure for prospecting, where necessary, and mine operations, development, or improvement purposes of the amount determined by the authorized officer will be a condition in each lease as to the minimum basis on which it will be granted, with the requirement that not less than one-third of such expenditure shall be made during the first year, and a like amount each year for the two succeeding years, the expenditure during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. Except as to the sums required to be expended for prospecting on the leased land, the minimum expenditure requirement may be met, when so authorized in the lease, by expenditures made or to be made off the leased land but for its benefit.

(b) A bond, in such sum as may be fixed in the notice of leasing but in no event less than $5,000, executed by the lessee with approved corporate surety on Form 4–1113 or the lessee's personal bond on Form 4–1114, conditioned upon compliance with the terms of the lease will be required. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond.

§ 196.5 *Minimum production.* Each lease will contain appropriate conditions fixing a minimum annual production of the leased deposits beginning with the fourth year from date thereof or payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, casualties not attributable to the lessee, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss. When authorized in the lease the minimum production requirements may be satisfied by production from other properties controlled by the lessee and constituting a necessary reserve so located as to be a part of a successful unit operation.

§ 196.6 *Lessee's petition for change in minimum production.* The lessee may request at any time prior to the end of the thirtieth lease month, that the Secretary reduce the amount of the minimum production specified in the lease upon the basis of the showing submitted by the lessee. The petition must be filed in duplicate with the office from which his lease was delivered. It should give, among other relevant information, (a) his estimate of tonnage of mineral phosphate rock and associated or related minerals in the leased land, (b) all available information as to the grade thereof, (c) his plan of operation for the property and adjacent property to be worked therewith, (d) a general statement of the method or methods which he intends to use in mining and proces-

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

ing of the phosphate rock and associated or related minerals, (e) the estimated rate of its extraction and (f) possible absorption in the markets. Within six months after receipt of this information the authorized officer, after considering what would be a reasonable period within which to mine the leased deposits taking into account, where material, the lessee's mining operations on adjacent phosphate land owned or controlled by him, will determine whether the minimum production requirement in the lease shall be changed to a lesser figure than the amount then provided.

§ 196.7 *Application for lease.*[1] Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. The application, if for a noncompetitive lease, must be accompanied by the first year's rental of twenty-five cents per acre for each acre of land included in the lease application. No specific form is required but the application should cover the following points:

(a) Applicant's name and address.

(b) A statement of his interests, direct or indirect, whether as a member of an association or stockholder in a corporation, or otherwise in other phosphate leases or applications therefor on public lands, identifying the same by land office and serial number together with the total amount of acreage so held both in the State in which the lease is desired and in the United States, and a statement that such holdings under said act within the State in which the land is situated, together with the lands applied for, do not exceed in the aggregate 5,120 acres and a like statement with respect to the maximum allowable area of 10,240 acres in the United States.

(c) Proof of citizenship; in the case of an individual, by a statement as to whether native-born or naturalized and, if naturalized, date of naturalization, court in which naturalized, and number of certificate, if known; if a woman, whether she is married or single, and if married, the date of her marriage and citizenship of her husband. Associations are required to file a certified copy of their articles of association and the same showing as to the citizenship and holdings of their members as required of an individual and specified herein. A corporation is required to file a certified copy of its articles of incorporation and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied. If 20 percent or more of the stock of any class is owned or controlled by or on behalf of any one stockholder, a separate showing of his citizenship and holdings must be furnished.

(d) Description of the land for which lease is desired, by legal subdivisions or, if unsurveyed, by metes and bounds, connected with a corner of the public survey by course and distance, and, where possible, description of the land by the approximate subdivisions of the future survey.

(e) To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(f) Each applicant must show in sufficient detail that:

(1) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(2) He intends to explore, mine and develop the property in good faith;

(3) He is financially and otherwise able to comply with the minimum expenditure requirements for exploration, mining and development of the property; and

(4) His proposed operation of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

(g) The applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Application on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

(h) And in addition, in the case of noncompetitive lease applications, the extent to which further prospecting is necessary before development can reasonably be undertaken and the general exploration program which will be undertaken, the estimated expenditure under such exploration program, and the maximum period of time required for its completion, not to exceed three years.

§ 196.8 *Noncompetitive application; publication; protests.* (a) If, upon an examination of the first application filed to lease the lands noncompetitively, and such additional information as the applicant may be required to submit, in support of it, and upon the report of the Geological Survey as to the need for further exploration and any other technical matters submitted to it, the Secretary determines that the applicant is qualified, and that the lands or deposits constitute an acceptable leasing unit and are subject to phosphate lease and that further exploration is necessary before development could reasonably be undertaken, the applicant, as a condition precedent to the issuance of the lease, will be required to publish, at his own expense, once a week for four consecutive weeks in a designated newspaper of general circulation in the county or counties in which the land is situated, a notice, specified by the Secretary, containing the terms upon which the lease will be issued to the applicant in the absence of a protest deemed valid by the Secretary. The applicant will be required to commence publication within 30 days after service of the decision upon him unless he requests reconsideration of the decision within that time.

(b) The notice shall describe the land, specify the rental and rate of royalty to be paid under the lease, state the minimum expenditure and minimum production requirements, together with a general statement as to the exploration program required by the Secretary to be undertaken by the applicant after lease issuance to ascertain that development is feasible under the lease. The notice shall also state (1) that the minimum production requirement will not be reduced or waived at the lessee's request except as provided in § 196.5, 196.6, 191.25 or 191.26, and (2) that the lease will be canceled if apart from or in addition to any other grounds that may exist therefor, production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease. A copy of the notice will be posted in the land office after receipt by the manager.

(c) A valid protest may be based upon (1) a prior equitable claim, including a mining location, or (2) the fact that there is sufficient interest by qualified applicants to justify offer of lease by competitive bidding. A protest based upon the second ground must be accompanied by the payment of the first year's rental of 25¢ per acre for the land, together with a showing that the protestant has the qualifications of an applicant under § 196.7. In addition, there must be set forth in the protest an offer to reimburse the applicant in whole, or ratably with other similar protestants, for the cost of publishing the notice of the application. Decisions on protests will be made within 30 days after the applicant has submitted proper proof of publication. No application will be re-

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

jected on the second ground unless proof is filed that, when directed by the authorized officer, payment of the advertising cost has been made or a satisfactory tender is being made and is still being kept open. If the protest is rejected or if the protestant is not the successful bidder when a sale is held, his rental payment will be returned to him.

(d) If the authorized officer decides after the receipt of an application or after proof of advertising has been submitted that the land is not available for leasing or that the applicant is not entitled to a lease or that the land should be offered for competitive bidding, the rental payment will be returned to the applicant and his application for a noncompetitive lease rejected.

§ 196.9 *Issuance of noncompetitive lease.* The applicant should file with the land office, within 30 days after publication has been completed, proof thereof, together with a lease duly executed by him on Form 4–4110 and the bond required by § 196.4 (b). In the absence of protest or of a protest deemed valid and if all else is regular, the lease will be issued and dated as of the first day of the month following its issuance, unless the applicant requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the lessee need not deposit the executed lease and bond until the land has been surveyed and the plat of such survey accepted and officially filed. A survey will be made at the expense of the Government. If the applicant has not reported compliance with the requirements of the decision issued under § 196.8, within 120 days of its receipt by him, the annual rental deposited by the applicant will be covered into the Treasury and the applicant advised that the case has been closed.

§ 196.10 *Offer of lands or deposits for lease by competitive bidding.* If the authorized officer, upon the report of the Geological Survey, with respect to an application for lease or otherwise, as to the need for further exploration, royalty rates, minimum expenditure and production requirements and any other technical matters submitted to it, determine that specific lands or deposits which constitute an acceptable leasing unit are subject to phosphate lease without the need of further exploration before development could reasonably be undertaken, the offer of lease will be made on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bids either at public auction or by sealed bids as provided in the notice of sale.

§ 196.11 *Notice of lease offer.* (a) Notice under the preceding section, of the offer of the lands or deposits for lease will be given by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, and in such other publications as may be authorized. The notice will be published at the expense of the Government. A copy of the notice will be posted in the proper land office during the period of publication. This notice will state the place and time of sale, the description of the land and where a detailed statement of the terms and conditions of the lease offer may be obtained. The detailed statement of terms and conditions will provide (1) that the minimum production requirement will not be reduced or waived at the lessee's request except as provided in §§ 196.5, 196.6, and 191.25, or § 191.26 of this chapter, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss; (2) that the lease will be canceled if production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease; and (3) the manner in which bids may be submitted, information as to rental, royalty, minimum production, minimum investment and all other terms and conditions of the sale.

(b) The right is reserved in the public interest, to reject any and all bids; and should a bid be rejected, the deposit made by the bidder will be returned. All bidders at any public sale of leases are warned against committing any act by intimidation, combination, or unfair management, to hinder or prevent bidding thereon, in violation of 18 U. S. C. 1860.

§ 196.12 *Action by successful bidder.* The successful bidder at a sale by public auction must deposit with the manager of the land office or other officer conducting the sale on the day of sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check, money order, or cash, for one-fifth of the amount bid by him; evidence of qualifications as prescribed in §§ 196.7 (b), (c), (g) and (h), if a current showing in that regard has not been filed. If the land is surveyed, the successful bidder will be allowed 30 days from date of auction or where sealed bids are submitted, 30 days from receipt of notice that his bid has been accepted within which (a) to file in the proper land office a lease, duly executed by him, in quintuplicate, on Form 4–1110 and the bond required by § 196.4 (b); and (b) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with requirements (a) and (b) in this section until the land has been surveyed and the plat of such survey accepted and officially filed. The survey will be made at the expense of the Government. If the bidder fails to comply after due service of notice, that portion of his deposit representing the minimum required to be deposited with the bid shall be held as liquidated damages and disposed of as other receipts under the Mineral Leasing Act.

§ 196.13 *Assignments of leases; subleases.* (a) Leases may be assigned or subleased in whole or in part to any person or corporation qualified to hold such leases. All instruments of transfer of a lease or of an interest therein including assignments of record title, subleases, operating agreements and working or royalty interests, must be filed for approval within 90 days from the date of final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease applicant by § 196.7 (b), (c), (f), and (g). If the instruments fail to describe the true consideration therefor, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection. If a bond is necessary it must be furnished. Assignments of record title interests, including operating agreements, must be filed in triplicate. A single executed copy of all other instruments of transfer is sufficient. An assignment of such leases shall take effect the first day of the month following its final approval by the Bureau of Land Management, or if the assignee requests, the first day of the month of the approval.

(b) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the effective date of the approval of the assignment of sublease. If the assignment or sublease is not approved, their obligations to the United States shall continue as though no such assignment or sublease had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any term in the assignment or sublease to the contrary.

(c) The lease account must be in good standing before approval of an assignment will be given.

§ 196.14 *Readjustment of terms and conditions at end of twenty-year periods.* The terms and conditions of a lease may be readjusted at the end of each twenty-year period succeeding the date of the lease. Prior to the expiration of that period, the lessee will be advised of the reasonable readjustment of terms proposed or notified that no readjustment is to be made for the next period. The lessee may file his consent to such proposed readjustment or inform the authorized officer as to the terms which are unsatisfactory. After considering the suggestions of the lessee, the authorized officer shall make his determination as to the reasonable readjustment of terms to be effective for the twenty-year period under consideration.

§ 196.15 *Relinquishment of lease.* Upon payment of all rentals, royalties and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, the lessee may surrender the entire lease at any time during the first three years of the lease. The lessee may during the first three years of the lease, upon a satisfactory showing that the public interest will not be impaired, surrender any legal subdivision or subdivisions of the area included within the lease. In no case will such lease be so terminated in whole

or in part until and unless the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered thereby. The surrender of all or part of a lease after the third year may be permitted in the discretion of the authorized officer and only if the conditions specified in this section have been satisfied. A surrender must be by a relinquishment filed, in triplicate, in the proper land office. A relinquishment upon its approval shall take effect as of the date it is filed.

§ 196.16 *Cancellation of lease.* If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 196.14, or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act: *Provided*, That, as to any default occurring under a lease issued noncompetitively not corrected prior to the commencement of production, the authorized officer may cancel such lease without institution of such court proceedings. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause or forfeiture, or for the same cause occurring at any other time.

§ 196.17 *Use of silica, limestone or other rock.* Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of the act shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the leased deposits or deposits from other lands upon payments of such royalty as may be determined by the authorized officer, which royalty may be stated in the lease when issued, or, may be provided for by an attachment to the lease to be duly executed by the lessor and the lessee.

§ 196.18 *Use permits for additional lands.* (a) A lessee may be granted a right to use the surface of not exceeding 80 acres of unappropriated and unentered public land not included within the boundaries of a national forest as may be necessary for the proper extraction, treatment, or removal of the leased deposits. The annual charge for the use of such land will be not less than $1.00 per acre or fraction thereof.

(b) Applications for permits for such additional land shall be filed in the office specified in § 196.7. Such applications must set forth the specific reasons why the additional land is necessary to the lessee for the use named, describe the land desired in accordance with § 196.7 (d), and also set forth the reasons why the land is desirable and adapted to the uses named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated. The application must also contain an agreement to pay the annual charge prescribed in the permit. Use permits will be issued on Form 4–1111 dated as of the first day of the month after its issuance unless the lessee requests that it be dated the first day of the month of issuance.

§ 196.19 *Claims initiated prior to February 25, 1920.* Section 37 of the act of February 25, 1920 (41 Stat. 451; 30 U. S. C. 193), provides that thereafter the deposits of phosphates described in the act may be disposed of only in the manner provided by the act, "except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under said laws, including discovery." Those claims initiated under the pre-existing law may go to patent which, at the date of the act, were valid mining locations, duly made and maintained as such on lands subject to such location at the date initiated.

§ 196.20 *Limitation on overriding royalties.* An overriding royalty interest shall not be created by assignment or otherwise exceeding one per cent of the gross value of the output at point of shipment to market or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the authorized officer that he has made substantial investments for improvements on the land covered by the assignment.

PART 197—OIL SHALE LEASES [1]

Sec.
197.1 Statutory authority.
197.2 Qualifications of applicants.
197.3 Lands and deposits to which applicable.
197.4 Form and contents of application.
197.5 Disposition of application.
197.6 Action on application.
197.7 Form of lease.
197.8 Preferred right to a lease.

AUTHORITY: §§ 197.1 to 197.8 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

CROSS REFERENCES: For Forest Service, land uses, see 36 CFR Part 251. For operating and safety regulations of the Geological Survey, see 30 CFR Part 231.

§ 197.1 *Statutory authority.* Section 21 of the act of Congress approved February 25, 1920 (41 Stat. 445; 30 U. S. C. 241), authorizes the Secretary of the Interior to lease any deposits of oil shale belonging to the United States, and the surface of such lands as may be necessary for the extraction and reduction of the minerals leased.

§ 197.2 *Qualifications of applicants.* Pursuant to section 1 of the act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181) leases may be made to (a) a citizen of the United States; (b) an association of such citizens; (c) a corporation organized under the laws of the United States, or of any State or Territory thereof; or (d) a municipality.

CROSS REFERENCE: For citizenship in public land cases, see Part 137 of this chapter.

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[1] Circ. 1220, June 9, 1930 (53 I. D. 127), contains the following instructions relative to oil shale withdrawal of Apr. 15, 1930, No. 5327:

"By E. O. 5327, Apr. 15, 1930, made under authority and pursuant to the provisions of the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497; 43 U. S. C. 142), and subject to valid existing rights, the deposits of oil shale and lands containing such deposits owned by the United States were temporarily withdrawn from lease for other disposal and reserved for the purposes of investigation, examination and classification.

"In order to identify for administrative purposes the known areas affected by the order, the Secretary has approved maps prepared by the Geological Survey designating the lands containing oil shale of recognized commercial importance, in Colorado, Wyoming, and Utah. Copy of the map showing the designations is transmitted herewith to the register of each district in which designations have been made.

"The oil shale deposits and the lands so designated, title to which is in the United States, are by the order withdrawn from lease, entry, selection or other form of disposal, and you will therefore reject all applications for such lands, except applications for patent under the mining laws for metalliferous mining claims, or applications under other public land laws which are based on claims to the lands initiated prior to the date of the withdrawal.

"Lands not designated on the map as oil shale, but which are in fact valuable for their oil shale deposits are also withdrawn by said order. Affirmative proof of the non-oil shale character of lands not designated on the maps as oil shale, other than the regular non-mineral affidavit, will not be required.

"However, if your records show any land not designated on the map to be in fact oil shale in character, you will reject any application therefor. Any entry, filing, or selection allowed for lands which are thereafter, and prior to patent, found to be valuable for oil shale, will be subject to cancellation by appropriate proceedings."

Circ. 1355, June 4, 1935 (55 I. D. 280), contains the following instructions relative to modification of oil shale withdrawal of Apr. 15, 1930, by E. O. 7038, May 13, 1935:

"By E. O. 7038, May 13, 1935, E. O. 5327, Apr. 15, 1930, withdrawing certain lands for purposes of investigation, examination, and classification, was modified to extent of authorizing the Secreary of the Interior to issue sodium permits and leases under the general leasing act of February 25, 1920 (41 Stat. 437), as amended by the act of December 11, 1928 (45 Stat. 1019; 30 U. S. C. 261, 262), for and of any of the lands withdrawn by said order.

"Circ. 1220, June 9, 1930 (53 L. D. 127), is accordingly modified to conform to the later Executive order and you are authorized to accept applications for sodium prospecting permits and leases for lands withdrawn under E. O. 5327, Apr. 15, 1930."

E. O. 5327, Apr. 15, 1930, was modified by E. O. 6016, Feb. 6, 1933, so as to authorize oil and gas leases for the withdrawn lands.

Since the issuance of the foregoing instructions, the title "register" has been changed to "manager." See item 1 of Note following table of contents of chapter. For elimination of the requirement of oaths in certain cases, see § 101.21 of chapter.

§ 197.3 *Lands and deposits to which applicable.* The lease may include oil shale deposits and the surface of so much of the land containing same, or of land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, the aggregate area not to exceed 5,120 acres.

§ 197.4 *Form and contents of application.*[1] (a) Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(1) Applicant's name and address.

(2) Qualifications of petitioner to take a lease under the act including: Statement of his interests, direct or indirect, in other oil shale leases or applications therefor on public lands in the State in which the lease is desired, identifying the same by land office and serial number, and proof of citizenship—in the case of an individual, by a statement as to whether native-born or naturalized and, if naturalized, date of naturalization, court in which naturalized and number of certificate if known; if a woman, whether she is married or single, and, if married, the date of her marriage and citizenship of her husband. Corporations are required to file a certified copy of their articles of incorporation, a showing as to residence and citizenship of the stockholders, and if any stock is held by aliens, a showing, to the extent reasonably ascertainable, of the name, country to which each such alien owes allegiance, and amount of stock held by each. Municipalities must submit evidence of the law or charter and procedure taken by which it became and exists as a body corporate, that the taking of a lease is authorized under such law or charter, and that the action proposed has been duly authorized by the governing body of such municipality.

(3) A statement that the applicant has no lease under the provisions of this section, nor any other application for lease thereunder pending, and that he does not hold interests in such leases or applications which, with the land applied for, will exceed 5,120 acres.

(4) Description of land for which the lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case the description should be connected to some corner of the public land surveys where practicable, or to some permanent landmark. If the land is unsurveyed, the applicant, after he has been awarded the right to a lease, but before the issuance thereof, will be required to deposit with the district cadastral engineer of the proper public survey office the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

(5) Evidence that the land is valuable for its oil-shale content, except so much thereof as is necessary for the extraction and reduction of the leased materials, with a statement as accurate as may be of the character and extent and mode of occurrence of the oil-shale deposits in the lands applied for.

(6) Proposed method, so far as determined, as to the process of mining and reduction to be adopted, the diligence with which such operations will be carried on, and the contemplated investment in reduction works and development, and the capital available therefor.

(7) The application shall be accompanied by a notice for publication, in duplicate, prepared for the signature of the manager, in substantially the following form:

Serial No. ------

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
LAND OFFICE AT ----------
---------- 19----

NOTICE OF APPLICATION FOR OIL-SHALE LEASE

Notice is hereby given that in pursuance of the Act of Congress, approved February 25, 1920, ------ ------ whose post-office address is ------ has made application for oil-shale lease covering the following described lands: -------

Any and all persons claiming adversely any of the above-described lands are required to file their claims in this office on or before ------, otherwise their claims will be disregarded in the granting of such lease.

----------, Manager.

(b) The application must be signed by the applicant or his attorney in fact, and if executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

(c) The manager will fix the time within which adverse or conflicting claims may be filed at not less than 30, nor more than 40 days from first publication.

§ 197.5 *Disposition of application.* (a) One copy of the signed notice will be delivered to the applicant, who will cause the same to be published in a newspaper to be designated by the manager, of general circulation, and best adapted to give the widest publicity, in the county where the land is situated. If the land is in two or more counties, notice must be published in each. Notice must also be posted in the land office during the period of publication.

§ 197.6 *Action on application.* As the area and form of lands leased hereunder is entirely discretionary with the authorized officer, if the area applied for is considered too large, or the form unsatisfactory, or in case of conflicting applications, the application may be held for rejection, but the applicant given an opportunity to amend his application in conformity with requirements. If the right to a lease be granted, the applicant will be required, within 30 days from notice, to pay the rental of 50 cents per acre for the first year.

§ 197.7 *Form of lease.* The form of lease will be substantially the same as that set forth in 47 L. D. 426–429.

§ 197.8 *Preferred right to a lease.* (a) Under a proviso of section 21 of the act (41 Stat. 445; 30 U. S. C. 241), a person having a valid claim to oil shale deposits under existing law, prior to January 1, 1919, shall, upon the relinquishment of such claim or claims, be entitled to a lease for not exceeding 5,120 acres: *Provided* "That no claimant for a lease who has been guilty of any fraud, or who had knowledge or reasonable ground to know of any fraud, or who has not acted honestly and in good faith, shall be entitled" to such lease.

(b) The beneficiaries of this proviso are those persons or their grantors who, in the honest belief that the mining laws were applicable to oil shale deposits, have proceeded in absolute good faith to make mineral locations, lode or placer, of shale deposits, and who have, in all respects, fully complied with the provisions and requirements of such laws, including discovery.

(c) The same form of procedure in making applications for lease should be followed as in other cases, except that, in addition to the points referred to in § 197.4 of any ordinary application, an application for a preference-right lease should be accompanied by a full and detailed showing, duly corroborated, of the facts on which the applicant claims a preferred right, together with copies of the location notices, abstracts of title, and such other evidence as may be deemed necessary to establish the claimant's preferred right and entire absence of fraud. Claimants of such preferred rights to leases should present same promptly; otherwise the lands may be leased to others, in which case any preference rights under this proviso will be deemed to have lapsed.

PART 198—SULPHUR PERMITS AND LEASES

SULPHUR PROSPECTING PERMITS AND LEASES ON LANDS IN LOUISIANA AND NEW MEXICO

Sec.
198.1 Statutory authority.
198.2 Governing regulations; maximum area for permit.
198.3 Royalty and rental.
198.4 Limitation as to holdings.
198.5 Applications.

AUTHORITY: §§ 198.1 to 198.5 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

CROSS REFERENCES: For Forest Service, land uses, see 36 CFR Part 251. For operating and safety regulations of the Geological Survey, see 30 CFR Part 231.

§ 198.1 *Statutory authority.* The act approved April 17, 1926 (44 Stat. 301; 30

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

U. S. C. 271–276), as amended by the act approved July 16, 1932 (47 Stat. 701; 30 U. S. C. 271, 276) authorizes the Secretary of the Interior to grant prospecting permits and leases for sulphur lands belonging to the United States in Louisiana and New Mexico.

§ 198.2 *Governing regulations; maximum area for permit.* (a) The similarity of the act of April 17, 1926, to the general mineral leasing act of February 25, 1920 (41 Stat. 437), is such that the regulations under said act of February 25, 1920, in this subchapter, are generally applicable and to the extent that they are not inconsistent with the said act of April 17, 1926, as amended, they will govern the procedure in applications for permits and leases under the latter act.

(b) A sulphur permit may, however, be allowed for a maximum of 640 acres only.

§ 198.3 *Royalty and rental.* (a) The royalty in sulphur leases granted consequent upon a permit shall be 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

(b) An oil permittee who shall make a discovery of sulphur in lands covered by his permit shall have the same privilege of obtaining a sulphur lease as is given to a sulphur permittee.

(c) All sulphur leases for lands known to contain valuable deposits of sulphur and not covered by permits or leases shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease and upon the payment in advance of a rental of 50 cents per acre per annum, the rental paid for any one year to be credited against the royalties accruing for that year.

§ 198.4 *Limitation as to holdings.* No person, association, or corporation shall take or hold more than three sulphur permits or leases in any one State during the life of such permits or leases.

§ 198.5 *Applications.* Applications for permits should be filed in the land office at Santa Fe, New Mexico, for lands in the State of New Mexico, and in the Bureau of Land Management, Washington 25, D. C., for lands in the State of Louisiana.

PART 199—MINERALS SUBJECT TO LEASE UNDER SPECIAL LAWS

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LEASES OF SILICA SANDS AND OTHER NON-METALLIC MINERALS IN CERTAIN AREAS IN NEVADA

AUTHORITY: §§ 199.1 to 199.12 issued under 56 Stat. 273.

§ 199.1 *Statutory authority.* The act of May 9, 1942 (56 Stat. 273), as amended by the act of October 25, 1949 (63 Stat. 886), authorizes the Secretary of the Interior to lease, under the rules and regulations of the act of February 25, 1920 (41 Stat. 437), as amended, so far as applicable, deposits of silica sand and other nonmetalliferous minerals within lands withdrawn by Executive Order No. 5105 of May 3, 1929.

§ 199.2 *Applicability of other regulations.* Deposits of oil, gas, phosphate, coal, sodium, and oil shale within the lands shall be subject to disposal pursuant to the applicable regulations issued under the act of February 25, 1920 (41 Stat. 437) as amended. The regulations issued under the act of February 27, 1927 (44 Stat. 1057) shall govern the disposal of potash deposits. The following regulations shall apply to all other deposits of nonmetalliferous minerals within the lands.

§ 199.3 *Lands to which applicable.* The act applies to the lands withdrawn by Executive Order No. 5105, which withdrew all public lands, not theretofore withdrawn, within the following described townships:

NEVADA

All of Township 15 South, Ranges 66, 67, 68, East, M. D. M.

All of Township 16 South, Ranges 66, 67, 68, East, M. D. M.

All of Township 17 South, Ranges 66, 67, 68, East, M. D. M.

and also a tract described as follows:

That area of unsurveyed land east of Timber Mountain bounded on the north by latitude 37°10'20", on the south by latitude 37°7'46", and lying between meridians of longitude 116°20'16" and 116°23'28", comprising an area of 9 square miles and including what is known as Fortymile Canyon Pueblo.

§ 199.4 *Leasing units.* Leasing units shall consist of legal subdivisions, if the lands are surveyed, of not more than 640 acres of public lands in a reasonably compact form or, if the lands are not surveyed, shall consist of not more than 640 acres in square or rectangular form with north and south and east and west boundaries, so as to approximate legal subdivisions, described by metes and bounds connected to a corner of the public land surveys by course and distance.

§ 199.5 *Acreage limitation.* Every applicant for a lease hereunder must show that, with the area applied for, his or its interest or interests in such leases and other applications therefor, directly or indirectly, will not exceed in the aggregate 2,560 acres.

§ 199.6 *Royalty and rentals.* (a) The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than two per centum of the quantity or gross value of the output of the leased mineral.

(b) Rental for the first year must be paid at the rate of 25 cents per acre or fraction thereof prior to issuing the lease and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

§ 199.7 *Qualifications of applicants.* Leases may be issued to (a) citizens of the United States, (b) associations of such citizens, or (c) corporations organized under the laws of the United States or of any State or territory thereof.

§ 199.8 *Filing of application.*[1] Application must be accompanied by a filing fee of $10 and filed in the proper land office.

§ 199.9 *Form and contents of application.* No specific form of application is required, but it should cover, in substance, the following points, namely:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant; by a statement of such fact if native born; or, if naturalized, by a statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

(c) A statement of all holdings by the applicant of leases under these regulations, pending applications therefor and interests, directly or indirectly, held in such leases.

(d) Description of the land for which the lease is desired, by legal subdivisions if surveyed or, if unsurveyed, by metes and bounds and by approximate legal subdivisions.

(e) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such exploration will be prosecuted.

(f) Statement of the applicant's experience in operations of this nature, together with reference as to his character, reputation, and business experience.

(g) The right is reserved to offer the lease by competitive bidding to the responsible bidder offering the highest cash bonus, in which case the filing of the application will not give any priority to the applicant if he is not the successful bidder.

§ 199.10 *Term of lease.* Leases will be issued for a period of 5 years subject to renewal at the expiration thereof for additional periods of 5 years each, on such reasonable terms as may be prescribed at the time of such renewal.

§ 199.11 *Bonds.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease.

§ 199.12 *Form of lease.* Leases issued pursuant to these regulations shall be substantially in accordance with Form No. 4–214.

LEASES OF SAND AND GRAVEL IN CERTAIN LANDS PATENTED TO THE STATE OF NEVADA

AUTHORITY: §§ 199.13 to 199.23 issued under 44 Stat. 708.

§ 199.13 *Statutory authority.* The act of June 8, 1926 (44 Stat. 708), authorizes the Secretary of the Interior to dispose of the reserved minerals in the lands patented to the State of Nevada, under such conditions and under such rules and regulations as he may prescribe, and §§ 199.13 to 199.23 are promulgated for the purpose of permitting the disposal of valuable deposits of sand and gravel in such lands.

§ 199.14 *Lands to which applicable.* The act applies to the lands patented to the State of Nevada which are described in the following schedule.

SCHEDULE OF LANDS PATENTED TO THE STATE OF NEVADA UNDER THE ACT OF JUNE 8, 1926 (44 STAT. 708), AND SUBJECT TO LEASE UNDER CIRCULAR NO. 1622

T. 17 N., R. 24 E., M. D. M., Nevada,
Sec. 34, SE¼;
Sec. 35, NW¼SW¼.
T. 9 N., R. 29 E., M. D. M.,
Sec. 5, lots 1, 2, 3, 4, 5, 6, SW¼NW¼;
Sec. 8, lots 1 and 2, NE¼NW¼;
Sec. 16, lot 2;
Sec. 21, lots 1, 2, 4, 5, 6, SE¼NW¼, NE¼SW¼, SW¼SE¼;
Sec. 22, lot 1;
Sec. 26, lots 1, 2, 3, NW¼SW¼, SE¼SW¼;
Sec. 27, lots 1, 2, 3, NW¼NW¼, SW¼NE¼;
Sec. 35, lots 1, 2, 3, 4, SW¼NE¼, NW¼SE¼.
T. 35 N., R. 55 E., M. D. M.
Sec. 36, all
T 14 N., R. 67 E., M. D. M
Sec. 27, S½;
Sec. 28, S½.
T. 22 S., R. 61 E., M. D. M.,
Sec. 1, SE¼SE¼;
Sec. 11, SE¼NE¼, E½SW¼, SE¼;
Sec. 12, S½NW¼, SW¼, E½;
Sec. 13, all.
T. 21, S., R. 62 E., M. D. M.,
Sec. 19, SE¼;
Sec. 20, S½NW¼, SW¼;
Sec. 28, E½NW¼, NW¼SW¼;
Sec. 29, N½NW¼, E½SE¼;
Sec. 31, SE¼SE¼;
Sec. 32, S½;
Sec. 33, SW¼, E½.
T. 22 S., R. 62 E., M. D. M.,
Sec. 1, SW¼SW¼;
Sec. 5, lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, lots 1 and 7, S½NE¼, SE¼, E½SW¼;
Sec. 7, lots 1, 2, 3, 4, E½W½, E½;
Sec. 8, all;
Sec. 9, N½, NE¼SE¼, S½SE¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, W½, S½NE¼, SE¼;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1, 2, 3, 4, E½W½, E½.
T. 23 S., R. 63 E., M. D. M.,
Sec. 11, W½;
Sec. 15, E½;
Sec. 22, E½.
T. 16, S., R. 66 E., M. D. M.
Sec. 25, N½;
Sec. 26, W½NW¼, NW¼SW¼.
T. 17 S., R. 66 E., M. D. M.,
Sec. 1, lots 1, 2, 3, 4, S½N½, S½;
Sec. 12, all;
Sec. 13, all;
Sec. 14, E½;
Sec. 22, SE¼;
Sec. 23, all;
Sec. 24, all;
Sec. 26, N½;
Sec. 27, NE¼.
T. 4 S., R. 67 W., M. D. M.,
Sec. 19, E½NW¼, W½NE¼, SE¼NE¼.
T. 17 S., R. 67 E., M. D. M.,
Sec. 13, S½;
Sec. 19, lots 1, 2, 3, 4, E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, N½
Sec. 27, N½.
T. 1 S., R. 68 E., M. D. M.,
Sec. 30, lots 1, 2, 3, 4, E½W½, E½;
Sec. 31, lots 1, 2, 3, 4, E½W½, E½.
T. 2 S., R. 68 E., M. D. M.,
Sec. 6, lots 1, 2, 3, 4, 5, SE¼NW¼, S½NE¼.
T. 5 S., R. 71 E., M. D. M.,
Sec. 16, SW¼SW¼;
Sec. 17, E½;
Sec. 21, N½NW¼, SE¼NW¼, E¼SW¼, SW¼NE¼, W½SE¼, lots 2, 3,

containing 25,499.47 acres.

§ 199.15 *Leasing units.* A leasing unit in any case shall consist of such area of land as shall be determined by the authorized officer of the Department of the Interior to constitute an economic working unit based upon the quantity of sand and gravel in the land, the available market for sand and gravel and such other factors as he may determine to be material.

§ 199.16 *Acreage limitation.* In no case shall more than 2,560 acres be leased to any one person, association, or corporation. Every applicant for a lease under §§ 199.13 to 199.23 must show that, with the area applied for, his or its direct or indirect interests in such leases and other applications therefor, will not exceed in the aggregate 2,560 acres.

§ 199.17 *Royalty and rentals.* (a) The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than two per centum of the quantity or gross value of the output of the leased mineral at the point of shipment to market.

(b) Rental for the first year must be paid prior to issuance of the lease at the rate of 25 cents per acre or fraction thereof and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

§ 199.18 *Qualifications of applicants.* Leases may be issued to (a) citizens of the United States, (b) associations of such citizens, or (c) corporations organized under the laws of the United States or of any State or territory thereof.

§ 199.19 *Filing of application.* Application must be accompanied by a filing fee of $10 and filed in the proper land office.

§ 199.20 *Form and contents of application.* No specific form of application is required, but it should cover, in substance, the following points, namely:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant; by a statement of such fact if native born; or, if naturalized, by a statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(c) A statement of all holdings by the applicant of leases under these regulations pending applications therefor and interests, directly or indirectly, held in such leases.

(d) Description of the land for which the lease is desired, by legal subdivisions, a statement as to whether the land is occupied or is being used, the nature and extent of such occupation and use and of any improvements on the land.

(e) Proposed method of conducting exploratory operations, amount of capital available for such operations, the diligence with which such exploration will be prosecuted, and the extent that operations are likely to interfere with any use that is being made of the land by the surface owner.

(f) Statement of the applicant's experience in operations of this nature, together with reference as to his character, reputation, and business experience.

§ 199.21 *Term of lease.* Leases will be issued for a period of five years subject to such special terms as may be deemed necessary in the particular case to protect the rights of the surface claimant and, in the discretion of the authorized officer, may be renewed at the ex-

piration thereof for additional periods of five years each, on such reasonable terms as he may prescribe at the time of such renewal.

§ 199.22 *Bonds.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease, and for the protection of the owner of the surface estate from damages resulting from the operation of such lessee.

§ 199.23 *Form of lease.* Leases will be issued on Form No. 4–988.

Mineral Leases in Lands Patented for Park or Other Public Purposes

GENERAL PROVISIONS

Authority: §§ 199.40 to 199.48 issued under 47 Stat. 1487, 49 Stat. 1482, 2026. Exception is noted following section affected.

§ 199.40 *Statutory authority.* The act of March 3, 1933 (47 Stat. 1487), as amended by the act of June 5, 1936 (49 Stat. 1482) and the act of June 29, 1936 (49 Stat. 2026), authorizes the Secretary of the Interior to dispose of the reserved minerals in the lands patented to the State of California pursuant thereto, at such times and under such conditions as he may prescribe, and §§ 199.40 to 199.56, inclusive, are promulgated for the purpose of permitting the disposal of the mineral deposits in such lands.

§ 199.41 *Lands to which applicable.* Sections 199.40 to 199.56, inclusive, apply to the lands patented to the State of California for park purposes.[1]

§ 199.42 *Minerals to be leased.* All disposal of minerals within the reserved areas covered by §§ 199.40 to 199.56, inclusive, shall be by lease.

§ 199.43 *Notice to the owner of the surface.* The manager of the land office will notify the surface owner or his authorized representative of each application received. Notice of any proposed offer of lands for lease will also be given to the surface owner prior to publication thereof. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory the application will be rejected or the offer of the land for lease will be withheld.

§ 199.44 *Protection of surface.* All leases issued pursuant to §§ 199.40 to 199.56, inclusive, shall be conditioned upon compliance by the lessee with all of the laws or rules and regulations of the surface owner for the safeguarding and protection of the plant life, scenic features and park or recreational improvements on the land, not inconsistent with the terms of the lease or §§ 199.40 to 199.56, inclusive. The lease shall also provide that any mining work performed upon the lease shall be located consistent with any requirements of the owner of the surface necessary to the protection of the surface rights and uses and so conducted as to result in the least possible injury to plant life, scenic features and improvements and that, upon completion of the mining operation, all excavations, including wells, shall be closed and the property be conditioned for abandonment to the satisfaction of the surface owner. The lease shall further provide that any use of the lands for ingress to and egress from the mine for all necessary purposes shall be on a route to be first approved by the surface owner or his duly authorized representative.

§ 199.45 *Bonds.* Each lessee will be required to furnish a bond in such sum as may be determined adequate, in no case less than $1,000, to insure compliance with the terms of the lease and for the protection of the surface owner.

§ 199.46 *Operating regulations.* All lessees will be required to operate under the applicable operating regulations of this Department.[2]

§ 199.47 *Existing regulations applied to leases of oil, gas, coal, potassium, sodium and phosphate.* The regulations contained in Parts 191 and 192 of this chapter to the extent that they are applicable and not inconsistent with §§ 199.40 to 199.56, inclusive, shall govern oil and gas leases issued under §§ 199.40–199.56. In like manner the regulations in Parts 191 and 193, 191 and 194, 191 and 195, and 191 and 196 of this chapter, so far as applicable shall govern the leasing respectively of coal, potassium, sodium and phosphate within the area.

§ 199.48 *Form of lease.* Oil and gas leases will be issued on Form 4–213 and Form 4–1158, with such changes in language as may be required to comply with §§ 199.40 to 199.56, inclusive. Leases for the other minerals named in § 199.47 will be upon the forms prescribed for the leasing of such minerals under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), as amended and supplemented, with necessary deletions and additions conformable to §§ 199.40 to 199.56, inclusive.

(64 Stat. 311; 16 U. S. C. 508b)

MINERALS OTHER THAN OIL, GAS, COAL, POTASSIUM, SODIUM AND PHOSPHATE

Authority: §§ 199.49 to 199.56 issued under 47 Stat. 1487, 49 Stat. 1482, 2026.

§ 199.49 *Leasing units.* A leasing unit in any case shall consist of such area of land as shall be determined by the authorized officer to constitute an economic working unit based upon the quantity of the leased mineral in the land, the available market therefor and such other factors as he may determine to be material.

§ 199.50 *Acreage limitation.* In no case shall more than 2,560 acres be leased to any one person, association or corporation. Every applicant for a lease under §§ 199.49 to 199.56, inclusive, must show that, with the area applied for, his or its direct or indirect interests in such leases and other applications therefore, will not exceed in the aggregate 2,560 acres.

§ 199.51 *Royalty and rentals.* (a) The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than two per centum of the quantity or gross value of the output of the leased mineral at the point of shipment to market.

(b) Rental for the first year must be paid prior to issuance of the lease at the rate of 25 cents per acre or fraction thereof and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

§ 199.52 *Qualifications of applicants.* Leases may be issued to (a) citizens of the United States, (b) associations of such citizens, or (c) corporations organized under the laws of the United States or of any State or Territory thereof, provided as to corporations, that no appreciable amount of the stock is held by citizens of countries which do not permit similar or like privileges to citizens of the United States.

§ 199.53 *Filing of application.* Applications must be accompanied by a minimum fee of $10 for each application embracing not more than 800 acres and an additional fee of $2 for each 160 acres or fraction thereof over 800 acres, and be filed in the appropriate land office.

§ 199.54 *Form and contents of application.* No specific form of application is required, but it should cover, in substance, the following points, namely:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant; by statement of such fact if native born; or, if naturalized, by statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(c) A statement of all holdings by the applicant of leases under §§ 199.40 to 199.56, inclusive, pending applications therefor and interests, directly or indirectly, held in such leases.

(d) Description of the land for which the lease is desired, by legal subdivisions, a statement as to whether the land is occupied or is being used, the nature and extent of such occupation and use and of any improvements on the land.

(e) Proposed method of conducting exploratory operations, the estimated duration of such exploration and the extent that operations are likely to interfere with the use of the land for the purposes for which it was granted.

§ 199.55 *Term of lease.* Leases will be issued for a period of five years and, in the discretion of the authorized officer upon application of the lessee filed within the 90-day period immediately preceding the expiration date of the lease, may be renewed at the expiration thereof

[1] A list of the patented lands may be obtained from the manager of the land office, Los Angeles, California.

[2] The operating regulations are contained in Title 30: Those applicable to coal in Part 211, to oil in Part 221, and to potash, oil shale, sodium and phosphate, sulphur, gold, silver and quicksilver in Part 231. Leases for minerals not listed in the preceding sentence will be governed by the operating regulations in 30 CFR Part 231.

for additional periods of five years each, on such reasonable terms as he may prescribe at the time of such renewal.

§ 199.56 *Form of lease.* Leases will be issued on Form 4–244.

DISPOSAL OF MINERAL RESOURCES ON CERTAIN NATIONAL FOREST LANDS IN MINNESOTA

AUTHORITY: §§ 199.61 to 199.65 issued under 64 Stat. 311; 16 U. S. C. 508b.

§ 199.61 *Authority.* The act of June 30, 1950 (64 Stat. 311; 16 U. S. C. Sup. IV 508 (b)) permits the prospecting, development, and utilization of those mineral resources in public domain lands, including lands received in exchange for public domain lands, or for timber on such lands pursuant to Part 148 of this chapter, situated within the exterior boundaries of the national forests in Minnesota, which, because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws of the United States or to mineral leasing laws,[1] and for the development and utilization of which no other authority exists.

§ 199.62 *Minerals to be leased.* All disposal of mineral resources covered by §§ 199.61 to 199.65 shall be by lease or permit.

§ 199.63 *Consent of Secretary of Agriculture; conditions and stipulations.* Leases or permits under the act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

§ 199.64 *Existing regulations applicable.* To the extent that they are applicable and not inconsistent with §§ 199.61 to 199.65, the leasing of minerals under the act of June 30, 1950, shall be governed by §§ 200.32 to 200.36 inclusive, of this chapter. Any lease or permit issued under §§ 199.61 to 199.65 shall state that it is subject to the terms and provisions of the act of June 30, 1950.

§ 199.65 *Distribution of proceeds.* All receipts derived from permits or leases issued under §§ 199.61 to 199.65 will be deposited by the Bureau of Land Management into the same funds or accounts in the Treasury for distribution in the same manner as prescribed for other national forest revenue by 16 U. S. C. sections 499, 500, and 501.

PART 200—MINERAL DEPOSITS IN ACQUIRED LANDS AND UNDER RIGHTS-OF-WAY

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200.6 Restrictions on holdings.
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200.8 Offer to lease and issuance of lease.
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LEASING UNDER THE MINERAL LEASING ACT FOR ACQUIRED LANDS

AUTHORITY: §§ 200.1 to 200.10 issued under sec. 10, 61 Stat. 915; 30 U. S. C. 359.

§ 200.1 *Purpose and authority.* (a) The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U. S. C. 351–359), and referred to in this section, and in §§ 200.2 through 200.10, as "the act," authorizes the Secretary of the Interior to issue permits and leases for deposits of oil, gas, oil shale, coal, phosphate, sodium and potassium in lands acquired by the United States, including such lands in Alaska, subject to the same conditions as contained in the mineral leasing laws of October 20, 1914 (38 Stat. 741; 48 U. S. C. 432), February 25, 1920 (41 Stat. 437; 30 U. S. C. 181), February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281), and in all laws which amend or supplement these mineral leasing laws. The act also authorizes the issuance of permits and leases for sulphur deposits in such acquired lands, wherever situated, subject to all other conditions contained in the act of April 17, 1926 (44 Stat. 301; 30 U. S. C. 271).

(b) The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3, effective July 16, 1946 (3 CFR 1946 Supp., chapter IV), as to the above-enumerated minerals, except as to leases or permits outstanding on August 7, 1947.

§ 200.2 *Lands and deposits to which the act does not apply.* The act does not apply to lands:

(a) Acquired for the development of their mineral deposits,

(b) Acquired by foreclosure or otherwise for resale,

(c) Reported as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611 et seq.).

(d) In incorporated cities, towns, and villages,

(e) In national parks and monuments,

(f) Set apart for military or naval purposes, including lands within naval petroleum and oil shale reserves, or

(g) Which are tide lands, submerged coastal lands, within the continental shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

§ 200.3 *Stipulations and consent of agency having jurisdiction of land.* Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered. All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a permit or lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project, if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

§ 200.4 *Other regulations applicable: Lease forms, applications, and offers.* Except as otherwise specifically provided in §§ 200.1 to 200.11, inclusive, the regulations prescribed under the mineral leasing laws, and contained in Parts 70, 71, and 191 to 198, inclusive, of this chapter, shall govern the disposal and development of minerals under the act to the extent that they are not inconsistent with the provisions of the act. All present interest acquired lands oil and gas leases whether the Government's interest be full or fractional shall be issued on Form 4–1196. Future interest and fractional future interest leases shall be issued on Form 4–1097.

§ 200.5 *Supplemental information required in offers and applications for leases and permits; place of filing.* (a) Each offer or application for a lease or permit must contain (1) a statement that applicant's interest, direct or indirect, in leases, permits or applications for similar minerals does not exceed a maximum chargeable acreage permitted to be held for that mineral in federally owned acquired lands in the same State, and (2) a complete and accurate description of the lands for which a lease or permit is desired. If surveyed according to the governmental "rectangular system", they should be described by legal subdivision, section, township and

[1] The Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181) as amended provides for the leasing of oil, gas, oil shale, coal, phosphate, sodium, and potassium deposits in public domain lands, including such lands generally in national forests. See Parts 191–197 of this chapter.

range, and if not so surveyed, by metes and bounds connected with a corner of the public surveys by courses and distances, or described in a manner consistent with the description in the deed of the United States. The description should, if practicable, refer to (i) the administrative unit or project of which the land is a part, the purpose for which the land was acquired by the United States, and the name of the governmental body having jurisdiction over the land, (ii) the name of the persons who conveyed the lands to the United States, (iii) the date of such conveyance, and the place, liber and page number of its official recordation.

(b) An application or offer under the act must be filed in the proper land office as set forth in § 200.8 (b). Such application or offer will be considered only as to the acquired lands described therein. If public domain lands or minerals are also included the application or offer will be rejected as to such lands or minerals.

§ 200.6 *Restriction on holdings.* The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings; such respective holdings shall not be interchargeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

§ 200.7 *Leases of future or fractional interests*—(a) *General.* Subject to the provisions of section 3 of the act, noncompetitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. There is no required form for applications or offers for noncompetitive leases of any mineral subject to the act, except oil and gas. However, such applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent applicable, conform to and include the information required by §§ 200.3, 200.4, 200.5, and this section. The terms and conditions of leases covering future or fractional interests in mineral deposits other than oil and gas, of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field, and of compensatory royalty agreements under § 192.7 of this chapter covering future or fractional interests, will be established on an individual case basis.

(b) *Offers to lease and leases covering future interests in oil and gas deposits.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. There is no required form for an application or offer to lease such whole or fractional future interest. The application or offer therefor should however to the extent applicable, conform to and include the information required by §§ 200.3, 200.4, 200.5 and must be accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by three copies of such lease or contract. In lieu of an abstract, a certificate of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought, but it shall not include tracts where the United States owns the entire mineral interest at the time the offer is made. Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. A future interest lease having different effective dates for different lands will prescribe a common date for the payment of annual rental or minimum royalty due under the lease with appropriate prorating of periods of less than one year.

(c) *Supplemental agreement as consideration for issuance of lease on future interest in oil and gas deposits.* As part of the consideration for the issuance of a future interest oil and gas lease and as supplemental thereto, the applicant shall execute and file in triplicate Form 4–1155 "Agreement Supplemental to Lease of Oil and Gas Lands Under the Mineral Leasing Act for Acquired Lands". Such agreement will provide for the payment of annual rental in advance at the rate of 25 cents an acre for each tract until the future interest therein becomes possessory or until production is had on the lands described in the lease. After discovery, and until the lease becomes effective as to the respective tracts, the agreement will provide for the payment of a royalty on production, not less than 25 cents per acre per annum, at the particular rate that is applicable: when the interval from the date of receipt of said lease application to the date that the future interest will become possessory is:

	Percent
Not more than 5 years	5
More than 5 years, but not more than 10 years	4
More than 10 years, but not more than 15 years	3
More than 15 years	1

Such agreement will be effective as of the date the lease issues. Such agreement will govern the relationship of the applicant and the United States between its effective date and the respective dates when the lease becomes effective as to each future interest, as set forth in the lease. Where the United States owns both a fractional interest and a fractional future interest in the minerals in the same tract, the supplemental agreement will cover only the fractional future interest in that tract. The lease when issued shall cover both the present and future interests in the land and shall be effective for the present interest held by the United States as of the date for which the lease issues. In such cases and also in all cases where the United States owns only part of the future mineral interest the percentage of royalty specified in the supplemental agreement shall apply to the fractional future interest in that proportion. In lieu of a provision in the agreement for the payment of royalty by the future interest lease holder, the applicant, if not the owner of the present mineral interest, may obtain and file with the Bureau of Land Management an instrument executed in duplicate by the present mineral owner conveying or assigning to the United States the royalty interest set forth in the agreement applicable to the particular term of years which will elapse before the United States becomes the owner of the mineral rights. If found acceptable, one original of such assignment will be returned to the applicant for recordation at his expense and for return to the Bureau of Land Management. In such case, the supplemental agreement should have endorsed on it by the applicant the statement that the assignment of such royalty interest to the United States is recognized by the holder of the agreement.

* * * * *

(d) *Offers for fractional interest oil and gas leases other than future fractional interests.* An offer for a fractional present interest noncompetitive lease must be executed on Form 4–1196 and must be accompanied by a statement showing whether the offeror owns the entire operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease, and if not, the extent of the offeror's ownership in the operating rights in each tract, and the names of other parties who own operating rights in such fractional interests. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than a majority interest of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such result will be rejected.

§ 200.8 *Offer to lease and issuance of lease.* (a) To obtain a present interest noncompetitive oil and gas lease, whether the Government's interest be whole or fractional, an offer to lease must be made on Form 4–1196, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or an unofficial exact one page copy of the approved form. The unofficial copies shall include the following statement: "This form is an exact copy of Form 4–1196". Form 4–1196, or a valid reproduction, will constitute the lease, when signed by the authorized signing officer of the Bureau of Land Management.

(b) Seven copies of Form 4–1196 or valid reproduction thereof, for each offer

to lease shall be filed in the land office for the State or land district in which the land is situated, or for land or deposits in States for which there are no land offices, with the Bureau of Land Management, Washington 25, D. C., except that offers for lands or deposits in North or South Dakota, must be filed in the land office at Billings, Montana; for lands or deposits in Nebraska or Kansas in the land office at Cheyenne, Wyoming; and for lands or deposits in Oklahoma and Texas in the land office at Santa Fe, New Mexico. If less than seven copies are filed, the offer will not be rejected, if not otherwise subject to rejection, until 30 days from filing have elapsed and if during that period the remaining required copies are filed, the offeror's priority will date from the date of the first filing. If the additional copies are not filed within the 30-day period, the offer will be rejected and returned and will afford no priority to the offeror. Should the additional copies be filed after the 30-day period but before the offer has been rejected, the offeror will have a priority as of the later filing date. The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) One of the copies of the offer first filed should be prominently marked as the "original" by the offeror. If not so marked by the offeror one copy of the offer will be marked "original" by the Bureau of Land Management. The copy marked "original" will govern as to the lands to be covered by the lease. Each offer should specify, if possible, the name of the governmental agency having jurisdiction over the surface of the land and also the unit of the project involved.

(d) Each offer should be typewritten or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee for the benefit of non-alien minors or incompetents. Offers may not be filed by minors or incompetents. Each offer must describe the lands by legal subdivision, section, township, range and State, if the lands are surveyed, or, if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance or described in a manner consistent with the description in the deed conveying such lands to the United States. The offer must cover only lands entirely within a six-mile square, and must be for an area of not more than 2,560 acres, except where the rule of approximation applies.

(1) Where an offer to lease covers minerals which are subject to sale under the act of September 6, 1950 (64 Stat. 769; 7 U. S. C. 1033), and surface title to the lands applied for is vested in different ownerships, separate leases will be issued for so much of the land as is vested in each separate surface ownership.

(2) If the offer is for lands in which the government has only a future interest in the oil and gas, the offeror must file the additional showing required by § 200.7 (b) and execute the supplemental agreement required by § 200.7 (c).

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge even though the offer be rejected or withdrawn by offeror in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, or if not known, on the basis of 40 acres for each smallest legal subdivision, or on the computed acreage included within a metes and bounds description.

(3) Evidence of the authority of an attorney in fact or agent who signs the offer and lease on behalf of the offeror except that this shall not apply to an officer of a corporation signing an offer on behalf of the corporation; and in addition if the offeror is an individual, a statement signed by him stating his citizenship and whether his direct and indirect interests in oil and gas leases, applications, and offers for acquired land in the same State exceed 46,080 chargeable acres.

(4) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor for acquired land in the same State exceed 46,080 acres. This paragraph does not apply where the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(5) If the offer is made by a guardian, committee, or trustee, a certified copy of the court order authorizing him to act as such and to enter into the lease in behalf of the minor or incompetent, and a statement as to the citizenship and holdings of the minor or incompetent.

(6) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(f) If the offeror is a corporation the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or by those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding 20 percent or more of the stock of the corporation. When the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate showing of citizenship and holdings of stockholders owning or controlling 20 percent or more of the stock of any class must also be furnished. Where such material has previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(g) (1) Except as provided in subparagraph (2) of this paragraph an offer will be rejected and returned to the offeror and will afford the applicant no priority if:

(i) The land description is insufficient to identify the lands, or the lands are not entirely within a 6-mile square.

(ii) The total acreage exceeds 2,560 acres, except where the rule of approximation applies.

(iii) The full filing fee and the first year's rental do not accompany the offer, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision.

(iv) The offer is signed by an agent in behalf of the offeror and the offer is not accompanied by a statement over the offeror's own signature with respect to holdings and citizenship and by the statements and evidence required by paragraph (e) (4) of this section.

(v) The offer is signed by a guardian or trustee in behalf of a minor and is not accompanied by the evidence required by paragraph (e) (5) of this section.

(vi) Less than seven copies of the offer are filed and the copies lacking are not received in the land office before the expiration of 30 days from the date of receipt of the copies first filed.

(vii) There is noncompliance with item 5 (a) of the Special Instructions. The offeror will be given an opportunity to file a new offer within 30 days from service of the rejection, and the fee and rental payments on the old offer will be applied to the new offer if the new offer shows the serial and receipt numbers of the old offer. The advance rental will be returned unless within the 30-day period another offer is filed.

(2) An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(i) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(ii) An offer covering not more than 10 percent over the maximum allowable

acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or so much over that amount as may be included under the rule of approximation.

(iii) An offer completed in pencil or script.

(iv) An offer on a lease form not currently in use.

(v) An offer or a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

(h) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received before the lease, an amendment of the lease (Form 4–1163) or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(i) (1) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(2) Leases for a whole or fractional future interest will be issued on Form 4–1097. Such leases will be sent to applicant or offeror for execution and return to the proper land office for execution by the appropriate officer. Thereafter, an executed copy will be mailed to lessee.

(j) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless before the issuance of the amendment to Form 4–1196, the office where the offer was filed received a withdrawal of the offer as to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on Form 4–1196 describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 192.40a of this chapter.

(k) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed. If probate has been completed, or is not required, the lease will be issued to the heirs or devisees. However, before the lease is issued the executor or administrator, or the heirs or devisees, as the case may be, must file an offer to lease on Form 4–1196. Such offer will retain the priority of the deceased's offer. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in their behalf. Each such offer must be accompanied by the following information:

(1) Where probate of the estate has not been completed;

(i) Evidence that the executor or administrator has authority to act as such and to sign the offer and if required, the bond forms.

(2) Where the probate or administration of the estate has been completed;

(i) A certified copy of the decree of distribution.

(3) Where no administration or probate proceedings are required;

(i) A statement signed by the heirs that they are the only heirs of the offeror, citing the provisions of the law of the deceased's last domicile showing that no probate or administration is required.

§ 200.9 *Exchange leases.* (a) Oil and gas leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act. New leases shall be issued for a term of five years and so long thereafter as oil or gas is produced in paying quantities, and shall be dated to be effectve as of the first of the month after the filing of the application to exchange. The rental rates for the new lease, for lands not within the known geologic structure of a producing oil or gas field at the time of the filing of the application for exchange, shall be the same as those set forth in § 192.80 (a) of this chapter, and the royalty rate for such lands shall be 12½ percent. For all other lands, the rental rate for the new lease shall be $1.00 per acre per annum, and the royalty requirements shall be the same as those stipulated in the lease offered in exchange.

(b) Coal, phosphate, sodium, potassium, sulphur, or oil shale leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act subject, in each case, to such appropriate conditions as may be prescribed.

§ 200.10 *Sale or conveyance of lands.* Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof, shall be subject to any lease or permit theretofore issued under the act.

§ 200.11 *Pending applications; use of new Form 4–1196.* Applications filed prior to the effective date of the amended regulations in this part will be processed in accordance with the regulations in effect immediately prior to such date and leases will continue to be issued in such cases on Form 4–1097, except:

(a) An applicant may, without losing his priority, file Form 4–1196 for the land described in his application, pursuant to § 200.8, without paying another filing fee if it has already been paid.

(b) When required, the holder of an application filed prior to the effective date of §§ 200.3, 200.4, 200.5, 200.6, 200.7 (a), (b) and (d) and 200.8 must, within 30 days from receipt of notice, file an offer of lease (Form 4–1196) covering the same land in, and bearing the same serial number as his pending application. No additional filing fee will be required. Priority of the original application will be retained. Falure, upon demand to refile will result in the rejection of the original application without further notice.

(c) From the date of issuance of §§ 200.3, 200.4, 200.5, 200.6, 200.7 (a), (b) and (d) and 200.8 until their effective date, filings for leases may be made on Form 4–1196, or in accordance with the prior regulations in this part.

(Sec. 10, 61 Stat. 915; 30 U. S. C. Sup. 359)

LEASING OF MINERAL DEPOSITS OTHER THAN OIL, GAS, OIL SHALE, COAL, PHOSPHATE, POTASSIUM, SODIUM, AND SULPHUR IN CERTAIN ACQUIRED LANDS

AUTHORITY: §§ 200.31 to 200.36 issued under R. S. 161; 5 U. S. C. 22.

§ 200.31 *Authority.* (a) Section 402, Reorganization Plan No. 3 of 1946 (3 CFR, 1946 Supp., chapter IV) transferred the functions of the Secretary of Agriculture and the Department of Agriculture relative to the leasing or other disposal of minerals in certain acquired lands to the Secretary of the Interior. These functions have been delegated to the Bureau of Land Management and the Geological Survey, to be exercised in accordance with general policies approved by the Secretary (§ 4.261 (a), 12 F. R. 8677, and § 4.662, 11 F. R. 14165, 12 F. R. 839). By virtue of Departmental Order 2291 of January 27, 1947 (12 F. R. 839), the Bureau of Land Management and the Geological Survey also have similar functions with respect to the leasing of minerals, where authorized by law, in acquired lands under the jurisdiction of the bureaus and other agencies of the Department of the Interior, except Indian lands. To the extent that the Plan and Departmental Order authorizes the leasing of oil, gas, oil shale, coal, phosphate, potassium, sodium and sulphur, they have been superseded by the authority conferred upon the Secretary by the Mineral Leasing Act for Acquired Lands (61 Stat. 913; 30 U. S. C. 351–359) with respect to the enumerated minerals.

(b) Section 3 of the act of September 1, 1949 (Public Law 280, 81st Congress), authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National

Forest by the act of March 19, 1948 (62 Stat. 83).

(Sec. 3, 63 Stat. 683; 30 U. S. C. 192c)

CROSS REFERENCE: For regulations under the Mineral Leasing Act for Acquired Lands, see §§ 200.1 through 200.10.

§ 200.32 *Scope.* (a) Except as to the minerals listed in § 200.31, §§ 200.31 through 200.36 apply to the leasing or other disposal of minerals.

(1) In acquired lands under the act of March 4, 1917 (39 Stat. 1134, 1150; 16 U. S. C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U. S. C. 401, 403 (a) and 408), the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118), section 55 of Title I of the act of August 24, 1935 (49 Stat. 750, 781), the act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (56 Stat. 725; 7 U. S. C. 1011 (c) and 1018),

(2) In acquired lands, except Indian lands, under the jurisdiction of the bureaus and other agencies of the Department of the Interior, and

(3) In those lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83), which were acquired with funds of the United States, or lands received in exchange therefor.

(b) Leases or permits may be issued, or the minerals otherwise disposed of, only if the Bureau of Land Management is advised by the appropriate official of the Department, bureau, or agency, having jurisdiction over the lands, that development of such minerals will not interfere with the primary purpose for which the land was acquired, and any lease, permit or other instrument, granting the right to mine and remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. If, however, there is any disagreement between any of the bureaus or agencies of the Department of the Interior as to leasing any land, or as to the terms or conditions of any proposed lease, the matter shall be submitted to the Secretary by the bureaus or agencies concerned.

(Sec. 3, 63 Stat. 683; 30 U. S. C. 192c)

§ 200.33 *Outstanding mineral permits and leases.* Permits and leases heretofore issued by the Department of Agriculture will continue to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

§ 200.34 *Filing of applications for mineral permits or leases.* Applications for permits or leases may be filed with the Bureau of Land Management, Department of the Interior, Washington 25, D. C., by any citizen of the United States, or corporation organized and existing under the laws of the United States or any State thereof.

§ 200.35 *Terms and conditions of mineral permits and leases.* Prospecting and mining permits shall not exceed 20 years' duration and shall provide for an annual rental payable in advance of not less than 25 cents per acre and a royalty of not less than 2 percent of the value of the minerals after having been brought to the surface of the ground. After production begins, the yearly advance rental shall be credited on the royalty payments for that year. The permit may also require the posting of a bond in an amount to be determined by the Bureau of Land Management. Prospecting may, in the discretion of the appropriate official of the Department, bureau, or agency, having jurisdiction over the lands, be carried on without permit where no structures are to be erected and no substantial excavation or disturbances of the surface will be made. Mineral leases shall be subject to such terms and conditions as may be prescribed in each case by the Bureau of Land Management.

§ 200.36 *Payments and reports.* All payments of rentals and royalties on permits and leases shall be made to the Bureau of Land Management and all reports concerning operations shall be filed with the Director of the Geological Survey.

OIL AND GAS LEASING IN LANDS UNDER RIGHTS-OF-WAY

AUTHORITY: §§ 200.80 to 200.87 issued under sec. 6, 46 Stat. 374; 30 U. S. C. 306.

§ 200.80 *Lands in and under railroad and other rights-of-way.* The act of May 21, 1930 (46 Stat. 373; 30 U. S. C. 301–306) authorizes the Secretary of the Interior to lease deposits of oil and gas in and under railroad and other rights-of-way acquired under any law of the United States. The right of lease is restricted to the owner of the right-of-way, or his assignees.

§ 200.81 *Application for lease.* (a) No particular form of application for lease of land in a right-of-way will be required. Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. Such applications must be filed by the owner of the right-of-way or by his assignee and be accompanied by a filing fee of $10, and, if filed by an assignee, by a duly executed assignment of the right to lease.

(b) The application should detail the facts as to the ownership of the right-of-way, and of the assignment if the application is filed by an assignee; the development of oil and gas in adjacent or nearby lands, the location and depth of the wells, the production, and the probability of drainage of the deposits in the right-of-way. Since rights-of-way are of record in the Bureau of Land Management, a description by metes and bounds is not necessary or required, but each legal subdivision through which the portion of the right-of-way desired to be leased extends should be described.

§ 200.82 *Owner of adjoining land allowed to submit bid.* (a) After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on his own motion, the manager of the land office will serve notice on the owner or lessee of the adjoining lands, as provided in section 3 of the act of May 21, 1930 (46 Stat. 374; 30 U. S. C. 303), allowing him 30 days or such other time as may be provided in the notice within which to submit an offer or bid of the amount or percentage of compensatory royalty such owner or lessee will agree to pay for the extraction through wells on his adjoining land of the oil and gas under and from such right-of-way. Notice to the owner of the right-of-way will be given at the same time allowing him opportunity within the same period to submit a bid or offer as to the amount or percentage of royalty he will pay if a lease is awarded to him.

(b) Award of lease to the owner of the right-of-way, or of a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands, will be made to the bidder whose offer is determined to be to the best advantage to the United States, considering the amount of royalty to be received and the better development of the oil and gas deposits in the right-of-way under the respective means of production and operation.

§ 200.83 *Term of lease and of compensatory royalty agreement.* The term of the lease will be for a period of not more than twenty years, and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

§ 200.84 *Royalties.* The royalty to be charged will be fixed by the Bureau of Land Management, after consideration of all the facts and circumstances in each case, but will not be less than 12½ percent.

§ 200.85 *Form of lease.* The lease issued to the owner of the right-of-way or assignee of such owner will be substantially Form 4–213 modified to conform to the requirements of the law and these regulations.

§ 200.86 *Form of agreement to pay compensatory royalty.* The agreement with the owner or lessee of the adjoining land to pay compensatory royalty for the extraction through wells on his adjoining land of the oil and gas in or under the right-of-way will be substantially Form 4–1086.

§ 200.87 *Form of bond.* The bond required under section 2 (a) of the lease and by the contractor under agreement to pay compensatory royalty, should be substantially Form 4–208g.

CROSS REFERENCE: For operating regulations see 30 CFR Part 221.

PART 201—MINERAL DEPOSITS IN THE OUTER CONTINENTAL SHELF

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AUTHORITY: §§ 201.1 to 201.150 issued under sec. 5, 67 Stat. 464; 43 U. S. C. 1334. Interpret or apply secs. 6, 8, 67 Stat. 465, 468; 43 U. S. C. 1335, 1337.

NOTE: Forms referred to in this part may be obtained from the Bureau of Land Management.

GENERAL PROVISIONS

§ 201.1 *Purpose and authority.* The Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462), referred to in this part as "the act", among other things, authorizes the Secretary of the Interior to issue on a competitive basis leases for oil and gas, sulphur, and other minerals in submerged lands of the outer Continental Shelf, as defined in section 2 of the act. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands are applicable to the submerged lands of the outer Continental Shelf.

§ 201.2 *Persons qualified to hold leases.* Mineral leases issued pursuant to section 8 of the act may be held only by citizens of the United States over 21 years of age, associations of such citizens, States, political subdivisions of a State, or private, public, or municipal corporations organized under the laws of the United States or of any State or Territory thereof.

§ 201.3 *Leasing maps.* (a) Any area of the outer Continental Shelf which has been appropriately platted as provided in paragraph (b) of this section is subject to lease for any mineral not included in a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the act, unless before any lease is offered or issued the unit is (1) withdrawn from disposition pursuant to section 12 (a) of the act, or (2) designated as an area or part of an area restricted from operation under section 12 (d) of the act.

(b) As the need arises, the Bureau of Land Management will prepare official leasing maps of areas of the outer Continental Shelf, which will be made to conform so far as practicable to the method of tract designation established by the adjoining State. The area included in each mineral lease shall be described in accordance with the official leasing map.

(c) Each oil and gas lease issued pursuant to section 8 of the act shall cover a compact area, which shall not exceed 5,760 acres.

§ 201.4 *Helium.* Each lease issued or continued under the act shall be subject to a reservation by the United States of the ownership of and the right to extract helium from all gas produced from the leased area, subject to such rules and regulations as shall be prescribed by the Secretary of the Interior. In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area in the manner required by the United States, for the extraction of helium in such plant or reduction works for that purpose as the United States may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof. The lessee shall not suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise, for which he is not reasonably compensated, save for the value of the helium extracted. The United States shall have the right to erect, maintain, and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium.

§ 201.5 *Payments due under lease.* All payments to the United States required by the act or the regulations in this part shall be made to the oil and gas supervisor of the Geological Survey for the region in which the leased area is situated unless otherwise provided by the regulations in this part or directed by the Secretary. All such payments should be made by check, bank draft, or money order payable to the Treasurer of the United States.

COOPERATIVE CONSERVATION PROVISIONS

§ 201.10 *Unit plans, pooling, and drilling agreements.* Section 5 (a) (1) of the act authorizes the Secretary in the interest of conservation to provide for unitization, pooling and drilling agreements. Such agreements may be initiated by lessees or where in the interest of conservation they are deemed necessary they may be required by the Secretary.

§ 201.11 *Application for approval of unit plan.* The procedure for obtaining the approval of a unit plan of development is contained in 30 CFR Part 226, "Unit or Cooperative Agreements".[1] All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey, for the region in which the unit area is situated.

§ 201.12 *Pooling or drilling agreements.* (a) With the approval of the Secretary, pooling or drilling agreements may be made between lessees for the purposes of (1) utilizing a common drilling platform to develop adjacent or adjoining leases; (2) permitting operators or pipeline companies to enter into contracts involving a number of leases sufficient to justify operations on a large scale for the discovery, development, production or transportation of oil and gas, sulphur, or other minerals and to finance the same; or (3) for other purposes in the interest of conservation.

(b) A contract submitted for approval under these provisions should be filed with the oil and gas supervisor, together with enough copies to permit retention of 5 copies by the Department after approval. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination and prescribe the conditions on which the contract is approved.

§ 201.13 *Subsurface storage of oil or gas.* (a) In order to avoid waste or to promote conservation of natural resources, and when it can be shown that no undue interference with operations under existing leases will result, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil or gas in the lands of the outer Continental Shelf, whether or not produced from the outer Continental Shelf. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each

[1] See 30 CFR, Part 226.

case, or, in lieu thereof, for a royalty other than that prescribed in any lease of the area involved when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease of an area used for the storage of oil or gas shall not be deemed to expire during the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands or interests in the lands involved, the parties in interest, including lessees of other mineral interests, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such storage. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

§ 201.14 *Directional drilling.* A lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directionally drilling under the leased area through any directional well surfaced on adjacent or adjoining land, and production, drilling, or reworking of any such directional well shall be considered production or drilling or reworking operations (as the case may be) on the leased area for all purposes of the lease.

ISSUANCE OF LEASES

§ 201.20 *Kind and term.* In accordance with the provisions of section 8 of the act, all leases will be issued competitively upon the Department's motion or upon a request describing the area and expressing an interest in leasing a unit or units addressed to the Director, Bureau of Land Management, Washington 25, D. C., hereinafter referred to as the Director, with a copy to the oil and gas supervisor. From time to time the Director may issue calls for the submission of requests for oil and gas or other mineral lease offerings in specified areas. Leases will be awarded to the highest qualified bidder on the basis specified in the notice of lease offer. All oil and gas leases shall be for a term of 5 years and so long thereafter as oil or gas may be produced from the leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted thereon. All sulphur leases shall be for a term of 10 years and so long thereafter as sulphur may be produced from the leased area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon. Other mineral leases shall be for such terms as may be prescribed by the Secretary at the time of offering the leases.

§ 201.21 *Notice of lease offer.* Notice of the offer of lands for lease will be given by publication at the expense of the United States in the FEDERAL REGISTER, as the official publication, and in such other publications as may be authorized and the first publication shall be at least 30 days prior to the date of sale. The notice will set the place, date, and hour at which the bids will be opened. All sealed bids in response to any such notice must be filed at the place, and prior to the time set for opening bids. The notice may contain special conditions which will become part of the lease to be issued.

§ 201.22 *What must accompany bids.* (a) A separate bid must be submitted for each lease unit described in the notice of lease offer. A bid may not be submitted for less than an entire unit. Each bidder must submit with his bid a certified or cashier's check or bank draft on a solvent bank, or a money order or cash, for one-fifth of the amount of the cash bonus. If the bidder is an individual, he must submit with his bid a statement of his citizenship. If the bidder is an association (including a partnership), the bid shall be accompanied also by a certified copy of the articles of association or appropriate reference to the record of the Bureau of Land Management in which such a copy has already been filed, with a statement as to any subsequent amendments. If the bidder is a corporation, the following additional information shall be submitted with the bid:

(1) A certified copy of the articles of incorporation and a copy either of the minutes of the meeting of the board of directors or of the by-laws indicating that the person signing the bid has authority to do so, or, in lieu of such a copy, a certificate by the secretary or the assistant secretary of the corporation to that effect, over the corporate seal or appropriate reference to the record of the Bureau of Land Management in connection with which such articles and authority have been previously furnished.

(b) All bidders are warned against violation of the provisions of Title 18 U. S. C. section 1860, prohibiting unlawful combination or intimidation of bidders.

§ 201.23 *Award of lease.* Following the public opening of the sealed bids as provided for in the notice of lease offer, the authorized officer, subject to his right to reject any and all bids will award the lease to the successful bidder. In the event the highest bids are tie bids, tie bidders may file with the Director within 15 days after notification an agreement to accept the lease jointly, otherwise all bids will be rejected. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened, all bids for such lease will be considered rejected. Notice of his action will be transmitted promptly to the several bidders. If the lease is awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from his receipt thereof to execute them, pay the first year's rental, the balance of the bonus bid, and file a bond as required in § 201.50. Deposits on rejected bids will be returned. If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the act. If before the lease is executed on behalf of the United States the land is withdrawn or restricted from leasing, all payments made by the bidder will be refunded. If the awarded lease is executed by an agent acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the agent to execute the lease. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed on behalf of the United States, and one fully executed copy will be mailed to the successful bidder.

§ 201.24 *Form.* Oil and gas leases will be issued on Form 4–1255, and sulphur leases on Form 4–1256. Other mineral leases will be issued on such forms as may be prescribed by the Secretary.

§ 201.25 *Dating of leases.* All leases issued under the regulations in this part will be dated and become effective as of the first day of the month following the date the leases are signed on behalf of the lessor, except that, when prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

RENTALS AND ROYALTIES

§ 201.40 *Rentals.* An annual rental shall be due and payable in advance on the first day of each lease year prior to discovery at the rate specified in the lease. The owner of any lease created by the assignment of a portion of a producing lease and on which assigned portion there is no discovery shall be required to pay an annual rental for such assigned portion at the rate per acre specified in the lease payable each lease year following the year in which the assignment became effective and prior to a discovery on such segregated portion.

§ 201.41 *Royalties.* Royalties shall be at the rate specified in the lease but in no event shall the royalty on oil and gas be less than 12½ percent of the amount or value of the production saved, removed or sold from the lease, nor on sulphur less than 5 percent of the gross production or value of the sulphur at the wellhead.

§ 201.42 *Minimum royalty.* Each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

§ 201.43 *Compensatory payments, extension of lease.* In the event that an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and in the event that the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking

operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

BONDS

§ 201.50 *Amount of bond required of lessee.* The successful bidder prior to the issuance of an oil and gas or sulphur lease must furnish a corporate surety bond in the sum of $15,000 conditioned on compliance with all of the terms of the lease, unless he already maintains or furnishes a bond in the sum of $100,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by him on the outer Continental Shelf in the (a) Gulf of Mexico, (b) along the Pacific Coast or (c) along the Atlantic Coast as may be appropriate. An operator's bond in the same amount may be substituted at any time for the lessee's bond. The United States reserves the right to require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary. The amount of bond coverage on leases for other minerals will be determined at the time of the offer to lease and will be stated in the notice of lease offer.

§ 201.51 *Form of bond.* Bonds furnished by lessee or operator for a single lease will be on Forms 4–1257 and 4–1260. The $100,000 bond will be on Form 4–1258. In place of a surety bond a lessee or operator may furnish his personal bond and deposit therewith United States bonds in a sum equal at their par value to the amount of the surety bond, such personal bonds as to a single lease to be on Forms 4–1261 and 4–1262, and as to areas, Form 4–1259.

ASSIGNMENTS OR TRANSFERS

§ 201.60 *Assignment of leases or interests therein.* Leases, or any undivided interest therein, may be assigned in whole or as to any officially designated subdivision subject to the approval of the authorized officer, to any one qualified under § 201.2 to take and hold a lease. Any assignment made under this section shall, upon approval, be deemed to be effective on and after the first day of the lease month following its filing in the Bureau of Land Management, Washington 25, D. C., unless at the request of the parties an earlier date is specified in the Director's approval. The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

§ 201.61 *Requirements for filing of transfers.* (a) (1) All instruments of transfer of a lease or of an interest therein, including operating agreements, subleases, and assignments of record interests, must be filed in triplicate for approval within 90 days from the date of final execution with a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and must contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests, or payments out of production, may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or sublease signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney in fact to execute the assignment or application and the statement required by § 201.22.

(c) Where an assignment creates a segregated lease a bond must be furnished in the amount prescribed in § 201.50. Where an assignment does not create separate leases the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) In order for the heirs or devisees of a deceased holder of a lease, or any interest therein, to be recognized by the Department as the lawful successor to such lease or interest, evidence of their status as such heirs or devisees must be furnished in the form of a certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or, if no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will, and, in all cases, the statements of the heirs or devisees that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 201.22. In the event such heirs or devisees are unable to qualify to hold the lease or interest they will nevertheless be recognized as the lawful successors of the deceased for a period of not to exceed 2 years from the date of death of their predecessor in interest.

§ 201.62 *Separate assignments required for transfer of record title to leases.* A separate instrument of assignment must be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 201.63 *Effect of assignment of particular tract.* (a) When an assignment is made of all of the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease from the United States in his own name, and the assignment after its approval will be the basis of a new record. Royalty, minimum royalty, and rental provisions of the original lease shall apply separately to each segregated portion.

(b) In the case of an assignment of a portion of an oil and gas lease the segregated leases shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas may be produced from the original leased area in paying quantities or drilling or well reworking operations as approved by the Secretary are conducted thereon.

TERMINATION OF LEASES

§ 201.80 *Relinquishment of leases or parts of leases.* A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the Director's office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to abandon all wells on the land to be relinquished to the satisfaction of the oil and gas supervisor.

§ 201.81 *Cancellation of leases.* Any nonproducing lease issued under the act may be canceled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations in force and effect on the date of the issuance of the lease, if such failure to comply continues for 30 days after mailing of notice by registered letter to the lease owner at his record post office address. Any such cancellation is subject to judicial review as provided in section 8 (j) of the act upon the complaint of any person. Producing leases issued under the act may be canceled for such failure only by judicial proceedings in the manner prescribed in section 5 (b) (2) of the act. Any lease issued under the act, whether producing or not, will be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

SUSPENSION OF OPERATIONS AND PRODUCTION; ROYALTY AND RENTAL RELIEF

§ 201.90 *Suspension of operations and production; royalty and rental relief.* (a) In addition to the provisions of section 12 (c) and (d) of the act, in the event that the Director of the Geological Survey in the interest of conservation directs the suspension of both operations and production with respect to any lease no payment of rental or royalty will be required during the period of suspension; and the term of the lease will be extended by a period equivalent to the period of suspension. In the event that the Director of the Geological Survey assents, at the request of a lessee, to a suspension of both operations and production under a lease or directs or assents to a suspension of operations only or production only, the term of the lease will not be deemed to expire so long as the suspension remains in effect but the lessee will not be relieved of his obligation to pay rental, minimum royalty, or royalty, as the case may be, during the term of suspension. In the event a leased

area contains only a well or wells capable of producing gas in paying quantities but which gas cannot be produced because of the lack of transportation facilities, the Director of the Geological Survey shall, upon application, grant producing relief subject to the conditions of this paragraph for a maximum period not to exceed five years commencing with the lease year beginning on or after the date of discovery, or the effective date of the regulations in this part, whichever is later. Any further suspension will be granted only pursuant to the other provisions of this paragraph. As to leases maintained under section 6 of the act which cover minerals in addition to oil and gas, suspensions may be made separately as to oil and gas or as to any other mineral designated in the suspension, order, or grant.

(b) In order to increase the ultimate recovery of minerals and in the interest of conservation, the Director of the Geological Survey, whenever he determines it necessary to promote development or finds that a lease cannot be successfully operated under the terms provided therein, may reduce the rental, minimum royalty, or royalty on the entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes. An application for any of the above relief shall be filed in triplicate with the Director of the Geological Survey. It must contain the serial number of the lease; the name of the record title holder; a description of the area included in the lease; the number, location, and status of each well that has been drilled; a tabulated statement for each month, covering a period of not less than six months prior to the date of filing the application, of the aggregate amount of minerals subject to royalty computed in accordance with the lease and applicable regulations. Every application must also contain a detailed statement of expenses and costs of operating the entire lease and of the income from the sale of any leased products, and all facts tending to show whether the wells or workings can be successfully operated upon the rental or royalty fixed in the lease. Where the application is for a reduction of royalty, full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid, and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

MINERAL LEASES AFFECTED BY SECTION 6 OF OUTER CONTINENTAL SHELF LANDS ACT

§ 201.110 *Effect of regulations on provisions of lease.* (a) As contemplated by section 6 (b) of the act, the preceding regulations in this part so far as they are applicable and the following regulations will supersede the provisions of any lease which is determined to meet the requirements of section 6 (a) of the act, to the extent that they cover the same subject matter, with the following exceptions: The provisions of a lease with respect to the area covered by the lease, the minerals covered by the lease, the rentals payable under the lease, the royalties payable under the lease (subject to the provisions of sections 6 (a) (8) and 6 (a) (9) of the act), and the term of the lease (subject to the provisions of section 6 (a) (10) of the act and, as to sulphur, subject to the provisions of section 6 (b) (2) of the act) shall continue in effect and, in the event of any conflict or inconsistency, shall take precedence over those regulations.[2]

(b) A lease that meets the requirements of section 6 (a) of the act shall also be subject to all operating and conservation regulations applicable to the outer Continental Shelf, as well as the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way in the outer Continental Shelf, to the extent that those regulations are not contrary to or inconsistent with the provisions of the lease relating to the area covered, the minerals covered, the rentals payable, the royalties payable, and the term of the lease.

§ 201.111 *Leases of other minerals.* The existence of a lease that meets the requirements of section 6 (a) of the act will not preclude the issuance of other leases of the same area for deposits of other minerals: *Provided*, That no lease of minerals other than those covered by the lease shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the existing lease: *And provided further*, That no sulphur leases will be granted by the United States on any area while such area is included in a lease covering sulphur under section 6 (b) of the act.

§ 201.112 *Bonds.* Within 30 days from the effective date of the regulations in this part or within such further period or periods as may be fixed from time to time by the authorized officer, the lessee under a lease meeting the requirements of section 6 (a) of the act must furnish a bond as provided in § 201.50.

§ 201.113 *Wells.* (a) After due notice in writing, the lessee shall drill and produce such wells as the Secretary may reasonably require in order that the leased area or any part thereof may be properly and timely developed and produced in accordance with good operating practice.

(b) At the election of the lessee, the lessee may drill and produce other wells in conformity with any system of well spacing or production allotments affecting the area, field, or pool in which the leased area or any part thereof is situated, which is authorized or sanctioned by applicable law or by the Secretary.

(c) The lessee shall drill and produce such wells as are necessary to protect the lessor from loss by reason of production on other properties, or in lieu thereof, with the consent of the oil and gas supervisor, to pay a sum determined by the supervisor as adequate to compensate the lessor for failure to drill and produce any such well. In the event that this lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of this lease.

§ 201.114 *Inspection.* The lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of the Department of the Interior, the leased area and all wells, improvements, machinery and fixtures thereon and all books, accounts, maps and records relative to operations and surveys or investigations on or with regard to the leased area or under the lease.

§ 201.115 *Diligence; compliance with regulations and orders.* The lessee shall exercise reasonable diligence in drilling and producing the wells herein provided for; shall carry on all operations in accordance with approved methods and practices including those provided in the operating and conservation regulations for the outer Continental Shelf; shall remove all structures when no longer required for operations under the lease to sufficient depth beneath the surface of the waters to prevent them from being a hazard to navigation and the fishing industry; and shall carry out at expense of the lessee all lawful and reasonable orders of the lessor relative to the matters in this section. On failure of the lessee so to do the lessor shall have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

§ 201.116 *Freedom of purchase.* The lessee shall accord all workmen and employees directly engaged in any of the operations under the lease complete freedom of purchase.

§ 201.117 *Purchase of production.* In time of war, or when the President of the United States shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of the oil or gas produced from the leased area, as provided in section 12 (b) of the act.

§ 201.118 *Suspension of operations during war or national emergency.* Upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after August 7, 1953, the Secretary is authorized to suspend any or all operations under a lease, as provided in section 12 (c) of the act: *Provided*, That just compensation shall be paid by the United States to the lessee whose operations are thus suspended.

§ 201.119 *Restriction of exploration and operations.* The United States shall have the right, as provided in section 12 (d) of the act, to restrict from exploration and operations the leased area or any part thereof which may be designated by and through the Secretary of

[2] Nothing herein should be construed to waive compliance with any provision of any State lease the subject matter of which is not covered in the regulations in this part.

Defense, with the approval of the President of the United States, as, or as part of, an area of the outer Continental Shelf needed for national defense. So long as such designation remains in effect no exploration or operations may be conducted on the surface of the leased area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under any lease within any such restricted area shall be suspended, any payments of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

§ 201.120 *Geological and geophysical exploration; rights-of-way.* The United States reserves the right to authorize the conduct of geological and geophysical exploration in the leased area which does not interfere with or endanger actual operations under the lease and the right to grant such easements or rights-of-way, upon, through, or in the leased area as may be necessary or appropriate to the working of other lands containing the deposits described in the act, and to the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes, subject to the provisions of section 5 (c) of the act where they are applicable and to all lawful and reasonable regulations and conditions prescribed by the Secretary thereunder.

§ 201.121 *Leases of sulphur and other mineral.* The United States reserves the right to grant sulphur leases and leases of any mineral other than oil, gas, and sulphur within the leased area or any part thereof, subject to the provisions of sections 8 (c), 8 (d), and 8 (e) of the act and all lawful and reasonable regulations prescribed by the Secretary thereunder: *Provided*, That no such sulphur lease or lease of other mineral shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the lease which is continued under section 6 of the act.

§ 201.122 *Removal of property on termination of lease.* Upon the expiration of any lease, or the earlier termination thereof as provided in the regulations in this part, the lessee shall within a period of one year thereafter remove from the premises all structures, machinery, equipment, tools, and materials other than improvements needed for producing wells or for drilling or producing other leases, and other property permitted by the lessor to be maintained.

§ 201.123 *Remedies in case of default.* (a) Whenever the lessee fails to comply with any of the provisions of the act or of the lease or of the lawful and reasonable regulations issued within 90 days after the authorized officer has determined that the lease meets the requirements of section 6 (a) of the act, the lease shall be subject to cancellation as follows:

(1) If, at the time of such default, no well is producing, or is capable of producing, oil or gas in paying quantities from the leased area, whether such well be drilled from a surface location within the leased area or be directionally drilled from a surface location on adjacent or adjoining lands the lease may be cancelled by the Secretary (subject to the right of judicial review as provided in section 8 (j) of the act) if such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address.

(2) If, at the time of such default, any well is producing, or is capable of producing, oil or gas in paying quantities from the leased area, whether such well be drilled from a surface location within the leased area or be directionally drilled from a surface location on adjacent or adjoining lands, the lease may be cancelled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 4 (b) of the act if such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address.

(b) If any such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address, the lessor may then exercise any legal or equitable remedy which the lessor may have; however, the remedy of cancellation of the lease may be exercised only under the conditions and subject to the limitations set out in paragraph (a) of this section, or pursuant to section 8 (i) of the act.

(c) A waiver of any particular default shall not prevent the cancellation of the lease or the exercise of any other remedy the lessor may have by reason of any other cause or for the same cause occurring at any other time.

§ 201.124 *Heirs and successors in interest.* Each obligation under any lease and under the regulations in this part shall extend to and be binding upon, and every benefit thereunder shall inure to, the heirs, executors, administrators, successors, or assigns of the lessee.

APPEALS

§ 201.150 *Appeals.* Any person aggrieved by any action taken under this part has the right of appeal to the Secretary of the Interior in accordance with the conditions and limitations provided in §§ 221.73 to 221.76 of this chapter. Nothing contained in this part shall be construed to prevent any interested party from seeking judicial review as authorized by law.

SUBCHAPTER M—NATIONAL FORESTS, NATIONAL PARKS, AND NATIONAL MONUMENTS

PART 205—NATIONAL FORESTS

PROCEDURE ON APPLICATION OR PROOF FOR LANDS WITHIN NATIONAL FORESTS

Sec.
205.1 Showing required with application alleging settlement prior to establishment of forest.
205.2 Notice to forest officer in connection with final proof; action by manager on proof.
205.3 Investigation of claim and report by forest officer; filing of protest.
205.4 Action by manager on protest; notice to adverse party; hearing.
205.5 Action when no protest is filed; patent to be withheld pending report from Forest Service.
205.6 Officers of Department of Agriculture who may file protests; notice to adverse party; hearing.
205.7 Officer to represent Government at hearing.
205.8 Procedure in forest lieu and school selection cases.
205.9 Notice to officers of Department of Agriculture of answers, appeals, motions, orders, and decisions.
205.10 Cost of hearings; estimates in advance.

CANCELED ENTRIES WITHIN NATIONAL FORESTS

205.11 Canceled entries in national forests not to be reinstated.

EXCEPTION IN FINAL CERTIFICATE AND PATENT OF TELEPHONE LINES, ROADS, TRAILS, BRIDGES, ETC. MAINTAINED AND OPERATED BY THE UNITED STATES UPON THE PUBLIC LANDS, INCLUDING NATIONAL FOREST LANDS

205.12 When exception will be made; procedure.
205.13 Preliminary survey is insufficient to warrant exception in final certificate or patent.

AUTHORITY: §§ 205.1 to 205.13 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For Indian allotments in national forests, see § 176.15 of this chapter. For mining claims in national forests, see § 185.33 of this chapter. For national forest homesteads, see Part 170 of this chapter. For Forest Service, Department of Agriculture, see Parks and Forests, 36 CFR Chapter II. For forest regulations of the Bureau of Indian Affairs, see Indians, 25 CFR Parts 61 to 64. For National Park Service, Department of the Interior, see Parks and Forests, 36 CFR Chapter I.

PROCEDURE ON APPLICATION OR PROOF FOR LANDS WITHIN NATIONAL FORESTS

§ 205.1 *Showing required with application alleging settlement prior to establishment of forest.*[1] When a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, the manager will require such person to file with his application a statement in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated, accompanied by the statement, in duplicate, of at least one disinterested person, corroborating the statement. The manager will immediately forward the duplicate of such statements to the supervisor of the national forest in which the lands are embraced, with information as to the date of filing the application, the date of filing

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

the township plat of survey covering the land, and any other facts of record affecting the application, and will suspend action on the application for 60 days, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed 6 months, as will enable him to make an examination of the claim, unless in the meantime he shall receive notice of no protest, as provided in § 205.3.

§ 205.2 *Notice to forest officer in connection with final proof; action by manager on proof.* The manager in issuing notice of intention to make final proof upon claims, either mineral or nonmineral, within a national forest shall immediately furnish a copy thereof to the supervisor in charge of such forest, and other than to publish such notice and receive final proof will, except in mineral cases as prescribed in § 205.4, suspend action on the final proof for 60 days from date thereof, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed 6 months, as will enable him to make an examination of the claim, unless in the meantime he shall receive notice of no protest as provided in § 205.3. In each case, however, where the manager, upon examination of the final proof at any time after its submission, finds it to be incurably defective, the same will be rejected and the Forest Service so advised, notwithstanding the time within which a protest may be filed hereunder has not expired.

§ 205.3 *Investigation of claim and report by forest officer; filing of protest.* The forest supervisor upon receipt of the statement mentioned in § 205.1, or the notice mentioned in § 205.2, will at once make investigation of the claim, and will submit to the regional forester a report thereon, unless immediate investigation is impossible because of climatic or other conditions, when an extension of time will be requested as provided in §§ 205.1 and 205.2, and the investigation will be made and the report submitted as soon as possible within the period of extension. The regional forester will promptly consider the report, and if of opinion that no protest should be filed will so advise the manager. If the regional forester is of opinion that a protest should be made, he will transmit the papers to the regional attorney, Office of the Solicitor, Department of Agriculture, who will prepare for his signature a protest, not under oath or corroborated, in which shall be plainly and briefly stated the grounds upon which the protest is based. The protest shall be filed in triplicate with the manager of the proper district land office.

§ 205.4 *Action by manager on protest; notice to adverse party; hearing.* Upon receipt of the protest, the manager shall immediately issue the notice required by § 221.5 of this chapter, accompanied by a copy of the protest, stating that unless the adverse party appears and answers the allegations of said notice within 30 days after service thereof, the allegations of the protest shall be taken as confessed. Upon the filing of the answer, the manager shall set a date for a hearing, after consultation with the regional attorney, Office of the Solicitor, Department of Agriculture, and notify parties as provided in the Rules of Practice, Part 221 of this chapter. Upon failure of the claimant to appear at the hearing the allegations of the protest will be taken as confessed. Hearings shall be conducted in accordance with the Rules of Practice, Part 221 of this chapter. In other than mineral cases, action upon the application and upon the final proof, which may be offered in the usual manner, shall be suspended pending the final determination of the protest, except as provided in § 205.2 for the disposition of incurably defective proof. In mineral applications for patent the proof shall be considered on its merits, and, if found regular, certificate issued, but the claimant should be advised in such case that patent will be withheld by the Bureau of Land Management pending determination of the protest.

The manager will prepare and serve the notices required by § 221.5 of this chapter in the same manner as is done by him in ordinary Government proceedings.

§ 205.5 *Action when no protest is filed; patent to be withheld pending report from Forest Service.* If no protest be filed within the time limit as provided in §§ 205.1, 205.2, the manager shall take appropriate action upon the application or the final proof. But in no case, in the absence of the filing of a protest or a no protest notice, as provided in § 205.3, shall patent issue until the Bureau of Land Management is notified by, or ascertains from, the Forest Service, that the claim will not be protested, as provided in § 205.6.

§ 205.6 *Officers of Department of Agriculture who may file protests; notice to adverse party; hearing.* A protest may be initiated against any claim, mineral, or nonmineral, embracing lands within national forests at any time prior to patent, by the solicitor or the regional attorney, Office of the Solicitor of the Department of Agriculture filing in the land office, in triplicate, a complaint signed by the Chief, Forest Service, or the regional forester, not under oath or corroborated, setting forth clearly and briefly the grounds of the protest. Upon receipt of such complaint the manager shall issue the notice required by § 221.5 of this chapter, accompanied by a copy of the complaint and arrange for hearing, if applied for, as provided in § 205.4.

§ 205.7 *Officer to represent Government at hearing.* In all hearings affecting lands or claims within a national forest the regional attorney, Office of the Solicitor, Department of Agriculture, will be entered of record as appearing in behalf of the Government, and will conduct the Government's side of the case.

§ 205.8 *Procedure in forest lieu and school selection cases.* Forest lieu and school selection cases will be handled by the authorized officer of the Department of the Interior. The forest officers will, upon request of the regional administrator, render any assistance possible in the making of investigations, and the regional attorney, Office of the Solicitor of the Department of Agriculture, will cooperate with the regional administrator in the conduct of hearings in such cases, and thereafter will take all necessary action, including the taking of appeals to the Secretary of the Interior.

§ 205.9 *Notice to officers of Department of Agriculture of answers, appeals, motions, orders, and decisions.* In all Government cases before managers involving lands or claims within a national forest, the regional attorney, Office of the Solicitor of the Department of Agriculture, shall be served with copies of all answers, appeals, motions, orders, and decisions required to be noted under the rules in cases of private contests. The proper officers of the Department of Agriculture shall have a right of appeal from any decision by the Bureau of Land Management and a right to take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions: *Provided, however,* That the Department of Agriculture shall not be required to take formal appeals from decisions of managers.

§ 205.10 *Cost of hearings; estimates in advance.* Costs of hearings will be paid from the current appropriations made to the Bureau of Land Management. Prior to June 1 of each year the regional attorney, Office of the Solicitor, Department of Agriculture, will mail to the area administrator, Bureau of Land Management, in whose area the lands involved lie, an estimate of the funds necessary to cover the hearings during the first quarter of the ensuing fiscal year. Like action will be taken on the first day of each month which immediately precedes the other quarters of the fiscal year. Such estimates should be accompanied by a list of the cases to be heard, which should include the names of claimants, land office, and serial number of entry or application, and character of entries or filings.

CANCELED ENTRIES WITHIN NATIONAL FORESTS

§ 205.11 *Canceled entries in national forests not to be reinstated.* (a) Whenever, after due procedure under the law and the rulings of the Department of the Interior, any entry within an existing national forest has been canceled by order of the Department, it will be held that such matter is closed, and is not subject to subsequent motion or order before or by the Department.

(b) This rule is applicable to an entry within a national forest regularly canceled by the Bureau of Land Management in the absence of an appeal. No such entry will be reinstated by direction of the Bureau of Land Management.

EXCEPTION IN FINAL CERTIFICATE AND PATENT OF TELEPHONE LINES, ROADS, TRAILS, BRIDGES, ETC., MAINTAINED AND OPERATED BY THE UNITED STATES UPON THE PUBLIC LANDS, INCLUDING NATIONAL FOREST LANDS

§ 205.12 *When exception will be made; procedure.* In cases where telephone lines, roads, trails, bridges, fire lanes, cabins, fences, or other improvements have been actually constructed upon the public

lands of the United States, including national forest lands, and are being maintained and operated by the United States, and the Bureau of Land Management is furnished with appropriate maps or field notes by the Department of Agriculture so prepared to enable it to definitely locate the constructed line, proper notation thereof should be made upon its records.

§ 205.13 *Preliminary survey is insufficient to warrant exception in final certificate or patent.* A mere preliminary survey, which might or might not be later followed by construction, is not an appropriation of the land to the public use which will warrant insertion of an exception in a final certificate or patent. Some action, indicating upon the ground itself that the tract has been devoted to the public use, is necessary, such as staking the area to be retained by the United States, accompanied by a setting aside of a sufficient part of the appropriation for construction. In other words, the case should be one of either actual construction, or in which the evidence shows that the construction has been provided for, and will be immediately undertaken.

PART 206—NATIONAL PARKS AND NATIONAL MONUMENTS

CROSS REFERENCES: For exchanges to eliminate private holdings from national parks, see Part 150, of this chapter. For sale of public lands for parks and cemeteries, see Part 253, of this chapter. For State grants for park purposes, see Part 270, of this chapter. For National Park Service, Department of the Interior, see Parks and Forests, 36 CFR Chapter I. For regulations of the American Battle Monuments Commission relating to national cemeteries abroad, see Parks, Forests, and Memorials, 36 CFR Part 403.

PROCEDURE ON APPLICATION OR PROOF FOR LANDS WITHIN NATIONAL PARK OR RESERVATION FOR NATIONAL MONUMENTS

§ 206.1 *Action by manager on entries or proofs.* When any application to make entry or proof is filed in the land office for lands within any national park or within any reservation of lands for national monument, the manager will immediately notify the superintendent or custodian thereof by regular mail.

(R. S. 2478; 43 U. S. C. 1201)

SUBCHAPTER N—OFFICERS AND ABSTRACTERS

PART 210—OFFICERS AND EMPLOYEES

OFFICERS AUTHORIZED TO ADMINISTER OATHS IN PUBLIC LAND CASES

Sec.

210.1 Officers qualified; statement and certificate of official character required in certain cases.
210.2 Time and place for transaction of business by the manager.

RULES TO BE OBSERVED IN ADMINISTERING OATHS AND TAKING FINAL PROOFS

210.3 Identity of applicant to be established prior to administering oath.
210.4 Jurat not attached until affidavit is complete and oath administered.
210.5 Manner in which final proof should be made; continuance.
210.6 Protests and adverse claims.
210.7 Officer to obtain full and complete answers and report to the manager.
210.8 Testimony of each claimant and witness to be taken separate and apart from and not within the hearing of the others.
210.9 Parties and witnesses to be advised of laws and penalties for false swearing.
210.10 Proof officer to transmit papers to the manager.
210.11 Fees for administering oath, preparation of paper and writing out testimony; penalty.
210.12 Officer shall not aid in the wrongful or illegal acquisition or use of public lands.
210.13 Officer taking affidavits, proofs, etc., should not participate in purchase, sale, mortgage, exchange, lease, or relinquishment of the lands involved.
210.14 Penalty for violation of the rules.

AUTHORITY: §§ 210.1 to 210.14 issued under R. S. 2478; 43 U. S. C. 1201. Statutes interpreted or applied are cited to text in parentheses.

CROSS REFERENCES: For abstracters, see Part 211 of this chapter. For cases in which requirements as to oaths have been eliminated, see § 101.21 of this chapter. For right of attorneys and agents to act as notaries, see § 221.89a of this chapter. For regulations relating to general practice, see Parts 220 to 223 of this chapter. For regulations relating to practice in Alaska, see Part 73 of this chapter. For regulations governing practitioners, see Part 1 of this title.

OFFICERS AUTHORIZED TO ADMINISTER OATHS IN PUBLIC LAND CASES

§ 210.1 *Officers qualified; statement and certificate of official character required in certain cases.* (a) Oaths required under the homestead, preemption,[1] timber-cultured,[1] desert-land, and timber and stone acts may, in States for which there is a land office, be made before the manager or the acting manager of the land office for the district embracing the land sought; or before any of the following officers inside the county, parish, or land district embracing the land sought, namely, a United States commissioner, a notary public, a judge, a clerk, or a prothonotary of a court of record, a deputy of such clerk or prothonotary, or a magistrate authorized by the laws of or pertaining to the State to administer oaths; or before any such officer outside the county and the land district embracing the land sought who because of geographic or topographic conditions may be the qualified officer nearest to the land or most accessible from it. In States for which there is no land office, the required oaths may be made before any qualified officer in the State.

(b) The official character of any officer not using a seal of office, other than a manager or an acting manager, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. If, in States for which there is a land office, an oath be administered outside the county and the land district embracing the land sought, the applicant must show by a statement, satisfactory to the Bureau of Land Management, that the oath was made before an officer who because of geographic or topographic conditions was the qualified officer nearest to the land sought or most accessible from it. Such showing, however, will not be required as part of the final proof if the proof be taken in the town or city in which the newspaper printing the final proof notice is published.[2]

(c) The papers in cases arising under the statutes above specified must be filed in the land office for the district embracing the land sought, if there be any such office; otherwise in the Bureau of Land Management in Washington, D. C. An application is not acceptable if dated more than 10 days before being deposited in the mails for filing in the appropriate office.

(R. S. 2294, as amended, 44 Stat. 558, 830; 43 U. S. C. 254, 75a, 5 U. S. C. 92a)

§ 210.2 *Time and place for transaction of business by the manager.* Applications to make entry cannot be received by the manager out of office hours, nor elsewhere than at his office, nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

RULES TO BE OBSERVED IN ADMINISTERING OATHS AND TAKING FINAL PROOFS

§ 210.3 *Identity of applicant to be established prior to administering oath.* No oath in support of any application, entry, proof, or claim to public lands should be administered to any stranger until he has first been reliably made known and identified to the officer administering it as the identical person he represents himself to be.

§ 210.4 *Jurat not attached until affidavit is complete and oath administered.* No jurat or certificate should be attached to any oath, affidavit, application, proof, or other written statement affecting public lands until such oath, affidavit, application, proof, or statement has been fully written out and completed, and until all blank spaces in any blank form prescribed or used therefor shall have been fully filled out or erased, and not then until after the same has been sworn to and signed by the affiant before and in the presence of the attesting officer and fully read by or made known to the affiant.

§ 210.5 *Manner in which final proof should be made; continuance.* Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a. m. and 6 p. m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and

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[1] The preemption and timber-culture laws were repealed by the act of March 3, 1891 (26 Stat. 1095; 43 U. S. C. 1181, 1197), with certain exceptions specified in that act.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof can not be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

CROSS REFERENCE: For proofs, generally, see Part 106 of this chapter.

§ 210.6 *Protests and adverse claims.* Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal, should be allowed to appear for that purpose on the day advertised, or upon any succeeding day to which the case may be continued. If any person appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the manager for his consideration and action.

§ 210.7 *Officer to obtain full and complete answers and report to the manager.* All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the manager with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the manager of any facts not set out in the testimony which in his judgment cast suspicion upon the good faith of the applicant or the validity of the entry.

§ 210.8 *Testimony of each claimant and witness to be taken separate and apart from and not within the hearing of the others.* The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

§ 210.9 *Parties and witnesses to be advised of laws and penalties for false swearing.* Officers taking affidavits and testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

§ 210.10 *Proof officer to transmit papers to the manager.* The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the manager. In no case should the transmittal thereof be left to the claimant.

§ 210.11 *Fees for administering oath, preparation of paper and writing out testimony; penalty.* No fee in excess of 25 cents can be lawfully charged or received for administering the oath to any affidavit, application, proof, or any other written statement affecting public lands; but there is no restriction on the fee the officer may charge for preparation of any paper, except that the total amount to be received for taking and writing out the final proof testimony of a claimant or of a witness, and administering the oath thereto, shall not exceed the sum of $1. Any officer demanding or receiving greater sums than are here specified for such services will be subject to indictment and punishment under amended section 2294 of the Revised Statutes (43 U. S. C. 254).

§ 210.12 *Officer shall not aid in the wrongful or illegal acquisition or use of public lands.* No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

§ 210.13 *Officer taking affidavits, proofs, etc., should not participate in purchase, sale, mortgage, exchange, lease, or relinquishment of the lands involved.* No officer authorized to take final proofs should, either for himself or as agent, attorney, or representative of another, induce or attempt to induce any owner, entryman, or other person to purchase, sell, mortgage, exchange, lease, or relinquish any lands which are involved, may be involved, or have been involved in any affidavit, or proof, executed before him, and he should not, either for himself or as agent for any other person, in any manner solicit or make to any entryman, owner, or claimant any loan or attempted loan the payment of which is to be secured by a lien or mortgage upon such lands; and he should not be or remain a member or stockholder of any copartnership or company which shall, either directly or indirectly, be interested in or benefited by any such sale, mortgage, exchange, lease, relinquishment, or loan, nor accept nor receive in any manner any fee, commission, compensation, emolument, or benefit arising therefrom, except for the lawful discharge of his official duties.

§ 210.14 *Penalty for violation of the rules.* Any officer violating any of the rules set forth in §§ 210.3 to 210.14 may be deprived of the right of further taking final proofs, and when any commissioner has so offended his action may be called to the attention of the court by which he was appointed, with appropriate recommendations. All managers and area administrators have been charged to use their utmost diligence in seeing that the rules in §§ 210.3 to 210.14 are fully and in good faith complied with, and directed to investigate and fully report any apparent violations thereof which may come to their notice.

PART 211—ABSTRACTERS

§ 211.1 *Evidence of title.* Evidence of title, when required by the regulations, must be submitted in such form and by such abstracter or company as may be satisfactory to the Bureau of Land Management. A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract, in proper cases, when issued by a title company. A policy of title insurance when furnished must be free from conditions and stipulations not acceptable to the Department of the Interior. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit and where the interests of the Government will be sufficiently protected thereby.

(R. S. 2478; 43 U. S. C. 1201)

CROSS REFERENCE: For evidence of title in mining cases, see § 185.56 of this chapter.

SUBCHAPTER O—PAYMENTS AND REPAYMENTS

PART 216—PAYMENTS

FEES AND COMMISSIONS

FEES AND COMMISSIONS CHARGEABLE IN ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, UTAH, WASHINGTON, AND WYOMING

Sec.
216.1 Charges which are effective in States named.
216.2 Declaratory statements.
216.3 Homestead applications.
216.4 Final homestead commissions.

FEES AND COMMISSIONS CHARGEABLE IN ALABAMA, ARKANSAS, FLORIDA, KANSAS, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH DAKOTA, AND WISCONSIN

216.5 Charges which are effective in States named.
216.6 Declaratory statements.
216.7 Homestead applications.
216.8 Final homestead commissions.

FEES AND COMMISSIONS CHARGEABLE IN ALL STATES, EXCEPT AS OTHERWISE NOTED

216.9 Charges which are effective in all States, with certain exceptions.
216.10 Mineral applications and adverse claims.
216.11 Timber and stone applications.
216.12 Military bounty land warrants.
216.14 State selections.
216.15 Railroad selections.
216.16 Valentine scrip.
216.17 Supreme Court or other private land scrip.
216.18 Reducing testimony to writing.
216.20 Plats and diagrams.
216.21 Lists for taxation purposes.
216.22 Cancellation fees.
216.23 Soldiers' additional homesteads.
216.24 Odd-numbered sections within granted limits of railroad, but excepted from grant.

Sec.
216.26 Depositions; taking and certifying.
216.27 Depositions; apportionment of costs.
216.28 Penalty for charging or receiving illegal fees, compensations or gratuity.

REMITTANCES

216.30 Forms of remittances that are acceptable.

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AUTHORITY: §§ 216.1 to 216.33 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCE: For repayments, see Part 217 of this chapter.

FEES AND COMMISSIONS

FEES AND COMMISSIONS CHARGEABLE IN ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, UTAH, WASHINGTON, AND WYOMING

§ 216.1 *Charges which are effective in States named.* In Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming fees and commissions as set forth in §§ 216.2 to 216.4 are chargeable by law.

§ 216.2 *Declaratory statements.*

Soldier's or sailor's homestead declaratory statement	$3.00
Reservoir declaratory statement (act of Jan. 13, 1897)	3.00

Declaratory statement fees are earned irrespective of the action taken upon the declaratory statement.

§ 216.3 *Homestead applications.*

For 160 acres, at $1.25 per acre:	
Fee	$10.00
Commissions	6.00
	16.00
For 80 acres, at $1.25 per acre:	
Fee	5.00
Commissions	3.00
	8.00
For 40 acres, at $1.25 per acre:	
Fee	5.00
Commissions	1.50
	6.50
For 160 acres, at $2.50 per acre:	
Fee	10.00
Commissions	12.00
	22.00
For 80 acres, at $2.50 per acre:	
Fee	5.00
Commissions	6.00
	11.00
For 40 acres, at $2.50 per acre:	
Fee	5.00
Commisions	3.00
	8.00

(a) Fees and commissions in connection with homestead applications are not earned unless the application is allowed.

(b) A fee of $10, with proper commissions, will be collected in connection with homestead applications where the area involved is 81 acres or more. Proper commissions, original and final, are based upon the area involved unless restricted by special act of Congress.

§ 216.4 *Final homestead commissions.*

For 160 acres, at $1.25 per acre	$6.00
For 80 acres, at $1.25 per acre	3.00
For 40 acres, at $1.25 per acre	1.50
For 160 acres, at $2.50 per acre	12.00
For 80 acres, at $2.50 per acre	6.00
For 40 acres, at $2.50 per acre	3.00

The commissions must be tendered with the homestead proof, together with testimony fees at 22½ cents per 100 words. The commissions are not earned unless the proof is approved.

FEES AND COMMISSIONS CHARGEABLE IN ALABAMA, ARKANSAS, FLORIDA, KANSAS, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH DAKOTA, AND WISCONSIN

§ 216.5 *Charges which are effective in States named.* In Alabama, Arkansas, Florida, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin, fees and commissions as set forth in §§ 216.6 to 216.8 are chargeable by law.

§ 216.6 *Declaratory statements.*

Soldier's or sailor's homestead declaratory statement	$2.00
Reservoir declaratory statement (Act Jan. 13, 1897)	2.00

Declaratory statement fees are earned irrespective of the action taken upon the declaratory statement.

§ 216.7 *Homestead applications.*

For 160 acres, at $1.25 per acre:	
Fee	$10.00
Commissions	4.00
	14.00
For 80 acres, at $1.25 per acre:	
Fee	5.00
Commissions	2.00
	7.00
For 40 acres, at $1.25 per acre:	
Fee	5.00
Commissions	1.00
	6.00
For 160 acres, at $2.50 per acre:	
Fee	10.00
Commissions	8.00
	18.00
For 80 acres, at $2.50 per acre:	
Fee	5.00
Commissions	4.00
	9.00
For 40 acres, at $2.50 per acre:	
Fee	5.00
Commissions	2.00
	7.00

Fees and commissions in connection with homestead applications are not earned unless application is allowed.

§ 216.8 *Final homestead commissions.*

For 160 acres, at $1.25 per acre	$4.00
For 80 acres, at $1.25 per acre	2.00
For 40 acres, at $1.25 per acre	1.00
For 160 acres, at $2.50 per acre	8.00
For 80 acres, at $2.50 per acre	4.00
For 40 acres, at $2.50 per acre	2.00

These commissions must be tendered with the homestead proof, together with testimony fees at 15 cents per hundred words. The commissions are not earned unless the proof is approved.

FEES AND COMMISSIONS CHARGEABLE IN ALL STATES, EXCEPT AS OTHERWISE NOTED

§ 216.9 *Charges which are effective in all States, with certain exceptions.* Fees and commissions are chargeable in all States, as set forth in §§ 216.9 to 216.27, except as otherwise noted.

§ 216.10 *Mineral applications and adverse claims.*

For filing and acting upon each application for a patent	$10.00
For filing and acting upon each adverse claim	10.00

Fees in connection with mineral land applications and adverse claims are earned irrespective of the action taken on the application or adverse claim.

§ 216.11 *Timber and stone applications.*

For filing and acting upon each application to purchase timber and stone lands	$10.00

§ 216.12 *Military bounty land warrants.* Revolutionary bounty-land scrip is received and accounted for as cash, and no fee is chargeable to parties presenting such scrip.

§ 216.14 *State selections.*

For each final location of 160 acres (or fraction thereof) under any grant of Congress to States (except for agricultural colleges)	$2.00

(a) No fees are chargeable on State swamp-land selections, but a fee of $2 is to be collected on each location of 160 acres, or fraction thereof, made with swamp-land indemnity certificates.

(b) This money is not earned unless the selection is approved. For method of computing State selection fees, see § 216.15.

(c) The enabling act (36 Stat. 557) provides that the fees to be paid to the managers in the States of Arizona and New Mexico for each final location or selection of 160 acres made thereunder shall be $1.

§ 216.15 *Railroad selections.*

For each final location of 160 acres (or fraction thereof) by railroad or other corporations	$2.00

(a) In computing the amount of fees payable on a list of State or railroad selections, the manager will divide the total area by 160; the quotient will be the number of 160-acre selections on which a fee of $2 each is chargeable. Should the quotient consist of a fraction over a whole number, the legal fee of $2 will be collected for such fraction.

(b) The moneys are not earned unless the selection is approved.

§ 216.16 *Valentine scrip.*

For each piece of scrip filed on unsurveyed lands	$1.00
For each location of scrip	1.00

The moneys are earned irrespective of the action taken.

§ 216.17 *Supreme Court or other private land scrip.* No fees or commissions are allowed on the location of Supreme Court scrip, or other private land scrip, except as specifically provided for by law.

§ 216.18 *Reducing testimony to writing.* (a) In the States of Alabama, Arkansas, Florida, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin, fees for reducing testimony to writing are allowed at the rate of 15 cents for each 100 words, and in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, fees for reducing testimony to writing are allowed at the rate of 22½ cents for each 100 words, in the following cases:

(1) Making final proof in commuted and noncommuted homestead and timber culture cases, irrespective of the fact whether or not the writing is done in the land office, as the fees are allowed for "examining and approving the proof."

(2) In establishing claims to timber and stone lands, when the testimony is reduced to writing in the district office.

(3) In hearings before managers in contest cases:

(i) Managers of the land offices will employ clerks for reducing testimony to writing in contest cases, when such clerical assistance is required in their offices. No specific authorization for the employment of such clerks will be required, nor will such clerks be required to file an oath of office. However, these clerks must attach a certificate, signed by them, to the testimony transcribed in each case, to the effect that such testimony is a true and literal transcription of the verbatim report taken at the hearing. Clerks employed for this work should be qualified as competent stenographers and typists and must furnish their own supplies.

(ii) The compensation to be paid such clerks will be not to exceed 15 cents per 100 words in the following States, where the amount to be collected from the contesting parties is 22½ cents per folio: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(iii) The compensation to be paid such clerks will be not to exceed 10 cents per 100 words in the following States, where the amount to be collected from the contesting parties is 15 cents per folio: Alabama, Arkansas, Florida, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin.

(iv) When the reducing to writing, in a contest case, is done by regularly appointed employees of district land offices, the total amount received must be deposited to the credit of the Treasurer of the United States.

(v) No compensation will be allowed contest clerks for docketing. Docketing of contest cases and all other notations on the contest docket will be done by the managers or by the regular salaried employees of the land offices.

(vi) When the reducing of testimony to writing in a contest case is done by regularly appointed employes of the district land office, carbon copies may be furnished at the rate of 5 cents per page, irrespective of the number of words or figures thereon.

(vii) If the testimony is reduced to writing by a clerk employed for that purpose, such clerk will be allowed to make a charge of not exceeding 3 cents per hundred words for carbon copies, to be collected by him from the party to whom the same is furnished.

(viii) The estimated cost of reducing to writing all the testimony to be taken before the manager in a contest case shall be collected in advance from the contesting parties on the date of the hearing before the hearing has begun, or, under § 221.57 of this chapter, the party liable thereto may be required to give security in advance of the trial by deposit in a reasonable sum or sums, for payment of the cost of transcribing the testimony. Receipts will issue for the amounts collected and must show the number of words and the rate per hundred. If any additional amounts above the estimated cost are collected, additional receipts will issue therefor. Moneys so receipted for will be deposited in the Treasury as "Deposits, unearned proceeds, lands, etc." When the complete record in the case has been transcribed and filed in the district land office any amount deposited in excess of the requirements will be returned to the proper parties.

(4) In making final proof on desert-land claims, when the testimony is reduced to writing in the district land offices.

(5) In computing the fees for reducing testimony to writing, only the words actually written must be charged for and no charge should be made for the printed words. (See pars. 10, 11, and 12, sec. 2238, Revised Statutes; 43 U. S. C. 82.) The words written must be counted and the charge made in accordance with the result of such count. Managers must not have a uniform fee of a specific sum in every case of the same class of proofs.

(b) Where a manager finds that his employees, for any reason, are unable to transcribe the testimony in contest cases which are set before him, and that he cannot obtain a competent clerk to do the work at the rates specified in this section, he may authorize the procurement of a qualified stenographer, following the regular contract procedure. The costs will be apportioned by the manager in accordance with §§ 221.53 to 221.60 of this chapter.

§ 216.20 *Plats and diagrams.* (a) Under the second section of the act of March 3, 1883 (22 Stat. 484; 43 U. S. C. 87), authorizing a charge to be made for plats, diagrams, etc., the fees for the same are hereby fixed as follows:

For a diagram showing entries only	$1.00
For a township plat showing entries, names of claimants, and character of entry	2.00
For a township plat showing entries, names of claimants, character of entry, and number	3.00
For a township plat showing entries, names of claimants, character of entry, number and date of filing or entry, together with topography, etc	4.00

(b) The plat or diagram must be of standard size (Form 4–590b), and it must be a correct and complete delineation of the particular township. There is no legal authority under said statute for managers to furnish a plat of a section or subdivision, or any other fraction of a township, and to charge or receive therefor a proportionate part of the authorized fee.

§ 216.21 *Lists for taxation purposes.* For lists of lands sold, which are construed to mean lists of final certificates furnished State or Territorial authorities for the purposes of taxation, 10 cents per entry. The receipts must show number of final entries and rate per entry.

§ 216.22 *Cancellation fees.*

For giving notice to contestants of the cancellation of any homestead entry	$1.00

This fee must be tendered to the manager before any application of the successful contestant for the lands involved will be approved.

§ 216.23 *Soldiers' additional homesteads.* The fees and commissions with soldiers' additional homestead applications will be computed in the same manner as are ordinary homestead fees and commissions. The original fee and commissions and final commissions will be collected together at the same time, and must be applied before certificate issues.

CROSS REFERENCE: For general regulations relating to soldiers' additional homesteads, see Part 132 of this chapter.

§ 216.24 *Odd-numbered sections within granted limits of railroad, but excepted from grant.* In collecting commissions and in disposing of lands in odd-numbered sections within the granted limits of a railroad, but excepted from the operations of the grant, the price should be computed at $1.25 per acre, unless a different price is fixed in the granting act or in some other act of Congress.

§ 216.26 *Depositions; taking and certifying.* (a) For depositions in hearings provided for by the act of February 14, 1931 (46 Stat. 1118; 43 U. S. C. 23) the fees of the officer taking them are fixed by said act at 25 cents per folio for taking and certifying same and 5 cents per folio for each copy furnished to a party on request.

(b) Where the officer takes the testimony of a witness or witnesses once and furnishes copies of that testimony for use as evidence in other cases under stipulated agreement between the interested parties, he is entitled to 5 cents per folio only for the copies furnished. (See Comp. Dec. Jan. 28, 1915)

(c) The title of the officer taking the deposition should be shown on the voucher in every case.

§ 216.27 *Depositions; apportionment of costs.* When the deposition is taken in its true sense the fees of the officer taking it shall be paid by the party on whose behalf it is taken. When witnesses of both parties are assembled under authority of act of January 31, 1903 (32 Stat. 790; 43 U. S. C. 102–106), and then in reality the hearing is held, each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses, just the same as when final hearing is held before the managers. The cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

§ 216.28 *Penalty for charging or receiving illegal fees, compensations or gratuity.* No fees, commissions, or rewards are required or allowed to be paid at land offices for extra services of any character whatever; and managers are absolutely prohibited by law from charging or receiving, directly or indirectly, any fee or compensation not expressly authorized by law, or for any services not imposed upon them by law, or a greater fee or compensation in any case than specifically allowed by law. Officers charging or receiving illegal fees, compensations, or gratuity are subject to summary dismissal from office, in addition to the penalties provided in title 18 of the United States Code, entitled "Crimes and Criminal Procedure." Illegal fees received by clerks, employees, or agents are received by the managers within the meaning and prohibitions of the law, and managers will be held personally and officially responsible therefor.

REMITTANCES

§ 216.30 *Forms of remittances that are acceptable.* (a) Forms of remittances that may be accepted by collection officers include cash and currency, and checks, money orders, and bank drafts made payable to the Treasurer of the United States that may be cashed without cost to the Government.

(b) Upon receipt of notice that a check or draft, whether certified or uncertified, is uncollectible, the collection officer should at once take appropriate steps to protect the interests of the Government.

(c) Whenever the regulations in this chapter require a deposit, or payment, to be made by certified check, money order, or cash, a bank draft or cashier's check will be accepted in lieu thereof.

CREDIT FOR PRIOR PAYMENT UPON SECOND PROOF

§ 216.31 *When moneys may be transferred.* In cases where the commutation homestead proof, final homestead proof, final desert-land proof, or other proof based upon an original entry, upon which the manager issued certificate, has been rejected the certificate canceled, and the original entry allowed to stand subject to future compliance with the law, if second proof is accepted, credit may be allowed for the money paid on the first proof, and the manager will issue his certificate, bearing proper number and date.

CROSS REFERENCE: For proofs, generally, see Part 106 of this chapter.

§ 216.32 *Testimony fees required with second proof.* The entryman is required to pay the testimony fees in connection with the second proof, irrespective of the fees paid with the first proof.

§ 216.33 *When purchase money may not be transferred.* If the entire entry is canceled and the entryman is allowed to begin proceedings de novo, as for instance, in a mineral entry, the purchase money paid upon the first entry can not be applied in payment for a second entry. The only relief that may be afforded, if any, will be upon application for repayment.

PART 217—REPAYMENTS

GENERAL REGULATIONS

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REPAYMENTS ON ENTRIES CANCELED FOR CONFLICT OR BECAUSE THEY WERE ERRONEOUSLY ALLOWED AND CANNOT BE CONFIRMED; ACT OF JUNE 16, 1880

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CROSS REFERENCES: For payments, see Part 216 of this chapter. For elimination of the requirements of oaths to written statements in public land matters, see § 101.21 of this chapter.

GENERAL REGULATIONS

AUTHORITY: §§ 217.1 to 217.7 issued under sec. 4, 21 Stat. 287, as amended; 43 U. S. C. 263.

§ 217.1 *Statutory authority.* The repayment of moneys received by the Government and covered into the United States Treasury, in connection with the disposal or attempted disposal of the public lands, is authorized by the following statutes:

In addition to the provisions of sections 2362 and 2363, Revised Statutes (43 U. S. C. 689, 690), the general laws providing for the return of such moneys are contained in the act of June 16, 1880 (21 Stat. 287; 43 U. S. C. 263) and the act of March 26, 1908 (35 Stat. 48) as amended by the act of December 11, 1919 (41 Stat. 366; 43 U. S. C. 95–98), and as supplemented by the act of June 27, 1930 (46 Stat. 822; 43 U. S. C. 98a).

§ 217.5 *Filing of applications.* Applications for repayment should be filed on Form 4–109 with the manager of the proper land office. If there is no such office in the State, they should be filed with the proper area administrator, Bureau of Land Management.

§ 217.7 *Application to state grounds for repayment.* Where an application is filed, or it should be accompanied by a statement by the applicant setting forth fully the grounds upon which repayment is claimed.

REPAYMENTS ON FRAUDULENT AND VOID SOLDIERS' AND SAILORS' ADDITIONAL ENTRIES; ACT OF JUNE 16, 1880

AUTHORITY: §§ 217.8 to 217.12 issued under sec. 4, 21 Stat. 287, as amended; 43 U. S. C. 263.

§ 217.8 *Statutory authority.* Section 1 of the act of June 16, 1880 (21 Stat. 287; 43 U. S. C. 263) authorizes the repayment of the fee, commissions, and excess payments required upon the location or entry of soldiers' and sailors' additional homestead rights, which locations or entries are found to be based upon spurious or forged papers and the entries are canceled as fraudulent and void.

§ 217.9 *Innocent parties only may receive repayment.* Under section 1 of the

act of June 16, 1880 repayment can be made only to the "innocent parties" who paid the moneys, and in order to present a claim thereunder it is necessary that the receipts issued to the claimant be surrendered as a part of the application for repayment. In case the receipts cannot be surrendered, a statement explaining the loss or destruction of the same is required, together with evidence to show that the moneys applied for were paid by the applicant.

§ 217.11 *Showing required as to void additional entry.* The applicant will be required, in all cases where the void location or entry is made in the name of the original entryman, to furnish the power of attorney, or certified copy thereof, authorizing the applicant to make the additional entry; or furnish such other authenticated evidence as may be produced to show that the applicant is in fact the party who made the void additional entry and paid the moneys in connection therewith.

§ 217.12 *Statement regarding fraudulent papers and innocence of applicant.* A concise statement, should accompany these applications for repayment, setting forth all the facts and circumstances in connection with the procurement and use of the fraudulent papers upon which the canceled entry was based, together with such other proof as may tend to establish the innocence of the applicant.

REPAYMENTS ON ENTRIES CANCELED FOR CONFLICT OR BECAUSE THEY WERE ERRONEOUSLY ALLOWED AND CANNOT BE CONFIRMED; ACT OF JUNE 16, 1880

AUTHORITY: §§ 217.13 to 217.20 issued under sec. 4, 21 Stat. 287, as amended; 43 U. S. C. 263.

§ 217.13 *Repayment to entryman, or to his heirs or assigns.* The first clause of section 2 of the act of June 16, 1880 (21 Stat. 287; 43 U. S. C. 263) provides for the repayment of fees, commissions, purchase money, and excesses paid in connection with entries of the public lands that have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry was erroneously allowed and cannot be confirmed. This clause directs that said moneys shall be repaid to the person who made such entry, or to his heirs or assigns, and it requires the surrender of the receipts issued and the execution of a proper relinquishment of all claims to the lands acquired under the invalid entry.

§ 217.14 *Definition of "erroneously allowed."* The phrase "erroneously allowed," being the basis for the allowance of repayment under section 2 of the act of June 16, 1880, can not be given an interpretation of such latitude as would countenance fraud. If the records of the Bureau of Land Management, or the proofs furnished, should show that the entry ought not to be permitted, and yet it were permitted, then it would be "erroneously allowed." But if a tract of land were subject to entry, and the proofs showed a compliance with law, and the entry should be canceled because the proofs were shown to be false, it could not be held that the entry was "erroneously allowed"; and in such case repayment would not be authorized.

§ 217.15 *Form of application under act of June 16, 1880.* Claims for repayment should be made on Form 4–109 or the equivalent thereof, which application must contain a statement that the title to the land under the invalid entry has not been sold or assigned and that the same has not become a matter of record.

§ 217.16 *Evidence necessary where entry has been recorded.* In cases where the entry has been made a matter of record, in the archives of the county recording officer, there should be added to the form of application (4–109) the words "except as shown by accompanying evidence," in which event the evidence hereinafter required must be furnished.

§ 217.17 *Form of relinquishment under act of June 16, 1880.* A duly executed relinquishment must be furnished by the applicant on Form 4–109.

§ 217.18 *Execution of relinquishment.* The relinquishment must be witnessed by two persons.

§ 217.19 *Reservation when original entry is to be left intact.* In cases of commutation homestead entry, final homestead entry, final desert-land entry, and other final certificates, which are canceled, leaving the original entry or base intact, subject to future compliance with the requirements of law, a reservation should be incorporated into relinquishment to the effect: "But excepting from the operation of this relinquishment all my rights and title to the described land under original entry No. _____."

§ 217.20 *Surrender of receipts.* The receipts showing the payments of the money claimed must be surrendered, but if the same have been lost or destroyed or are not available for any reasons, a statement showing the facts must be furnished.

REPAYMENTS ON FINAL ENTRIES; ACT OF JUNE 16, 1880

AUTHORITY: §§ 217.21 to 217.29 issued under sec. 4, 21 Stat. 287, as amended; 43 U. S. C. 263.

§ 217.21 *Surrender of receipt and duplicate certificate of entry.* With applications for repayment of the moneys paid upon canceled commuted homestead entries, final homestead entries, final desert-land entries, mineral entries, coal-land entries, and other final entries, the manager's receipt and the duplicate certificate of entry, whenever such has issued, should be surrendered.

§ 217.22 *When certificate of recording officer is required as to unrecorded title.* In case the receipt or certificate cannot be surrendered or has been lost or destroyed, a certificate will be required from the proper recording officer of the county within which the land is situate, showing that the same has not become a matter of record and that there is no encumbrance of the title to the land thereunder.

§ 217.23 *Claimants who must furnish certificate of recording officer.* A recorder's certificate must be furnished, as in § 217.22, (a) in all cases where the application for repayment is made by another than the original entryman, and (b) in all cases where the claim is based upon an unrecorded deed from the entryman to the party applying for repayment.

§ 217.24 *When reconveyance need not be recorded.* In all cases where patent has been issued, upon an invalid entry, a full reconveyance to the United States of all right and title to the land acquired under the patent and entry must be furnished, which deed must be recorded. If a certificate of the recording officer is produced showing that neither the entry nor the patent has been recorded, it is unnecessary to record the reconveyance in case the patent is surrendered.

§ 217.25 *When reconveyance must be recorded.* If, however, the patent cannot be surrendered, or should the entry or patent have been recorded, it is necessary that the proper party or parties execute a full reconveyance to the United States and have the same recorded as indicated in the next following sections.

§ 217.26 *Quitclaim deed must accompany application.* Where title under an invalid entry or patent has become a matter of record, a duly executed quitclaim deed, relinquishing to the United States all right, title, and claim to the land, acquired under the entry, or patent, must accompany the application for repayment.

§ 217.27 *Certificate of recording officer required as to recorded title.* The deed referred to in the preceding section must be duly recorded, and a certificate must also be produced from the proper recording officer of the county wherein the land is situated, showing that said deed is so recorded and that the records of his office do not exhibit any other conveyance or encumbrance of the title to the land.

§ 217.28 *Reconveyance to conform to State laws.* The reconveyance to the United States must conform in every particular to the laws of the State or Territory in which the land is located relative to transfers of real property; in the case of a married man, in localities where the right of dower, or equivalent, exists, the wife must join in the execution of the deed, and in case of an executor or administrator, due proof of authority to alienate the estate.

§ 217.29 *When reconveyance is unnecessary.* If the applicant has also acquired the valid title conveyed by the United States, a reconveyance of the land is unecessary, but a relinquishment, waiving all claim under the illegal entry, is required, together with corroborative evidence of the facts, preferably an abstract of title and a statement in full in support of the claim for repayment.

REPAYMENTS TO HEIRS, EXECUTORS, ADMINISTRATORS, AND ASSIGNEES; ACT OF JUNE 16, 1880

AUTHORITY: §§ 217.30 to 217.43 issued under sec. 4, 21 Stat. 287, as amended; 43 U. S. C. 263.

§ 217.30 *When proof of heirship is required.* Where application is made by

heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained and must show that the parties applying are the heirs and the only heirs of the deceased.

§ 217.31 *Statement required showing facts as to heirship.* Proof of heirship should be made in the form of a statement, corroborated by two witnesses, setting forth the date of the death of the intestate; whether the intestate left surviving a husband or wife, as the case may be; the full name and age of such husband or wife; the names and ages of all children; and also state whether there is any issue of a deceased child or children. The statement should set forth all the facts, in order that the Bureau of Land Management may determine who are the legal heirs, in accordance with the laws of descent and distribution of the State where the land is situated.

§ 217.32 *Application by minor heirs.* In case there are minor heirs not under the guardianship of a duly appointed guardian, and the amount to be repaid is $200 or less, the surviving parent may execute the application as the natural guardian of such heirs. Such application should be supplemented with a statement setting forth all the facts in detail.

§ 217.33 *Application by executors.* Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

§ 217.34 *Applications by administrators.* Where application is made by administrators, the original, or a certified copy, of the letters of administration must be furnished.

§ 217.35 *Applications by assignees.* Where applications are made by assignees, the applicants must show their right to repayment by furnishing properly authenticated abstracts of title, or the original deeds or instruments of assignment, or certified copies thereof.

§ 217.36 *Certificate in lieu of abstract.* In the place of an abstract of title the applicant may furnish a certificate of the recording officer of the county in which the land is situated, showing all alienations or liens affecting title to the land in connection with the entry upon which the claim for repayment is based.

§ 217.37 *Proof required that assignees have not been indemnified.* The applicants must also show that they have not been indemnified by their grantors or assignors for the failure of title, and that title has not been perfected in them by their grantors through other sources.

§ 217.38 *When proof is required that original purchaser has not been indemnified.* Where there has been a conveyance of the land and the original purchaser applies for repayment, he must show that he has indemnified his assignee or perfected the title in him through another source, or produce a full reconveyance to himself from the last grantee or assignee.

§ 217.39 *Definition of "assignees."* Those persons are assignees, within the meaning of the statutes authorizing the repayment of purchase money, who purchase the land after the entries thereof are completed and take assignments of the title under such entries prior to complete cancellation thereof, when the entries fail of confirmation for reasons contemplated by the law.

§ 217.40 *Assignment of claim prohibited.* To construe said statutes so as to recognize the assignment or transfer of the mere claim against the United States for repayment of purchase money, or fees and commissions, disconnected from a sale of the land or attempted transfer of title thereto, would be against the settled policy of the Government and repugnant to section 3477 of the Revised Statutes (31 U. S. C. 203). (2 Lawrence, First Comp. Dec. 264, 266, and 6 Dec. Comp. of the Treasury, 334, 359.)

§ 217.41 *Repayment to assignees of land.* Assignees of land who purchase after entry are, in general, deemed entitled to receive the repayment when the lands are found to have been erroneously sold by the Government. But this rule does not apply to the repayment of double-minimum excesses. (First Comp. Dec. in case of Adrian B. Owens, Copp's Public Land Laws, 1890, vol. 2, p. 1238.)

§ 217.42 *Repayment to mortgagees.* Mortgagees are not assignees within the meaning of the repayment laws, but may become such by pursuing the course suited to the particular case as follows:

(a) Where, after date of entry and prior to cancellation thereof, the land is mortgaged and the mortgagee receives a sheriff's deed under foreclosure proceedings, the mortgagee becomes an assignee. (See 193 U. S. 651, 58 L. ed. 830; 28 L. D. 201, 30 L. D. 136.)

(b) Where a mortgage is executed prior to the cancellation of an entry, and a deed made to the mortgagee after such cancellation, the holder of such deed becomes the assignee. (See 26 L. D. 425.)

§ 217.43 *Establishment of claim by assignee or mortgagee.* In either case, complete evidence must be furnished to establish the applicant's right to repayment by producing the original deeds or instruments, or certified copies thereof showing all transactions, together with certified copies of the court proceedings.

REPAYMENT OF DOUBLE-MINIMUM EXCESS; ACT OF JUNE 16, 1880

AUTHORITY: §§ 217.44 to 217.46 issued under sec. 4, 21 Stat. 287, as amended; 43 U. S. C. 263.

§ 217.44 *Repayment of excess on double-minimum land.* (a) The last clause of the second section of the act of June 16, 1880 (21 Stat. 287; 43 U. S. C. 263), provides:

> In all cases where parties have paid double-minimum price for land which has afterwards been found not to be within the limits of a railroad land grant, the excess of $1.25 per acre shall in like manner be repaid to the purchaser thereof or to the heirs or assigns.

(b) This clause has been practically absorbed by section 2 of the act of March 26, 1908 (35 Stat. 48; 43 U. S. C. 96).

§ 217.45 *Applicant must be entryman.* The applicant must show that he is the identical party who made the entry on which repayment is claimed, as contained in the form of application.

§ 217.46 *Repayment only to entryman or his heirs or assigns.* Repayment of double-minimum excess will be made only to the original entryman, his heirs or assigns. The sale and transfer of the land is not of itself treated as an assignment of the right to receive repayment of double-minimum excess.

REPAYMENTS ON REJECTED APPLICATIONS, PROOFS, ETC.; ACT OF MARCH 26, 1908, AS AMENDED

AUTHORITY: §§ 217.47 to 217.57 issued under R. S. 2478; 43 U. S. C. 1201.

§ 217.47 *Statutory authority.* (a) The act of March 26, 1908, as amended (35 Stat. 48, 41 Stat. 366; 43 U. S. C. 95–98) provides for the repayment of certain commissions, excess payments, and purchase moneys paid under the public land laws and is additional to the provisions of sections 2362 and 2363, Revised Statutes (43 U. S. C. 689, 690), and to the act of June 16, 1880 (21 Stat. 287; 43 U. S. C. 263).

(b) The act of June 27, 1930 (46 Stat. 822; 43 U. S. C. 98a) makes the provisions of the act of March 26, 1908, as amended, "applicable to all payments in excess of lawful requirements made under the act of Congress approved February 25, 1920 (41 Stat. 437), and under any statute relating to the sale, entry, lease, or other disposition of the public lands."

§ 217.48 *When repayment may be made.* The first section of the act of March 26, 1908, as amended, authorizes the return to the applicant, or his legal representatives, of purchase moneys and commissions covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, where such application has been or shall be rejected, in cases where neither the applicant nor his or her legal representatives shall have been guilty of any fraud or attempted fraud in connection with said application.

§ 217.49 *Repayments on allowed entries and proofs.* The first section of the act of March 26, 1908 as amended, refers more particularly to moneys covered into the Treasury of the United States which were paid in connection with rejected applications to make entry, proof, etc., but it also contemplates the repayment of moneys paid in connection with allowed entries and proofs, which entries or proofs should have been rejected. (See 43 L. D. 104.)

§ 217.50 *Return of excess payments.* The second section of the act of March 26, 1908 as amended, authorizes the return to the person who made the payment, or to his legal representatives, of any moneys paid under any of the land laws of the United States, in excess of the legal requirements.

§ 217.51 *Limitations on time for filing applications.* (a) The act of Congress, approved December 11, 1919 (41 Stat. 366; 43 U. S. C. 95–98), limits the time of filing repayment claims under

the act of March 26, 1908 (35 Stat. 48) to 2 years.

(b) The time of filing claims for repayment is limited to 2 years from rejection of the application, entry, or proof; and in case of payments in excess of lawful requirements, claims for repayment must be filed within 2 years from issuance of patent. (See act of June 27, 1930, 46 Stat. 822; 43 U. S. C. 98a).

§ 217.52 *Definition of "legal representatives."* The term "legal representatives" includes heirs, executors, and administrators, and where application is made by either of them due proof must be furnished as required by § 217.33 or § 217.34, as the case may be.

§ 217.53 *Definition of "assignees."* Assignees also come within the purview of this term, but only in such instances as would not be repugnant to section 3477, Revised Statutes (31 U. S. C. 203).

§ 217.54 *Evidence of assignment required.* Where applications are made by assignees, the evidence required under § 217.35 or 217.36, as the case may be, must be furnished.

§ 217.55 *Assignment of claims prohibited.* Section 3477, Revised Statutes (31 U. S. C. 203), prohibits the transfer or assignment of claims against the United States, and therefore any attempted transfer or assignment of a claim under either of the before-mentioned sections can not be recognized, except in certain cases, coming under section 1 of the act of March 26, 1908. (See 42 L. D. 181.)

§ 217.56 *When assignees may receive repayment.* The instances in which assignees are authorized to receive repayment under the act of March 26, 1908, would be in cases where entries are allowed, but which should have been rejected, and after the date of such entries and prior to the cancellation thereof, valid attempts are made to transfer the lands entered; and further, in cases where proofs and payments are made, but certificates of entry withheld, and thereafter valid assignments are made of all right, title, and interest in and to the lands involved. (43 L. D. 477, and 44 L. D. 516.)

§ 217.57 *What constitutes "fraud or attempted fraud."* What constitutes "fraud or attempted fraud" within the meaning of section 1 of the act of March 26, 1908 (35 Stat. 48; 43 U. S. C. 95), such as will bar repayment, affords a wide degree of latitude, and it necessarily follows that each claim for repayment must be adjudicated upon a finding of the record in the case.

SUBCHAPTER P—PRACTICE

PART 220—GENERAL REGULATIONS RELATING TO PRACTICE

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220.2 Relinquishment of entry after service of notice of contest.
220.3 Relinquishment of entry after filing of contest affidavit and before service of notice.
220.4 Junior contest alleging valid ground for cancellation and collusive nature of prior contest.
220.5 Hearing in event of relinquishment, to allow junior contestant to prove charge of collusion.
220.6 Procedure where junior contest charging collusion is not filed until after hearing on prior contest.
220.8 Preference right of successful contestant; disposition of applications by others before termination of preference-right period.

MORTGAGEES

220.9 Notice of relinquishment to be given to mortgagee; action on relinquishment.

DECISIONS, NOTICES, ETC.

220.10 Rules governing registration of letters, etc.
220.11 Service of notice on unknown heirs.
220.12 Notice of decisions.

AUTHORITY: §§ 220.1 to 220.12 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For applications and entries, general, see Part 101 of this chapter. For Government contests, see Part 222 of this chapter. For practice, Alaska, see Part 73 of this chapter. For public land records, see Part 240 of this chapter. For relinquishments, cancellations, and reinstatement of entries, see Part 105 of this chapter. For Rules of Practice, see Part 221 of this chapter. For witnesses, see Part 223 of this chapter.

CONTESTS AND PROTESTS

§ 220.1 *What contestant must do to obtain preference right of entry.* In order to entitle a contestant to the preference right of entry conferred by section 2 of the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185), it must appear not only that he has contested the entry and paid the land-office fees in that behalf but that he has actually procured the cancellation of the entry.

§ 220.2 *Relinquishment of entry after service of notice of contest.* Where it appears of record that the defendant has been served with notice of contest personally or by publication, it will be conclusively presumed as a matter of law and fact that the relinquishment was the result of the contest, and the contestant will be awarded the preference right of entry without necessity for a hearing.

§ 220.3 *Relinquishment of entry after filing of contest affidavit and before service of notice.* (a) Where a good and sufficient affidavit of contest has been filed against an entry and no notice of contest has issued on such affidavit, or, if issued, there is no evidence of service of such notice upon the contestee, if the entry should be relinquished the manager will immediately note the cancellation of the entry upon the records of his office. In such cases for purposes of administration a presumption will obtain that the contest induced the relinquishment and the manager will at once so notify the contestant and that he will be allowed to make entry accordingly. If the relinquishment is accompanied by the application of another than the contestant, the manager will at once advise the applicant of the pending contest and of the presumptive preference right thereunder, and that should the contestant in the exercise of such right make timely application for the land, showing himself duly qualified, said right can only be avoided on a showing that the contest charge was not true, or that the contestant is not a qualified applicant, or that the land is not subject to his application. Should the contestant apply for the lands, showing himself duly qualified, within the preference-right period, and the intervening applicant file request for a hearing, with his corroborated affidavit as to the facts above stated in avoidance of a preference right in the contestant, within 20 days after the filing of the contestant's application, hearing will be had, after at least 30 days' notice to all interested parties, upon the issues thus presented, the intervening applicant having the burden of proof. The contestant must pay all costs of the testimony as to the truth or falsity of the contest charge, and upon any other issue each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses.

(b) Should the manager inadvertently allow an application filed with a relinquishment of a contested entry, he will, upon discovery of the error, immediately notify the contestant of his presumptive preference right and proceed in all other respects as provided in paragraph (a) of this section. Should a hearing be had, the intervening entryman may submit testimony with reference to his compliance with law prior to discovery of the erroneous allowance of the entry, as well as in support of the showing above provided for.

(c) Nothing contained in this section will preclude the exercise by the Department of its authority to adjudicate cases as they may arise in accordance with the particular facts thereof and in the light of the settled principles of equity.

§ 220.4 *Junior contest alleging valid ground for cancellation and collusive nature of prior contest.* (a) Where, prior to hearing in a contest, a junior contest is filed, alleging a valid ground for the cancellation of the entry, and in addition thereto the collusive nature of the prior contest, the junior contestant may, if the entryman has been served with notice of the prior contest, intervene at the hearing and submit testimony in support of his charges.

(b) Should the junior contestant elect to offer testimony in support of his charge of collusion only, he will not gain a preference right of entry if such charge be established. If, at the time of the filing of the junior contest, notice is not issued on the prior contest, the manager will issue such notice and at the same time notice on the junior contest; the latter notice must recite all the charges contained in the affidavit and state, in addition, that the junior contestant will be allowed to appear at the time set for taking testimony in the prior contest and offer evidence in support of his charges. The junior contestant will be required to service notice on both the prior contestant and the entryman.

§ 220.5 *Hearing in event of relinquishment, to allow junior contestant to prove charge of collusion.* If, before the case proceeds to a hearing, the entryman's relinquishment be filed, both contestants must be notified of the cancellation of the entry and of their right to apply to enter the land within 30 days after the receipt of such notice. Should both apply within such period, the manager will set a day for hearing, of which each shall have at least 30 days' notice, at which the junior contestant will be allowed to prove his charge of collusion and so defeat the claimed preference right of the prior contestant.

§ 220.6 *Procedure where junior contest charging collusion is not filed until after hearing on prior contest.* Where a junior contest charging collusion is not filed until after the prior contest has proceeded to a hearing, it will be suspended pending the closing of the latter case, and must wholly fail if the entry be cancelled as the result of the prior contest. This, however, will not prevent the junior contestant from attacking the application of the successful contestant to make entry, upon the ground of collusion or for any other valid cause, should the latter attempt to exercise the preferred right of entry, nor, should the prior contest result in favor of the entryman, will the junior contestant be precluded from prosecuting his case if his affidavit, in addition to the charge of collusion, states a sufficient ground for the cancellation of the entry other than the charge involved in the trial of the prior contest.

§ 220.8 *Preference right of successful contestant; disposition of applications by others before termination of preference-right period.* (a) No application will be received, or any rights recognized as initiated by the tender of an application for a tract embraced in an entry of record, until said entry has been canceled upon the records of the district office. Thereafter, and until the period accorded a successful contestant has expired, or he has waived his preferred right, applications may be received, noted, and held subject to the rights of the contestant, to be disposed of in the order of filing, upon the expiration of the period accorded the successful contestant or upon the filing of his waiver of his preferred right.

MORTGAGES

§ 220.9 *Notice of relinquishment to be given to mortgagee; action on relinquishment.* The manager will see that in all cases where notice of a mortgage interest in land embraced within a subsisting entry is filed, as provided in § 221.90 of this chapter, such mortgagee is given notice of any relinquishment of the entry that may be filed; and he will accept no relinquishment in such case unless the mortgagee joins therein, or is given opportunity to make such showing in the matter as he may desire, and 30 days from notice of the relinquishment may be allowed the mortgagee in which to express his assent to the relinquishment, or submit such statement or showing as he may desire. If the mortgagee fails to respond to the notice, or objects to the relinquishment of the entry, the manager will suspend action thereon and report the matter in full to the Bureau of Land Management, with his recommendation.

DECISIONS, NOTICES, ETC.

§ 220.10 *Rules governing registration of letters, etc.* The manager will be governed, in the matter of registration of official letters, by the following rules:

(a) The general correspondence of his office with the Bureau of Land Management or the public is not required to be registered, and such registration will not be paid for by the United States.

(b) Official returns will not be registered.

(c) Certificates of deposit on account of surveys will not be registered.

(d) Notices of hearings in contest cases required by § 221.7 of this chapter, to be mailed by registered letter are to be sent by contestants, who must furnish proof thereof, and are not to be registered at the public expense.

(e) Notices of hearings and decisions in cases where hearings are ordered on behalf of the Government, will be registered as a matter of evidence.

(f) In addition to the registration of notices of hearings and decisions, as heretofore provided, it is directed that all notices required to be given of decisions, involving the right of appeal, or the exercise of other rights within a certain time, be served by the manager personally or by registered letter.

(g) When personal service is had, the manager will transmit to the Bureau of Land Management the acknowledgment of such service or evidence thereof. When service is made by registered letter, the registry return receipt, or returned letter, as the case may be, must, in every instance, be sent up with the papers in the case, or otherwise accounted for by the manager.

§ 220.11 *Service of notice on unknown heirs.* The Postal Laws and Regulations provide that mail indefinitely addressed shall be denied admission to the registered mail. Accordingly, when notice is to be served by the manager on the unknown heirs of a public-land claimant, the same should be addressed to the claimant at his address of record and also at the post office nearest the land. Notice thus addressed will be held to constitute notice to the unknown heirs, provided the letter, if undelivered, is held at the office of delivery for at least 30 days.

§ 220.12 *Notice of decisions.* If an attorney has entered his appearance in a case involving lands in a State wherein there is no land office, notice of the decision therein will be addressed to such attorney, and no notice given to the claimant.

CROSS REFERENCE: For regulations relating to practitioners, see Part 1 of this title.

PART 221—RULES OF PRACTICE

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AUTHORITY: §§ 221.1 to 221.92 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For general regulations relating to practice, see Part 220 of this chapter. For Government contests, see Part 222 of this chapter. For practice, Alaska, see Part 73 of this chapter. For public land records, see Part 240 of this chapter. For witnesses, see Part 223 of this chapter.

SUBPART A—PROCEEDINGS BEFORE MANAGER

INITIATION OF CONTESTS OR PROTESTS

§ 221.1 *By whom contests or protests may be initiated.* (a) Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Bureau of Land Management.

(b) Any protest or application to contest filed by any other person shall be forthwith referred to the State Supervisor of the Bureau, who will promptly investigate the same and recommend appropriate action.

APPLICATION TO CONTEST

§ 221.2 *Form of application.* Any person desiring to institute a contest must file, in duplicate, with the manager, application in that behalf, together with statement under oath containing:

(a) Name and residence of each party, adversely interested, including the age of each heir of any deceased entryman.

(b) Description and character of the land involved.

(c) Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

(d) Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

(e) Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

(f) That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

(g) Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

(h) Address to which papers shall be sent for service on such applicant.

§ 221.3 *Corroboration required.* The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

§ 221.4 *Allowance by manager.* The manager may allow any application to contest without reference thereof to the Director; but where notation on the records of the Bureau of Land Management is required, the manager must immediately forward a copy thereof to the Director, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

CONTEST NOTICE

§ 221.5 *Form of notice.* The manager shall act promptly upon all applications to contest, and upon the allowance of any such application shall issue notice, directed to the persons adversely interested, containing:

(a) The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

(b) Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

SERVICE OF NOTICE

§ 221.6 *How notice may be served.* Notice of contest may be served on the adverse party personally or by publication.

§ 221.7 *Personal service.* (a) Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is made by publication, copy of the affidavit of contest must be served with such notice.

(b) When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the heirs of the entryman are nonresident or unknown, notice may be served upon them by publication as hereinafter provided. If the person to be personally served is an infant under 14 years of age or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the statutory guardian or committee of such infant or person of unsound mind, if there be one; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

§ 221.8 *Abatement of contest.* Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if

service by publication is ordered, unless publication is commenced within 20 days after such order and proof of service of notice by publication is made not later than 20 days after the fourth publication, as specified in § 221.10, the contest shall abate: *Provided*, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

SERVING NOTICE BY PUBLICATION

§ 221.9 *When notice may be given by publication.* (a) Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within 30 days after the allowance of application to contest and within 10 days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within 15 days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

(b) Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

(c) The published notice of contest must give the names of the parties thereto, description of the land involved, identification by appropriate reference of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that upon failure to answer within 20 days after the completion of publication of such notice the allegations of said affidavit of contest will be taken as confessed.

(d) The affidavit of contest need not be published.

(e) There shall be published with the notice a statement of the dates of publication.

§ 221.10 *Publication and posting of notice.* (a) Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

(b) Copy of the notice as published, together with copy of the affidavit of contest, shall be sent by the contestant within 10 days after the first publication of such notice by registered mail directed to the party for service upon whom such publication is being made at the last address of such party as shown by the records of the land office and also at the address named in the affidavit for publication, and also at the post office nearest the land.

(c) Copy of the notice as published shall be posted in the office of the manager and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of notice as provided in paragraph (a) of this section.

§ 221.11 *Proof of service.* (a) Proof of publication of notice shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the same, showing the publication thereof in accordance with §§ 221.9 and 221.10.

(b) Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the manager as to posting in the district land office.

(c) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice, attached to the postmaster's receipt for the letter or (if delivered) the registry return receipt.

DEFECTIVE SERVICE OF NOTICE

§ 221.12 *Effect of defective service.* No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but in such case the time to answer may be extended in the discretion of the manager.

ANSWER

§ 221.13 *When and how answer must be filed.* (a) Within 30 days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within 20 days after the fourth publication, as prescribed by the rules in this part, the party served must file with the manager answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application to contest, or personally in the manner provide for the personal service of notice of contest.

(b) Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

FAILURE TO ANSWER

§ 221.14 *Effect of failure to answer.* Upon failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the manager will forthwith notify the parties by ordinary mail of the action taken.

DATE AND NOTICE OF TRIAL

§ 221.15 *Manager to fix time and place for trial.* Upon the filing of answer and proof of service thereof the manager will forthwith fix a time and place for taking testimony, and notify all parties thereof by registered mail not less than 20 days in advance of the date fixed.

PLACE OF SERVICE OF PAPERS

§ 221.16 *Proof of delivery of papers.* (a) Proof of delivery of papers required to be served upon the contestant at the place designated under § 221.2 (h) in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and where notice of contest has been given by registered mail, and the registry-return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received shall, in the absence of other direction by such adverse party, be sufficient.

(b) Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

CONTINUANCE

§ 221.17 *When hearing may be postponed.* Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that:

(a) The matter to which such witness would testify, if present, is material.

(b) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(c) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(d) That the continuance is not sought for mere purposes of delay.

§ 221.18 *When more than one continuance may be allowed.* One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

§ 221.19 *When continuance will be denied; continuance on behalf of United States.* (a) No continuance shall be granted if the opposite party shall admit that the witness on account of whose absence continuance is desired would, if present, testify as stated in the application for continuance.

(b) Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

DEPOSITIONS AND INTERROGATORIES

§ 221.20 *When testimony may be taken by deposition.* Testimony may be taken by deposition when it appears by affidavit that:

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness cannot be obtained.

§ 221.21 *Affidavit required showing grounds for deposition; proposed interrogatories.* The party desiring to take deposition must serve upon the adverse party and file with the manager an affidavit setting forth the name and address of the witness and one or more of the grounds set forth in § 221.20 for taking such deposition, and that the

testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

§ 221.22 *Cross interrogatories.* The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding section, serve and file cross-interrogatories.

§ 221.23 *Commission to take deposition.* (a) After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, a commission to take the deposition shall be issued by the manager directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

(b) Ten days' notice of the time and place of taking such deposition shall be given by the party in whose behalf such deposition is to be taken to the adverse party.

§ 221.24 *Completion of deposition.* The officer before whom such deposition is taken shall cause each interrogatory to be written out and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

§ 221.25 *Deposition to be returned to manager.* The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be enclosed in a sealed package, endorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the manager, who will endorse thereon the date of reception thereof, and the time of opening said deposition.

§ 221.26 *When certificate of official character is required.* If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

§ 221.27 *Deposition by filing stipulation.* Deposition may, by stipulation filed with the manager be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

§ 221.28 *Testimony taken by order of manager.* Testimony may, by order of the manager and after such notice as he may direct, be taken before a United States Commissioner or other officer authorized to administer oaths, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the manager in the like manner as is provided with reference to depositions.

§ 221.29 *No charge for examining deposition.* No charge will be made by the manager for examining testimony taken by deposition.

§ 221.30 *Fees for taking testimony.* Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by managers.

§ 221.31 *Substitution of officer to take testimony.* When the officer designated to take deposition cannot act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

§ 221.32 *Time for issuing order to take testimony.* No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

TRIALS

§ 221.33 *Exclusion of witnesses from the trial.* The manager and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

§ 221.34 *Examination of witnesses by manager.* The manager will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officer should, whenever necessary, personally interrogate and direct the examination of a witness.

§ 221.36 *Facts to be ascertained under homestead and other laws.* Under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined. The manager will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of his office.

§ 221.37 *Cross-examination of witnesses.* Due opportunity will be allowed opposing claimants to cross-examine witnesses.

§ 221.38 *Objections to evidence.* Objections to evidence will be duly noted, but not ruled upon, by the manager, and such objections will be considered by the Director. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

§ 221.39 *Testimony to be reduced to writing.* (a) At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

(b) When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: *Provided, however,* That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

(c) The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken, showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

§ 221.40 *Action on demurrers.* (a) If a defendant demurs to the sufficiency of the evidence, the manager will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

(b) When testimony is taken, before an officer other than the manager, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the manager will rule upon such demurrer when the record is submitted for his consideration.

(c) If said demurrer is sustained, the manager will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

(d) Upon the completion of the evidence in a contest proceeding, the manager will render a report and opinion thereon making full and specific reference to the posting and annotations upon the records.

§ 221.41 *Decision of manager; right to move for new trial, or appeal.* The manager will, in writing, notify the parties to any proceeding of the conclusion therein, and that 15 days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, 30 days will be allowed from the receipt of such notice within which to appeal to the Director.

NEW TRIAL

§ 221.42 *Ground for new trial.* (a) The decision of the manager will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice: *Provided, however,* That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

(b) No appeal will be allowed from an order granting new trial, but the manager will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony therefore taken without reexamination of same witnesses, confining the taking

of testimony to the newly discovered evidence.

§ 221.43 *Notice of motion for new trial; time for answer.* Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the manager not more than 15 days after notice of decision; the adverse party shall, within 10 days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

§ 221.44 *Consideration of motions for new trial.* Motions for new trial will not be considered or decided in the first instance by the Director or the Secretary of the Interior, or otherwise than on review of the decision thereof by the manager.

§ 221.45 *Manager to forward all papers to Director.* (a) If motion for new trial is not made, or if made and not allowed, the manager will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the Director, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

(b) The manager will not, after forwarding of decision, as provided in paragraph (a) of this section, take further action in the case unless so instructed by the Director.

FINAL PROOF, PENDING CONTEST

§ 221.46 *Submission of final proof excused pending disposition of proceedings.* (a) The pendency of a contest will excuse the submission of final proof on the entry involved until a reasonable time after the disposition of the proceedings, but final or commutation proof may be submitted at any stage thereof. The payment of the final commissions or purchase money, as the case may be, should be deferred until the case is closed, when, if the contest is dismissed and the proof is found satisfactory, claimant will be allowed 30 days from notice within which to pay all sums due and furnish a nonalienation affidavit, upon receipt of which the proper form of final certificate will issue.

(b) In such cases the fee for reducing the proof testimony to writing must be paid at the time the proof is submitted.

(c) The final proof should be retained in the district land office until the record in the contest case is forwarded to the Bureau of Land Management, but will not be considered in determining the merits of the contest, though it may be used for the purpose of cross-examination during the trial.

(d) In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

APPEALS TO DIRECTOR

§ 221.47 *Service and filing of notice required.* No appeal from the action or decision of the manager will be considered unless notice thereof is served and filed in the land office in the manner and within the time specified in § 221.48.

§ 221.48 *Notice of appeal; filing of briefs.* Notice of appeal from the decision of the manager shall be served upon the adverse party and filed with the manager within 30 days after receipt of notice of the decision. Within 20 days after service of notice of appeal, the appellant may file a brief, a copy of which must be served upon the appellee. Within 20 days after such service the appellee may file his brief, a copy of which must be served upon the appellant. Briefs must be served upon the opposing party within the same period of time allowed for their filing with the manager. When a motion for a new trial is made and denied, notice of an appeal shall be served within 15 days after the receipt of notice of the denial of the motion.

§ 221.49 *Effect of failure to answer or appear.* No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the manager.

§ 221.50 *Notice of appeal to be in writing; failure to serve and file notice closes case.* (a) Such notice of appeal must be in writing, and set forth in clear, concise language the grounds of the appeal, in the form of specifications of error, which shall be separately stated and numbered; where error is based upon insufficiency of the evidence to justify the decision, in the assignment thereof the particulars wherein it is deemed insufficient must be specifically set forth in the notice. All grounds of error not assigned or noticed and argued in the brief will be considered as waived.

(b) Upon failure to serve and file notice of appeal as provided in §§ 221.47 to 221.49 the case will be closed.

§ 221.51 *Effect of failure to move for new trial or appeal.* (a) When any party fails to move for a new trial or to appeal from the decision of the manager within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of fraud or gross irregularity.

(b) No case will be remanded for any defect which does not materially affect the aggrieved party.

§ 221.52 *Manager to keep all documents on file.* All documents received by the manager must be kept on file and the date of filing noted thereon; no papers will, under any circumstances, be removed from the files or from the custody of the manager, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

COSTS AND APPORTIONMENT THEREOF

§ 221.53 *Costs to preference-right and other claimants.* A contestant claiming preference right of entry under the second section of the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185), must pay the costs of contest. In other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses; the cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

§ 221.54 *Excessive costs.* Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

§ 221.55 *Cost to settlers.* Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the homestead, or desert-land laws by virtue of settlement and improvement without reference to the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185) the costs of contest will be imposed as prescribed in the second sentence of § 221.53.

CROSS REFERENCES: See the following parts in this chapter: For homesteads, Alaska, Parts 65, 66; for homesteads, generally, Parts 166–170; for soldiers' and sailors' homestead rights, Part 181; for desert-land entries, Part 232.

§ 221.56 *Cost chargeable by managers.* The only cost of contest chargeable by managers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

§ 221.57 *Security for costs.* Managers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

§ 221.58 *Return of excess deposit.* Upon the filing of the transcript of the testimony in the land office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

§ 221.59 *Cost to Government.* When hearings are ordered on behalf of the Government all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by § 221.53.

§ 221.60 *Collection of costs.* The costs provided for by the preceding rules will be collected by the manager when the parties are brought before him in obedience to the order for hearing.

NOTICES

§ 221.61 *Preparation and service of notices.* All notices and other papers not required to be served by the manager must be prepared and served by the respective parties.

§ 221.62 *Manager to make provision for notices not specifically provided for.* The manager will require proper provision to be made for such notices not specifically provided for in the rules in this part as may become necessary in

the usual progress of the case to final decision.

APPEAL FROM DECISION REJECTING APPLICATION TO ENTER PUBLIC LANDS

§ 221.63 *Action by manager to facilitate appeals.* To facilitate appeals from his action relative to applications to file, enter, or locate upon the public lands, the manager will:

(a) Endorse upon every rejected application the date of presentation and reasons for rejection.

(b) Promptly advise the party in interest of the action and of his right of appeal.

(c) Note upon his records a memorandum of the transaction.

§ 221.64 *When notice of appeal must be filed; form of notice.* The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the land office. The notice of appeal, when filed, will be forwarded to the Bureau of Land Management with full report upon the case, which should recite all the facts and proceedings had and must embrace the following particulars:

(a) The original application, with reasons for the rejection thereof.

(b) Description of the tract involved and statement of its status, as shown by the records of the land office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

SUBPART B—PROCEEDINGS BEFORE THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT AND SECRETARY OF THE INTERIOR

EXAMINATION AND ARGUMENT

§ 221.66 *Notice of orders or decisions of the Director.* The Director will cause notice to be given to each party in interest whose address is known of any order or decision affecting the merits of the case or the regular order of proceedings therein.

§ 221.67 *When additional evidence will be considered.* No additional evidence will be admitted or considered by the Director unless offered under stipulation of the parties or in support of a mineral application or protest: *Provided, however,* That the Director may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the Director will not be considered in finally determining any controversy upon the merits.

§ 221.68 *When action will be taken by the Director.* After receipt of the record by the Director 30 days will be allowed to expire before any action is taken thereon, unless, in the judgment of the Director, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do: *Provided,* That where no appeal has been filed the case may be immediately considered and disposed of.

§ 221.69 *Effect of failure to file brief.* If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the Director therefor.

§ 221.70 *When oral argument may be presented.* In the discretion of the Director, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

REHEARINGS

§ 221.71 *Motion for rehearing not allowed.* No motion for rehearing of any decision rendered by the Director of the Bureau of Land Management will be allowed.

MOTIONS

§ 221.72 *Action on motions; consideration of additional evidence.* (a) No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

(b) In ex parte cases, where the entryman has been allowed by the Director to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the Director shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the Secretary as in other cases.

APPEAL FROM THE DIRECTOR TO THE SECRETARY

§ 221.73 *When appeal may be taken to the Secretary of the Interior.* In any proceeding relating to the public lands, an appeal may be taken to the Secretary of the Interior from a final decision of the Director, except from a decision of the Director which, prior to promulgation, has been approved by the Secretary, the Under Secretary, or an Assistant Secretary of the Interior.

(R. S. 161, 2478; 5 U. S. C. 22, 43 U. S. C. 1201)

§ 221.74 *Effect of failure to appeal from adverse decision of manager.* No appeal shall be had from the action of Director affirming the decision of the manager in any case where the party adversely affected shall have failed to appeal from the decision of said manager.

§ 221.75 *Notice of appeal to Secretary.* (a) An aggrieved person desiring to appeal to the Secretary of the Interior from a decision rendered by the Director of the Bureau of Land Management must, within 30 days from the date of the service upon such person or his authorized representative of notice of the Director's decision, file a notice of appeal with the Director, Bureau of Land Management, Department of the Interior, Washington 25, D. C.

(b) A notice of appeal shall set forth clearly and concisely the grounds upon which the appellant contends that the Director's decision is erroneous.

(c) If the Director's decision indicates that any other person has an interest in the proceeding adverse to the appellant, the appellant shall, within the 30-day period prescribed in paragraph (a) of this section (or such further period as may be allowed by the Secretary or his representative for good cause shown), file a certificate showing that a copy of the notice of appeal has been served personally upon or mailed to each such person or his authorized representative. If the certificate accompanies the notice of appeal, it shall be filed with the Director of the Bureau of Land Management. Otherwise, it shall be filed with the Solicitor, Department of the Interior, Washington 25, D. C.

(d) An appeal shall be subject to summary dismissal for failure to comply with any of the requirements prescribed in this section.

§ 221.76 *Filing of briefs.* (a) Within 20 days after filing a notice of appeal (or within such further period as may be allowed by the Secretary or his representative for good cause shown), the appellant may file with the Solicitor, Department of the Interior, Washington 25, D. C., a brief in support of his appeal. If any other person has an interest in the proceeding adverse to the appellant, the brief shall be accompanied by a certificate showing that a copy of the brief has been served personally upon or mailed to each such person or his authorized representative.

(b) Within 20 days after personal service upon or 25 days after the date of the mailing of the appellant's brief to an adverse party (or within such further period as may be allowed by the Secretary or his representative for good cause shown), the adverse party may file a reply brief with the Solicitor, Department of the Interior, Washington 25, D. C. The reply brief shall be accompanied by a certificate showing that a copy of the reply brief has been served personally upon or mailed to the appellant or his authorized representative.

ORAL ARGUMENT BEFORE THE SECRETARY

§ 221.77 *When oral argument will be allowed.* Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the Secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour, unless an extension of time is ordered before the argument begins.

SUPERVISORY POWER OF THE SECRETARY

§ 221.78 *Power of Secretary.* In proceedings before the Secretary of the Interior, the same rules shall govern, insofar as applicable, as are provided for proceedings before the Director of the Bureau of Land Management, but no rule of practice shall be construed to deprive the Secretary of any power conferred upon him by law.

ATTORNEYS

§ 221.79 *Regulations governing attorneys.* Every attorney, before practicing before the Department of the Interior and its bureaus, must comply with the

requirements of the regulations prescribed by the Secretary of the Interior pursuant to section 5 of the act of July 4, 1884 (23 Stat. 101; 5 U. S. C. 493).

CROSS REFERENCE: For regulations relating to practitioners, see Part 1 of this title.

§ 221.80 *Service on attorney.* (a) In all cases where any party is represented by attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

(b) Where a party is represented by more than one attorney, service of notice or other papers upon one of said attorneys shall be sufficient.

§ 221.81 *Name and address of attorney and client required.* No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and post-office address and the name and post-office address of the party whom he represents.

§ 221.82 *Attorney allowed access to records.* Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the Department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

§ 221.83 *Verbal or other inquiries.* Verbal or other inquiries by parties or counsel directed to any employee of the Department, except the Director, Associate Director, Executive Officer or Staff Officers of the Bureau of Land Management, or the Secretary, Under Secretary or Assistant Secretaries, the Solicitor, or Associate or Assistant Solicitors or members of the Board of Appeals, or with the consent of one or more of said officers, is expressly forbidden.

§ 221.84 *Cause for disbarment proceedings.* Abuse of the privilege of examining records of the Department or violation of the foregoing rule by any attorney will be treated as sufficient cause for institution of disbarment proceedings.

CROSS REFERENCE: For requirements on the first appearance of a practioner in any matter, see § 1.7 of this title; for notice to practitioner in a case where there is no land office in the State in which the land involved is situated, see § 220.12 of this chapter.

§ 221.85 *Attorneys and agents not disqualified to act as notaries in public land cases in which they may be interested.* In view of section 3 of the act of June 3, 1948 (62 Stat. 301), attorneys and agents in public land cases who are also notaries public are no longer disqualified under section 1–501 D. C. Code from taking acknowledgments, administering oaths, certifying papers or performing any official acts as notaries in such matters.

SERVICE OF NOTICES

§ 221.86 *Time allowed for service.* (a) Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notice or other papers by mail from the Bureau of Land Management, except in case of notice to resident attorneys, in which case 1 day will be allowed.

(b) In computing time for service of papers under the rules in this part the first day shall be excluded and the last day included: *Provided,* That where the last day is a Sunday, a legal holiday, or half holiday such time shall include the next full business day.

§ 221.87 *When and how notice shall be served.* Notice of all motions and proceedings before the Director or Secretary, except as specified below, shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof.

§ 221.88 *Rules governing ex parte proceedings.* Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules prescribed in other cases, so far as the same are applicable. In such cases the Director or Secretary may, pursuant to application and upon good cause being shown therefor, permit additional evidence to be presented for the purpose of curing defects in the proofs of record.

INTERVENTION

§ 221.89 *Application to intervene.* No person shall be allowed to intervene in any case except upon application therefor, under oath, showing his interest therein.

SUBPART C—GENERAL

HOW TRANSFEREES AND ENCUMBRANCERS MAY ENTITLE THEMSELVES TO NOTICE OF CONTEST OR OTHER PROCEEDINGS

§ 221.90 *Notice to be filed in district land office.* Transferees and encumbrancers of land the title to which is claimed or is in process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or encumbrance must be forthwith noted upon the records of the land office. Thereafter such transferee or encumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

ACKNOWLEDGMENT OF THE FILING OF APPLICATIONS AND OTHER PAPERS

§ 221.91 *When receipt of papers will be acknowledged.* The Secretary and the Director of the Bureau of Land Management will not acknowledge the receipt of papers forwarded by mail, but if a prepared receipt is forwarded to a land office with any paper the manager will sign and return the receipt to the party who forwarded the same, after inserting the date and the serial number.

NOTICE OF PREFERENCE RIGHT

§ 221.92 *Procedure where preference right is awarded; fee to manager.* Where preference right of entry is awarded under section 2 of the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185), the manager will, after service of notice of such right upon contestant and the expiration of the 30 days allowed for exercise thereof, cause the evidence of service to be filed with the canceled entry record. A fee of $1 for giving such notice must be tendered to the manager of the land office before any application for the land will be approved.

PART 222—GOVERNMENT CONTESTS

PROCEEDINGS IN CONTESTS INITIATED BY THE GOVERNMENT

Sec.

222.1 Purpose of Government contests.
222.2 Report of the State Supervisor affecting the validity or legality of an entry or claim.
222.3 Service of notice of charges.
222.4 Form and contents of notice.
222.5 When charges will be accepted as true.
222.6 Manner of service of notice.
222.7 Action by manager when hearing is requested.
222.8 Appearance by Government at hearing; conduct of hearing.
222.9 Procedure where claimant defaults.
222.10 Examination of witnesses; burden of proof.
222.11 Subpenas; preparation of case.
222.12 Decision by manager.
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222.14 Proceedings to be governed by the Rules of Practice.

AUTHORITY: §§ 222.1 to 222.14 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For general regulations relating to practice, see Part 220 of this chapter. For rules of practice, see Part 221 of this chapter. For witnesses, see Part 223 of this chapter.

§ 222.1 *Purpose of Government contests.* The purpose of contests initiated by the Government is to secure speedy action upon claims to the public lands, and to allow claimant, entryman, or other claimant of record, opportunity to file a denial of the charges against the entry or claim, and to be heard thereon if he so desires.

§ 222.2 *Report of the State Supervisor affecting the validity or legality of an entry or claim.* Upon receipt of a report of the State Supervisor, affecting the validity or legality of an entry, or claim, the manager will consider the same and determine therefrom whether the facts stated, if true, would warrant the rejection or cancellation of the entry or claim.

§ 222.3 *Service of notice of charges.* Should the charges, if not disputed, justify the rejection or cancellation of the entry or claim the manager will issue notice of such charges in the manner and form provided for in this part, which notice must be served upon the entryman and other parties in interest shown to be entitled to notice.

§ 222.4 *Form and contents of notice.* The notice must be written or printed and must state fully the charges; also the number of the entry or claim, subdivision of land involved, name of entry-

man or claimant or other known parties in interest.

§ 222.5 *When charges will be accepted as true.* The notice must also state that the charges will be accepted as true (a) unless the entryman or claimant files in the land office within 30 days from receipt of notice a written denial under oath, of said charges, with an application for a hearing, (b) or submits a statement of facts rendering the charges immaterial, (c) or if he fails to appear at any hearing that may be ordered in the case.

§ 222.6 *Manner of service of notice.* Notice of the charges may in all cases be served personally upon the proper party by any officer or person or by registered letter mailed to the last address of the party to be notified, as shown by the record, and to the post office nearest to the land. When it is necessary to serve notice on the unknown heirs of a person in interest, the same must be addressed to that person at his address of record and also at the post office nearest the land. Proof of personal service shall be the written acknowledgment of the person served or the affidavit of the person who served the notice, attached thereto, stating the time, place, and manner of service. Proof of service of notice by registered letter shall consist of the report of the manager who mailed the notices, accompanied by the post-office registry return receipts, or the returned unclaimed registered letters.

§ 222.7 *Action by manager when hearing is requested.* If a hearing is asked for, the manager will consider same and confer with the State Supervisor relative thereto and fix a date for the hearing, due notice of which must be given entryman or claimant. The above notice may be served by registered mail. By ordinary mail, a like notice will be sent to the State Supervisor.

§ 222.8 *Appearance by Government at hearing; conduct of hearing.* The Government must appear with its witnesses on the date and at the place fixed for said hearing, unless there is reason to believe that no appearance on behalf of the Government, will be required.

§ 222.9 *Procedure where claimant defaults.* If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or to submit a statement of facts rendering the charges immaterial, or fails to appear at the hearing ordered without showing good cause therefor, such failure will be taken as an admission of the truth of the charges and will obviate the necessity for the Government submitting evidence in support thereof, and the manager will forthwith close the case and notify the parties by registered mail of the action taken.

§ 222.10 *Examination of witnesses; burden of proof.* Upon the day set for the hearing and the day to which it may be continued the testimony of the witnesses for either party may be submitted, and both parties, if present, may examine and cross-examine the witnesses, under the rules, the Government to assume the burden of proving the charges, unless otherwise ordered.

§ 222.11 *Subpenas; preparation of case.* The State Supervisor will cause subpenas to be served upon the Government witnesses and take such other steps as are necessary to prepare the case for prosecution.

§ 222.12 *Decision by manager.* If a hearing is had, as provided in § 222.10, the manager will render his decision upon the record, giving due notice thereof in the usual manner. When decision is adverse to the Government, notice thereof must be sent to the State Supervisor.

§ 222.13 *Appeals by State Supervisor.* Appeals or briefs relating to managers' decisions, if filed, must be in accordance with the rules but need not be served upon the State Supervisor or Government representative in charge of the hearing. No appeals from decisions by the managers will be filed by the State Supervisor. However, the State Supervisor shall have the right of appeal from any decision by the Director of the Bureau of Land Management in favor of the contestee, and shall have the right to take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions.

CROSS REFERENCE: For regulations as to when appeal may be taken to the Secretary of the Interior, see § 221.73 of this chapter.

§ 222.14 *Proceedings to be governed by the Rules of Practice.* The proceedings required under this part will be governed by the Rules of Practice, Part 221 of this chapter. All notices served on claimants or entrymen must likewise be served upon transferees or mortgagees.

PART 223—WITNESSES

COMPULSORY ATTENDANCE OF WITNESSES BEFORE MANAGERS

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223.1 Manager to issue subpenas; form and service thereof.
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223.7 Act of January 31, 1903, not exclusive in its operation.
223.8 Subpena not effective outside of county in which served; witnesses' fees.
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223.11 Fees payable to witness who testifies on request, without issuance of subpena.
223.12 Clerical assistance and fees of officer taking deposition.
223.13 Use of employees as witnesses in a private contest case.

AUTHORITY: §§ 223.1 to 223.13 issued under R. S. 2478; 43 U. S. C. 1201.

§ 223.1 *Manager to issue subpenas; form and service thereof.* (a) The first section of the act of January 31, 1903 (32 Stat. 790; 43 U. S. C. 102), authorizes and empowers the manager to issue subpenas directing the attendance of witnesses at hearings to be held before him; and requires such witnesses, when duly served as herein provided, in the county wherein the land office is situated, to attend in obedience to the summons.

(b) Managers, when requested in writing, by either party to a cause pending before them, will issue a subpena for such witnesses as the applicant may desire to testify in his behalf at such hearing.

(c) The subpena may be in the following form:

THE UNITED STATES OF AMERICA.

To_____

You are hereby commanded to be and appear before_____ at _____ office, in _____, in the county of _____ State (or Territory) of _____, at the hour of ___ m. on the _____ day of _____, 19__, to testify in behalf of _____ at a hearing, to be then and there held, wherein _____ is _____ and _____ is _____, and herein fail not at your peril.

Issued this _____ day of _____, 19____.

_____
_____

(d) The service of the subpena and proof of the same is provided in said section will devove upon the party in whose behalf the subpena is issued, and the officer issuing the same shall deliver to such party the original and a copy of the same for each witness named therein. No fee is provided for the manager for issuing such process.

§ 223.2 *Notice to be attached to copy of each subpena served.* There shall be furnished to each witness with the copy of the subpena delivered to him a copy of the following statement:

A witness can not be compelled under the subpena, copy of which is attached, to appear outside of his own county, and if he does so appear, can claim mileage in but one county; the county where the district land office is located if he appears before that office, and the county of his residence if he appears before another officer. Any witness who is served with a subpena directing him to appear at a place outside of his own county will please notify _____, the regional administrator.

§ 223.3 *Fees of witnesses.* Section 2 of the act of January 31, 1903 (32 Stat. 790; 43 U. S. C. 103) provides that the fees and mileage of witnesses attending before managers shall be the same as that provided by law in the district courts of the United States for the district in which the land office is situated and gives to the witness the right to receive the fee for 1 day's attendance and mileage in advance, and also entitles him to receive his fee for attendance in advance from day to day during the hearing. Such payments must be made by the respective parties to the hearing in whose behalf the witness is subpenaed, except in cases in which the United States is a party.

NOTE: The fees and mileage of witnesses in the District of Alaska were fixed, effective Feb. 1, 1945, by Department of Justice Order 3299, Supplement 1, Jan. 8, 1945; 28 CFR 21.3.

§ 223.4 *Punishment where obedience to subpena is neglected or refused.* Section 3 of the act of January 31, 1903 (32

Stat. 790; 43 U. S. C. 104), fixes the punishment to which persons are liable who willfully neglect or refuse obedience to such subpena, and provides the method of enforcing the same, which shall be by indictment in the district court of the United States or in the district courts of the Territories exercising the jurisdiction of circuit courts of the United States.

§ 223.5 *Depositions; fees of witnesses.* (a) Section 4 of the act of January 31, 1903 (32 Stat. 790; 43 U. S. C. 105), authorizes any party to the proceedings to take the testimony of any witness, who resides outside of the county in which the hearing occurs, by deposition, which, upon 10 days' previous notice, may be taken before any United States commissioner, notary public, judge or clerk of a court of record in the county where the witness resides. In such case the party desiring to take the deposition will be required to file with the manager an affidavit setting forth the name and the address of the witness; that he resides outside the county in which the land office is situated, and that for such reason he desires to take the testimony of the witness named, in the form of a deposition. Whereupon it shall be the duty of the manager to enter an order designating the time and place at which such deposition will be taken, and to issue a commission to some officer designated by this act to take the same. In such case either the manager or the officer before whom the deposition is to be taken is authorized to issue subpena for the witness, using substantially the form prescribed in § 223.1 and disobedience thereof as defined in the act is punishable as in case of violation of a subpena to appear before the manager. Witnesses attending before such officers are entitled to the same fees and mileage and payable in the same manner as if they appeared before the manager at the land office, and the fees of the officer taking such deposition will be the same as those allowed to such officers respectively for taking depositions to be used in the State or Territorial courts. Such fees are to be paid by the party taking the deposition, and the officer taking the same is required to attach thereto an itemized account of the fees charged and collected. However, for depositions in hearings provided for by the act of February 14, 1931 (46 Stat. 1118; 43 U. S. C. 23) the fees of the officer taking them are fixed by said act at 25 cents per folio for taking and certifying same and 5 cents per folio for each copy furnished to a party on request.

(b) It will be the duty of the manager to see that this requirement is observed.

§ 223.6 *Depositions before same officer by opposite party.* (a) Section 5 of the act of January 31, 1903 (32 Stat. 791; 43 U. S. C. 106), extends to the opposite party the right to take depositions before the same officer, at once upon the conclusion of the first depositions; and he is entitled to have his witnesses summoned in like manner and subject to the same conditions as his antagonist: *Provided*, That notice of the intention to take such testimony is given to the opposite party, his agent or attorney, "before taking of the depositions in the first instance is entered upon."

(b) To aid in enforcing the punitive provisions of this act, in issuing a commission to take testimony the manager will instruct the commissioner to make special return to him of the name of any witness who, after service, has failed, under the provisions of § 223.4, to respond to the subpena, and the manager will make prompt report to the United States district attorney of the proper district, of the names of each party or parties as well as of those who have been duly summoned have failed to appear before the manager to the end that he may take such action in the premises as the law requires.

§ 223.7 *Act of January 31, 1903, not exclusive in its operation.* The act of January 31, 1903 (32 Stat. 790; 43 U. S. C. 102–106), is not exclusive in its operation to the extent of abolishing the existing methods, under the rules, by which the attendance of witnesses may be secured or their testimony taken by deposition; and parties may elect to use either method of procedure. But should they think proper to proceed under the existing Rules of Practice, Part 221 of this chapter and fail to secure the attendance of their witnesses, they will not be entitled to a continuance.

§ 223.8 *Subpena not effective outside of county in which served; witnesses' fees.* No witness can be compelled to appear before the land office or any other officer outside the county in which the subpena may be served, and no mileage fees should be demanded or paid except for distance necessarily traveled by the shortest usually traveled route between the land office and points in the same county, or, when depositions are taken, between points in the county of the witness's residence; nor should any attendance fee be allowed or paid a witness for time consumed in going to or returning from the place where the hearing is held or deposition taken.

§ 223.9 *Assessment by manager of fees where witness appears in more than one case at same time, between same parties.* Where the same person appears as a witness in more than one case at the same time, between the same parties, the manager should tax the mileage fees to be received by him as costs in the first case in which action is taken, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of. In the event that a witness testifies in more than one case between the same parties on the same day, he is entitled to but one per diem fee.

§ 223.10 *Fees to which witness is entitled; one subpena where several cases are before same officer.* Under the provisions of 28 U. S. C. 1821, a witness is entitled to receive the amount allowed thereby for each day's attendance before the officer taking the testimony, in each case in which he may have been in attendance pursuant to law, regardless of the fact that he may have been in attendance as a witness in more than one case before the same officer at the same time. This is a general rule applicable to all cases and to all parties. Each witness who attends a hearing before a United States land office is entitled to receive the mileage provided by law for the distance actually and necessarily traveled within the county in which such land office is located. Each witness whose deposition is taken under section 4 of the act of January 31, 1903, is entitled to mileage for the distance actually and necessarily traveled within the county of his residence. In cases where a witness is required to be in attendance in more than one case before the same officer at the same time or on successive days, one subpena only should be issued, and the cases in which his presence is desired should be particularly designated therein.

§ 223.11 *Fees payable to witness who testifies on request, without issuance of subpena.* Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy, or at the request of the attorney or duly authorized agent of such party, without having been subpenaed to so attend, should receive the same mileage and attendance fees to which he would have been entitled if he had been first duly subpenaed as a witness on behalf of such party.

§ 223.12 *Clerical assistance and fees of officer taking deposition.* Where a commission is issued to an officer to take depositions it is his duty to provide for the necessary clerical services to comply with such commission, at his own expense, and he is entitled to the fees allowed by law for taking depositions.

§ 223.13 *Use of employees as witnesses in a private contest case.* For testimony of employees and use of books, records and files in judicial and administrative proceedings, see §§ 2.6 and 2.20 of this title.

SUBCHAPTER O—RECLAMATION AND IRRIGATION

PART 230—RECLAMATION OF ARID LANDS BY THE UNITED STATES

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230.121 Entries subject to taxation; tax-title claimants; prior lien of United States; extinguishment of lien.

AUTHORITY: §§ 230.1 to 230.121 issued under sec. 10, 32 Stat. 390, as amended; 43 U. S. C. 373.

CROSS REFERENCES: For Bureau of Reclamation, see Chapter II of this title. For desert-land entries, see Part 232 of this chapter. For Flathead irrigation project, Montana, see Part 233 of this chapter. For general orders of withdrawal, effect of, see footnote to Part 295 of this chapter. For reclamation of arid lands in Nevada, see Part 234 of this chapter. For State irrigation districts, see Part 231 of this chapter. For agricultural conservation, see Agriculture, 7 CFR Chapter XI. For construction costs of Indian irrigation projects, see Indians, 25 CFR Parts 141, 144, 147. For electrification of Indian irrigation projects, see Indians, 25 CFR Part 131. For inclusion of liens in all patents and instruments executed in Indian irrigation projects, see Indians, 25 CFR Part 151. For operation and maintenance of Indian irrigation projects, see Indians, 25 CFR Parts 91, 94, 97, 100, 103, 106, 121, 124, 127, 130. For sale of irrigable Indian lands, see Indians, 25 CFR Part 154.

GENERAL STATEMENT

§ 230.1 *Effect of reclamation withdrawals.* Section 3 of the act of June 17,

1902 (32 Stat. 388; 43 U. S. C. 416), provides for the withdrawal of lands from all disposition other than that provided for by said act. Since the passage of the act of June 25, 1910 (36 Stat. 835; 43 U. S. C. 436, 437), lands withdrawn as susceptible of irrigation are open to settlement or entry only when approved farm-unit plats have been filed and water is ready to be delivered to the land in said farm units or some part thereof and such fact has been announced by an authorized officer, except as provided by the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U. S. C. 436, 437). Where settlements had been effected in good faith prior to June 25, 1910, on lands embraced within second-form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law. The Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto are hereinafter referred to generally as the reclamation law.

§ 230.2 *When withdrawn lands not shown on farm-unit plats may be reentered.* Under the provisions of the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U. S. C. 436, 437), the prohibition contained in section 5 of the act of June 25, 1910, forbidding settlement on or entry of lands reserved for irrigation purposes prior to the approval of farm-unit plats and the announcement of the fact that water is ready to be delivered to the land, is set aside as to lands included in entries made prior to June 25, 1910, where such entries have been or may be relinquished in whole or in part.

§ 230.3 *Provisions governing reentries.* Settlement and entry of such lands will be allowed subject to the provisions of the homestead law and the reclamation law in the same manner as for other lands subject to entry within reclamation projects except that the certificate of the official in charge of the project that water-right application has been made and charges deposited, which must be filed in the ordinary case, is not required. (See § 230.5) The lands must have been covered by a valid entry prior to June 25, 1910, and shall only be subject to entry under the provisions of the present act in cases where a relinquishment of the former entry has been or shall be filed.

§ 230.4 *When reentry may be made.* Entries are permitted under the act of February 18, 1911, as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U. S. C. 436, 437), upon the relinquishment of an entry made prior to June 25, 1910, and the right to enter such land is not limited to one or more entries or entrymen. (Lena Hektner, 42 L. D. 462.) This act has no application where the cancellation of the entry made prior to June 25, 1910, was the result of a contest or of a relinquishment resulting from the same. (Fred V. Hook, 41 L. D. 67.) The act is also inapplicable in the case of lands withdrawn under the first form and has reference only to lands covered by second-form withdrawals. (Annie G. Parker, 40 L. D. 406.)

§ 230.5 *Homestead entries in reclamation projects.* Homestead entries of lands platted to farm units and covered by public notice are made practically in the same manner as the ordinary homestead entry and managers will allow homestead applications for such lands, if found regular, and accompanied by a certificate of the official in charge of the project showing that water-right application has been filed and the proper water-right charges deposited and that the applicant has qualified under subsection C of section 4 of the act of December 5, 1924 (43 Stat. 702; 43 U. S. C. 433). No application to make homestead entry of lands within a reclamation project and covered by public notice will be received unless accompanied by such certificate of the official in charge. Where under the reclamation law lands within the reclamation project are subject to entry notwithstanding public notice covering said lands has not yet issued, such certificate of the official in charge is not required, and in such cases the application, if otherwise regular, will be received and entry allowed. The manager will immediately notify the official in charge of each entry allowed, stating whether the entry was allowed with or without the certificate of the official in charge above referred to.

CROSS REFERENCE: For lands in State irrigation districts, see Part 231 of this chapter.

§ 230.5a *Mortgage loans on existing reclamation homestead entries; reclamation homestead applications for lands subject to a mortgage lien held by the United States acting through the Secretary of Agriculture; occupancy of the land.* (a) A reclamation homestead entryman or a recognized assignee thereof desiring a loan on an existing reclamation homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C., Supp III secs. 1006a, 1006b), should consult the Farmers Home Corporation of the Department of Agriculture and the Bureau of Reclamation of the Department of the Interior.

(b) Where a reclamation homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land would be subject to reclamation homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished. An applicant for such land should first consult the Farmers Home Corporation and the Bureau of Reclamation. Such a reclamation homestead application must not be filed in the land office until the applicant has been selected by the Farmers Home Corporation and the Bureau of Reclamation, and he has been directed by the Farmers Home Corporation to file the application.

(c) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the reclamation homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(d) Decisions canceling reclamation homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the reclamation or homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(e) If the land in a relinquished or canceled reclamation homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled reclamation homestead entry was closed, the land will become subject to disposition by the Secretary of Agriculture.

§ 230.5b *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

§ 230.6 *Commutation not allowed; conformation to farm units.* Reclamation entries are not subject to the commutation provisions of the homestead law, and on the determination by an authorized officer of the Department of the Interior that the proposed irrigation project is practicable, the entries made prior to June 25, 1910, and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the authorized officer, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas.

SUBDIVISION OF FARM UNITS

§ 230.7 *Conditions justifying subdivision.* An entry may be made of part of an established farm unit (a) when the remaining portion of said unit is also desired for entry simultaneously by another person and is, in the judgment of the official in charge of the project, sufficient, if carefully managed, to return to the reclamation fund the charges apportioned to the irrigable area thereof, or (b) can be advantageously included as part of an established farm unit, or (c) can in combination with existing farm units be advantageously replatted into new farm units, each sufficient, if carefully managed, to support a family and return to the reclamation fund the charges apportioned to the irrigable area of the several new farm units.

§ 230.8 *Amendments of farm units.* Where it is desired to make entry of part only of a farm unit, an application for the amendment and subdivision of such unit should be filed with the official in charge of the project. If such subdivision is rectangular and survey is not required to determine the division of the irrigable area of the farm unit as proposed to be divided, no charge will be made. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit or the division of the irrigable area, the official in charge will proceed as directed in § 230.32. Upon such application being

filed, the official in charge will either approve or disapprove the same, and, if approved, proceed as directed in § 230.33.

§ 230.9 *Farm-unit plats; public notice.* The farm units may be as small as 5 acres where the lands are suitable for fruit raising, etc., but as a rule they are fixed at from 40 to 160 acres each. These areas are announced on farm-unit plats, and public notice stating the amount of the charges and other details concerning payment is issued by the authorized officer. Until this public notice is issued it is impossible in most respects to give definite information as to any particular tract or as to the details intended to be covered by such notice.

WITHDRAWALS AND RESTORATIONS

§ 230.10 *Withdrawals.* The withdrawal of these lands at first is principally for the purpose of making surveys and irrigation investigations in order to determine the feasibility of the plans for irrigation and reclamation proposed. Only a portion of the lands will be irrigated, even if the project is feasible, but it will be impossible to decide in advance of careful examination what lands may be watered, if any, and the mere fact that surveys are in progress is no indication whatever that the works will be built. It cannot be determined how much water there may be available or what lands can be covered or whether the cost will be too great to justify the undertaking until the surveys and the irrigation investigations have been completed.

§ 230.11 *Forms of withdrawal.* There are two classes of withdrawals authorized by the act, one commonly known as "withdrawals under the first form," which embraces lands that may possibly be needed in the construction and maintenance of irrigation works, and the other commonly known as "withdrawals under the second form," which embraces lands not supposed to be needed in the actual construction and maintenance of irrigation works, but which may possibly be irrigated from such works.

§ 230.12 *Effect of withdrawals under first form.* After lands have been withdrawn under the first form they can not be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied. Any withdrawal otherwise valid shall not be affected by failure to note same on tract book or otherwise follow usual procedure. (42 L. D. 318.) Lands cannot be examined at the instance of individuals prior to the completion of construction to determine whether particular lands will be irrigable. (42 L. D. 8)

CROSS REFERENCE: For mineral locations and entries in reclamation withdrawals, see § 185.36 of this chapter.

§ 230.13 *Acquisition of lands for irrigation works.* If any lands embraced in any unapproved or uncertified selection are needed in the construction and maintenance of any irrigation works (other than for right-of-way for ditches or canals reserved under act of August 30, 1890, 26 Stat. 391; 43 U. S. C. 945) under the reclamation law, payment therefor will be made upon agreement of the owner with the representative of the Government as to the value of the land and the improvements thereon. Where the owner of the land and the representative of the Government fail to agree as to the amount to be paid therefor, the same shall be acquired by condemnation proceedings under judicial process, as provided by section 7 of the Reclamation Act of June 17, 1902 (32 Stat. 389; 43 U. S. C. 421).

CROSS REFERENCE: For regulations concerning rights-of-way for ditches or canals, see Part 244 of this chapter.

§ 230.14 *Effect of withdrawals under second form.* Lands withdrawn under the second form and becoming subject to entry in the manner provided by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U. S. C. 436, 437), can be entered only under the homestead laws and subject to the provisions, limitations, charges, terms, and conditions of the reclamation law, and all application to make selections, locations, or entries of any other kind on such lands should be rejected, except that where settlement rights were acquired to the withdrawal and have been diligently prosecuted and the homestead law complied with, the settler will be entitled to make and complete his entry subject to all the charges, terms, conditions, limitations, and provisions of the reclamation law. (See Sarah E. Allen, 44 L. D. 331.) No person will be permitted to gain or exercise any right whatever under any settlement or occupation begun after withdrawal of the land from settlement and entry.

§ 230.15 *Completion of claims initiated prior to withdrawals; reservation for ditches or canals.* Withdrawals made under either of these forms do not defeat or adversely affect any valid entry, location, or selection which segregated and withheld the lands embraced therein from other forms of appropriation at the date of such withdrawal; and all entries, selections, or locations of that character should be permitted to proceed to patent or certification upon due proof of compliance with the law in the same manner and to the same extent to which they would have proceeded had such withdrawal not been made. All lands, however, taken up under any of the land laws of the United States subsequent to October 2, 1888, are subject to rights-of-way for ditches or canals constructed by authority of the United States (act of Aug. 30, 1890, 26 Stat. 391; 43 U. S. C. 945). All entries made upon the lands referred to are subject to the following proviso of the act cited:

> That in all patents for lands hereafter taken up under any of the land laws of the United States, or on entries or claims validated by this Act, west of the one hundredth meridian, it shall be expressed that there is reserved from lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

§ 230.16 *Appropriation of land for ditches or canals.* Should a homestead entry embrace land that is needed in whole or in part for purposes contemplated by said proviso in the act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 945) the land would be taken for such purpose, and the entryman would have no claim against the United States for the same.

§ 230.17 *Effective dates of withdrawals and restorations.* All withdrawals become effective on the date upon which they are ordered and all orders for restorations on the date they are received in the land office unless otherwise specified in the order. (George B. Pratt et al., 38 L. D. 146.)

CROSS REFERENCE: For withdrawals and restorations, see Part 295 of this chapter.

§ 230.18 *Withdrawal effective upon cancellation of entry.* Upon the cancellation of an entry covering lands embraced within a withdrawal under the Reclamation Act such withdrawal becomes effective as to such lands without further order. (See Cornelius J. MacNamara, 33 L. D. 520.) Such lands under first-form withdrawal cannot therefore, so long as they remain so withdrawn, be entered or otherwise appropriated, either by a successful contestant or any other person.

CROSS REFERENCE: For cancellations, see Part 105 of this chapter.

§ 230.19 *Effect of filing of farm-unit plats.* Where an authorized officer by the approval of farm-unit plats has determined, or may determine, that the lands designated thereon are irrigable, the filing of such plats in the Bureau of Land Management and in the land offices is to be regarded as equivalent to an order withdrawing such lands under the second form, and as an order changing to the second form any withdrawals of the first form then effective as to any such tracts. This applies to all areas shown on the farm-unit plats as subject to entry under the provisions of the reclamation law or as subject to the filing of water-right applications, and to all farm units to which an authorized officer has announced that water is ready to be delivered.

CROSS REFERENCE: For the Bureau of Reclamation regulations relating to the filing of farm-unit plats, see Part 401 of this title.

§ 230.20 *Improvements made prior to conformation of entry; area of farm unit.* Inasmuch as every entry made under the reclamation law is subject to conformation to an established farm unit, improvements placed upon the different subdivisions by the entryman prior to such conformation are at his risk. (Jerome M. Higman, 37 L. D. 718.) They should be confined to one legal subdivision until the entry is conformed. In readjusting such an entry the authorized officer is not required to confine the farm unit to the limits of the entry, but may combine any legal subdivision thereof with a contiguous tract lying outside of the entry, so as to equalize in value the several farm units. (Idem.) The act of June 27, 1906 (34 Stat. 519; 43 U. S. C. 434), authorizes the Secretary of the Interior to fix a lesser area than 40 acres as a farm unit when, "by reason of market conditions and special fitness of the

soil and climate for the growth of fruit and garden produce, a lesser area than 40 acres may be sufficient for the support of a family" or when necessary "in order to provide for practical and economical irrigation."

CROSS REFERENCE: For conformation to farm units, see § 230.30.

ADDITIONAL ENTRIES

§ 230.21 *Limitation on entry.* A person who has made homestead entry for any area within a reclamation project, cannot make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry within a reclamation project, as every entry within a project is either made for or is subject to conformation to a farm unit, which is the equivalent of a homestead entry of 160 acres of land outside of a reclamation project. (38 L. D. 58)

EXCHANGES; ACT OF MARCH 4, 1915[1]

§ 230.22 *Applications for exchange.*[2] The act of March 4, 1915 (38 Stat. 1215; 43 U. S. C. 447), provides for the exchange of lands included in pending entries, for other lands in the same project, under certain conditions. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must refer to the serial number and give the description of the former entry, and must be accompanied by a relinquishment of the former entry and a statement by the applicant showing the facts upon which he claims to be entitled to the provisions of this act.

§ 230.23 *Conditions permitting exchange.* The act of March 4, 1915, permits a new entry only where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land has been designated as a farm unit. Any such farm unit entered under this act will be subject to conformation to a new farm unit, in the discretion of the Department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat. 388), and acts supplemental thereto and amendatory thereof.

CONTESTS

§ 230.24 *Rights of successful contestants.* An entry embracing lands included within a first- or second-form reclamation withdrawal, whether such entry was made before or after the date of such withdrawal, may be contested and canceled because of entryman's failure to comply with the law or for any other sufficient reason, except that for failure to pay the construction charges or charges for operation and maintenance no contest will lie, and any contestant who secures the cancellation of such entry and pays the land-office fees occasioned by his contest will be awarded a preferred right of making entry. Should the land embraced in the contested entry be within a reclamation withdrawal at time of successful termination of the contest, the preferred right may prove futile, for it cannot be exercised as long as the land remains so withdrawn, but should the lands involved be restored to the public domain or a farm-unit plat be approved for the lands and announcement made that water is ready to be delivered, the preference right may be exercised at any time within 30 days from notice of the restoration or the establishment of farm units. It should be the duty, however, of such contestant to keep the manager advised respecting his residence to which notice may be sent him of his preference right of entry in event of successful contest, when the land is subject to entry, and a notice mailed to his address, shown by the records of the district land office at the time of the mailing of the notice of preference right, will be held to meet the requirements of the act of May 14, 1880 (21 Stat. 140; 43 U. S. C. 185). No contest can be allowed, however, against any qualified entryman who prior to June 25, 1910, made bona fide entry upon lands proposed to be irrigated and who established residence in good faith upon the lands entered by him for failure to maintain residence or to make improvements upon his land prior to the time when water is available for its irrigation.

§ 230.25 *When contests are allowable.* Under the regulations in § 230.24 and in this section, the filing of contests will be allowed against homestead entries made subject to the reclamation law in the following cases:

(a) Where the entry was made on or after June 25, 1910.

(b) Where the entry was made prior to June 25, 1910, and it is alleged that the entryman failed to establish residence in good faith upon the lands entered by him.

(c) Where the entry was made prior to June 25, 1910, and a period of 90 days has elapsed since the issuance of public notice under section 4 of the Reclamation Act of June 17, 1902 (32 Stat. 389; 43 U. S. C. 419), fixing the date when water will be available for irrigation of the land.

(d) Where the entry was made prior to June 25, 1910, for any causes other than "failure to maintain residence or make improvements upon the land prior to the time when water is available."

LEAVE OF ABSENCE; ACT OF JUNE 25, 1910

§ 230.26 *Showing required.* Applications for leave of absence should be duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirements of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof. The statement regarding the availability of water for irrigation must be corroborated by certificate of the official in charge of the project, to be filed with the application for leave.

§ 230.27 *Period of leave.* When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry.

§ 230.28 *Effect of granting leave.* Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this act is to protect the entry from contest for abandonment, and by the necessary implication of the act the period within which the entryman is required to submit final proof will be extended and the entry will not be subject to cancellation for failure to submit proof until the expiration of the period allowed in which to submit final proof, exclusive of the period for which leave of absence may be granted. Under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U. S. C. 445), no qualified entryman for lands within a reclamation project whose entry was made prior to June 25, 1910, and who established residence in good faith upon the lands so entered shall be subject to contest for failure to maintain residence or make improvements upon his land prior to the time public notice is issued fixing the water-right charges and announcing that water is available for the irrigation of the land embraced in his entry. Within 90 days after the issuance of public notice under section 4 of the act of June 17, 1902 (32 Stat. 389; 43 U. S. C. 419), fixing the water-right charges and announcing the date when water will be available for irrigation, the entryman must file water-right application for the irrigable land in his entry in conformity with the public notice and farm-unit plat, and must file in the land office a statement showing

[1] Other exchanges within reclamation projects, under certain conditions, have been authorized, as indicated below:

(a) Subsection M, section 4 of the act of December 5, 1924 (43 Stat. 703; 43 U. S. C. 438) provides for the exchange of unpatented entries on the same or another reclamation project, in the same State.

(b) Section 44 of the act of May 25, 1926 (44 Stat. 648; 43 U. S. C. 423c) authorizes exchanges of unpatented entries and private lands for other public lands within the same project or any other Federal reclamation project.

(c) Departmental orders of May 10, 1922 and July 31, 1924, permit the exchange of unpatented and patented land and water-right entries under the act of January 25, 1917 (39 Stat. 868) in Part One, Mesa Division, Yuma Irrigation Project, Arizona.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

that he has reestablished his residence on the land with the intention of maintaining the same for a period sufficient to enable him to make final proof.

ASSIGNMENTS

§ 230.29 *When assignments and partial assignments may be made.* Under the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), persons who have made or may make homestead entries subject to the reclamation law may assign their entries in their entirety at any time after filing in the land office satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act also provides for the assignment of homestead entries in part, but such assignments, if made after farm units are established, must conform thereto, except as provided in §§ 230.34 to 230.37.

§ 230.30 *Election where entry involves two or more farm units.* In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. He may also assign parts of farm units included in his entry, provided the assignee has an entry covering or obtains an assignment of the remainder of such unit. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

§ 230.31 *Assignment of part of farm unit.* Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit should be filed with the official in charge of the project. The assignment, with accompanying showing of the assignee and assignor, must also be filed with the official in charge for his consideration.

§ 230.32 *Deposit for cost of survey.* If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the agent cashier, Bureau of Reclamation, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

CROSS REFERENCE: For surveys in general, see Part 260 of this chapter.

§ 230.33 *Amendatory farm-unit plats.* When the plats describing the amended farm units are approved, the official in charge of the project will forward copy of the amendatory plat, in duplicate, together with the assignment and accompanying showing by the assignor and the assignee to the land office. A copy of the amendatory plat should be at once forwarded by the official in charge to the Commissioner of the Bureau of Reclamation, at Washington, D. C., to be formally approved in the usual manner by authority of the Secretary.

§ 230.34 *Filing of instruments of assignment.* No assignment of a homestead entry or any part thereof shall be accepted by the manager, or recognized as valid for any purpose, until after the filing in the land office of the instruments required by § 230.31.

§ 230.35 *Showing required of assignor and assignee.* Assignments under the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441) are expressly made "subject to the limitations, charges, terms, and conditions of the Reclamation Act," and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all construction or building and betterment charges, each assignor must present a showing to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing that he is over 21 years of age, that he does not own or hold and is not claiming any other farm unit or entry under the reclamation law or one or more parcels of private land up to the limit of single ownership fixed for the project receiving water from the project system upon which all installments of construction or building and betterment charges have not been paid in full. If the assignee is a woman, it must be shown whether she is married or single, and if a married woman it must be shown that the assignment is purchased with her own separate money, in which her husband has no interest or claim. (39 L. D. 504, and Sadie A. Hawley, 43 L. D. 364.) These showings must be accompanied by evidence of the conveyance of the land, as indicated in § 230.36, and a further showing in the form of a certificate by the official in charge of the project that water-right application therefor is not receivable, or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment.

§ 230.36 *How assignments may be made.* Assignments may be effected by quitclaim or warranty deed or by any other form of conveyance in general use in the State in which the land is located, but a quitclaim or warranty deed is preferred. The original instrument of assignment, or where the instrument is recorded, a copy thereof certified by the officer who has custody of the record will be accepted. Where the original instrument of assignment is presented to an officer having an official impression seal, a copy of the instrument certified by such officer under his seal will be accepted if accompanied by satisfactory evidence of compliance with the documentary stamp tax provisions of the internal revenue law.

§ 230.37 *Procedure governing assignments.* In case of an assignment of a portion of an existing farm unit, if the evidence is found to meet the requirements of the law and regulations, the authorized officer of the Bureau of Land Management will so advise the Commissioner of the Bureau of Reclamation, who will then cause the issuance of an order amending the farm-unit plats so as to show new farm units in accordance with the assignment. Upon the approval of an assignment, the assignee will at the proper time make payment of the water-right charges and submit proof of reclamation as would the original entryman, and after proof of full compliance with the law, may receive a patent for the land.

MORTGAGES

§ 230.38 *Notice of interest by mortgagees.* Mortgagees of lands embraced in homestead or desert-land entries within reclamation projects may file in the land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the official in charge of the project in case of any lands, whether or not water-right application has been filed under the provisions of the act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.), including homestead entries, desert-land entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by an authorized officer against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied against such lands.

§ 230.39 *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest filed as provided in the preceding section must be forthwith noted upon the records of the official in charge of the project and of the land office, and be promptly reported to the Commissioner of the Bureau of Reclamation, where like notations will be made. Relinquishment of a homestead or desert-land entry or part thereof, within a reclamation project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein; nor will an assignment of such a homestead entry or part thereof under the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), nor an assignment of a mortgaged desert-land entry where the records show the land to have been mortgaged, be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

§ 230.40 *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the lands at foreclosure sale, such mortgagee-purchaser, whether a nonresident or corporation, may, at any time within 1 year after the end of the statutory period of redemption, if there be such statutory period, and if not, at any time within 1 year after such foreclosure sale, make proof of cultivation and reclamation of the land under section 1 of the act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541), and receive

final water-right certificate, provided such mortgagee-purchaser is otherwise qualified so to do. Water will be furnished said land, and no steps will be taken to cancel the water-right application on account of the holdings by the same mortgagee-purchaser of lands in excess of 160 acres, or the limit per single ownership of private land as fixed by an authorized officer for which a water right may be purchased, until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of the foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of such mortgagee-purchaser. To secure the benefits hereof the mortgagee purchasing the land at foreclosure sale must give notice thereof to the manager of the land office and to the officer in charge of the project within 60 days after such purchase.

WATER-RIGHT CHARGES

§ 230.41 *Cancellation of entries for nonpayment of water-right charges.* All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forfeiture, whether water-right application has been made or not.

CROSS REFERENCE: For cultivation requirements of the homestead laws, see §§ 166.22 to 166.25, 166.40 to 166.43 of this chapter.

WIDOWS AND HEIRS OF ENTRYMEN

§ 230.42 *Completion of entries by widows and heirs.* The widows or heirs of persons who make entries under the reclamation law will not be required both to reside upon and cultivate the lands covered by the entries of the persons from whom they inherit, but they must reclaim the land as required by the reclamation law, and make payment of all unpaid charges when due.

§ 230.43 *Rights of minor heirs.* Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U. S. C. 171), be sold for the benefit of such heirs. (See Heirs of Frederick C. DeLong, 36 L. D. 332). If in such case the land has been divided into farm units, the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will be required to conform the entry to one farm unit in the same manner as an original entryman by amending the former entry, relinquishing to the United States or assigning to a duly qualified assignee the lands embraced in the entry in excess of the farm unit he elects to retain. The purchaser and his assignees take, subject to the payment of the water-right charges authorized by the reclamation law and regulations thereunder, and must reclaim the land as required by said law, but are not required otherwise to comply with the homestead law. Should the land not be sold for the benefit of the minor heirs, but retained by them, they will be required to show compliance with the requirements of law as to reclamation and payment of the charges.

CROSS REFERENCE: For regulations relating to the payment of water-right charges, see §§ 230.41, 230.85 to 230.100.

FINAL PROOF, CERTIFICATES, AND PATENTS

§ 230.44 *Entries made prior to June 25, 1910; submission of proof postponed.* All persons who make entry of lands within the irrigable area of any project commenced or contemplated under the reclamation law will be required to comply fully with the homestead law as to residence, cultivation, and improvement of the lands, except that where entries were made prior to the issuance of public notice announcing the availability of water for the irrigation of the land and prior to June 25, 1910, in which case, under the departmental decision in the case of ex parte J. H. Haynes (40 L. D. 291), and under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U. S. C. 445), the submission of final proof is not required within the period during which proof must be submitted under the ordinary provisions of the homestead law.

§ 230.45 *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as stated in Part 181 of this chapter will be allowed to claim such credit in connection with entries made under the reclamation law, but will not be entitled to receive final certificate or patent until the water-right charges due have been paid and the requirements as to reclamation have been met.

§ 230.46 *Acceptance of proof of residence, cultivation, and improvement.* Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead law and have submitted proof which has been found satisfactory but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units have not been established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry, as finally adjusted to an approved farm unit, and payment of all charges due under the public notices and orders issued in pursuance of the reclamation law.

§ 230.47 *Issuance of final certificates and patents.* (a) The act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541), expressly requires reclamation of one-half of the irrigable area of the entry as finally adjusted before final certificate and patents may issue thereunder, and, therefore, the act does not authorize the issuance of final certificate on homestead entries made subject to the reclamation law, prior to the establishment by an authorized officer of farm units, and the conformation of the entry to an approved unit, for the reason that prior to that time the entry is still subject to adjustment in area, and it can not be determined what area must be ultimately reclaimed under the provisions of the act.

(b) The act of Congress of February 15, 1917 (39 Stat. 920; 43 U. S. C. 541) amends the proviso to section 1 of the act of August 9, 1912 (37 Stat., 265), to read as follows:

Provided, That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate.

(c) Under the provisions of this act patents may issue on reclamation entries where all water-right charges due at the time the entryman submits proof of reclamation of one-half of the irrigable area of the land embraced in his entry have been paid, regardless of the fact that other water-right charges may accrue and be unpaid prior to the issuance of patent.

§ 230.48 *Requirements of reclamation proof.* Homestead and desert-land entrymen, in making proof of compliance with the reclamation law as to reclamation and payment of reclamation charges due, must submit such proof, duly corroborated by two witnesses, in duplicate, to the official in charge of the project showing these facts. Thereupon it shall be the duty of the official in charge to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of the Bureau of Reclamation and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not yet been accomplished as required he will forward the proofs to the manager of the land office for the district in which the land is situate, with his report or findings thereon, for appropriate action. If the proof be rejected by the manager, appeal will lie to the Director, Bureau of Land Management, as in other cases provided, it being the purpose to issue final certificate upon any such entry only after a final determination that all water charges due on account thereof have been paid and that reclamation has been accomplished as required by the reclamation law. Where

prior to issuance of public notice water has been furnished on a water-rental basis to reclamation entrymen or others, and by means whereof reclamation sufficient to obtain patent or water-right certificate under the act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen or others desiring to obtain patent or water-right certificate under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by an authorized officer. In such cases reclamation homestead entries must be conformed to farm units as established by an authorized officer. If not theretofore created, farm units may be established upon application.

§ 230.49 *Certifications by superintendents or other officers of irrigation districts and water users' associations.* On a reclamation project (other than the Salt River Valley Project)[3] or part thereof operated and maintained by an irrigation district or water users' association, the certifications as to the cultivation of, reclamation of, and payments from lands within the boundaries of the irrigation district or within the general territory of the water users' association may be made by the superintendent or other appropriate officers of the district or association, under the seal of the district or association, and when so made will be accepted and given the same force and effect as certifications made by a Government project superintendent: *Provided, however,* That when the certificate relates to payments made by the entryman, and the district or association is delinquent in the payment of charges due from the district or association to the United States, the certificate shall show that the Government charges paid by the entryman to the district or association were paid over to the Government by or on behalf of the district or association.

§ 230.50 *What constitutes reclamation and cultivation.* To comply with the provisions of the reclamation law as to reclamation and cultivation, the land must be cleared of brush, trees, and other encumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the official in charge of the project of proof of reclamation, except as prevented by hailstorm or flooding, satisfactory crops must be grown on at least one-half of the irrigable area thereof. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover; or (c) a season's growth of orchard trees or vines of which 75 percent shall be in a thrifty condition. The crop production requirements of this section affecting lands embraced in reclamation homestead entries made after January 1, 1949, must be performed and met by the entryman personally, by members of his immediate family residing with him, or by persons employed under his direction, supervision, and management. The crop production requirements of this section shall be applicable to entryman's successors in interest.

§ 230.51 *Time for reclaiming certain lands.* As to all lands subject to the Reclamation Extension Act of August 13, 1914 (38 Stat. 686; 43 U. S. C. 440), at least one-quarter of the irrigable area thereof shall be so reclaimed within three full irrigation seasons after entry or making water-right application, and at least one-half of the irrigable area thereof so reclaimed within five full irrigation seasons after entry or making water-right application, except that the first full irrigation season affecting such land for which water-right application shall have been made prior to May 3, 1915, shall be the irrigation season of 1915. All land thus reclaimed and cultivated shall continue to be so reclaimed and cultivated until after final proof is made and accepted or patent or final water-right certificate issued. Failure to so reclaim lands subject to the said Reclamation Extension Act renders the entry, or, in case of private land, the water-right application therefor, subject to cancellation.

§ 230.52 *Lien for unpaid charges on entries under the reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912, as amended by the act of February 15, 1917 (39 Stat. 920; 43 U. S. C. 541), and in the act of August 26, 1912 (37 Stat. 610; 43 U. S. C. 547), in case of homestead entries under the reclamation law, on ceded Indian lands entered under the Reclamation Act, and in case of desert-land entries within the exterior limits of any land withdrawal or irrigation project under the Reclamation Act, if final proof of compliance with the homestead or desert-land law, as the case may be, has been previously submitted and has been accepted, or if such final proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation the manager will issue final certificate on the entry. The final certificate so issued must be stamped by the manager when issued as follows: "Subject to the provisions of the act of August 9, 1912 (37 Stat. 265)." The entry, if found to be regular, will be approved by the manager for patent under said act of August 9, 1912, or August 26, 1912 (37 Stat. 610), and patent issued reserving the lien and containing other provisions as in said acts provided.[4]

§ 230.53 *Lien for unpaid charges on entries other than those under reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges, as provided in the act of August 9, 1912, as amended, in the case of homestead entries, other than those under the Reclamation Act, where a water-right application has been filed by the entryman, and the manager has been notified by the official in charge of the project of the acceptance of such application, if final proof has been accepted on the entry, or final proof is submitted at the time of the receipt of such reclamation proof and is found to be sufficient on examination in the land office, the manager will issue final certificate of compliance with the homestead law. The entry, if found to be regular, will be approved by the manager for patent and final water-right certificate will be issued by the project official in charge, reserving a lien to the Government and its successor for the charges due or to become due.[4]

§ 230.54 *Final water-right certificate.* The execution of final water-right certificate has the effect of vesting in the water-right applicant absolute title to the water right involved, subject in case of partial payment to a lien for the payment of all sums still due, and in all cases to payment of the annual charges for operation and maintenance.

§ 230.55 *Notation on final water-right certificate.* The certificate should not be executed until the following notation (record completed ——) has been initialed by a responsible employee who shall have ascertained from a careful examination of the project records that full compliance has been made with the requirements of the law such as to entitle the applicant to the issuance of such certificate.

§ 230.56 *Recordation of certificate on Bureau of Reclamation records.* Upon the execution of the certificate, and before delivery to the water-right applicant, it should be recorded in the bound volume which has been provided for that purpose, care being exercised to make the record an exact copy of the original

[3] By Departmental telegram, dated Nov. 26, 1917, the register at Phoenix, Arizona, was instructed to return to the Salt River Valley Water Users' Association for report, recommendation, and forwarding by association to Commissioner, Bureau of Reclamation, all assignments, reclamation homestead entries and certificates of final proof under the reclamation law offered to or filed in his office and that applications to make homestead entries in the Salt River Reclamation project should be noted on his records and forwarded to Commissioner, Bureau of Reclamation for consideration and recommendation.

[4] Sec. 2 of the act of May 15, 1922 (42 Stat. 542; 43 U. S. C. 512) provides in part as follows:

"That patents and water-right certificates which shall hereafter be issued under the terms of the Act entitled 'An Act providing for patents on reclamation entries, and for other purposes,' approved August 9, 1912 (37 Stat. 265), for lands lying within any irrigation district with which the United States shall have contracted, by which the irrigation district agrees to make the payment of all charges for the building of irrigation works and for operation and maintenance, shall not reserve to the United States a lien for the payment of such charges; * * *."

certificate. The person preparing the certificate and recording the same should initial the certificate and record, and will be held responsible for absolute accuracy in this respect; and to insure this the original should be checked with the record thereof in the bound volume. The original must not be delivered until the signature has been copied on the record.

§ 230.57 *Card index kept by Bureau of Reclamation.* It will be necessary to keep a complete index of final water-right certificates issued. A double card index should be made for this purpose, one under the names of the parties and the other by land descriptions.

§ 230.58 *Notation on water-right application.* When final water-right certificate has been issued and recorded the fact should be noted on the back of the water-right application forming the basis thereof, citing the volume and page where recorded.

§ 230.59 *When final water-right certificates are not required.* Final water-right certificates are not required for and will not be issued for (a) lands entered under the Reclamation Act; (b) desert-land entries for which water-right application has been made; (c) entries of ceded Indian lands, whether patents for such lands are issued under act of August 9, 1912, or otherwise, but patent in each of such cases carries with it the water right to which the lands patented are entitled. In all other cases, that is, in cases of lands in private ownership and in cases of homesteads where entry was made prior to the reclamation withdrawal, final water-right certificate will issue as provided in this part.

§ 230.60 *Final water-right certificates for lands in private ownership and homestead entries made prior to withdrawal.* In case of lands in private ownership and homestead entries made prior to reclamation withdrawal, reclamation is required to be shown before any final water-right certificate is issued upon a water-right application made for such lands under the reclamation law. Further, before issuance of such a certificate under the act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541–546), on account of any lands so held, evidence must be filed satisfactorily showing that the applicant for water right has an unencumbered title to the land, or, where encumbered, the consent of the encumbrancers must be furnished in such form that the lien to be given the Government to secure the deferred payments on account of the water right shall, as contemplated by the law, constitute a prior lien upon the land. Upon the filing of such proofs with the official in charge of the project and the payment of all reclamation charges then due, he will issue a water-right certificate to the applicant which shall expressly reserve to the United States a prior lien on the land upon which a water right is certified, together with all water rights appurtenant or belonging thereto, superior to all other liens, claims, or demands whatsoever to secure the payment of all sums due or to become due, to the United States or its successors. The project official in charge will forward all papers, including a copy of the certificate, to the Commissioner of the Bureau of Reclamation.

§ 230.61 *When lien in water-right certificate or patent will be released.* The Commissioner or the General Supervisor of Operations and Maintenance of the Bureau of Reclamation will, upon the full payment of all construction or building and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the final water right certificate or patent under the act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541–546).

WATER RIGHTS

§ 230.62 *Duties of project officers.* In pursuance of the authority contained in the act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541–546), an agent cashier of the Bureau of Reclamation has been designated to receive payment of the construction or building and betterment charges and the charges for operation and maintenance payable on account of the lands within each project. All administrative matters regarding the filing of original water-right applications and all actions regarding water-right applications heretofore filed shall be carried on by the officer of the Bureau of Reclamation in charge of the project. Appeals from his action may be taken in accordance with §§ 230.115 to 230.120.

§ 230.63 *Notices to project managers.* Notice of all action in the district land office or in the Bureau of Land Management regarding any entry for which water-right application has been made, or may be made, whether subject to the reclamation law or not, shall be given immediately by the manager to the official in charge of the project by the forwarding of copy of decision in the case. The official in charge shall advise the manager of all action regarding any water-right application or contract by the Bureau of Reclamation affecting the status or validity of the homestead or desert-land entry covering the land. Among the several actions of which the manager is especially directed to notify the official in charge, are:

(a) Allowance of entries.

(b) Conformation of entries to farm units.

(c) Cancellation of entries.

(d) Applications for reinstatement of entries.

(e) Acceptance of final proof.

(f) Issuance of final certificate.

(g) Issuance of patent.

(h) Acceptance or rejection of assignments under the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441).

(i) Contest against entries, granting leave of absence, death or disability of entryman, or any other actions materially affecting the entry, or affecting land under reclamation withdrawal.

§ 230.64 *Control of operation of sublaterals.* The control of operation of all sublaterals constructed or acquired in connection with projects under the reclamation law is retained by the Secretary of the Interior to such extent as may be necessary or reasonable to assure to the water users served therefrom the full use of the water to which they are entitled. (See 37 L. D. 468.)

WATER RIGHTS FOR LANDS IN PRIVATE OWNERSHIP

§ 230.65 *Conditions under which water will be furnished; area that may be held.* Lands which have been patented or which were entered before the reclamation withdrawal may obtain the benefit of the reclamation law. However, the landowner must be an actual bona fide resident on the land or occupant thereof residing in the neighborhood at the time of making water-right application. The Secretary of the Interior has fixed a limit of residence in the neighborhood at a maximum of 50 miles. This limit of distance may be varied, depending on local conditions. After water-right application has been made and accepted (which constitutes a water-right contract), the applicant is not required to continue his residence on the land or in the neighborhood. A landowner may, however, hold rights to the use of water for more than one tract of patented land in the prescribed neighborhood at one time: *Provided*, That the aggregate area of such tracts upon which the construction charge has not been fully paid does not exceed the maximum limit established by the Secretary of the Interior nor the limit of 160 acres fixed by the reclamation law, on which water will be furnished. The Secretary has decided that the area which may be held by any one landowner after the construction charges have been fully paid may exceed 160 acres. (43 L. D. 339–341.) Water will not be furnished on a tract of patented land and a tract of unpatented land in the same ownership unless the water charges have been paid in full on one of the tracts. In other words, water will not be furnished on a tract of private land, regardless of the area, and a tract of unpatented land in the same ownership at the same time unless all water charges on one of the tracts have been paid in full. A landowner who has made contract for the use of water in connection with 160 acres of irrigable land and sold the same, together with the water right, can make other and successive contracts for other irrigable lands owned or acquired by him. Holders of more than 160 acres of irrigable land, or more than the limit of area per single ownership of private land as fixed by the Secretary of the Interior, for which water may be purchased within the reclamation project, if such a limit has been fixed, must sell or dispose of all in excess of that area before water-right application will be accepted from such holders. (See § 230.80.) If the holder of a greater area desires, he can subscribe for stock in the local water users' association (if there be one), for his entire holdings, executing a trust deed, giving the association power to ultimately sell the excess area to actual settlers who are qualified to comply with the reclamation law, unless the land has been sold by the owner when the Government is ready to furnish water thereon, or provide for the disposal of such excess holdings in some manner approved by an authorized offi-

cer of the Department of the Interior. Holders of land in private ownership who have made and had accepted water-right application for their holdings may receive water for lands in excess of the area hereinabove stated, in case such excess lands have had water-right application made and accepted therefor, and have been acquired by descent, will, or by foreclosure of any lien; in which case said excess lands may be held for 2 years and no longer after their acquisition, without in any manner militating against the right of the holder to be furnished water under the reclamation law.

§ 230.66 *Water-right application, where contract to purchase private lands is canceled.* Where private lands are held under contract of purchase, title remaining in the vendor, and the purchaser makes water-right application therefor, making one or more payments on account of the construction or building charge, and subsequently the vendor cancels the contract of purchase because of default in payments or for other default of the purchaser, the land resumes its status as if no contract of purchase had been entered into and no water-right application had been made. All payments made by the contract purchaser on account of the water-right application are forfeited to the United States. If the tract is resold to new purchasers, whether by deed or by contract of purchase, such new purchaser must make a new water-right application under such regulations as are in force at the time.

§ 230.67 *Water-right application, where contract to purchase private lands is transferred.* A different result occurs where the contract purchaser sells his interest under the contract to another and transfers in writing credit for payments made by him and this other and the vendor enters into a new arrangement whereby this other takes a new contract of purchase from the vendor. In this case the new contract purchaser is the successor in interest of the original contract purchaser and succeeds to the benefits of any payments made by the original contractor on his water-right application. If, therefore, in such a case a new water-right application is required because of any regulations applicable to the case, credits should be allowed on the new application to the extent of the payments made by the original contract purchaser.

§ 230.68 *Purpose of the reclamation law.* The purpose of the reclamation law is to secure the reclamation of arid or semiarid lands and to render them productive, and section 8 declares that the right to the use of water acquired under that law shall be appurtenant to the land irrigated and that "beneficial use shall be the basis, the measure, and the limit of the right." There can be no beneficial use of water for irrigation until it is actually applied to reclamation of the land. The final and only conclusive test of reclamation is production. This does not necessarily mean the maturing of a crop, but does mean the securing of actual growth of a crop. The requirement as to reclamation imposed upon lands under homestead entries applies likewise to lands in private ownership and land entered prior to the withdrawal—namely, that the landowner shall reclaim his land as required by law, and no right to the use of water will permanently attach until such reclamation has been shown. (See 37 L. D. 468, and § 230.60.)

§ 230.69 *Cancellation of water-right and homestead entry for default in payment.* Sections 3 and 6 of the Reclamation Extension Act of August 13, 1914 (38 Stat. 687, 688; 43 U. S. C. 478–481, 493, 494–497) provide for the cancellation of entries with forfeiture of rights for 1 year's default in payment of any installment of the construction or operation and maintenance charge. The said sections provide that for such default the water-right application and the entry, if a homestead entry, shall be subject to cancellation and that all payments made by the applicant or entryman shall be forfeited to the reclamation fund.

VESTED WATER RIGHTS

§ 230.70 *Recognition of vested rights to water.* The provision of section 5 of the act of June 17, 1902 (32 Stat. 389; 43 U. S. C. 381, 392, 431, 439), limiting the area for which the use of water may be sold, does not prevent the recognition of a vested right for a larger area and protection of the same by allowing the continued flowing of the water covered by the right through the works constructed by the Government under appropriate regulations and charges.

WATER-RIGHT APPLICATIONS

§ 230.71 *Forms of water-right applications.* The Department has adopted two forms of applications for water rights, viz, Form A, for homestead entries under the reclamation law; Form B, for lands other than homestead entries under the reclamation law embraced within a project. Copies of these forms will be used in all applications for water rights on all reclamation projects.

§ 230.72 *Entries made prior to June 25, 1910; contests and water-right applications.* Under the act of April 30, 1912 (37 Stat. 105; 43 U. S. C. 445), a reclamation homestead entry made prior to June 25, 1910, where a residence was established in good faith, is not subject to contest for failure of the entryman to maintain residence or make improvements upon the land prior to the time when water is available for the irrigation of the lands embraced within the entry under public notice. The entryman is required within 90 days after public notice has issued to file a water-right application. (See § 230.24.)

§ 230.73 *When Form A water-right applications must be filed.* Upon notice issued by the authorized officer that the Government is ready to receive applications for water right for described lands under a particular project, all persons who have made entries of such lands under the provisions of the reclamation law will be required to file application for water rights on Form A for the number of acres of irrigable land in the farm unit entered, as shown by the plats of farm units approved by an authorized officer of the Department of the Interior, and any person settled on such lands or intending to make entry of any such lands may file application for water rights on Form A for the number of acres of irrigable land in the farm unit settled on or intended to be entered, as shown by such farm-unit plats.

§ 230.74 *Action on Form A water-right application, where entry has not been allowed.* Where such settler or other person makes a water-right application before initiating entry for the lands for which such water-right application is made, the water-right application will be received by the official in charge of the project, and the amount due thereon as shown by the public notices and orders collected by the agent cashier of the Bureau of Reclamation. The water-right application will be retained by the official in charge until entry is made, or if entry is not perfected by the applicant within 30 days the application shall be endorsed "rejected," with the date thereof, and the amount collected returned to the applicant, except in case water shall have been furnished such applicant under the application, in which case only the amount collected on account of the construction or building and betterment charges will be returned. The amount collected for operation and maintenance will be retained by the agent cashier as payment to the United States for the service rendered in furnishing water. If entry is made the entryman will be required to exhibit to the official in charge his land-office receipt. The official in charge will endorse on the water-right application the number, date, and land-office serial number of the entry and take the action indicated in § 230.75.

§ 230.75 *Action on Form A water-right application, where entry has been allowed.* All applications on Form A must be filed in the project office of the United States Bureau of Reclamation in person or by mail, accompanied by two complete copies and the amount due thereon as shown by the public notices and orders. The official in charge of the project will carefully examine the original application, and if regularly and properly made out accept the same and endorse thereon his acceptance. He will see that the copies correspond with the original and that the entry number, date, etc., are properly given, and will immediately transmit one copy to the Commissioner, Bureau of Reclamation, and give the second copy to the applicant, with the agent cashier's receipt for the amount collected. The original application will be retained in the project office of the Bureau of Reclamation.

§ 230.76 *When Form B water-right application must be filed.* Upon the issuance of the public notice private landowners and entrymen whose entries were made prior to withdrawal may, in like manner, apply to the project office of the United States Bureau of Reclamation, on Form B for water rights for tracts not containing more than 160 acres of irrigable land, according to the approved plats, unless a smaller limit has been fixed as to lands in private ownership by an authorized officer.

§ 230.77 *Showing as to residence required for Form B applicants.* Each application on Form B must contain a statement as to the distance of the applicant's resident from the land for which a water right is desired.

§ 230.78 *Form B; applicants not residing within distance fixed for project.* If a greater distance than that fixed for the project is shown in any application, the case should be reported to the Commissioner of the Bureau of Reclamation, for special consideration upon the facts shown. If the applicant is an actual bona fide resident on the land for which water-right application is made, the clause in parentheses of Form B, regarding residence elsewhere, must be stricken out.

§ 230.79 *Form B applicant required to state nature of interest.* The applicant on Form B must state accurately the nature of his interest in the land. If this interest is such that it cannot be perfected into a fee simple title at or before the time when the last annual installment for water right is due, the application must be rejected.

§ 230.80 *Execution of Form B application.* Form B, used by owners of private land and entrymen whose entries were made prior to the withdrawal of the land within reclamation projects for entering into contracts with the United States for the purchase of a water right, must be signed, sealed, and acknowledged before a duly authorized officer in the manner provided by local law. A space is provided on the blank for evidence of the acknowledgment, which should be in exact conformity to that prescribed for mortgages by the law of the State in which the lands covered by the contract lie. When so executed the original must be filed in the project office of the Bureau of Reclamation either in person or by mail, together with four complete copies, and must be accompanied by the amount of the charges for recording the same in the county records. The application must cover all the irrigable land of the applicant in the project. (See § 230.65.) If the applicant owns more than the limit of irrigable area fixed for land in private ownership, he must make disposition of all the irrigable lands not covered by his application, as indicated in § 230.65, before the application is accepted. If the application is (a) regular and sufficient in all respects; (b) bears the certificate of the secretary of the local water users' association in cases where such certificate is required; (c) is accompanied by the proper payments required by the provisions of the public notices and orders issued in connection with the project and the recording fees; the official in charge of the project will accept the same by filling out the blank provided and attaching his signature and seal and placing a scroll around the word "Seal," whereupon the water-right application becomes a water-right contract.

§ 230.81 *Recordation of contract.* As stated in the instructions for the execution of the blank, the contract must be duly recorded in the records of the county in which the lands are situated, and, therefore, immediately upon execution of the contract the original will be transmitted by the official in charge of the project to the proper county officer to be recorded.

§ 230.82 *Action after recordation of contract.* Upon return of the original contract to the official in charge of the project, bearing certificate at the bottom of the last page executed by the recording officer, showing the recordation of the instrument, the said official in charge will fill out the same blank on the three copies held in his office, signing the name of the recording officer with the word "signed" in parentheses preceding such name. The original will be sent to the General Accounting Office, Audit Division; one copy will be forwarded to the Commissioner, Bureau of Reclamation, one copy to the applicant, and the remaining copy will be retained by the official in charge.

§ 230.83 *Assignment of credits.* When application is filed by an assignee of an entryman under the Reclamation Act, and the assignee proposes to claim credit for any payment made by the assignor, the prior applicant should execute the following form at the bottom of the last page, either written in ink or typewritten:

I, ------ ------, for value received, hereby sell and assign to ------ ------ all my right, title, and interest in and to any credits heretofore paid on water-right application No. ---- for the above-described land, together with all interests possessed by me under said application.

------ ------, *Assignor.*

------ ------, *Witness.*

§ 230.84 *Action on cases bearing assignment.* Action on cases bearing such assignment will be the same as on other cases, except that the assignment must be permissible under the provisions of existing public notices and departmental regulations and orders.

WATER-RIGHT CHARGES

§ 230.85 *Fixing of acreage in an entry and water charges.* An authorized officer will at the proper time, as provided in section 4 of the act of June 17, 1902 (32 Stat. 389; 43 U. S. C. 419), fix and announce the area of lands which may be embraced in any entry thereafter made or which may be retained in any entry theretofore made under the reclamation law and the charges which shall be made per acre for the irrigable lands embraced in such entries and lands in private ownership, for the building of the works, and for operation and maintenance and prescribe the number and amount and the dates of payment of the annual installments thereof.

§ 230.86 *Public notices which may be withdrawn.* Under the act of February 13, 1911 (36 Stat. 902; 43 U. S. C. 468), the Secretary is authorized in his discretion to withdraw any public notice issued prior to the passage of that act.

§ 230.87 *When water-right payments are forfeited.* If an entry subject to the reclamation law is canceled or relinquished, the payment for water-right charges already made and not assigned in writing to a prospective or succeeding entryman under the provisions of § 230.94, is forfeited. All water-right charges which remain unpaid are canceled by the relinquishment or cancellation of the entry, except as provided by the specific provisions of public notices applicable to particular projects.

CROSS REFERENCE: For general regulations concerning cancellations, relinquishments, and reinstatements, see Part 105 of this chapter.

§ 230.88 *Irrigable area increased; supplemental agreement.* In cases where water-right application has been made and the irrigable area is subsequently ascertained to be greater than that stated therein, action should be taken as follows:

(a) For land covered by water-right application reserving a lien to the United States, the water users should execute a supplemental contract and the same shall be recorded in the county records at the expense of the United States.

(b) For land covered by water-right application not reserving a lien to the United States, the water user should execute application on the form of water-right application in current use, and the same shall be recorded in the county records at the expense of the United States.

§ 230.89 *Where water-right payments may be credited to subsequent entry.* Any person who applies to enter the same land at the time of relinquishment and at the same time files an assignment in writing of the charges theretofore paid will be allowed credit therefor. If the application to enter is made at a later date or is not accompanied by a written assignment of credits, the applicant must pay the water-right charges as if the land had never been previously entered.

§ 230.90 *Sale of land in private ownership; water-right application.* In case of the sale of all or any part of the irrigable area of a tract of land in private ownership covered by a water-right application which is not recorded in the county records, the vendor will be required to have his transferee make new water-right application for the land transferred. Upon acceptance of such new water-right application the transfer will be duly noted, and, in case of transfer of part the water-right charges under the original application of the vendor, will be adjusted to the respective tracts. If the vendor's water-right application has been recorded on the county records, the vendee will not be required to make new water-right application.

§ 230.91 *Tender of part payment.* Where payment is tendered for a part only of either an annual installment of water-right construction or building charges or an annual operation and maintenance charge, the same may be accepted if the insufficient tender is, in the opinion of the official in charge of the project, caused by misunderstanding as to the amount due and approximates the same.

§ 230.92 *Action where insufficient payment is tendered.* In all cases of insufficient payment accepted in accordance with the provisions of the forego-

ing section, receipts must issue for the amount paid and the water user shall be immediately notified by registered letter that the payment is insufficient and allowed a period of 30 days to make payment of the balance due to complete the charge on which a part payment has been made. If the balance of either such installments is paid within this period, additional receipt must issue therefor, but if either or both installments remain unpaid for 30 days, report shall be made to the Commissioner of the Bureau of Reclamation. In all other cases where insufficient tenders are made they shall be rejected with notice to the water user of the reason for the rejection.

§ 230.93 *Receipt for full payment.* When full payment is tendered and, upon examination, is found to be correct, the agent cashier will issue receipt therefor.

§ 230.94 *Assignment of money credits.* A person who has entered lands under the reclamation law, and against whose entry there is no pending charge of noncompliance with the law or regulations, or whose entry is not subject to cancellation under this act, may relinquish his entry to the United States and in writing assign to a prospective or succeeding entryman any credit he may have for payments already made under this act on account of said entry, and the party taking such assignment may, upon making proper entry of the land at the time of the filing of the relinquishment, if subject to entry, receive full credit for all payments thus assigned to him, but must otherwise comply in every respect with the homestead law and the reclamation law. Under this section credit may be allowed in cases of assignment where the water-right application has been made under the Reclamation Extension Act; and also, in case of new entry under the act of March 4, 1915 (38 Stat. 1215; 43 U. S. C. 447). (See departmental instructions, Dec. 20, 1915, 44 L. D. 544.)

§ 230.95 *Water-right charges on transfer of privately owned lands; delivery of water.* The transfer of lands in private ownership covered by water-right contract before cancellation of the contract carries with it the burden of water-right charges and credit for the payments made by the prior owner. (See departmental decision, Mar. 20, 1911, in the case of Fleming McLean and Thomas Dolf, 39 L. D. 580.) After any such transfer, water will continue to be delivered for the entire irrigable area of the tract transferred and tract retained, at the same place or places as delivery was theretofore made, and no change will be made in the place of delivery except upon compliance with the provisions of §§ 230.98 and 230.99, regarding the additional expense for laterals, division boxes, surveys, or for other purposes, and for providing rights of way for irrigation or drainage ditches across the portions transferred or retained.

CROSS REFERENCE: For rights-of-way for irrigation drainage ditches, see Part 244 of this chapter.

NOTICE OF INSTALLMENTS DUE

§ 230.96 *When one or more than one installment is due.* At least 30 days prior to the date on which any installment of the construction or building charge becomes payable, under the terms of any public notice or order, by any water-right applicant under a project, a notice will be mailed to each such water user at his last known post-office address as shown on the Bureau of Reclamation project records, which notice will state the amount of construction or building charge due at the date of the notice and the amount to become due when the next succeeding installment of the construction or building charge is due. Water-right applications and homestead entries under the reclamation law are subject to cancellation for failure to pay construction or building charges more than 1 year in arrears. When other efforts to collect delinquent charges have failed, formal notice of delinquency on the prescribed form shall be mailed to the water-right applicant. Such notice shall be sent by registered mail to the applicant at his last known address, as above indicated, which notice will state the amount of reclamation charges then due, and that unless, on or before the thirtieth day following that on which the notice is received, payment be made of the amount due in excess of one full installment the following action will be taken: (a) In case of a reclamation homestead entryman, that the entry and the accompanying water-right application will be canceled without further notice, or (b) in cases other than those of reclamation homestead entrymen the case will be reported to an authorized officer of the Department of the Interior with recommendation for appropriate action by suit to recover the amount due, and also, if such action is deemed advisable, for the cancellation of the water-right application. The Rules of Practice, Part 221 of this chapter, so far as they are not in conformity herewith are hereby modified. The registry return receipts of each such notice will be preserved and promptly after the expiration of the time allowed in the notice to make payment will be forwarded to the Commissioner of the Bureau of Reclamation, with copy of notice sent in each case of delinquency and with report and recommendation relative to cancellation or other action to be taken against the delinquent. In case such a notice is returned unclaimed by the addressee such unclaimed notice should accompany the other papers. In case the registry return receipt is not received, or, being received, has been lost, a new notice must be sent. The Commissioner of the Bureau of Reclamation will take appropriate action in each case. If the entry is subject to cancellation he will forward appropriate statement to the authorized officer of the Bureau of Land Management with evidence of service. The bills for operation and maintenance will be similarly rendered and will be handled in the same manner.

CREDIT FOR PAYMENTS ON PARTIAL RELINQUISHMENT

§ 230.97 *Relinquishment of part of farm unit; water-right charges.* A homestead entryman subject to the reclamation law may relinquish part of his farm unit if in the judgment of an authorized officer it would not jeopardize the interests of the United States in the collection of the charges against the part proposed for relinquishment or otherwise. The portions of the payments theretofore made by him on account of the construction or building charge applicable to the relinquished area will be credited as follows: First, upon the portion of the charges for operation and maintenance then due against the relinquished area, and second, any remainder will be credited upon the construction or building charge against the area retained. In no case will payments theretofore made on account of operation and maintenance charges be so credited. The entryman desiring to make such relinquishment shall submit to the official in charge of the project his application therefor. The said official in charge will transmit such application with his recommendation through proper channels to the Commissioner of the Bureau of Reclamation for approval of the amendment of the farm-unit plat.

§ 230.98 *Partial relinquishment where entry is not subject to reclamation law.* Where an entryman, whose entry is not subject to the reclamation law, relinquishes part of the land included in his entry, appropriate notation will be made on his water-right application showing such relinquishment, and his charges thereafter due will be reduced accordingly upon presenting to the project official in charge certificate of the district land office showing the lands relinquished and the lands remaining in his entry. If entry is made for the relinquished portion at the time of filing the relinquishment the new entryman will receive credit for payments made thereon if assignment in writing is filed, as provided in §§ 230.83 to 230.92. No credit will be allowed if the new entry is not filed at the time of relinquishment.

§ 230.99 *Transfer of credits when additional expense is involved.* No authorization for allowance of credits as hereinabove provided will be made which will, in the judgment of an authorized officer of the Department of the Interior, impose any additional expense whatever upon the United States for the construction of laterals and division boxes, or for the making of surveys or for other purposes. Where such relinquishment would involve additional expenses on the part of the United States in order to irrigate either the retained or the relinquished portion of the farm unit the applicant may deposit from time to time, in advance, as required by the project official in charge, payment of the estimated amount necessary to provide for the proper irrigation of either portion of the farm unit, and, in such case, if the application is not otherwise objectionable, the same will be allowed.

§ 230.100 *Conditions governing partial relinquishments.* Every partial relinquishment shall be subject to the following conditions: (a) That the relinquishing entryman and his successors in title shall permit the entryman then or thereafter entering the relinquished part to

use the irrigating and drainage ditches and other irrigation works existing on the retained part at the time of relinquishment, whenever in the opinion of the project official in charge such use is reasonably necessary for the irrigation and drainage of the relinquished part; and the entryman then or thereafter making entry of the relinquished part shall have right-of-way over the retained portion for the necessary operation and maintenance of such ditches, drains, and irrigation works; (b) that the entryman then or thereafter entering the relinquished part shall have a right-of-way over the retained part for the construction, operation, and maintenance of such additional ditches, drains, and other irrigation works as the said official in charge may from time to time consider reasonably necessary or proper to be constructed upon or through the retained part for the irrigation and drainage of the linquished part.

DESERT-LAND ENTRIES WITHIN A RECLAMATION PROJECT

§ 230.101 *Conditions excusing entrymen from compliance with the desert-land laws.* By section 5 of the act of June 27, 1906 (34 Stat. 520; 43 U. S. C. 448), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.) will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

§ 230.102 *Persons excused from compliance with the desert-land laws.* Section 5 of the act of June 27, 1906, applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project, or by any withdrawal of public lands under the reclamation law, from improving or reclaiming the lands covered by their entries.

§ 230.103 *Statement required to warrant excuse.* No entryman will be excused under this act from a compliance with all of the requirements of the desert-land law until he has filed in the land office for the district in which his lands are situated a statement showing in detail all of the facts upon which he claims the right to be excused. This statement must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

§ 230.104 *Extension of time for annual proof.* Inasmuch as entrymen are allowed 1 year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of the act of June 27, 1906, are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the act, the applicant will file his statement explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

§ 230.105 *When application for extension of time should be filed.* An entryman will not need to invoke the privileges of the act of June 27, 1906, in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of a reclamation project, the statement explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

§ 230.106 *Time extended to make final proof.* When the time for submitting final proof has arrived and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, he will be excused and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

§ 230.107 *Beginning of period for compliance with the law.* If, after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman shall begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must, if he depends on the Government's project for his water supply, comply with all provisions of the reclamation law, and must under the act of June 6, 1930 (46 Stat. 502; 43 U. S. C. 448), relinquish or assign in not less than 2 years after notice all the land embraced in his entry in excess of one farm unit, and upon making final proof and complying with the regulations of the Department applicable to the remainder of the irrigable land of the project and with the terms of payment prescribed in the reclamation law, he shall be entitled to patent as to such retained farm unit, and final water-right certificate containing lien as provided for by the act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541–546), act of August 26, 1912 (37 Stat. 610; 43 U. S. C. 547), and the act of February 15, 1917 (39 Stat. 920; 43 U. S. C. 541), or to patent without a lien if provision therefor shall have been made as provided for by the act of May 15, 1922 (42 Stat. 541; 43 U. S. C. 511–513).

§ 230.108 *Assignment of desert-land entries in whole or in part.* Under the act of July 24, 1912 (37 Stat. 200; 43 U. S. C. 449), desert-land entries covering lands within the exterior limits of a Government reclamation project may be assigned in whole or in part, even though water-right application has been filed for the land in connection with the Government reclamation project, or application for an extension of time in which to submit proof on the entry has been submitted, under the act of June 27, 1906 (34 Stat. 520; 43 U. S. C. 448), as amended by the act of June 6, 1930 (46 Stat. 502; 43 U. S. C. 448), requiring reduction of the area of the entry to one farm unit.

§ 230.109 *Amendment of farm-unit plat after partial assignment.* Where it is desired to assign part of a desert-land entry which has been designated as a farm unit, application for the amendment of the farm-unit plat should be filed with the official in charge of the project, as in the case of assignments of homestead entries. (See §§ 230.31 to 230.33.) The same disposition of amendatory diagrams will be made and the same procedure followed as provided for assignments of homestead entries.

§ 230.110 *Desert-land entryman may proceed independently of Government irrigation.* Special attention is called to the fact that nothing contained in the act of June 27, 1906 (34 Stat. 520; 43 U. S. C. 448), shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation law, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

§ 230.111 *Disposal of lands in excess of 160 acres.* Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish or assign all of the lands embraced in their entries in excess of one farm unit in not less than 2 years after notice through the land office, must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project, and also comply with the regulations of the Department applicable to the remainder of the irrigable land of the project.

TOWN-SITE SUBDIVISIONS

CROSS REFERENCES: For town sites, Alaska, see Part 80 of this chapter. For town sites, in general, see Part 255 of this chapter.

§ 230.112 *Water-right application for private land used for town-site purposes.* Where water-right application has been

made and accepted for land in private ownership, no new water-right application by any purchaser of part of the irrigable area of such private land will be accepted for land so purchased, if the same is subdivided into lots of such form and area as to indicate a use thereof for town site rather than for agriculutral or horticultural purposes. In such case no notation shall be made of such transfer on the original water-right application, but water will be furnished such land on the original application, and the water-right charges collected thereunder as if no such sale or sales had been made.

CROSS REFERENCE: For water-right charges, see §§ 230.41, 230.85 to 230.100.

§ 230.113 *Water for town-site areas.* Water for land subdivided into such form and areas as to indicate a use thereof for town site rather than for agricultural or horticultural purposes may be procured for the entire areas so subdivided by contract with the Bureau of Reclamation through the proper representatives of the land owners, as authorized by the Secretary of the Interior under the acts of April 16 and June 27, 1906 (34 Stat. 116, 519; 43 U. S. C. 561, 563, 568).

§ 230.114 *Adjustment of water rights.* Where separate water-right applications, otherwise valid, have been accepted for lands subdivided into such form and areas as indicate a use thereof for town site rather than for agricultural and horticultural purposes, such water-right applications and the corresponding subscriptions to the stock of the water users' association may be surrendered and canceled, and water supplied to such lands under the provisions of the acts of April 16 and June 27, 1906, upon such terms and conditions as will return to the "reclamation fund" an amount not less than the charges due under such water-right applications. Similar adjustment by cancellation and new contract may be made where water-right application has been accepted and the land has been subsequently subdivided into tracts of form and area as above.

APPEALS FROM ACTIONS OF PROJECT OFFICIAL IN CHARGE

§ 230.115 *Where appeals may be taken.* Appeal may be taken from the action of the project official in charge to the Commissioner of the Bureau of Reclamation and ultimately to the Secretary of the Interior.

§ 230.116 *When appeals may be taken.* All cases of error or applications for relief should be promptly called to the attention of the project official in charge by the party affected. If the said official in charge decides to deny the request or application, he will serve upon the party aggrieved, personally or by registered mail, notice of his decision. The notice will state the facts, the reason for denying the relief asked, and also that the party aggrieved may appeal to the Commissioner, Bureau of Reclamation, within 30 days after receipt of the notice by filing with the official in charge, addressed to the Commissioner, Bureau of Reclamation, such appeal.

§ 230.117 *Facts to be shown in appeal; action by project official in charge.* The appeal may consist of a written statement addressed to the Commissioner, Bureau of Reclamation, setting out clearly and definitely the ground of complaint. The project official in charge will note thereon the date of its receipt in his office and promptly forward the same, with full report, to the Commissioner, Bureau of Reclamation, through the appropriate regional director, who will attach his recommendation.

§ 230.118 *Review and decision by the Bureau of Reclamation.* Upon receipt of the papers in the office of the Commissioner of the Bureau of Reclamation the matter will be reviewed and decision rendered, stating the reasons therefor and that appeal therefrom may be taken as in the next section provided. Notice and copy of this decision will be served by the project official in charge upon the party aggrieved personally or by registered mail sent to the last-known address of such party.

§ 230.119 *Appeal to Secretary of the Interior.* The party aggrieved desiring to appeal from the decision of the Commissioner of the Bureau of Reclamation will file with the project official in charge, within 60 days from receipt of notice of the Commissioner's decision, written statement of appeal, setting out the grounds thereof, addressed to the Secretary of the Interior. In case of appeal from the Commissioner's ruling, the matter will be submitted to the Secretary for consideration and appropriate action.

§ 230.120 *Service of notice.* In case of service of notice of decision by registered mail, such notice will be mailed to the last known post-office address as shown in the record, and evidence of service will consist of the registry return card on which such letter was delivered, or, in case of inability of postal authorities to make delivery, of the returned unclaimed letter. When service is personal, the party making the service will make affidavit to that fact, stating time and place of service, or secure written acknowledgment of the person served, and file the same with the project official in charge.

TAXATION BY STATES OF ENTRIES UNDER RECLAMATION ACT OR ENTRIES ON CEDED INDIAN LANDS WITHIN INDIAN IRRIGATION PROJECTS, PRIOR TO ISSUANCE OF FINAL CERTIFICATES

§ 230.121 *Entries subject to taxation; tax-title claimants; prior lien of United States; extinguishment of lien.* (a) The act of April 21, 1928 (45 Stat. 439), as amended by the act of June 13, 1930 (46 Stat. 581; 43 U. S. C. 455, 455a–455c), permits taxation by States or political subdivisions thereof, prior to the issuance of final certificate, of lands embraced in reclamation homestead entries, and in desert-land entries within irrigation projects constructed under the Reclamation Act and obtaining a water supply from a reclamation project, and of homestead entries on ceded Indian lands within any Indian irrigation project.

(b) Homestead entries under the Reclamation Act and homestead entries on ceded Indian lands within any Indian irrigation project are made subject to such taxation after the submission of satisfactory final proof under the ordinary provisions of the homestead law and upon the acceptance thereof by the manager of the district land office, and desert-land entries located within irrigation projects constructed under the Reclamation Act and obtaining a water supply from such project at any time after water from said project has been actually available for the irrigation of the lands in the entry for 4 years.

(c) Taxes legally so assessed by the State or political subdivision thereof under the acts of April 21, 1928, and June 13, 1930, constitute a lien upon the land, subject to the prior lien of the United States for all due and unpaid installments of the appraised purchase price of the lands and for all the unpaid charges authorized by law, whether accrued or otherwise, and such lien may be enforced by the State or political subdivision thereof by the sale of the lands under proceedings had as in case of lands held in private ownership.

(d) No tax assessed or levied, if any, prior to April 21, 1928, by the State or political subdivision thereof, is validated by either the act of April 21, 1928, or June 13, 1930.

(e) In case of the sale for unpaid taxes of lands included in homestead entries on ceded Indian lands within any Indian irrigation project, or of a reclamation homestead entry, or a desert-land entry within an irrigation project constructed under the Reclamation Act and obtaining its water supply from such a project, the holder of the tax deed or tax title resulting from such tax sale shall be entitled to all the rights and privileges, as to such homestead entries, of an assignee homestead entryman on such ceded Indian lands or of an assignee under the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), and section 2 of the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 324), as to desert-land entries, only when application for recognition as assignee has been filed in accordance with the governing regulations (see § 230.35 as to homestead entries and § 232.15 of this chapter as to desert-lands entries), and also satisfactory proof of such tax title and showing that the period of redemption has expired. After acceptance by the manager of the land office of such evidence as satisfactory, the name of such assignee shall be endorsed upon the records of the office and such assignee shall be entitled to the rights of one holding a complete and valid assignment under said act of June 23, 1910, or the act of March 28, 1908, and such assignee may at any time thereafter receive patent with lien reserved (in proper cases) under the act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541–546), as amended and extended, for all unpaid installments, including, in proper cases, all sums due or to become due to the United States on account of the purchase price of the land, upon submitting satisfactory proof of reclamation required by the act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in case of desert-land entries, the claimant upon submitting satisfactory final proof under the act of March 3, 1877 (19 Stat. 377;

43 U. S. C. 321–323), as amended by the acts of March 3, 1891 (26 Stat. 1095; 43 U. S. C. 321, 323, 325, 327–329), section 5 of June 27, 1906 (34 Stat. 520; 43 U. S. C. 448), June 6, 1930 (46 Stat. 502; 43 U. S. C. 448), and June 13, 1930 (46 Stat. 581), and making the payments required by said acts, shall receive patent with lien reserved in proper cases. The holder of the tax deed or tax title, applying for recognition as assignee, as aforesaid, must submit proper evidence of tax title. As the laws governing the sale of lands for taxes are not the same in the several States affected by this act and as in some instances more than one method of conducting sales is permitted, and as the period in which redemption may be made varies, it is not thought advisable to formulate specific rules governing evidence or proof of tax titles. However, the following general rules must be observed: If the tax title is based on court proceedings, a copy of the decree or order of the court under the seal of the clerk of the court must be furnished. The certificate of the clerk of the court should make specific reference to the laws governing such sale and show that the period of redemption has expired without redemption having been made, citing the statute. If the sale was made by the State or political subdivision thereof or under other than court proceedings, the certificate of the officer conducting such sale, under the seal of his office, must be furnished. This certificate should show that all steps necessary to legalize such sale were taken, citing the statutes, and should show that the period of redemption has expired without redemption being made.

(f) In cases of application for exchange of reclamation homestead entries under said act of June 17, 1902, in whole or in part (of lands not sold at tax sale), or application to amend, where the proof as to residence, improvements, and cultivation in support of the base land has been accepted as satisfactory (see subsection M. of section 4 of the act of December 5, 1924, 43 Stat. 703, 43 U. S. C. 438, and section 44 of the act of May 25, 1926, 44 Stat. 648, 43 U. S. C. 423c, and the regulations under said act of May 25, 1926, 51 L. D. 525, 54 L. D. 193, Part 403 of this title), there must be furnished in addition to the usual evidence a certificate by the proper State or county tax officer showing that there are no unpaid taxes or tax sales charged against the land or tax deeds outstanding and that the accrued taxes for the current year have been provided for. In this connection reference is made of course to assessments or taxes, if any, levied by the State since April 21, 1928, under said acts of April 21, 1928, and June 13, 1930.

(g) Except in cases of application to exchange, or amend, as set forth in paragraph (f) of this section, whenever relinquishments of entries or parts of entries involving taxable lands are filed with the manager, he will note the same upon his records as in ordinary cases, and in cases of the cancellation, in whole or in part, of entries involving taxable lands, the manager will note such cancellation upon his records and promptly advise the State or county authorities thereof to the end that the lands involved may be formally relieved of taxes, liens, or tax titles, if any, levied or outstanding thereagainst pursuant to said act of June 13, 1930, between June 13, 1930, and the date when the relinquishment was filed or cancellation made. Such notice should describe the land involved and give the name of the entryman or claimant thereof as shown by the records of the district land office. The notice to the tax authorities should be substantially in the form prescribed (53 I. D. 424). The release of the lien or tax title should be duly executed and recorded by the proper State or county authorities, after which with evidence of its recordation it should be filed with the manager.

(h) Failure to notify the State or political subdivision thereof of reversion of title to the base land in cases of application for exchange, or for amendment, or in cases of relinquishment or cancellation of any entry does not mean that such base land or land covered by the relinquished or canceled entry still retains its taxable status, if any such it ever had under said act of April 21, 1928, as originally enacted or as amended, as aforesaid, inasmuch as under law lands owned by the United States and not in a taxable status are not, under any circumstances, subject to taxation by the State or political subdivision thereof.

(i) Neither said act of April 21, 1928, nor the amendatory act of June 13, 1930, enlarges, abridges, or impairs the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), in re irrigation districts in their relation to the public lands of the United States and both the act of April 21, 1928, as amended, and said act of August 11, 1916, may have harmonious operation within their proper spheres.

(j) The holder of the tax deed or tax title resulting from the tax sale mentioned in section 3 of said act of April 21, 1928, and of said act of June 13, 1930, should promptly give notice in writing of his claimed interest in the land to the manager of the land office within whose district the involved land is situated, in accordance with § 221.90 of this chapter, whereupon he will be entitled to full notice of all action against the entry as provided by said section.

PART 231—STATE IRRIGATION DISTRICTS

STATE IRRIGATION DISTRICTS IN THEIR RELATION TO THE PUBLIC LANDS

Sec.

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AUTHORITY: §§ 231.1 to 231.20 issued under R. S. 2478; 43 U. S. C. 1201. Statutory provisions interpreted or applied are cited to text in parentheses.

CROSS REFERENCES: For Arkansas drainage, see Part 117 of this chapter. For Bureau of Reclamation, see chapter II of this title. For Carey Act Grants, see Part 272 of this chapter. For desert-land entries, see Part 232 of this chapter. For Flathead irrigation projects, see Part 233 of this chapter. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For Minnesota drainage, see Part 118 of this chapter. For reclamation of arid land by the United States, see Part 230 of this chapter. For reclamation of arid lands in Nevada, see Part 234 of this chapter. For swamp land grants, see Part 271 of this chapter. For reclamation of Indian lands, see 25 CFR Parts 91, 94, 97, 100, 103, 106, 121, 124, 127, 130–132, 141, 144, 147, 151, 154.

§ 231.1 *Statutory authority.* The act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630) empowers the Secretary of the Interior, following the presentation of proper applications, to investigate the plans and financial and physical resources of irrigation districts theretofore or thereafter organized pursuant to the law of any State, and if he shall find and conclude that any such applicant has planned and is executing an altogether meritorious and feasible irrigation undertaking, to grant his approval of its plan and undertaking, provided a majority of acreage thereof is not unentered land, to the end that upon such approval, and upon compliance by such districts with the conditions in said act specifically set forth, all unentered public land and land which has been entered, but upon which final certificate has not issued, shall be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes to the same extent and upon like terms as are privately owned lands within the district. This includes the right of the district to levy and collect taxes on unpatented land for the purpose of raising funds with a view to the construction, operation, and maintenance of the irrigation system, but does not grant the right to tax generally or for any purpose not definitely connected with the construction and maintenance of the irrigation works. The right of the district to sell lands which were entered at the date of the levy of any such lawful tax or assessment remaining unpaid is also provided for, together with the right of individuals to make entry of such land after the period of redemption from tax sales has expired.

§ 231.2 *Application by a district for approval.* Any irrigation district desiring to obtain the benefits of the act of

August 11, 1916, should file in the land office for the district within which the lands are situated an application, in duplicate, consisting of the following:

(a) A statement setting forth concisely the legal address of the district; the date when, by court decree or otherwise, it was finally declared to be fully organized; the name and title of all officers of the district qualified at the date of the filing of the application; the gross amount of land embraced in the district; the amount of irrigable land within the district; the amount of privately owned land within the district; the amount of entered land for which final certificate has not issued; the amount of unentered public land; the amount of land embraced within a withdrawal for a United States reclamation project; the amount of land otherwise withdrawn (within Indian, forest, power-site, or other withdrawal); how much (percent) of the project has been completed; what bond issue, if any, has been finally consummated, and the present bonded debt; whether contract has been made with the United States under the Reclamation act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.), or is pending, and if any such, the date thereof; and any other facts or circumstances which would throw light on or be pertinent to a full understanding of the present condition or future prospects of the district.

(b) Proof of organization.

(c) Evidence of water right and sufficiency of available water supply.

(d) Maps showing the project.

(e) Plans and specifications.

(f) Such data as may be necessary to a full understanding of the situation.

§ 231.3 *Proof of organization.* A properly authenticated copy in duplicate of the proceedings through which the district claims corporate existence should be filed. The character of this proof will, of course, depend upon the State statute under which the organization was effected.

§ 231.4 *Evidence of water right.* If the lands to be reclaimed are wholly withdrawn lands within a United States reclamation project, and the right to the use of the water depends solely upon an appropriation by the Government, no evidence of water right will be required; but if dependence is placed upon any water appropriation other than one claimed by the Government, either for the reclamation of the whole or a portion of the lands sought to be made subject to the act of August 11, 1916, certified copies of such instruments as will show title to the water rights claimed should be filed with the application. A statement as to whether the stream or other body of water from which the water supply is to be secured has been adjudicated, and if so, the court in which the decree was granted and the date thereof, should be given. If water measurements have not been taken, a detailed report showing the foundation for the belief that sufficient water exists should be filed.

§ 231.5 *Maps and details to be shown thereon.* (a) There should also be filed in duplicate with the application tracings showing by smallest legal subdivision, in accordance with the latest official survey, all of the lands embraced within the confines of the district; the status of the various tracts should be differentiated, by markings on each legal subdivision, in black India ink, letters corresponding to the status of the land, as follows:

(1) Privately owned land.

(2) Lands which have been entered but for which final certificate has not been issued.

(3) Lands withdrawn under the Reclamation Act.

(4) Lands otherwise withdrawn.

(5) Unentered public lands.

NOTE: If a tract of land appears to come within two of the designations, both letters should be used.

(b) Unless one-eighth of any smallest legal subdivision is susceptible of reclamation from the irrigation system as planned or constructed, the district should not request its designation, except where it is shown that such irrigable area, where less than one-eighth of the subdivision, will when reclaimed be more valuable than the entire subdivision in its native state.

(c) These tracings should be made on tracing linen with India ink. Three scales are permissible; 2,000 feet to the inch, 1,000 feet to the inch, or 500 feet to the inch. No other scales should be used, and the scale most adaptable to a clear showing of the matters and things set forth thereon should be used, but in no case should any one tracing be over 36 inches in width.

(d) The tracings should also show the outlines, properly tied, of any reservoirs, canals, ditches, power plants, transmission lines, or other aids to reclamation which are included in the system as well as cross sections, properly drawn to scale, of dams and canals.

(e) If the irrigation system relied upon for the reclamation of the lands within the district is entirely a United States reclamation project, it will be unnecessary to furnish a map. See section 3 of the act of May 15, 1922 (42 Stat. 542; 12 U. S. C. 773). If, however, public lands are to be reclaimed, in whole or in part, by means other than under a United States reclamation project, such system or the portion thereof not connected with the United States reclamation project should be shown by map.

§ 231.6 *Plans and specifications.* (a) If the district irrigation works have been constructed, either fully or partially, plans and specifications of the principal structures, sufficient to show the designs and methods of construction, prepared by a competent engineer, should be filed together with an authenticated statement of the amount actually expended upon the construction and the estimated amount necessary to complete the system.

(b) If no construction has been undertaken, preliminary plans showing the estimated cost of the project and the salient features thereof in sufficient detail to establish the feasibility of the project will be sufficient.

§ 231.7 *Complete data required.* As each project must necessarily stand or fall upon its own merits, it will be impossible to specify minutely all of the data that may be required. In every instance, however, the data should be so full and complete as to place before the authorized officer all of the information necessary to an intelligent consideration of the feasibility of the project as a whole. Additional information may be required if the data stated upon the original application prove insufficient.

§ 231.8 *Statements and certificates on maps.* Each of the maps filed with the application for recognition should bear the certificate of the president or other presiding or chief officer of the district, countersigned by the secretary, clerk, or other recording officer and attested by the seal of the district, in accordance with Form No. 1.[1] They should also bear the statement of the district's chief engineer, in accordance with Form No. 2.[1] This certificate and statement should be inscribed upon the maps in India ink.

§ 231.9 *Application for right-of-way.* If any unpatented public land or any reservation of the United States is affected by any of the proposed works of the irrigation district, application for right-of-way therefor must be filed by the district under the appropriate act before the application for recognition will be finally approved.

§ 231.10 *Identification of unsurveyed lands.* Where any proposed district includes within its confines unsurveyed lands, the lines of survey nearest such unsurveyed lands will be protracted.

§ 231.11 *Lands in more than one land district.* Where the lands within the confines of the proposed irrigation district lie within the jurisdiction of more than one land office, it will only be necessary to file the data in duplicate in one of the land offices; a blueprint copy of the map and one copy of the statement, however, should be filed in the other land offices, together with a notice to the manager that the application, in duplicate, has been filed in the other land office (naming it).

§ 231.12 *Requirements when lands are to be claimed by Bureau of Reclamation.* (a) Section 3 of the act of May 15, 1922 (42 Stat. 542; 12 U. S. C. 773), provides as follows:

> That upon the execution of any contract between the United States and any irrigation district pursuant to this Act, the public lands included within such irrigation district when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the Act entitled "An Act to promote the reclamation of arid lands," approved August 11, 1916: *Provided*, That no map or plan as required by section 3 of the said Act need be filed by the irrigation district for approval by the Secretary of the Interior.

(b) This section is construed as an amendment of the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), in that it makes unnecessary the filing of a map or plan of the district for the ap-

[1] Forms Nos. 1 and 2 are printed in 52 L. D. 170.

proval of the Secretary of the Interior in those cases where the lands within a district are to be reclaimed by the Bureau of Reclamation under a contract between the Secretary of the Interior and the irrigation district entered into under the act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in lieu thereof provides for the designation by the terms of such contract of the public lands included in such a district where subject to entry and entered lands on which no final certificates shall have been issued, such designation to make the land subject to all the provisions of the act of August 11, 1916.

(c) Accordingly it will not be necessary for a district, under such circumstances, to file formal application for the designation of the land, as provided for in the act of August 11, 1916, but in connection with its negotiations with the Secretary of the Interior for the construction of the irrigation system or for repayment of cost if already constructed, it should make request for the designation of the lands under the act of August 11, 1916, filing a list thereof.

(d) In such a case the contract between the Secretary of the Interior and the irrigation district must contain a description according to the approval plats of survey of the lands within such district, properly subject to designation under said act of August 11, 1916, and the approval of such a contract by the Secretary, unless otherwise stipulated, will have the effect of designating the lands as provided for in said act and making them subject to all the provisions thereof.

(e) The Bureau of Reclamation will require the district to present a list of the land which it desires to have designated under the act of August 11, 1916. From this list the Bureau of Reclamation will eliminate tracts which for any reason will not be irrigated (at least to such an extent as to make the irrigable portion more valuable than the whole tract when unreclaimed) by the system as constructed or to be constructed.

(f) These lists should then be referred by the Bureau of Reclamation to the Bureau of Land Management with a view to the elimination of any lands not subject to entry, whereupon the remaining tracts will be included in the contract between the district and the Secretary of the Interior.

(g) The Commissioner of the Bureau of Reclamation will furnish the Director of the Bureau of Land Management with two copies of all such contracts, together with two blue-print maps of the district.

§ 231.13 *Taxes and assessments.* (a) Where an irrigation district has been approved by the Secretary of the Interior the district must, after each assessment, file with the manager of the land office for the district within which the lands of the irrigation district are situated, an officially certified list showing the amount assessed against each smallest legal subdivision of unentered or entered and unpatented public land within the district, which list shall contain a statement that such assessment was made in due form in compliance with the provisions of the State law and of this act. Any assessment or sale, or attempted sale, of such lands prior to the approval of the district is without authority of law and void.

(b) Where contracts made between the United States and irrigation districts involving public lands of the United States inhibit the assessment of unentered public land while in that status, the provisions of such contracts must, of course, be complied with by the district.

§ 231.14 *Status of lands within approved irrigation districts.* (a) For the purpose of entry, the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), may be considered as dividing the unpatented lands within a State irrigation district into two general classes, namely, lands withdrawn under the act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.), and lands not so withdrawn.

(b) For the purpose of administration the lands within such a district may be considered as divided into the following subordinate classes:

(1) Unpatented public lands when subject to entry.

(2) Entered unpatented lands.

(3) Entered lands which shall become vacant by relinquishment or cancellation for any cause.

(c) The approval of a legally organized irrigation district by the Secretary of the Interior under said acts, unless otherwise provided by contract between the district and the United States, makes the public lands within such district, when subject to entry, and the entered lands on which no final certificates have issued, subject to a lien for all taxes and assessments thereafter lawfully levied by the district to the same extent and in the same manner as lands of a like character held under private ownership.

§ 231.15 *Entries under the Reclamation Act.* (a) Lands within an approved irrigation district withdrawn under the act of June 17, 1902 (32 Stat. 388), shall during the continuance of such withdrawal be subject to entry only in the manner provided by said act, and amendments thereto and the regulations thereunder.

(b) When lands included in entries made under the act of June 17, 1902, are sold for nonpayment of district taxes or assessments the purchaser on the presentation of proper evidence of his tax title shall be considered as one holding a complete and valid assignment under the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), and shall perfect the entry in the same manner required of an assignee under said act.

(c) The evidence of such tax title shall be the same as hereinafter provided in the case of an applicant under tax title for land not subject to the Reclamation Act.

§ 231.16 *Entry of lands unentered when tax or assessment was levied; section 5, act of August 11, 1916.* (a) Public lands within an approved irrigation district which were unentered at the time any tax or assessment was levied against same shall not be sold for such tax or assessment, but same shall be and continue a lien upon such land, and not more than 160 acres of such land shall be entered by any one person, and when such land shall be applied for after the approval of the district by the Secretary of the Interior, under the homestead or desert-land laws, the applicant shall be required to present a certificate from the proper district or county officer showing that no unpaid district charges are due, or delinquent, against said land.

(b) Any such application for lands of this character, if unaccompanied by the required certificate, will be suspended for 30 days to enable the applicant to present such certificate, and if not furnished, the application will be rejected, subject to the right of appeal.

§ 231.17 *When tax title will not be recognized.* No application to enter or purchase land within an approved irrigation district under tax-sale title will be allowed if the sale was for taxes or assessments levied prior to the approval of the district by the Secretary of the Interior.

§ 231.18 *Reentry of land covered by canceled entries; section 6, act of August 11, 1916.* (a) In case where any tract of entered land within an approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall, in addition to the qualifications and requirements otherwise provided, be required to furnish satisfactory proof by certificate from the proper district or county officer showing that he has paid all charges due to the district upon said land, and also that he has paid to the proper district or county officer for the holder, or holders, of any tax certificate, delinquency certificate, or other proper evidence of tax sale, the amount for which said land was sold at tax sale, together with the interest and penalties thereon provided by law.

(b) Entries for such land will be limited to 160 acres, as such lands come within the general description of "unentered" lands.

(c) It will be observed that as to such land the requirement as to payment of taxes, assessments, interest, and penalties applies to any subsequent applicant therefor and not solely to applicants under the homestead and desert-land law as in the first instance.

(d) If the application is not accompanied by this evidence the manager will suspend same for 30 days, and if the necessary proof of the required payments is not made within such time he will reject the application, subject to the right of appeal.

(Sec. 5, 39 Stat. 508; 43 U. S. C. 627)

§ 231.19 *Cash entries; section 6, act of August 11, 1916.* (a) In case of entered lands within an approved irrigation district not subject to the Reclamation Act of June 17, 1902 (32 Stat. 388), the purchaser thereof at tax sale, or his assignee (no redemption having been made), may receive patent to the land upon the payment to the manager of the district land office of the minimum price of $1.25 per acre, or such other price as may be fixed by law for such land, together with the usual fees and commissions charged in entries of like land under the homestead laws, and upon satisfactory showing that

the irrigation works have been constructed and that water of the district is available for such land.

(b) However, such purchaser or his assignee shall at the time of application for patent have the qualifications of either a homestead or desert-land entryman, and not more than 160 acres of such land shall be patented to any one purchaser.

(c) If the purchaser at tax sale, or his assignee, shall not within 90 days after the time for redemption has expired pay to the proper manager all fees and commissions and the purchase price to which the United States shall be entitled, as provided in this act, any person having the qualifications mentioned may pay to the proper manager for not more than 160 acres of such land the unpaid purchase price, fees, and commissions to which the United States may be entitled, and upon satisfactory proof that he has paid to the purchaser at tax sale, or to his assignee, or to the proper officer of the district for such purchaser, or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges, or bid in by the district at such sale, and in addition thereto the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

§ 231.20 *Application to purchase.*[1] (a) An application to purchase under the act of August 11, 1916, and the proofs required therewith must be signed by the applicant but need not be under oath.

(b) The application shall contain a description according to the approved plats of survey of the land sought to be purchased and shall give the serial number or numbers of the entry or entries in which the land is then included. The applicant shall also show by like evidence required in such cases that he has the qualifications of a homestead or desert-land entryman, furnishing the proof thereof.

(c) He must show whether he is applying as purchaser at tax sale, as assignee of such purchaser, or is seeking to be subrogated to the right of such purchaser or assignee.

(d) The application shall not embrace less than a legal subdivision or more than 160 acres and shall not include land in more than one land district and shall be accompanied by the usual fees and commissions provided in entries of like land under the homestead laws, together with the purchase price of the land, not less than $1.25 per acre, or such other price as may be fixed by law for such land.

(e) As the laws governing the sale of lands for taxes are not the same in the several States affected by this act, and as in some instances more than one method of conducting sales is permitted, and as the period in which redemption may be made varies, it is not thought advisable to formulate specific rules governing proof of tax titles. However, the following general rules must be observed:

(1) If the tax title is based on court proceedings a copy of the decree or order of the court under the seal of the clerk of the court must be furnished. The certificate of the clerk of court should make specific reference to the laws governing such sale and show that the period of redemption has expired without redemption having been made, citing the statute.

(2) If the sale was made by the district or under other than court proceedings the certificate of the officer conducting such sale, under the seal of his office, must be furnished. This certificate should show that all steps necessary to legalize such sale were taken, citing the statutes, and should show that the period of redemption has expired without redemption being made.

(3) No application to purchase under this act will be accepted for lands included in more than one pending entry unless necessary in order to make the 160 acres maximum area to which the applicant may be entitled, but in such event the land applied for must, if practicable, be contiguous, and if not contiguous, as nearly so as the circumstances will permit.

(4) If the application is not complete in substance, or based on an unredeemable tax title, the manager will hold same for rejection, subject to the usual right of appeal. If the application is found satisfactory and complete in all respects he will notify the entryman or entrymen, of the land affected and alleged to have been sold at tax sale, of the filing of the application to purchase such land, and that because thereof the entry, or entries, are held for cancellation (to the extent affected by such sale) subject to the usual right of appeal.

(5) If the application is without objection and contains the evidence herein required and water has been made available for the land, cash certificate will be issued by the manager. If an appeal is filed, the same will be considered and disposed of in the usual manner.

(6) If all be found regular and sufficient, except that the irrigation works have not been constructed and water has not been made available, the cash certificate will be withheld pending proof of construction and of the availability of water.

(7) When the application to purchase is approved, and, without regard to whether or not such purchaser shall then be entitled to certificate and patent (which will depend upon the question of construction of irrigation works and the availability of water), the conflicting entry, or entries, as the case may be, to the extent to which the land was sold for delinquent taxes or assessments, no appeal having been filed, will be canceled of record.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

PART 232—DESERT-LAND ENTRIES

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AUTHORITY: §§ 232.1 to 232.62 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For amendment to entries affecting desert lands, see §§ 104.9–104.13 of this chapter. For Carey Act grants, see Part 272 of this chapter. For desert-land entries within a reclamation project, see §§ 230.101–230.111 of this chapter. For Flathead irrigation project, Montana, see Part 233 of this chapter. For general orders of withdrawal see §§ 297.11, 297.12 of this chapter. For general regulations relating to applications and entries, see Part 101 of this chapter. For land classifications, see Part 296 of this chapter. For reclamation of arid lands by the United States, see Part 230 of this chapter. For reclamation of arid lands in Nevada, see Part 234 of this chapter. For State irrigation districts, see Part 231 of this chapter. For swamp land grants, see Part 271 of this chapter.

GENERAL STATEMENT

§ 232.1 *Purpose of statutes.* (a) It is the purpose of the statutes governing desert land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

(b) Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply; more elaborate and expensive systems of irrigation works are required, the cost of water rights is correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character.

ENTRY

§ 232.2 *States in which desert-land entry may be made.* The act of March 3, 1877 (19 Stat. 377; 43 U. S. C. 321–323), as amended by the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 321, 323, 325, 327–329), provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

§ 232.3 *Land that may be entered as desert land.* (a) As the desert-land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert-land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, non-mineral (except lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in Part 102 of this chapter), nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L. D. 522 and 42 L. D. 524.)

(b) Applications to make desert-land entries of lands embraced in applications, permits, or leases under the act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with §§ 102.30 to 102.34 of this chapter. Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

§ 232.4 *Who may make desert-land entry.* (a) Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the statements specified in §§ 232.8 and 232.9 can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

(b) The citizenship of a married woman must be shown, as required by § 137.2 of this chapter.

(c) At the time of making final proof claimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

§ 232.5 *Quantity of lands that may be entered.* (a) Under the act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the act of March 3, 1891, the maximum area that may be embraced in a desert entry was reduced to 320 acres. This limitation must, however, be read in connection with the act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 212), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws, and the amendment thereof by the act of February 27, 1917 (39 Stat. 946; 43 U. S. C. 330), allowing one who has entered 320 acres under the enlarged homestead laws to make a desert-land entry. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, or 320 acres under the Enlarged Homestead Act, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, may, if otherwise qualified, enter 160 acres of land under the desert-land laws. In other words, he may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres. It is to be noted also that the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area, and that a like restriction is made by the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), as supplemented by the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124) with reference to desert-land entries made for land withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable for those deposits.

(b) Entry of lands within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), is limited to 160 acres.

§ 232.6 *Second entry.* (a) A person's right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except, however, that under the act of September 5, 1914 (38 Stat. 712; 43 U. S. C. 182), if a person, otherwise duly qualified to make a desert-

land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert-land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted thereafter to make another entry or to take one or any part thereof by assignment.

§ 232.7 *Land entered must be in compact form.* Land entered under the desert land laws should be in compact form, which means that it should be as nearly a square form as possible. Where, however, it is impracticable, on account of the previous appropriation of adjoining lands or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered and the surrounding tracts should be stated, in order that the manager may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entrymen should make a complete showing in this regard and should state the facts and not the conclusions they derive from the facts, as it is the province of the manager to determine whether or not, from the facts stated, the entry should be allowed. Under no circumstances, however, can one entry be made for two or more separate tracts or for two tracts which touch each other at only a single point.

§ 232.8 *Entries restricted to surveyed lands since March 28, 1908; claims on unsurveyed lands.* (a) Prior to the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 324, 326, 333), a desert-land entry could embrace unsurveyed lands, but since the date of that act desert-land entries may not be made of unsurveyed lands. This act provides, however, that any individual qualified to make entry of desert lands under the desert land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the land office.[1]

[1] Unsurveyed public land withdrawn by Executive Orders Nos. 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to appropriation, under the desert-land laws, until such appropriation has been authorized by classification. See Part 296 and §§ 297.11 and 297.12 of this chapter.

(b) To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land, as required under the homestead law, are not necessary, the possession and improvements must be such as to conform to the requirements of the desert land law and must evidence good faith on the part of the claimant.

§ 232.9 *Application for desert-land entry.*[2] (a) A person who desires to make entry under the desert-land laws must file with the manager of the proper land office an application, in duplicate, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is a bona fide resident of the State in which the land sought to be entered is located, except in the State of Nevada, where the qualification as to citizenship is that of the United States only (41 Stat. 1086; 43 U. S. C. 323, 325). He also must state that he has not previously exercised the right of entry under the desert-land laws by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural land laws, to lands which, together with the land applied for, will exceed in the aggregate 320 acres, or 480 acres in case he has made an enlarged homestead for 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon within 4 years from the date of his application. The application must contain a description of the land by legal subdivisions, section, township, and range. If the application is made for lands, withdrawn or classified as coal lands or for lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable therefor, the applicant also must state in his application that the same is made in accordance with and subject to the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), or the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), as the case may be.

(b) The application will be considered as a petition for the classification of the land as provided in Part 296 of this chapter.

§ 232.10 *Showing required in application as to character of land.* (a) Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The showing, which is made a part of the application, may not be made by an agent or upon information and belief, and the manager must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge, obtained from a personal examination of the land. The blank spaces in the application must be filled in with a complete statement of the facts showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the statements of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry.

(b) The statements in the blank form of declaration and accompanying statements as to present character of the land may be modified so as to show the facts in any case wherein application is made for entry of lands reclaimed or partially reclaimed, by applicant, before survey, under the provisions of the act of March 28, 1908; as to a former application or entry, in case application is made for a second entry under the provisions of the act of September 5, 1914; as to the character of the land with respect to coal deposits in case application is made under the provisions of the act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal; and with respect to phosphate, nitrate, potash, sodium, sulphur, oil, gas, and asphaltic minerals in case application is made under the provisions of the act of July 17, 1914, for lands withdrawn, classified, or reported as containing those substances, or valuable therefor.

§ 232.11 *Post-office addresses of applicants and witnesses.* Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the manager of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them.

§ 232.12 *Execution of applications and proofs; time for filing of applications.* (a) Applications and proofs, except final proofs required by R. S. 2294 (43 U. S. C. 254), must be signed by the applicants but need not be under oath. Final proofs may be executed before any officer authorized to administer oaths in public land cases, as explained by § 210.1 of this chapter.

(b) An application to make desert-land entry is not acceptable if dated more than 10 days before its filing at the district land office.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 232.13 *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. All applications not accompanied by the evidence above indicated will be rejected.

§ 232.14 *Plan of irrigation and payment; reports.* (a) At the time of filing the application with the manager, the applicant also must file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, i. e., reservoirs for storage, canals, flumes, or other methods by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs, whether perennially flowing or intermittent. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a statement must accompany the application, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the Department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells or by pumping from nonartesian underground sources of water supply, a statement must be submitted as to the existence of such water supply upon or near the land involved, including information as to other wells theretofore sunk and affording a water supply to adjoining or nearby lands.

(b) With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, the approximate irrigable area of each legal subdivision, and the position and direction of the proposed permanent main and lateral ditches on the land, and that the land is of such contour that it can be irrigated from the proposed system. The map required to be filed by section 4 of the act of March 3, 1877, as amended by section 2 of the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 327), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The manager will carefully examine the evidence submitted in such applications, and either reject defective applications or require additional evidence to be filed.

(c) At the time of filing his application, plans, and the statements submitted therewith the applicant must pay the manager the sum of 25 cents per acre for the lands therein described, the application to be given its proper serial number at that time. No rights to the land are initiated by the filing of an application unless this sum is paid or tendered.

ASSIGNMENT

§ 232.15 *Lands which may be assigned.* While by the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 329), assignments of desert-land entries were recognized, the Department of the Interior, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous.

CROSS REFERENCE: For assignment of desert-land entries within Government reclamation projects, see § 230.108 of this chapter.

§ 232.16 *Qualifications of assignees.* (a) The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under the act of September 5, 1914, to make a second entry, he can not take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second entry. The right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking one by assignment, unless such entry be subsequently lost, forfeited, or abandoned because of matters beyond the claimant's control.

(b) A person who has the right to make a second desert-land entry under the act of September 5, 1914, may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned. The right to make a second desert-land entry, however, is not possessed by any person who has assigned some former entry or part thereof.

(c) The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

§ 232.17 *Showing required of assignees; recognition of assignments.* (a) As evidence of the assignment there should be transmitted to the manager the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

(b) An assignee must file with his deed of assignment a statement (Form 4–274c), showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status in accordance with Part 137 of this chapter. If the assignee is a woman, she should in all cases state whether she is married, and if so, she must make the showing required by Part 137 of this chapter. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L. D. 541, 33 L. D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L. D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L. D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgments of deeds. The assignee must furnish a statement on Form 427c as to his qualifications.

(c) No assignments of desert-land entries or parts of entries are conclusive until examined in the land office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the manager, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L. D. 90 and 48 L. D. 519.

SALE, TAXATION, AND MORTGAGE

§ 232.18 *When lands may be sold, taxed, or mortgaged.* (a) After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so obtained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

(b) Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

(c) Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), may be taxed and otherwise dealt with as provided by said act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the act of June 13, 1930 (46 Stat. 581; 43 U. S. C. 455, 455a–455c).

(d) A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrancers may file in the proper land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry.

ANNUAL PROOF

§ 232.19 *Showing required.* (a) In order to test the sincerity and good faith of claimants under the desert-land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention to reclaim them, Congress, in the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 327, 328) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than 4 years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made.

(b) Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

§ 232.20 *Acceptable expenditures.* (a) Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district, through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

(b) The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended, nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L. D. 106.)

§ 232.21 *Expenditures not acceptable.* (a) Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the act of September 5, 1914, can not receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L. D. 601 and 42 L. D. 523.)

(b) Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as railing the land, will not be accepted.

(c) No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

§ 232.22 *Procedure where proof is not made when due.* Managers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendency of a Government proceeding initated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

§ 232.23 *Extensions of time.*[3] The law makes no provision for extensions of time

[3] Extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U. S. C. 256a), July 26, 1935 (49 Stat. 504; 43 U. S. C., 256a), and June 16, 1937 (50 Stat. 303; 43 U. S. C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter. The regulations were issued as Circs. 1311, 1365, and 1432, respectively.

in which to file annual proof becoming due subsequent to December 31, 1936, on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose cannot therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L. D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

§ 232.24 *Submission of proof before due dates.* Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

FINAL PROOF

§ 232.25 *General requirements.* The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

§ 232.26 *Notice of intention to make final proof.* When an entryman has reclaimed the land and is ready to make final proof, he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an endorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

§ 232.27 *Publication of final-proof notice.* The manager will issue the usual notice for publication. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L. D. 131; 43 L. D. 216). The claimant must pay the cost of the publication, but it is the duty of managers to procure the publication of proper final-proof notices. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by some one authorized to act for him.

§ 232.28 *Submission of final proof.* On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law, or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 210.1 of this chapter.

§ 232.29 *Showing as to irrigation system.* The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

§ 232.30 *Showing as to lands irrigated and reclaimed.* While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L. D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L. D. 269.)

§ 232.31 *Showing as to tillage of land.* As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of gass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L. D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

§ 232.32 *Showing as to water right.* (a) In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in

his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

(b) In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L. D. 305.)

(c) It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, his actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

(d) Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, cannot be viewed as meeting the requirements of the desert-land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

§ 232.33 *Showing where water supply is derived from irrigation project.* (a) Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer, either with his final proof or subsequently, such evidence as he can tending to support his contentions.

(b) Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the manager will endorse the name and address of the project upon the copy of the notice to be forwarded to the regional administrator. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the manager will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time the manager will reject the proof, subject to the usual right of appeal.

§ 232.34 *Final-proof expiration notice.* (a) Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the claimant will be allowed 90 days in which to submit final proof. (44 L. D. 364.)

(b) Should no action be taken within the time allowed, the entry will be canceled. The 90 days provided for in this section must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

§ 232.35 *Requirements where township is suspended for resurvey.* No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L. D. 223.) This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township.

CROSS REFERENCE: For resurveys, see Part 281 of this chapter.

EXTENSIONS OF TIME FOR FINAL PROOFS; ACTS OF MARCH 28, 1908, APRIL 30, 1912, AND FEBRUARY 25, 1925

§ 232.36 *General acts authorizing extensions of time.*[4] There are five general acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U. S. C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U. S. C. 333); April 30, 1912 (37 Stat. 106; 43 U. S. C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161; 43 U. S. C. 335); and February 25, 1925 (43 Stat. 982; 43 U. S. C. 336). The act of June 27, 1906, is applicable only to entries embraced within the exterior limits of

[4] In addition to the acts cited in this section, extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U. S. C. 256a), July 26, 1935 (49 Stat. 504; 43 U. S. C. 256a), and June 16, 1937 (50 Stat. 303; 43 U. S. C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter. The regulations were issued as Circs. Nos. 1311, 1365, and 1432, respectively.

some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388). For regulations governing extensions under said act of June 27, 1906, see §§ 230.113 to 230.119 of this chapter. The act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this act denies any extension under its terms to claimants who can obtain such benefit under prior acts.

CROSS REFERENCE: For regulations under the act of March 4, 1915, see §§ 232.39 to 232.41.

§ 232.37 *When extensions of time may be granted.* (a) Under the provisions of the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 333), the period of 4 years may be extended, in the discretion of the authorized officer, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. Applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L. D. 332.) It must also appear that he has complied with the law as to annual expenditures and proof thereof.

(b) Under the provisions of the act of April 30, 1912 (37 Stat. 106; 43 U. S. C. 334), a further extension of time may be granted for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension can not be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

(c) An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the manager a statement setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts.

(d) Applications for further extension of time under the act of April 30, 1912, and February 25, 1925 (43 Stat. 982; 43 U. S. C. 336), may be made in the same manner, and the same procedure will be followed with respect to such applications as under the act of March 28, 1908, and the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 335), as amended.

§ 232.38 *Procedure on applications for extensions of time, where contest is pending.* (a) A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L. D. 603.)

(b) Consideration of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges.

RELIEF; ACT OF MARCH 4, 1915

§ 232.39 *General statement.* The last three paragraphs of section 5 of the act of Congress approved March 4, 1915 (38 Stat. 1161), entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," as amended by the act of March 21, 1918 (40 Stat. 458; 43 U. S. C. 335, 337, 338), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding 3 years from date of its allowance, in which to submit final proof; or that upon certain other conditions he may either complete his entry in the manner required of a homestead claimant or purchase the land on special terms.

§ 232.40 *Applications for relief.* (a) All applications for the benefits of section 5 of the act of March 4, 1915, as amended, should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered lands is situated. They must be supported by the statement of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown.

(b) All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law.

§ 232.41 *Conditions for extensions of time.* (a) To entitle an entryman to the benefits of the first of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, the following conditions must exist: (1) The entry must be a lawful, pending entry made prior to March 4, 1915; (2) the entryman must have complied with the requirements of the desert land law with reference to yearly expenditures and the submission of annual proofs thereof; (3) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law; (4) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (5) there must be established, some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

(b) The existence of the conditions set forth in paragraph (a) (1) and (2) of this section, can be determined by examination of the records of the Bureau of Land Management, but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land, but not used as the basis of annual proof.

(c) The existence of the conditions enumerated in paragraph (a) (3), (4), and (5) of this section, must be established in all cases by the statements filed in support of the application for relief.

(d) With regard to the condition set forth in paragraph (a) (3) of this section, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the source of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

(e) If water is to be obtained through an irrigation company, association, or district upon which a favorable report has been made, and favorable action on such report has been taken, the existence of the condition in paragraph (a) (3) of this section will be taken for granted.

provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

(f) If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

(g) The condition set forth in paragraph (a) (4) of this section will be satisfied if the case does not come within the terms of any of the other acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

(h) The extension of time authorized by the act of March 4, 1915, is applicable only to entries made prior to the date of the act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where, on account of drought of greater or less duration, but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the act of March 4, 1915, as amended by the act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the act of June 17, 1902 (32 Stat. 388), and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the act of June 27, 1906 (34 Stat. 520; 43 U. S. C. 448).

(i) No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert-land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert-land law.

§ 232.42 *Relief by homestead proof, or purchase.* The last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337, 338) are designed to afford relief in cases of the kind last mentioned in the preceding section. The regional administrator is authorized, in his discretion, to permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however, but remains a desert-land entry, subject to a new kind of proof.

§ 232.43 *Conditions authorizing homestead proof and purchase.* (a) To entitle a claimant to relief under either of the last two paragraphs of section 5 of the act of March 4, 1915, as amended, it must be made to appear to the satisfaction of the authorized officer: (1) That the entry in question is a lawful pending entry, made prior to March 4, 1915; (2), where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 21, 1918; (3), that the applicant or his assignors have, in good faith, expended the sum of $3 per acre in the attempt to effect reclamation of the entered land; and, (4), that there is no reasonable prospect that if the extension of time authorized under the provisions of this act, or any other existing law, were granted the applicant would be able to secure water sufficient to effect reclamation of the land in his entry or any subdivision thereof.

(b) The conditions of paragraph (a) (1) and (2) of this section can be determined from the records of the Bureau of Land Management.

(c) With regard to the condition of paragraph (a) (3) of this section, any expenditure which the claimant can show that he has made in good faith and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable even though such expenditure may not have been such as would satisfy the requirements for annual proof.

(d) With regard to the condition of paragraph (a) (4) of this section, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply, the existence of that condition will be taken for granted.

§ 232.44 *Notice of allowance of relief; election to purchase.* When any application for relief under the second of the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337), as amended, shall have been allowed by the manager, notice thereof will be served upon the claimant, advising him that he will be allowed 5 years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the district land office an election to perfect the entry within 5 years by purchase under the third paragraph, and pay to the manager, at time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall be given. The election must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith.

§ 232.45 *Procedure for final proofs in relief cases.* In the submission and consideration of final proofs under the last two paragraphs of section 5 of the act of March 4, 1915, as amended, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase.

§ 232.46 *No assignment allowed after relief has been granted.* After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assignment thereof will be allowed, for the reason that the benefits of the last two paragraphs of section 5 of the act of March 4, 1915, as amended by the act of March 21, 1918, are not available to assignees under assignments made subsequently to the date of the act, as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs the same rules will be observed, as to proof of nonalienation, as in homestead cases.

§ 232.47 *Entries perfected by compliance with homestead law.* (a) A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

(b) However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the Enlarged Homestead Acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutation proof must pay for the land at the regular "minimum price" of $1.25 per acre.

(c) Failure to submit final proof within the 5-year period allowed by the law will be ground for the cancellation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the Director, Bureau of Land Management, for confirmation.

CROSS REFERENCE: For the confirmation of entries, see Part 107 of this chapter.

(d) Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply

to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public land laws, as in the case of those who make ordinary final proof on desert-land entries.

§ 232.48 *Residence and improvements for homestead proof.* (a) If not already residing on his desert-land entry, the claimant must establish residence thereon within 6 months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, unless such period be extended as permitted by the homestead law.

(b) Residence upon the land must be continuously maintained for a period of 3 years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed 5 months. Actual residence must be maintained for the remaining 7 months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements as to the period of residence and amount of cultivation are those of the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218), or the "3-year homestead law."

(c) If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

(d) Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

(e) The claimant must have a habitable house upon the land at the time of submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith.

CROSS REFERENCE: For residence and cultivation requirements under the homestead laws, see §§ 166.22 to 166.43 of this chapter.

§ 232.49 *Cultivation for homestead proof.* Cultivation of the land for at least 2 years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the 3-year homestead law, will be allowed, without regard to the time when it was performed.

§ 232.50 *Homestead proof on entries in Utah and Idaho.* If the entry is situated in the State of Utah or Idaho, and the lands involved have been, or shall be, designated as being of the character subject to entry under the sixth section of the act of February 19, 1909 (35 Stat. 639; 43 U. S. C. 218) as amended, or June 17, 1910 (36 Stat. 531; 43 U. S. C. 219), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of 4 years.

§ 232.51 *Heirs and devisees; reduction of cultivation.* (a) If an entryman dies before being authorized to exercise the rights conferred by the last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337, 338), as amended, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the said act of March 4, 1915, may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

(b) The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or, on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of 3 years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

(c) With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases.

§ 232.52 *Fees.* The same fees, and no others, may be charged by managers upon submission of final proofs under section 5 of the act of March 4, 1915, as amended, as upon submission of ordinary desert-land proofs. No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office.

§ 232.53 *Entries perfected by purchase.* If claimant elects to perfect his entry under the last paragraph of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 338), as amended, he must, within 5 years from the date of his election and payment of the sum of 50 cents per acre, make final proof and pay to the manager the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre, and that he has in good faith used the land for agricultural purposes for at least 3 years. Under said last paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown.

§ 232.54 *Credit for improvements used as the basis for annual proof.* Improvements made during the first 3 years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under the last paragraph of section 5 of the act of March 4, 1915, as amended, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry.

§ 232.55 *Penalty for failure to make final proof and payment.* If a claimant fails to make final proof and payment, as required by the last paragraph of section 5 of the act of March 4, 1915, as amended, within the 5-year period, all sums theretofore paid by him will be forfeited and the entry canceled.

§ 232.56 *Forms of proofs.* Final proofs under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, may be made on the forms used in homestead cases. For final proofs to be made under the last paragraph special forms have been provided.

RELIEF; ACT OF FEBRUARY 14, 1934

§ 232.57 *Applications for relief; initial payment required.* (a) The act of February 14, 1934 (48 Stat. 349; 43 U. S. C. 339), entitled "An act to amend an act approved March 4, 1929 (45 Stat. 1548), entitled 'An act to supplement the last three pargaraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161), as amended by the act of March 21, 1918 (40 Stat. 458),'" grants relief to desert-land entrymen, as set forth in this section and § 232.58.

(b) This act applies to all pending desert-land entries made prior to July 1, 1925, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land and where there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land or any legal subdivision thereof.

(c) Desert-land entries made prior to March 4, 1915, and pending February 14, 1934, are entitled to the relief granted by the act of March 4, 1915, as amended, or by the provisions of this act. Desert-land entries made since March 4, 1915, and prior to July 1, 1925, and pending February 14, 1934, are entitled only to the relief provided for in this act.

(d) In all applications for relief of desert-land entries made prior to March 4, 1915, it should be specifically stated whether the relief is sought under the provisions of the act of March 4, 1915, or under the provisions of said act of February 14, 1934.

(e) The showing as to the right to such relief must be the same as that required by § 232.40. Applications for relief hereunder must be filed in the land office for the district in which the land embraced in the particular entry is situated.

(f) When any application for relief under the provisions of this act shall have been approved by the manager, notice, by registered mail, will be served upon the claimant, of such approval that he will be allowed 90 days from date of receipt of such notice within which to pay to the manager 25 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this act, and that if he fails within the time allowed to make said initial payment of 25 cents per acre, the entry will be canceled; that he will be allowed 1 year from the date of the filing of such election to pay the manager the additional amount of 75 cents an acre; and that, in case the final payment be not made within the time prescribed, the entry will be canceled and all money theretofore paid will be forfeited.

(g) Should any claimant fail to pay said 25 cents per acre and file said election within the 90-day period, the entry will be canceled and the case closed without further notice.

§ 232.58 *Publication and proof; final payment required.* (a) To perfect title to the entry, under the act of February 14, 1934, the claimant shall file with the manager a notice of intention to do so, and the manager will order the publication thereof in the same manner as to other desert-land cases and in the prescribed form.

(b) Publication, proof thereof and the required additional payment of 75 cents per acre should be made within 1 year from the date of the filing of the election mentioned in the preceding section, it being expressly stated in said act of February 14, 1934, that said additional payment of 75 cents per acre should be paid within 1 year from the date of the filing of the election to perfect title to the entry under said act, with the proviso "That in case the final payment be not made within the time prescribed, the entry shall be canceled and all money theretofore paid shall be forfeited." There is no provision of law whereby extension of time to make this payment may be granted.

(c) Where relief has heretofore been granted in desert-land entries made prior to March 4, 1915, and such entries are intact upon the records claimants may, if they so desire, take advantage of the provisions of this act.

(d) Where relief has been granted in desert-land entries under the original act of 1929 and prior to February 14, 1934, date of passage of act amendatory thereof, and such entries are intact upon the records of the Bureau of Land Management and all of the payments required to be made by said original act of 1929 have not been completed prior to the date of said amendatory act, in all such cases the total amount to be collected of such entrymen as a condition precedent to the patenting of their entries will be at the rate of $1 per acre, instead of $2.

PAYMENTS

§ 232.59 *Collection of purchase money and fees; issuance of final certificate.* (a) At the time of making final proof the claimant must pay to the manager the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the act of March 4, 1915, as amended and supplemented. (See §§ 232.47 and 232.53.)

(b) If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

(c) When final proof is made on an entry made prior to the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the manager will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the manager. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the land office the manager will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries.

(d) If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land.

§ 232.60 *Amounts to be paid.* No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 335, 337, 338), or February 14, 1934 (48 Stat. 349; 43 U. S. C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making final proof. Where final proofs are made before the manager in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, he will be entitled to receive jointly 22½ cents for each 100 words of testimony reduced to writing; in all other States he will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

CONTESTS AND RELINQUISHMENTS

§ 232.61 *Contests.* (a) Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

(b) Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the manager will give the same notice and is entitled to the same fee for notice as in other cases.

CROSS REFERENCE: For rules of practice govering contests and protests, see Part 221 of this chapter.

§ 232.62 *Relinquishments.* A desert-land entry may be relinquished at any time by the party owning the same. Conditional relinquishments will not be accepted.

CROSS REFERENCE: For relinquishments, in general, see Part 105 of this chapter.

PART 233—FLATHEAD IRRIGATION PROJECT, MONTANA [1]

GENERAL STATEMENT

Sec.
233.1 Statutes authorizing construction of project; lands in project.
233.2 Payment of appraised Indian price of land.

[1] The administration of the Flathead irrigation project was transferred from the Bureau of Reclamation to the Bureau of Indian Affairs by Departmental order of January 15, 1924.

Sec.
233.3 Limitation on entry.
233.4 Assessment for irrigation is in addition to appraised Indian price.
233.5 Commutation permitted.

ASSIGNMENTS

233.6 Privilege of assignment extended to Flathead project.
233.7 Assignment of part of farm unit.
233.8 Deposit for cost of survey.
233.9 Amendatory farm-unit plats.
233.10 Filing of instruments of assignment.
233.11 Showing required of assignor and assignee.
233.12 Procedure governing assignments.

MORTGAGES

233.13 Notice of interest by mortgagees.
233.14 Notation of mortgage interest; effect of notation.
233.15 Rights of mortgagee purchaser at foreclosure sale.

CANCELLATION OF ENTRIES

233.16 Payment of appraised price and reclamation of land necessary.

WIDOWS, HEIRS, OR DEVISEES OF ENTRYMEN

233.17 Completion of entries by widows, heirs, or devisees.
233.18 Rights of minor heirs.

FINAL AND COMMUTATION PROOFS, CERTIFICATES, AND PATENTS

233.19 Action on proofs; when final certificate may issue.
233.20 Procedure where proof is not acceptable.
233.21 Credit for military or naval service.
233.22 Acceptance of proof of residence, cultivation, and improvement.
233.23 Indian charges, testimony fees, and final commissions.
233.24 Requirements of reclamation proof.
233.25 What constitutes reclamation and cultivation.
233.26 Lien for unpaid moneys reserved in final certificate.
233.27 When lien in patent will be released.

AUTHORITY: §§ 233.1 to 233.27 issued under sec. 15, 35 Stat. 450.

CROSS REFERENCES: For electric power system, Flathead irrigation project, see 25 CFR Part 131. For operation and maintenance regulations of the Flathead irrigation project, see 25 CFR Parts 97, 100. For orders fixing operation and maintenance charges for the Flathead irrigation project and district, see 25 CFR 130.15–130.29.

GENERAL STATEMENT

§ 233.1 *Statutes authorizing construction of project; lands in project.* The Flathead irrigation project was constructed within the Flathead Indian Reservation under the provisions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and supplemented by the act of May 10, 1926 (44 Stat. 464), and other acts. Only those lands designated as farm units on farm-unit plats approved by the Secretary of the Interior or under his specific authority and those lands irrigable from the project embraced in Indian allotments are within the Flathead irrigation project. The designation of any tract or tracts of land as a farm unit or farm units includes those lands in the Flathead project, and the cancellation of any farm unit or farm units eliminates the lands formerly designated as such farm unit or farm units from the project.

§ 233.2 *Payment of appraised Indian price of land.* An entryman for land within the Flathead project, in addition to complying with the ordinary provisions of the homestead laws applicable to his entry, must pay the appraised Indian price of the land. One-third of the appraised value of the land must be paid when entry is made and two-fifteenths of the appraised value annually thereafter for 5 years beginning 1 year after the date of filing, without interest.

§ 233.3 *Limitation on entry.* No person can enter more than one farm unit, regardless of its acreage, nor can he enter a part of a farm unit, nor parts of two or more farm units, nor a farm unit and adjacent lands not designated as a farm unit, and no person can enter a farm unit who is not entitled to enter 160 acres under the homestead laws.

§ 233.4 *Assessment for irrigation is in addition to appraised Indian price.* Persons who enter farm units must pay that part of the cost of building, operating, and maintaining the irrigation works which is assessed against their tracts, in addition to the Indian price or appraised value of the lands. The building, operation, and maintenance charges against any particular unit or allotment will be based on the number of acres in it which can be irrigated and not on the entire area of the unit, as there will be no building, operation, or maintenance charges against any land in any unit which can not be irrigated. The entire Indian price must be paid for each acre in the units, regardless of the area of them which can be irrigated.

§ 233.5 *Commutation permitted.* These entries are subject to the commutation provisions of the homestead law. The irrigable areas are announced on farm-unit plats, and public notice, stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior.

ASSIGNMENTS

§ 233.6 *Privilege of assignment extended to Flathead project.* Under the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), persons who have made or may make homestead entries subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat. 388), may assign their entries in their entirety, or in part, at any time from and after filing with the Bureau of Land Management of satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act of July 17, 1914 (38 Stat. 510; 43 U. S. C. 593), extends the provisions of the act of June 23, 1910, supra, to the Flathead project. Assignment of part of an entry within the Flathead project may be made only after the subdivision of the farm units.

§ 233.7 *Assignment of part of farm unit.*[1] Where it is desired to assign a part of a farm unit, an application for the amendment, and subdivision, of such unit should be filed with the project engineer. The assignment, with accompanying showing by the assignor and assignee, must also be filed with the project engineer for his consideration.

§ 233.8 *Deposit for cost of survey.* If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special disbursing agent of the project on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

CROSS REFERENCE: For surveys, in general, see Part 280 of this chapter.

§ 233.9 *Amendatory farm-unit plats.* When the plats describing the amended farm units are approved by the project engineer, he will forward two copies of the amendatory plat together with the assignment and accompanying showings to the land office, where the amendatory plat will be treated as an official amendment of the farm-unit plat. A copy of the amendatory plat will also be forwarded promptly by the project engineer to the Area Director, Bureau of Indian Affairs, Billings, Montana, for formal approval.

§ 233.10 *Filing of instruments of assignment.* No assignment of a farm unit or any part thereof shall be accepted by the Bureau of Land Management, or recognized as valid for any purpose, until after the filing in the land office of the showings and certificates required by § 233.11.

§ 233.11 *Showing required of assignor and assignee.* Assignments under this act are expressly made subject to the limitations, charges, terms, and conditions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and acts supplementary thereto or amendatory thereof, including the act of May 10, 1926 (44 Stat. 464), and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all building and betterment charges, each assignor must present a showing to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing that he does not own or hold, and is not claiming, any other farm unit or entry under the act of April 23, 1904 (33 Stat. 302), and the acts supplementary thereto or amendatory thereof, upon which all installments of building and betterment charges have not been paid in full, and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior, and a further

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

showing, in the form of a certificate of the project engineer, that water-right application therefor is not yet receivable; or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. A married woman whose husband is claiming any farm unit or entry upon which all installments of building and betterment charges have not been paid will not be allowed to take an assignment under the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), unless such assignment is purchased with her own money and for her own use and benefit.

§ 233.12 *Procedure governing assignments.* Assignments made and filed in accordance with the regulations in §§ 233.6 to 233.11 should be noted on the land office record and, if approved, the assignees in each case will, at the proper time, make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

MORTGAGES

§ 233.13 *Notice of interest by mortgagees.* Mortgagees of lands embraced in homestead entries within the Flathead project may file in the land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project engineer in case of any lands, whether or not water-right application has been filed, including homestead entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

§ 233.14 *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest, filed as provided in the preceding section, must be forthwith noted upon the records of the project engineer, and of the land office, and be promptly reported to the Area Director, Bureau of Indian Affairs. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such entry, or part thereof, under the act of July 17, 1914 (38 Stat. 510; 43 U. S. C. 593), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

§ 233.15 *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the land at foreclosure sale, no steps will be taken to cancel the water-right application, on account of failure of the applicant to maintain residence upon or in the neighborhood of the land, until 1 year after the end of the statutory period of redemption, if there be such statutory period; if not, until 1 year after the foreclosure sale; nor on account of the holdings by the same mortgagee of lands in excess of 160 acres or of the limit per single ownership of private lands as fixed by the Secretary of the Interior for which a water right may be purchased until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of the mortgagee; and also that within such period of 1 year an acceptable water-right application for such land be filed by a qualified person, who, upon submitting satisfactory evidence of transfer of title, shall receive a credit equal to all payments theretofore made on account of the water-right charges for said land. To secure the benefits of this order the mortgagee purchasing land at foreclosure sale hereunder must give notice thereof to the manager of the district land office and to the engineer in charge of the project within 60 days thereafter.

CANCELLATION OF ENTRIES

§ 233.16 *Payment of appraised price and reclamation of land necessary.* All homestead entrymen within the Flathead project must, in addition to paying the appraised value of the land and water-right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts authorizing the construction of the Flathead project as to residence, cultivation, improvement, and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due will render such entries subject to cancellation; and upon receipt of a statement from the Area Director, Bureau of Indian Affairs, that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be canceled.

WIDOWS, HEIRS, OR DEVISEES OF ENTRYMEN

§ 233.17 *Completion of entries by widows, heirs, or devisees.* The widows, heirs, or devisees of persons who make entries within the Flathead project will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes, as required by the law, and make payment of all unpaid charges when due.

§ 233.18 *Rights of minor heirs.* Upon the death of a homesteader having an entry within the project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U. S. C. 171), be sold for the benefit of such heirs. (See heirs of Frederick C. DeLong, 36 L. D. 332.) The purchaser and his assignees take subject to the payment of the water-right charges authorized by law and the regulations thereunder and must reclaim one-half the irrigable area, as required by said law, but are not required otherwise to comply with the homestead law.

FINAL AND COMMUTATION PROOFS, CERTIFICATES AND PATENTS

§ 233.19 *Action on proofs; when final certificate may issue.* If such proof showing reclamation and payment of charges is filed, and the proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found, on examination by the manager, to be sufficient, he will issue final certificate on the entry as provided in § 233.26.

§ 233.20 *Procedure where proof is not acceptable.* If any proof offered under this law be irregular or insufficient the manager will reject it and allow the entryman the usual right of appeal.

§ 233.21 *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as provided in Part 181 of this chapter, will be allowed to claim such credit in connection with entries within the Flathead project, but will not be entitled to receive final certificate or patent until the requirements as to reclamation and payment of the water-right charges have been met.

§ 233.22 *Acceptance of proof of residence, cultivation, and improvement.* Entrymen who have resided on, cultivated, and improved their lands for the time required by the homestead law, and have submitted proof which has been found satisfactory thereunder by the Bureau of Land Management, but who are unable to furnish proof of reclamation because water has not been furnished, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry and payment of all charges due under public notices and orders issued in pursuance of the law.

CROSS REFERENCE: For regulations under the homestead laws, concerning residence, cultivation, and improvements, see §§ 166.22–166.43 of this chapter.

§ 233.23 *Indian charges, testimony fees, and final commissions.* Upon the submission of proof on entries within the Flathead project, managers will accept only the payments of Indian charges and the testimony fees for "re-

ducing testimony to writing and examining and approving testimony," and will not accept final commissions payable on such entries until proof is received of compliance with the requirements of the law as to reclamation and payment of the charges which have become due.

§ 233.24 *Requirements of reclamation proof.* Entrymen, in making proof of compliance with the law as to reclamation of one-half of the irrigable area and payment of charges due, must submit a showing duly corroborated by two witnesses, in duplicate, to the project engineer showing those facts. Thereupon it shall be the duty of the project engineer to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct, he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of Indian Affairs, and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not been accomplished as required he will forward the proofs to the manager of the land district in which the land is situated, with his report or findings thereon. Where prior to issuance of public notice water has been furnished to entrymen on a water-rental basis, and by means thereof reclamation sufficient to obtain patent under the act of August 9, 1912 (37 Stat. 265; 43 U. S. C. 541–546), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen desiring to obtain patent under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by the Secretary.

§ 233.25 *What constitutes reclamation and cultivation.* To comply with the provisions of the law requiring the reclamation of one-half the irrigable area of an entry within the Flathead project, the land must have been cleared of brush, trees, and other encumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the project engineer of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereon. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover, or, (c) a season's growth of orchard trees, or vines, of which 75 percent shall be in a thrifty condition.

§ 233.26 *Lien for unpaid moneys reserved in final certificate.* Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912 (37 Stat. 265), extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510), if proof of compliance with the homestead law has been previously submitted, and has been accepted, or if such proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation, the manager will issue final certificate on the entry. The final certificate so issued must be endorsed by the manager across the face of each certificate when issued as follows: "Subject to lien, under act of August 9, 1912 (37 Stat. 265), as extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510)."[2]

§ 233.27 *When lien in patent will be released.* The Area Director, Bureau of Indian Affairs, will, upon the full payment of all building and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the patent under the act of August 9, 1912.

PART 234—RECLAMATION OF ARID LANDS IN NEVADA

DEVELOPMENT AND UTILIZATION OF SUBTERRANEAN WATERS IN NEVADA FOR IRRIGATION PURPOSES

Sec.

234.1 Statutory authority.
234.2 Beneficiaries.
234.3 Lands subject to disposition under act.
234.4 Application.
234.5 Conditions of permits.
234.6 Progress reports.
234.7 Showing required for proof.
234.8 Form of lands selected for patent; survey.
234.9 Minerals reserved.
234.10 Disposal of permit lands, after patent.
234.11 Final proof.
234.12 Extensions of time.
234.13 Contests and protests.

AUTHORITY: §§ 234.1 to 234.13 issued under sec. 9, 41 Stat. 295; 43 U. S. C. 360.

CROSS REFERENCES: For general orders of withdrawals, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter.

[2] A proviso to the act of May 10, 1926 (44 Stat. 465) provides: That all construction, operation, and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on this project shall be, and are hereby, made a first lien against all lands within the project, which lien upon any particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The contracts executed by such district or districts shall recognize and acknowledge the existence of such lien.

§ 234.1 *Statutory authority.* The patenting of public lands, in Nevada, on the discovery and development of underground waters, is authorized by the act of Congress approved October 22, 1919 (41 Stat. 293; 43 U. S. C. 351–355, 357–360), entitled "An act to encourage the reclamation of certain arid lands in the State of Nevada, and for other purposes," as amended by the act of September 22, 1922 (42 Stat. 1012; 43 U. S. C. 356).

§ 234.2 *Beneficiaries.* (a) The act referred to in the preceding section, as the title indicates, is limited in its operation to lands in the State of Nevada and is designed to encourage the development and utilization of subterranean waters for irrigation purposes. It confers upon the Secretary of the Interior authority to grant permits to citizens of the United States, or associations of such citizens, giving the exclusive right to explore not to exceed 2,560 acres of land selected by them.

(b) The only qualifications provided in the act for persons receiving the benefits thereof are that the applicant, or each member of an association of applicants, shall be a citizen of the United States; that he shall not be a beneficiary under any other application or permit under this act for land situated within an area of 40 miles square, and that he has not been a permittee under any other permit under this act, which has been canceled for failure to comply with its terms.

(c) Married women, if their interest is actual and bona fide, have the same privileges as unmarried persons. A corporation is not considered as an association of persons within the meaning and purpose of the act.

(d) A permit under the act is not assignable, but the interest of a deceased permittee will pass to his legal representative.

(e) The 40-mile square limitation is construed to mean an area of that extent in which the lands covered by a permit theretofore granted are in the approximate center; to avoid possible violation of this provision of the act, applicants for more than one permit are advised not to include in their applications for additional permits any lands within less than 20 miles of any boundary of the lands included in any other application or permit in which the applicant is interested.

§ 234.3 *Lands subject to disposition under act.* Lands to be designated and made subject to disposition under the act of October 22, 1919, as amended, are those public lands which are unreserved, unappropriated, nonmineral, nontimbered, and not known to be susceptible of successful irrigation from any known source of water supply at a reasonable cost.

§ 234.4 *Application.*[1] Any qualified applicant desiring to explore for water under the terms of this act should file

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

with the manager of the land office of the district in which the land is situated, an application for permit, together with a corroborated statement as to the character of the land, and pay the filing fee of 1 cent an acre for each acre of land involved. The application should be filed in duplicate and cover the following points:

(a) *Name and address.* Name and address of the applicant or each member of an association of applicants.

(b) *Citizenship.* If the applicant or each member of the association of applicants is a native-born citizen of the United States, the application must so state. If a naturalized citizen, the application should state the fact, and be accompanied by a statement as to the applicant's naturalization, as required by Part 137 of this chapter. It should be noted that unlike most public land laws, no rights may be initiated under this act by an alien who has only filed a declaration of intention to become a citizen.

(c) *Special requirements.* (1) In accordance with the specific requirements found in sections 1, 2, and 3 of the act of October 22, 1919, as amended, the application should include an averment that neither the applicant nor any member of an association of applicants has filed an application under this act for lands within an area of 40 miles square embracing the lands in the present application; that no permit heretofore granted to him, or to any association of which he was a member, has ever been canceled for noncompliance with the terms and conditions of such permit; that the application is honestly and in good faith made for the purpose of reclamation and cultivation, and not for the benefit of any other person or corporation, and that he is not acting as agent for any person, corporation, or syndicate, to give them the benefit of the land applied for, or any part thereof, and that he will faithfully and honestly endeavor to comply with all the requirements of the act.

(2) The application should also include an averment that no spring or water hole exists, if it be a fact, upon any legal subdivison of the land involved, if surveyed, and if unsurveyed, within one-quarter of a mile from the exterior limits thereof. If there be any spring or water hole, the exact location and size should be stated, and an estimate furnished of the quantity of water in gallons which it is capable of producing daily, together with any other information necessary to determine whether or not it is valuable or essential as a public water reserve.

(d) *Description of land applied for.* (1) If the land is surveyed, it should be described by legal subdivisions. If the land is unsurveyed, it should be described with reference to locality, natural objects, and permanent monuments as fully and carefully as possible, with such detail and precision that the boundaries and location of the land may be readily traced and ascertained; if the land is situated within a reasonable distance from a known corner of the public-land survey, the course and distance should be given from such Government corner to a described point on the boundary of the land applied for; also, where practicable, the land should be described, as nearly as can be ascertained, in accordance with the legal subdivisions of the regular extension of the Government survey over the land. In this connection, all applicants for unsurveyed lands are urged to make a complete metes and bounds survey of the land applied for, with an accurate tie-line by course and distance to a Government corner, otherwise, with the large areas that may be embraced in applications under this act, it will be impossible to prevent conflicts and consequent controversy and litigation. If impracticable to make such a survey prior to filing the application, it may be made later, and the descriptions in the application and permit, if granted, may be amended accordingly. All corners of unsurveyed land selected should be marked with substantial post or rock monuments.

(2) All land applied for must be contiguous and situated in reasonably compact form; in the absence of special or unusual conditions, an application for land extending more than 4 miles in any one direction will not be considered acceptable.

(3) A map should accompany each application, showing by legal subdivisions the land selected, if surveyed; if the land is unsurveyed, then it should be shown by legal subdivisions as nearly as possible in accordance with the regular extension of the Government survey.

(e) *Character of the land.* This showing should not only allege that the land applied for is "unreserved, unappropriated, nonmineral, nontimbered public land of the United States in the State of Nevada, not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply," but should also include such a complete statement of pertinent specific facts as will afford an adequate basis for classification and designation, such as (1) the lay of the land, slope; (2) whether timber, sagebrush, or grassland; (3) kind of soil; (4) altitude; (5) length of growing season; (6) rainfall and distribution thereof through the year; (7) location with respect to any surface-water supply for irrigation; (8) what is known as to underground water supply on the land or in the vicinity; (9) whether land will mature crops by dry-farming methods; together with any additional facts having a direct or indirect bearing on the question of whether the land may properly be designated, the chances of successful development, and the good faith of the applicant.

(f) *Corroboration.* If, at the time of filing application, the land has not been designated as subject to the act, all that portion of the application relative to the character of the land must be corroborated by two disinterested witnesses, having personal knowledge of the facts; or by a separate and independent affirmative statement of the facts; but, if the land is already designated at time of filing application, no corroborating witnesses are required.

§ 234.5 *Conditions of permits.* Permits will be granted only upon condition that active operations be begun for the development of underground water within 6 months from date of approval and continued diligently in good faith until water has been developed in quantity sufficient for the practicable irrigation of not less than 20 acres, or until the date of expiration of the permit; and if the permittee shall not continue such operations in good faith and with reasonable diligence, or if he shall violate any of the terms of the permit, upon presentation of satisfactory proof thereof, the permit will be forthwith canceled and he will not again be granted a permit under the act. (See § 234.12.)

§ 234.6 *Progress reports.* At or near the end of the 6 months' period, beginning with the date of the permit, and again at the end of the first year of the life of the permit, if final proof of water development and reclamation has not been submitted, the permittee, or at least one member of an association of permittees, must file in the proper district land office a properly executed statement, corroborated by at least two disinterested witnesses, having knowledge of the facts, showing when the work of exploration was begun, in what manner and to what extent it has been prosecuted, and what results have been obtained. (See § 234.12.)

§ 234.7 *Showing required for proof.* Unless granted an extension of time the permittee is allowed 2 years from the date of his permit in which to complete the work of exploration, and whenever he shall within that time satisfactorily establish that sufficient water has been discovered, developed, and made permanently available to produce a profitable agricultural crop other than native grasses, upon not less than 20 acres of the land described in the permit, he will be entitled to patent for one-fourth of the land embraced in the permit. No mere perfunctory or questionable compliance with the law will be accepted. It must appear that an agricultural crop has been actually raised—not necessarily a paying or profitable crop, but such a crop as will satisfy the Secretary of the Interior that in time and under ordinary circumstances profitable crops of some sort can be produced from the land. No patent will be granted until the full 20 acres have been cleared, leveled, ditched, plowed, fenced, and an agricultural crop actually planted and raised by irrigation, all in accordance with good farming practice. The wells, pumps, or other works and equipment for the development and supplying of water must be of a permanent and dependable character, suitable for use year after year. A detailed statement of costs of irrigation and production of crops from such water supply will be required; to this end, accurate account should be kept of such costs. No patent can be granted under the act if the cost of irrigation from the developed water supply is practically prohibitive. The act requires a successful development and demonstration of the use of subterranean water, as the principal condition precedent for patent.

§ 234.8 *Form of lands selected for patent; survey.* The land selected for patent shall be in compact form according to legal subdivisions of the public-land surveys, if the land be surveyed.

If the land be unsurveyed, the permittee may, at any time during the life of his permit, apply to the area cadastral engineering officer for a survey of the land for which he intends to make application for patent. The area cadastral engineering officer will thereupon make an estimate of the cost and call on the permittee for a deposit of the amount of the estimate. If the deposit made should prove insufficient, an additional deposit will be called for. If the applicant has not taken steps to procure a survey before submitting final proof, after final proof has been submitted and examined, if same is found satisfactory and acceptable, and in the meantime the public-land system of surveys has not been extended over the lands in question, call will be made on the permittee to make the necessary deposit to cover the cost of survey, in which case the issuance of patent will be suspended until the survey is made and accepted. Wherever practicable such official survey will be an extension of the regular system of township surveys, in which case the selection for patent must be conformed to the legal subdivisions of such survey.

§ 234.9 *Minerals reserved.* The act provides that all entries made and patents issued under its provisions shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands entered and patented, together with the right to prospect for, mine, and remove the same.

§ 234.10 *Disposal of permit lands, after patent.* On the issuance of patent the remaining area within the limits of the land embraced in the permit will thereafter be subject to classification and disposition under section 7 of the act of June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315f).

§ 234.11 *Final proof.* (a) Final proof of the discovery, development ,and availability of sufficient water to justify patent may be made by the permittee, or, in case of his death, by his heirs, executors, or administrators, or in case the permittee is an association of individuals, by any member of such association, at any time after such discovery and development as hereinbefore defined, but must be made within 2 years after the date of the permit; but an additional period, not to exceed 1 year, may, upon proper showing, be allowed within which to make the required proof of actual irrigation and cultivation.

(b) When a permittee has reclaimed the land and is ready to make final proof he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land selected by him for patent and give the serial number of the permit and name of the claimant. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in the notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

(c) This notice must be published once a week for 5 successive weeks in a newspaper of established character and general circulation published nearest the land, and it must also be posted in a conspicuous place in the land office for the same period of time. The permittee must pay the cost of the publication. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the certificate of the publisher of the newspaper or by some one authorized to act for him. The manager will certify to the posting of the notice in the land office.

(d) On the day set in the notice (or in the case of accident or unavoidable delay, within 10 days thereafter) and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

(e) Final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 210.1 of this chapter.

§ 234.12 *Extensions of time.* (a) The act of September 22, 1922 (42 Stat. 1012; 43 U. S. C. 356), authorizes the allowance under certain conditions of an extension of time for a period not exceeding 2 years for the beginning, recommencement, or completion of the work of water development and the submission of final proof of reclamation. This does not mean that the extension will be granted as a matter of course, and applications for extension will not be granted unless it be clearly shown that the failure to complete the work of exploration and water development or of reclamation, as the case may be, within the required period was due to no fault on the part of the permittee but to some unavoidable delay for which he was not responsible and could not have readily foreseen.

(b) A permittee who desires to make application for extension of time should file with the manager an application setting forth fully the facts, showing how and why he has been prevented from beginning or completing the work of water development and making final proof within the regular period. The application must be corroborated by at least two witnesses who have personal knowledge of the facts.

(c) The manager is required to suspend any application for extension of time if he considers it defective in form or substance and to allow the applicant 30 days to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made. After the expiration of the time thus granted the original application and the amendments or exceptions, as the case may be, will be given appropriate consideration by the manager.

§ 234.13 *Contests and protests.* Contests and protests may be made against applications, permits, and final proofs under the act of October 22, 1919, as amended, the same as other entries or selections under the public land laws, and same will be disposed of in accordance with the Rules of Practice, Part 221 of this chapter, so far as applicable. No preference right, however, can be gained by such contest or protest, but if successful the entire area embraced in the permit will revert to the public domain and the land will be subject to the applicable public land laws.

SUBCHAPTER R—RECORDS

PART 240—PUBLIC LAND RECORDS

TRACT BOOKS AND PLATS

Sec.
240.1 Notations on tract books and plats.
240.2 Procedure when managers are unable to make plats or diagrams; listing names of abstracters and attorneys.
240.3 Filing of township plats.

COPIES OF RECORDS AND PAPERS

240.5 Homestead entry papers for which photographic certified copy will not be made or tracing of signatures permitted, for private use.
240.6 Fees for copies made by managers.
240.7 Fees for certification of copies made by private party.

LISTS FOR TAXATION PURPOSES

240.9 Fees for furnishing lists of final entries and canceled final entries.
240.11 Fees for listing lands selected by States and corporations.
240.12 Preparation of lists by agent of State.

SERIAL REGISTER

240.13 Inspection of serial register.

PRODUCTION OF RECORDS IN COURT

240.14 Statutory authority.

AUTHORITY: §§ 240.1 to 240.14 issued under R. S. 2478; 43 U. S. C. 1201. Exceptions are cited to text in parentheses.

CROSS REFERENCES: For fees for copies of official records, generally, see § 2.4 of this title. For applications and entries, Alaska, see Part 60 of this chapter. For applications and entries, generally, see Part 101 of this chapter. For homesteads, see Parts 166–170 of this chapter. For homesteads, Alaska, see Parts 65, 66 of this chapter. For surveys and resurveys, see Parts 280, 281 of this chapter.

TRACT BOOKS AND PLATS

§ 240.1 *Notations on tract books and plats.* (a) Section 2295 of the Revised Statutes (43 U. S. C. 163), provides in part that:

The manager of the land office shall note all applications under the provisions of this chapter (5—Homesteads) on the tract books and plats of his office, and keep a register of such entries.

(b) While this section applies to homestead applications only, it is nevertheless necessary that notations shall be made on the tract books and plats of all applications and entries of public lands, regardless of their character, in order that the status of a tract may be readily ascertained by the officer or person examining either tract book or plat, and the manager shall cause the proper notations to be made on the plats as well as the tract books.

All withdrawals, reservations, classifications, designations under the Enlarged Homestead Act, and similar orders affecting the disposition of the land should be noted on the margin of the plats as well as on the tract books.

§ 240.2 *Procedure when managers are unable to make plats or diagrams; listing names of abstracters and attorneys.* (a) When it is necessary for the manager due to the pressure of current business relating to the entry of land, to refuse to fill an order for a plat or diagram, the fee received should be returned to applicant and he advised of the reason therefor. There is no objection to the manager furnishing to the party a list of the names of persons or companies located in his city who follow the business of preparing such diagrams, but the list should be complete and be arranged in alphabetical order. Under no circumstances should he recommend any person or company.

(b) If asked for a list of abstracters doing business in his city, or for a list of attorneys resident in such city who practice before his office, the manager in complying with the request, should make the list complete, and arranged in alphabetical order.

§ 240.3 *Filing of township plats.* (a) After acceptance of a survey, the original plat thereof will be returned to the area cadastral engineering office, the duplicate plat will be retained in the files of the Bureau of Land Management in Washington, D. C., and the triplicate plat will be forwarded to the appropriate land office. The plat will be placed on record in the open files of the respective offices immediately upon receipt thereof and will then be available to the public as a matter of information only with respect to the technical data and descriptions appearing thereon; copies of such plat and the related field notes will be furnished upon request and payment of the costs as provided in § 2.4 of this title. When the manager of the land office is instructed to file the plat without the usual public notice, such plat will be regarded as officially filed in his office on the date of receipt.

(b) If public notice of the filing of the plat is to be given, the authorized officer shall prepare the notice for publication in the FEDERAL REGISTER.

COPIES OF RECORDS AND PAPERS

§ 240.5 *Homestead entry papers for which photographic certified copy will not be made or tracing of signatures permitted, for private use.* (a) No photographic certified copy of homestead entry papers, where the entry was made prior to June 22, 1874 ,and was for less than 160 acres, will be made, except for Government use. All certified copies of such entry papers, for other than Government use, must be typewritten. Where a blank form is used the blank spaces must be typewritten.

(b) No tracing of any signature, or imitation thereof, to papers in such homestead entries shall be made by any attorney, agent, or other person, for private use.

§ 240.6 *Fees for copies made by managers.* (a) The performance of any service by managers or by the employees of their offices for which personal remuneration or compensation is received is prohibited, except as to cases where an officer or employee receives fees or compensation expressly allowed by law. Nor shall such service be performed save in the course of official duties and during office hours, and persons not officially connected with any office, even though Government employees, shall not be admitted to that office outside of office hours, unless the public interests are involved in the purpose for which such admission is desired or requested, in which event the manager is authorized to extend the working hours for such purpose.

(b) When certified copies of records are requested and the pressure of public business will not permit of the work being done by the office force, the parties desiring same, if desk room is available, may be permitted to make such copies, but before certification by the manager, copies thus made must be carefully compared by his office force and he will charge therefor the fees allowed by law.

§ 240.7 *Fees for certification of copies made by private party.* The same fees must be collected for comparing the copies made by the parties desiring them, and certifying to their correctness, under § 240.6 as are collected for copies prepared by the land office force and certified by the manager.

LISTS FOR TAXATION PURPOSES

§ 240.9 *Fees for furnishing lists of final entries and canceled final entries.* (a) The act of March 3, 1883 (22 Stat. 484; 43 U. S. C. 87), provides that upon application by the proper State or Territorial authorities, managers shall:

Furnish for the purpose of taxation a list of all lands sold in their respective districts, together with the names of the purchasers, and shall be allowed to receive compensation for same not to exceed 10 cents per entry.

(b) Upon like application, and for the compensation therein stated, lists of canceled final entries may be furnished by the manager, so that the lands may be relieved from improper taxation. Therefore, when application is made by the proper authorities, the manager will furnish such lists.

§ 240.11 *Fees for listing lands selected by States and corporations.* In furnishing to State officials, under section 2 of the act of March 3, 1883 (22 Stat. 484; 43 U. S. C. 87), lists of lands sold in their respective districts, the managers will, in listing lands selected by States and corporations under grants from Congress, charge 10 cents for each 160 acres or fraction thereof, computed as are the fees to be collected under § 216.15 of this chapter.

§ 240.12 *Preparation of lists by agent of State.* Managers are required, by section 2 of the act of March 3, 1883 (22 Stat. 484; 43 U. S. C. 87), to furnish, upon application of the proper State or Territorial authorities, for taxation purposes, lists of all lands sold in their respective districts and collect therefor a fee of 10 cents per entry (36 L. D. 194). If, as sometimes happens, the manager is unable, because of pressure of other business pertaining to the entry of public lands, to prepare such lists, a duly accredited representative of the State or Territory may have access to the "serial register" for that purpose, provided he first examines the schedule of final certificates issued or other available records and procures therefrom the list of serial numbers to be examined, which examination must be conducted under the observation of either the manager, or a clerk employed under the authority of the Bureau of Land Management. If, at any time, the privilege extended to the representative of the State or Territory be abused by inspection of other matters than that within the scope of his investigation, and, especially, by making notes of current business, the manager will summarily refuse him further access to the "serial register".

SERIAL REGISTER

§ 240.13 *Inspection of serial register.* The serial register is a public record and may be reasonably inspected by any person, provided such examination may be made without interfering with the orderly dispatch of public business. Should the manager ascertain that any person is obtaining information therefrom for improper purposes, he will deny such person further access thereto.

PRODUCTION OF RECORDS IN COURT

§ 240.14 *Statutory authority.* Whenever, pursuant to the act of April 19, 1904 (33 Stat. 186; 43 U. S. C. 13), the manager shall be served with a subpena duces tecum or other valid legal process requiring him to produce, in any United States court or in any court of record of any State, the original application for entry of public lands or the final proof of residence and cultivation or any other original papers on file in the Bureau of Land Management on which a patent to land has been issued or which furnish the basis for such patent, it shall be the duty of such manager to at once notify the Director of the Bureau of Land Management of the service of such process, specifying the particular papers he is required to produce, and upon receipt of such notice from any manager the Director of the Bureau of Land Management shall at once transmit to such manager the original papers specified in such notice, and attach to such papers a certificate, under seal of his office, properly authenticating them as the original papers upon which patent was issued. The said act also provides that such papers so authenticated shall be received in

evidence in all courts of the United States and in the several State courts of the States of the Union.

(33 Stat. 186; 43 U. S. C. 13)

CROSS REFERENCE: For testimony of employees and use of books, records and files in judicial and administrative proceedings, see §§ 2.6 and 2.20 of this title.

SUBCHAPTER S—RIGHTS-OF-WAY

PART 243—RIGHTS-OF-WAY FOR RAILROADS AND STATION GROUNDS

RIGHTS-OF-WAY TO RAILROAD COMPANIES FOR RAILROAD AND STATION GROUND PURPOSES

Sec.

243.1 Statutory authority.
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AUTHORITY: §§ 243.1 to 243.20 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For rights-of-way, Alaska, see Part 74 of this chapter. For rights-of-way for canals, ditches, reservoirs, water pipe lines, telephone and telegraph lines, tramroads, roads and highways, oil and gas pipe lines, etc., see Part 244 of this chapter. For rights-of-way for power projects and for power transmission lines, see Part 245 of this chapter. For rights-of-way over Indian lands, see Indians, 25 CFR Part 256.

§ 243.1 *Statutory authority.* The act approved March 3, 1875 (18 Stat. 482; 43 U. S. C. 934–939) grants rights-of-way to railroad companies through the public lands of the United States, for railroad and station ground purposes, and the act of March 3, 1899 (30 Stat. 1233; 16 U. S. C. 525) authorizes the Secretary of the Interior to approve surveys and plats of such rights-of-way "over and across any forest reservation or reservoir site when in his judgment the public interest would not be injuriously affected thereby."

§ 243.2 *Nature of grant.* A railroad company to which a right-of-way is granted does not secure a full and complete title to the land on which the right-of-way is located. It obtains only the right to use the land for the purposes for which it is granted and for no other purpose, and may hold such possession, if it is necessary to that use, as long and only as long as that use continues. The Government conveys the fee simple title in the land over which the right-of-way is granted to the person to whom patent issues for the legal subdivision on which the right-of-way is located, and such patentee takes the fee, subject only to the railroad company's right of use and possession. All persons settling on a tract of public land, to part of which right-of-way has attached, take the same subject to such right-of-way, and at the total area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location, his right is superior, and he is entitled to such reasonable measure of damages for right-of-way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of the Department of the Interior.

§ 243.3 *National forest.* When a right-of-way is located within a national forest the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest.

§ 243.4 *Proposed national forest; construction through forests.* (a) When a right-of-way is located within a proposed national forest the applicant must file such stipulation and execute such bond as may be required for the protection of such proposed forest.

(b) No construction will be allowed in a national forest or a proposed national forest until an application for right-of-way has been regularly filed in accordance with the laws of the United States and has been approved, or has been considered by the Department of the Interior, and permission for such construction has been specifically given.

§ 243.5 *Private lands and possessory claims.* Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnation of the right-of-way across the same may be made in accordance with the provisions of section 3 of the act of March 3, 1875 (18 Stat. 482; 43 U. S. C. 936), or the right can be purchased as provided by section 2288 of the Revised Statutes, as amended by section 3 of the act of March 3, 1891 (26 Stat. 1097; 43 U. S. C. 174).

§ 243.6 *Articles of incorporation, etc.*[1] (a) Any railroad company desiring to obtain the benefits of the law is required to file with the manager of the land office for the district in which the principal terminus of the road is to be located:

(1) A copy of its articles of incorporation, duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(2) A copy of the State or Territorial law under which the company was organized, with the certificate of the governor or secretary of the State or Territory that the same was the law at the date of incorporation. (See subparagraph (7) of this paragraph.)

(3) If the law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territorial officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(4) When a company is operating in a State other than the State or Territory in which it is incorporated it must submit the certificate of the proper officer of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(5) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory in which it is incorporated. (Form 1.)[2]

(6) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2.)[2]

(7) If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to the Bureau of Land Management by the governor or secretary of any State or Territory, a company organized in such State or Territory may file, in lieu of the requirements of subparagraph 2 of this paragraph, a certificate of the governor or secretary of the State or Territory that no change has been made since a given date, not later than that of the laws last forwarded.

(b) No forms are prescribed for the proofs required in paragraph (a) (1)–(4) of this section, as each case must be governed to some extent by the laws of the State or Territory.

§ 243.7 *Maps of alignment.* (a) The word profile as used in this act is understood to intend a map of alignment. All such maps and plats of station grounds are required by the act to be filed with the manager of the land office for the district where the right-of-way is located; but if the right-of-way is located in more than one district, duplicate maps and field notes need be filed in but one district, and single sets in the others. The maps must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey of the line of route or of the station grounds.

(b) The maps should show any other road crossed, or with which connection is made, and whenever possible the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which applicant asks right-of-way. Field notes of the surveys should be written along the line on the map. If the map would thereby be too much crowded to be easily read, then duplicate field notes should be filed separate from the map. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[2] For Forms 1 to 8, inclusive, referred to in this part, see 37 L. D. pp. 795 to 797, inclusive.

notes on the map. In all cases station numbers should be given on the map where changes of numbering occur and where the lines of the public surveys are crossed, with distances to the nearest existing corner. The map must also show the lines of reference of initial and terminal points, with their courses and distances.

§ 243.8 *Field notes.* Typewritten field notes, with clear carbon copies, are preferred whenever separate field notes are necessary, as they expedite the examination of applications. The field notes, whether given on the map or filed separately, must be so complete that the line may be retraced from them on the ground. They should show whether lines were run on true or magnetic bearings, and if run on magnetic bearings the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public-survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

§ 243.9 *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to the inch ordinarily, but when absolutely necessary the scale may be increased to 1,000 feet to the inch. These scales are fixed so that maps may be readily handled and filed. In most cases, by furnishing separate field notes an increase of scale may be avoided. Plats of station grounds should be drawn on a scale of 500 feet to the inch, and must be filed separately from the map of the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

§ 243.10 *Public-land subdivisions.* All subdivisions of the public surveys represented on the map should have their entire boundaries drawn, and all lands affected by the right-of-way the smallest legal subdivisions (40-acre tracts and lots) must be shown.

§ 243.11 *Termini of road.* The termini of the line of road should be fixed by reference of course and distance to the nearest existing corner of the public survey. The map, field notes, engineer's statement, and president's certificate (Forms 3 and 4),[2] should each show these connections. The company must certify in Form 4 that the road is to be operated as a common carrier of passengers and freight. A tract for station grounds must be similarly referenced and described on the plat and in Forms 7 and 8,[2] except when the tract conforms to the subdivisions of the public survey, in which case it may be described in the forms according to the subdivisions.

§ 243.12 *Connections on unsurveyed land.* When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant, and the single bearing and distance from the terminal point to the corner must be computed and noted on the map, in the engineer's statement, and in the president's certificate (Forms 3 and 4).[2] The notes and all data for the computation of the traverse must be given.

§ 243.13 *Connections with monuments on unsurveyed land.* When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. There must be given an accurate description of the mark and full data of the traverse, as required above. The engineer's statement and president's certificate (Forms 3 and 4)[2] must state the connections. These monuments are of great importance.

§ 243.14 *Surveyed and unsurveyed land.* (a) When the line of route lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately stated in Forms 3 and 4[2] by connection of termini and length, as though each portion were independent.

(b) When lands desired for station grounds lie partly on unsurveyed land, the areas of the several parts on surveyed and unsurveyed land must be separately stated on the map and in Forms 7 and 8.[2]

(c) Lines of route or station grounds lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to the regulations in this part, but the approval will only relate to that portion traversing the surveyed lands.

§ 243.15 *Unsurveyed land.* Maps of lines of route or plats of station grounds lying wholly on unsurveyed lands may be received and placed on file in the district land office of the district in which the same is situated, for general information, and the date of filing will be noted thereon; but the same will not be approved as the act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps or plats will not dispense with the filing of maps or plats after the survey of the lands and within the time limited in the act granting the right-of-way. If these maps or plats are in all respects regular when filed, they will receive approval. In filing such maps or plats the initial and terminal points will be fixed as indicated in §§ 243.12 and 243.13.

§ 243.16 *Connections with public survey corners.* Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. The map or plat should show these distances and the station numbers at the points of intersection. When field notes are submitted, they should also contain these distances and station numbers.

§ 243.17 *Statement and certificate required.* The engineer's statement and president's certificate must be written on the map, and must both designate by termini and length, in miles and decimals, the line of route for which right-of-way application is made. (See Forms 3 and 4.)[2] Station grounds must be described by initial point and area in acres (see Forms 7 and 8),[2] and when they are on surveyed land the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein.

§ 243.18 *Spurs or branch lines.* Where right-of-way is desired for spurs or short branch lines which will not greatly enlarge the size of the map, they may be shown on the same map with the main line, and should be separately described in the forms by termini and length. For longer branch lines separate maps should be filed.

§ 243.19 *Notations on maps and records.* (a) When maps are filed, the manager will note on each the name of the land office and the date of filing, over his written signature. Notations will also be made on the records of the land office, as to each unpatened tract affected, that application for right-of-way is pending, giving date of filing and name of applicant. The manager will certify on each map, over his written signature, that unpatented land is affected by the proposed right-of-way. The maps and field notes will be approved by the manager in duplicate, and the duplicate. Any right existing at the date of the filing of the right-of-way application will not be affected by the filing or approval thereof. If no unpatented land is involved in the application the manager will reject it, allowing the usual right of appeal.

§ 243.20 *Evidence of construction.* When the railroad is constructed, a statement of the engineer and certificate of the president (Forms 5 and 6)[2] must be filed in the district land office, in duplicate. No new map will be required, except in case of deviations from the right-of-way previously approved, whether before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case. The map must show clearly the portions amended, or bear a statement describing them, and the location must be described in the forms as the amended survey and the amended definite location. In such cases the company must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the manager.

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOGGING ROADS ON THE OREGON AND CALIFORNIA AND COOS BAY REVESTED LANDS

Subpart A—General Regulations Applicable to All Rights-of-Way Provided for in This Part

DEFINITIONS

Sec.
244.1 Definitions.

[2] For Forms 1 to 8, inclusive, referred to in this part, see 37 L. D. pp. 795 to 797, inclusive.

INDIAN LANDS

Sec.
244.2 Indian lands.

APPLICATIONS

244.3 Application.
244.4 Showing as to organization required of corporations.
244.5 Showing as to citizenship required of individuals; showing by associations of individuals.
244.6 Documents which must accompany application.

GENERAL PROVISIONS

244.7 Nature of the interest granted; settlement on right-of-way.
244.8 Commencement of construction work in advance of approval of right-of-way; trespass.
244.9 Terms and conditions.
244.10 Proposed or existing national forest.
244.11 National parks and monuments.
244.12 Oregon and California Railroad and Coos Bay Wagon Road grant lands.
244.13 Alaska.
244.14 Approval of right-of-way.
244.15 Use of right-of-way.
244.16 Revocation for violation of regulations or terms or conditions.
244.17 Change in jurisdiction over or disposal of lands.
244.18 Transfer of right-of-way.
244.19 Disposal of property on termination of right-of-way.
244.20 Appeals.

RENTAL CHARGES

244.21 Payment required; exceptions; default; revision of charges.

Subpart B—Rights-of-Way Through Public Lands and Reservations for Canals, Ditches, and Reservoirs Under the Act of March 3, 1891, as Amended

244.22 Statutory authority.
244.23 Pipelines, flumes, and conduits included; use of materials on adjacent lands.
244.24 Use subsidiary to main purpose of irrigation.
244.25 Caretaker's building sites.
244.26 Showing required for additional right-of-way.
244.27 Procedure when unsurveyed land is involved.
244.28 Segregated reservoir sites.

Subpart C—Reservation of Public Lands for Reservoirs for Watering Livestock

244.29 Statutory authority.
244.30 Declaratory statement.
244.31 Action on declaratory statement; size, location, and number of reservoir sites.
244.32 Time for construction.
244.33 Map of constructed reservoir.
244.34 Approval of constructed project.
244.35 Annual proof of maintenance.
244.36 Procedure when unsurveyed land is involved.
244.37 Application to fence reservoir; plat required.

Subpart D—Rights-of-Way Through Public Lands and Reservations for Telephone and Telegraph Lines, Transmission Lines, Radio and Television Sites, and for Pipelines, Canals, Ditches, and Water Plants Under the Acts of February 15, 1901, and March 4, 1911

244.39 Statutory authority.
244.40 Applications for lands in national forests and other reservations.
244.41 Applications which may be submitted under the acts of February 15, 1901, and March 4, 1911.
244.42 Plant sites; buildings to be platted on maps.
244.43 Transmission lines.
244.44 Terms and conditions.
244.45 No rights acquired prior to filing and approval of application.
244.46 Unsurveyed lands.
244.47 Expiration and renewal of right-of-way.

Subpart E—Rights-of-Way Through National Forests for Dams, Reservoirs, Water Plants, Ditches, Flumes, Pipes, Tunnels, and Canals for Municipal or Mining Purposes, Under the Act of February 1, 1905

244.48 Statutory authority.
244.49 When construction may commence.
244.50 Water plant structures.
244.51 Procedure when unsurveyed land is involved.

Subpart F—Rights-of-Way Under the Act of January 21, 1895, Over Public Lands for Tramroads and Other Roads for Logging and Mining Purposes, Except Logging Roads Over Revested and Reconveyed and Intermingled Public Lands in Oregon

244.52 Statutory authority.
244.53 Tramroads defined.

Subpart G—Transfers of Public Lands and Reservations for Highways, Road Building Material and Maintenance Sites, Roadside and Landscape Development Areas and Flight Strips, Under the Federal Aid Highway Act

244.54 Statutory authority.
244.55 Filing of application.
244.56 Action on application.

Subpart H—Rights-of-Way for the Construction of Highways Over Public Lands Under R. S. 2477

244.57 Statutory authority.
244.58 Effective date and extent of grant.
244.59 Procedure when reserved land is involved.

Subpart I—Rights-of-Way Through Public Lands and Reservations for Oil and Natural Gas Pipe Lines and Pumping Plant Sites Under the Mineral Leasing Act

244.60 Statutory authority.
244.61 Who may file application.
244.62 Common carrier stipulation.
244.64 Use of pipe line.
244.65 Approval of right-of-way.
244.66 Pumping plant site.

Subpart J—Rights-of-Way Over Lands Subject to a Mineral Lease

244.67 Statutory authority; applications.

Subpart K—Rights-of-Way for Federal Irrigation Purposes Under the Act of December 5, 1924

244.68 Statutory authority.

Subpart L—Rights-of-Way for Tranmission Lines in Connection With Boulder Canyon Project Under the Boulder Canyon Project Act

244.69 Statutory authority.

Subpart M—Emergency Access Permits for Salvage Operations

244.70 Statutory authority.
244.71 Statement of policy.
244.72 Definitions.
244.73 Nature of emergency access permit.
244.74 Filing of application.
244.75 Contents of application.
244.76 Reciprocal road use agreement; recordation.
244.77 Use by the United States and its licensees of rights received from a permittee.
244.78 Duration and location of rights granted or received by the United States.
244.79 Permittee's agreement with United States respecting compensation and adjustment of road use.
244.80 Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.
244.81 Agreements and arbitration between permittee and licensee respecting adjustment of road use.
244.82 Arbitration procedure.
244.83 Payment required for Government timber.
244.84 Payment to the United States for road use.
244.85 Bond in connection with existing roads.
244.86 Approval of permit.
244.87 Terms and conditions of permit.
244.88 Assignment of permit.
244.89 Causes for termination of permittee's rights.
244.90 Remedies for violations by licensee.
244.91 Disposition of property on termination of permit.
244.92 Appeals.

SUBPART A—GENERAL REGULATIONS APPLICABLE TO ALL RIGHTS-OF-WAY PROVIDED FOR IN THIS PART [1]

AUTHORITY: §§ 244.1 to 244.21 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

DEFINITIONS

§ 244.1 *Definitions.* As used in §§ 244.1 to 244.69:

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, Bureau of Land Management.

(c) "Area Administrator" means area administrator of the Bureau of Land Management.

(d) "Manager" means manager of the land office for the district in which the lands applied for are situated. For areas for which there is no land office "manager" means the Eastern States Supervisor.

(e) "Project" means the physical structures in connection with which the right-of-way is approved.

(f) "Construction work" means any and all work, whether of a temporary or permanent nature, done in the construction of the project.

(g) "Superintendent in charge" means the officer of the United States having supervision of the land under authority of the agency having jurisdiction and control over the land involved.

(h) "Reservation lands" includes national parks and monuments, or any other reservations of the United States for the use of or administration by the National Park Service, the Fish and Wildlife Service, the Bureau of Reclamation, or any agency outside the Department of the Interior.

(i) "Right-of-way" includes license, permit, or easement, as the case may be, and, where applicable, includes "site".

INDIAN LANDS

§ 244.2 *Indian lands.* The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and

[1] This part does not apply to the obtaining of rights-of-way by Federal agencies over unreserved, or withdrawn, or reserved public domain lands. Such rights-of-way may be appropriated under the principles of the instructions of January 13, 1916 (44 L. D. 513), with the consent of the agency having jurisdiction or control over the land.

upon Indian lands. All applications for the use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations contained in 25 CFR Part 256.

APPLICATIONS [2]

§ 244.3 *Application.*[3] No special form of application is required. The application should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purpose for which the right-of-way is to be used. Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

§ 244.4 *Showing as to organization required of corporations.* (a) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(b) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(c) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(d) A copy of the resolution or by-laws of the corporation authorizing the filing of the application must also be filed.

(e) If the corporation shall have previously filed with the Bureau the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

§ 244.5 *Showing as to citizenship required of individuals; showing by associations of individuals.* (a) An individual applicant applying for a right-of-way under any right-of-way act, except the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946 et seq.), and the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952–955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(b) An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

§ 244.6 *Documents which must accompany application*—(a) *Maps.* Each application, other than a reservoir declaratory statement under § 244.30, must be accompanied by a map prepared on tracing linen and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(1) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines, and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having a nominal voltage of less than 33 kv. map scales may at option of the applicant be 5,280 feet to the inch.

(2) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(3) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(4) If the right-of-way is across or within reservation lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public-land surveys.

(5) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(6) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. For reservoirs, the capacity in acre-feet, the area within the high-water line, the source of the water supply, and the location and height of the dam must be shown. The total distance of the right-of-way on the Federal lands shall be stated. In the case of a reservoir or other site, the total acreage shall be stated.

(7) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2, which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.[4]

(8) Whenever it is found that a public-land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(b) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water.

[2] In addition to the material contained under this heading, the subpart relating to the particular type of right-of-way involved should be consulted. See Subparts B through L of this part.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

[4] See appendix for form to be placed on maps.

Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within a specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

GENERAL PROVISIONS [*]

§ 244.7 *Nature of the interest granted; settlement on right-of-way.* (a) No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

(b) All persons entering or otherwise appropriating a tract of public land, to part of which a right-of-way has attached under the regulations in this part, take the land subject to such right-of-way and without deduction of the area included in the right-of-way.

§ 244.8 *Commencement of construction work in advance of approval of right-of-way; trespass.* (a) Permission to commence construction work over and through lands under the jurisdiction of the Department of the Interior or of its agencies in advance of the approval of a right-of-way may be granted by the manager upon a satisfactory showing of the necessity for such action and upon a determination, after the request for permission has been cleared by all interested agencies of the Department, that such action is compatible with the public interest. Requests for such advance authority need not meet the formal requirements of §§ 244.3–244.5 and may be filed with the agency having supervision of the land involved, in which case a duplicate request must be filed in the office specified in § 244.3.

(b) Any grant of advance permission is solely for the convenience of the applicant and is not a commitment by the Department that a right-of-way will be approved. The Department's authority in acting on a right-of-way application is not restricted in any way by the grant of advance permission or any requirements laid down in such grant of permission and the Department may impose additional or different requirements, within the scope of the applicable statute and lawful regulations thereunder, as conditions precedent to the approval of the right-of-way. A grant of advance permission is revocable at will, and the grantee assumes all the risk of operating under such permission.

(c) Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

§ 244.9 *Terms and conditions.* An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent in charge may specify.

(c) To take such soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way as the superintendent in charge of such lands may request.

(d) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(f) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the right-of-way, except that where a right-of-way is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(g) To notify promptly the superintendent in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the agency having supervision of the lands to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent in charge.

(j) That he shall at all times keep the manager informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

§ 244.10 *Proposed or existing national forest.* Whenever a right-of-way is sought through or in national forest lands, or any area withdrawn for inclusion within a national forest, the applicant must enter into such stipulations and execute such bond as the Forest Service may require for the protection of such existing or proposed national forest.

§ 244.11 *National parks and monuments.* (a) The act of March 3, 1921 (41 Stat. 1353, 16 U. S. C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development,

[*] In addition to the material contained under this heading, the subpart relating to the particular type of right-of-way involved should be consulted. See Subparts B through L of this part.

transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without specific authority of Congress.

(b) Whenever a right-of-way is desired through any national park or monument for purposes other than those excepted by the act of March 3, 1921, or not otherwise expressly prohibited by law, the applicant must show to the satisfaction of the Director, National Park Service, that the location and use of the right-of-way for the purposes contemplated will not interfere with the uses and purposes for which the park or monument was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant must also file such stipulations and bond as may be required by the Director, National Park Service. Ordinarily, such a right-of-way may be allowed only on a showing of absolute necessity.

§ 244.12 *Oregon and California Railroad and Coos Bay Wagon Road grant lands.* All applications for rights-of-way for the construction and operation of any project over Oregon and California Railroad lands, title to which was revested in the United States by the act of June 9, 1916 (39 Stat. 218), and reconveyed Coos Bay Wagon Road lands, act of February 26, 1919 (40 Stat. 1179), must also be accompanied by a statement showing the amount of merchantable timber, if any, to be cut, removed, or destroyed in the construction of the project works, and agreeing to deposit with the Bureau, in advance of construction, such sum of money as may be determined to be the full stumpage value of the timber to be so cut, removed, or destroyed, and an affirmative showing that favorable action on the application will not adversely affect or impair watershed protection, streamflow regulation, and other conservation features enumerated in the act of August 28, 1937 (50 Stat. 874).[4]

§ 244.13 *Alaska.* All general right-of-way laws, and the regulations thereunder contained in this part, are applicable to Alaska.[5]

§ 244.14 *Approval of right-of-way.* (a) Where an application is complete and in conformity with the law and regulations and all required reports have been obtained and it is determined that the approval of the right-of-way will not be contrary to the public interest, including that of the Government, the manager will approve the right-of-way.[6]

(b) An application which does not conform with the law or regulations under which filed or the approval of which would be inconsistent with the public or Government interest, will be rejected.

§ 244.15 *Use of right-of-way—(a) Proof of construction.* A period of 5 years from the date of the approval of the right-of-way is usually allowed for construction unless a different period is provided by statute. Upon completion of construction, proof thereof should be submitted to the manager, consisting of a statement and certificate furnished by the holder of the right-of-way. The statement and certificate are embodied in Forms 5 and 6, which should be modified so as to be appropriate to the act and to the nature of the project.[8] If, in construction, a substantial deviation from the location shown on the original map is planned or made, the party in interest must file a duly executed relinquishment of the unused portion of the right-of-way accompanied by a map of amended location of the right-of-way for the project as actually constructed. The map of amended location must be prepared in accordance with § 244.6 (a) and must be filed before or as soon as possible after the deviation is made. The relinquishment may be prepared so as to become effective upon approval of the amended location. Any deviation made prior to such approval will be at the risk of the applicant.

(b) *Nonconstruction, abandonment, or nonuse.* Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

§ 244.16 *Revocation for violation of regulations or terms or conditions.* All rights-of-way approved pursuant to this part, except those granted for pipe lines pursuant to section 28 of the act of February 25, 1920, as amended August 21, 1935 (49 Stat. 678; 30 U. S. C. 185), shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of the terms or conditions of the right-of way. No right-of-way shall be deemed to be canceled except on the issuance of a specific order of cancellation.

§ 244.17 *Change in jurisdiction over or disposal of lands.* (a) A change of jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will, however, change the administrative jurisdiction over the right-of-way.

(b) The final disposal by the United States of any tract traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or part, but such final disposition shall be deemed and taken to be subject to such right-of-way until it is specifically canceled.

§ 244.18 *Transfer of right-of-way.* Any proposed transfer, by assignment, lease, operating agreement or otherwise, of a right-of-way acquired under any of the acts, except the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946–949), must be filed in triplicate in accordance with § 244.3 for approval; must be accompanied by the same showing of qualifications of the assignee as is required of applicants; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the right-of-way. No assignment will be recognized unless and until approved.

§ 244.19 *Disposal of property on termination of right-of-way.* Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all moneys due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

§ 244.20 *Appeals.* An appeal pursuant to the Rules of Practice (Part 221 of this chapter) may be taken from any decision of the manager to the Director, and from the Director to the Secretary.

RENTAL CHARGES

§ 244.21 *Payment required; exceptions; default; revision of charges.* (a) The charge for use and occupancy of public and reservation lands for rights-of-way for telephone, telegraph, and power transmission lines, water pipelines, ditches or canals under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959); telephone, telegraph, and power transmission lines under the act of March 4, 1911 (36 Stat. 1253; 43 U. S. C. 961); tramroads under the act of January 21, 1895 (28 Stat. 635; 43 U. S. C. 956); oil and gas pipelines under section 28 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449), as amended August 21, 1935 (49 Stat. 678; 30 U. S. C. 185); and water pipelines, ditches, flumes, tunnels, or canals under section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 524), shall be at the rate of five dollars ($5) per mile or fraction thereof per calendar year or fraction thereof for rights-of-way not over 100 feet in width and one dollar ($1) per mile or fraction thereof for each additional 20 feet or fraction thereof in width.

(b) The charge for use and occupancy of public and reservation lands for reservoirs, dams, water plant and powerplant sites, well sites, and similar purposes under the act of February 15, 1901; sites for pumping stations or other structures authorized under section 28 of the Mineral Leasing Act, as amended; and dams, reservoirs, and water-plant sites under section 4 of the act of February 1, 1905, shall be based on the value of the land and the use to which it is to be put, but in no case will the minimum charge be less than five dollars ($5) per calendar year or fraction there of. The charge for micro wave relay and communication sites other than radio and television broadcast sites shall be based upon the value of the land, but in no case will the annual charge be less than fifty dollars ($50) per site. The charge for radio and television broadcast sites shall be based

[4] The general right-of-way statutes were extended to these lands by sec. 2 of the act of June 9, 1916 (39 Stat. 218), and sec. 3 of the act of February 26, 1919 (40 Stat. 1179).

[5] See sec. 3 of the act of August 24, 1912 (37 Stat. 512; 48 U. S. C. 23), and 30 Op. Atty. Gen. 387 (1915).

[6] Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the manager is required to clear the application with such agency.

[8] See appendix for forms.

on the value of the land but in no case will the annual charge be less than the following:

Stations not over:	
1,000 watts input power	$75.00
2,500 watts input power	100.00
5,000 watts input power	200.00
10,000 watts input power	250.00
20,000 watts input power	300.00
All others	450.00

(c) No rental charge will be required for the use and occupancy of public or reservation lands under a right-of-way authorizing such use and occupancy exclusively for irrigation projects, municipally operated projects, non-profit or REA cooperative projects, or when the use is by a Government agency.

(d) (1) There shall be remitted with the application the amount provided as the rental for a calendar year or fraction thereof.

(2) Where the application is for a reservoir, dam, well, or plant sites, etc., the sum of five dollars ($5), the minimum charge specified for such cases, shall be remitted with the application.

(e) The holder of the right-of-way thereafter shall pay, on or before the first day of each calendar year, the rental charges for that calendar year in accordance with paragraphs (a) and (b) of this section. If the rental charge is not paid when due, and such default shall continue for thirty days after the first day of January, action may be taken to cancel the right-of-way. After default has occurred, no structures, buildings, or other equipment may be removed from the right-of-way except upon written permission first obtained from the regional administrator.

(f) At any time not less than five years after either the approval of the right-of-way or the last revision of rental charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing calendar year.

(g) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department. (31 Stat. 790, 36 Stat. 1253, 28 Stat. 635, Sec. 4, 33 Stat. 628, Sec. 28, 49 Stat. 678; 43 U. S. C. 959, 961, 956, 16 U. S. C. 524, 30 U. S. C. 185)

SUBPART B—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR CANALS, DITCHES, AND RESERVOIRS UNDER THE ACT OF MARCH 3, 1891, AS AMENDED [10] [11]

AUTHORITY: §§ 244.22 to 244.28 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.22 *Statutory authority.* (a) Section 18 of the act of March 3, 1891 (26 Stat. 1101), as amended by the acts of March 4, 1917 (39 Stat. 1197), and May 28, 1926 (44 Stat. 668; 43 U. S. C. 946) authorizes the Secretary to grant rights-of-way for irrigation and drainage purposes over public lands and reservations to the extent of the ground occupied by the water of any reservoirs and any canals and laterals and 50 feet on each side of the marginal limits thereof and such additional right-of-way as may be deemed necessary for the proper operation and maintenance of said reservoirs, canals, and laterals.

(b) Section 19 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 947), provides that a map of the canal or ditch and reservoir must be filed within twelve months after the location of ten miles of a canal if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States; that upon the approval thereof by the Secretary, the same shall be noted upon the records and thereafter all lands affected by such right-of-way shall be disposed of subject to such right-of-way.

(c) Section 20 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 948), provides that this act shall apply to all canals, ditches, or reservoirs theretofore or thereafter constructed, whether by corporations, individuals, or association of individuals, on the filing of the certificates and maps as therein provided; that if any section of the project is not completed within 5 years after location, the right-of-way shall be forfeited as to the uncompleted canal, ditch, or reservoir, to the extent that the same is not completed at the date of forfeiture.

(d) Section 21 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 949), provides that nothing in this act shall authorize the occupancy of such right-of-way except for the purpose for which it was approved, and then only so far as may be necessary for the construction, maintenance, and care of the project.

§ 244.23 *Pipelines, flumes, and conduits included; use of materials on adjacent lands.* (a) The act of March 3, 1891, as amended, is applicable to rights-of-way for pipelines, flumes, or other conduits, although they are not specifically mentioned in the act, if water is conveyed primarily for irrigation or drainage purposes.

(b) Material on adjacent lands: The word "adjacent", as used in section 18 of the act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L. D. 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L. D. 566). These decisions were rendered under the Railroad Right-of-Way Act of March 3, 1875 (18 Stat. 482; 43 U. S. C. 934), and are applied to the act of March 3, 1891, since the wording with respect to the use of material is the same.

§ 244.24 *Use subsidiary to main purpose of irrigation.* Section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U. S. C. 951), authorizes the use of rights-of-way approved under the act of March 3, 1891, for purposes subsidiary to the main purpose of irrigation.

§ 244.25 *Caretaker's building sites.* The act of March 1, 1921 (41 Stat. 1194; 43 U. S. C. 950), authorizes the Secretary, except as to lands within national forests, to grant permits or easements for not to exceed 5 acres of ground adjoining the right-of-way at each of the locations, to be determined by the Secretary, to be used for the erection thereon of dwellings or other buildings or corrals for the convenience of those engaged in the care and management of the works provided for by the act of March 3, 1891, as amended.

§ 244.26 *Showing required for additional right-of-way.* The act of May 28, 1926 (44 Stat. 668; 43 U. S. C. 946), amended section 18 of the act of March 3, 1891, so as to authorize, if needed, a right-of-way additional to the 50 feet allowed by the section for operation and maintenance of reservoirs, canals, ditches, and laterals. To obtain such additional right-of-way, an explanatory showing must accompany the application. This should consist of a statement by the applicant's engineer or surveyor setting forth succinctly the extent of the additional right-of-way required and the necessity therefor. The additional right-of-way should also be shown graphically by lateral limit lines on the map filed in connection with the application. If additional right-of-way is wanted only for portions or sections of the reservoirs, canals, ditches, or laterals, the termini thereof should be fixed by engineer's survey stations in addition to the lateral limit lines.

§ 244.27 *Procedure when unsurveyed land is involved.* (a) Maps filed under the said act, as amended, showing canals, ditches, laterals, and reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps conform to these regulations, but the approval will only relate to that portion of the right-of-way traversing the surveyed land.[12]

(b) Maps showing canals, ditches, laterals, and reservoirs lying wholly on unsurveyed lands may be received and placed on file in the Bureau of Land Management for general information. The date of filing will be noted thereon; but the maps will not be approved as the act makes no provision for the approval of any but maps showing locations on surveyed lands. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified in the act, and if the maps are regular in all respects they will receive the manager's approval.

§ 244.28 *Segregated reservoir sites.* The act of February 26, 1897 (29 Stat.

[10] See Solicitor's opinion of July 16, 1942 (58 L. D. 29), for a discussion of the applicability of various acts relating to rights-of-way for canals, ditches, and reservoirs.

[11] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[12] By letter of August 21, 1937, approved by the Department in the case of the Twin Lakes Reservoir and Canal Company (Denver 045465), it was held that a right-of-way may be acquired under the 1891 act, by actual construction of a project in advance of the filing of an application and approval of the right-of-way over unsurveyed lands, upon the same principle applied to railroads under the act of March 3, 1875 (18 Stat. 482; 43 U. S. C. 934-939).

599; 43 U. S. C. 664), permits the approval of applications under the act of March 3, 1891, for rights-of-way upon reservoir sites reserved under authority of the act of October 2, 1888 (25 Stat. 526; 43 U. S. C. 662), and August 30, 1890 (26 Stat. 371, 391; 43 U. S. C. 662).

SUBPART C—RESERVATION OF PUBLIC LANDS FOR RESERVOIRS FOR WATERING LIVESTOCK [13]

AUTHORITY: §§ 244.29 to 244.37 issued under 29 Stat. 484, 42 Stat. 1437; 43 U. S. C. 952–955.

§ 244.29 *Statutory authority.* (a) By the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952–955), it is provided that any person, livestock company, or transportation corporation engaged in breeding, grazing, driving, or transporting livestock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such livestock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding 160 acres, so long as such reservoir is maintained and water kept therein for such purpose. The act does not apply to lands in grazing districts, and applications for stock-watering reservoirs on such lands should be filed under section 4 of the Taylor Grazing Act (48 Stat. 1271; 43 U. S. C. sec. 315c) and Part 161 of this chapter.

(b) Section 1 of the act of January 13, 1897, as amended by the act of March 3, 1923 (42 Stat. 1437; 43 U. S. C. 952), authorizes the Secretary of the Interior, in his discretion, under such rules, regulations, and conditions as he may prescribe, upon application by such person, company, or corporation, to grant permission to fence reservoirs constructed under the act of January 13, 1897, in order to protect livestock, to conserve water, and to preserve its quality and conditions, provided, that such reservoir shall be kept open to the free use of any persons desiring to water animals of any kind.

§ 244.30 *Declaratory statement.* To apply for a reservoir site under §§ 244.29 to 244.37, the applicant must file with the manager a declaratory statement drawn in accordance with Form 7.[14] No other application is necessary.

§ 244.31 *Action on declaratory statements; size, location, and number of reservoir sites.* For the filing of the reservoir declaratory statement a fee of $1 will be charged (R. S. 2238; 43 U. S. C. 82). In acting upon these statements the following general rules will be applied:

(a) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity, not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity, not more than 80 acres can be reserved. For reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity, not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more, 160 acres may be reserved. In the case where the water is furnished the livestock by artificial means, such as by windmill, pump, tanks, and troughs, the regulations requiring a minimum capacity of 250,000 gallons may be waived upon the claimant's submitting a satisfactory showing that by such artificial means he will be able to furnish sufficient water and provide proper troughs and facilities to properly accommodate all cattle likely to water at the place in question.

(b) Not more than 160 acres shall be reserved for this purpose in any section.

(c) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(d) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(e) Lands so reserved shall be kept open to the free use of any person desiring to water animals of any kind. If the lands so reserved are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use them for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(f) Notwithstanding his action in accepting any such declaratory statement, the manager will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

§ 244.32 *Time for construction.* The reservoir must be constructed and completed within 2 years after the filing of the declaratory statement; otherwise the right-of-way will be subject to cancellation.

§ 244.33 *Map of constructed reservoir.* After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped showing its location with relation to the public land surveys. The map must be prepared in accordance with the requirements of § 244.6 and be filed with the manager and must bear Forms 8 and 9.[15]

§ 244.34 *Approval of constructed project.* The map and papers will be examined to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory, they will be approved, and the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the act. When such reservation is made the manager will make the proper notations on his records.

§ 244.35 *Annual proof of maintenance.* In order that this reservation shall be continued, it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required, during the month of January of each year, to file with the manager a statement to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the act have been complied with. Form 10 [16] will be used for this statement. Upon failure to file such statement, steps will be taken looking to the revocation of the reservation of the lands.

§ 244.36 *Procedure when unsurveyed land is involved.* (a) In any case where the proposed reservoir is to be located upon unsurveyed public land, the declaratory statement may be filed, the land being therein described by metes and bounds and, as well, by the description which it is believed it will bare when officially surveyed. Proof of construction must be submitted at the end of the same period of time and in the same manner as is prescribed and required in cases where the lands have been previously surveyed. Such proof should embrace the field notes and a plat of survey such as is required in cases of reservoirs on surveyed lands, with such modifications as are necessary (§ 244.33).

(b) Any reservation made pursuant to the act of Jauary 13, 1897, secures only a license to use and occupy the reserved land with and for a reservoir, and this license may endure permanently or may be of transient duration. No estate in the land is granted. For this reason it is administratively undesirable that private surveys made pursuant to the statute and §§ 244.29 to 244.37 shall be preserved and established by subsequent public-land surveys and approved plats thereof. Therefore, when the public-land surveys have been extended over land covered by a reservoir declaratory statement affecting unsurveyed lands, the declarant shall adjust his survey to the line of the official survey, showing the location of the reservoir with respect to said lines by means of properly established tie lines. Any subsequent reservation which may be ordered will be of those subdivisions or aliquot parts of subdivisions thus shown to be occupied by or necessary for the proper use of the reservoir.

(c) An annual statement of maintenance must be submitted the same as though the reservoir had been constructed on surveyed lands. Nothing in §§ 244.29 to 244.37 shall preclude the Bureau of Land Management from requiring additional information in any case where that information is deemed proper or necessary.

§ 244.37 *Application to fence reservoir; plat required.* Any person, company, or corporation desiring to secure the benefits of the act of March 3, 1923, should file in accordance with § 244.3 an application, duly corroborated by at least two disinterested witnesses, setting forth

[13] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[14] [15] [16] See appendix for forms.

such facts as would show that it is necessary to fence such reservoir in order to protect the livestock, to conserve water, and to preserve its quality and conditions. There should be filed with such application, and as a part thereof, a plat showing the land embraced in the reservoir as near as may be, the location of the proposed fence with respect to such reservoir, together with all gates or other openings and roadways leading to the same. In no instance will an application be considered unless said plat shows the location of at least two gates. Said gates shall be so constructed and maintained that they may be, at all times, readily opened and closed by any person desiring to water animals of any kind, and such gates shall be so placed as to be readily accessible from the road or roads nearest the reservoir, which roads shall be the ones usually traveled and, where there are no such roads to govern the location of such gates, they shall be so situated as to make the reservoir readily available from the adjacent public or other range. There shall be posted on the gates, and elsewhere if necessary, a notice stating that the reservoir is for stock-watering purposes, located on public lands, and that the same is open to the free use of any person desiring to water animals of any kind.

SUBPART D—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR TELEPHONE AND TELEGRAPH LINES, TRANSMISSION LINES, RADIO AND TELEVISION SITES, AND FOR PIPE LINES, CANALS, DITCHES, AND WATER PLANTS UNDER THE ACTS OF FEBRUARY 15, 1901 AND MARCH 4, 1911 [17]

AUTHORITY: §§ 244.39 to 244.47 issued under 31 Stat. 790, 36 Stat. 1253; 43 U. S. C. 959, 961.

§ 244.39 *Statutory authority.* (a) The act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(b) The act of March 4, 1911 (36 Stat. 1253; 43 U. S. C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.[18]

(c) The applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U. S. C. 791–825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3 (11) of the act, excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D. C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2.

§ 244.40 *Applications for lands in national forests and other reservations.* (a) Applications under the act of February 15, 1901,[19] for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with § 244.3.

(b) Applications for a right-of-way under the act of March 4, 1911, involving lands under the control of a department or agency other than the Department of the Interior should be prepared in accordance with the regulations issued by such department or agency and submitted to the proper officer thereof.[20]

§ 244.41 *Applications which may be submitted under the acts of February 15, 1901, and March 4, 1911.* (a) All applications where it is sought to acquire a right-of-way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946–949), and section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U. S. C. 951), must be submitted under the 1891 and 1898 acts, in accordance with the applicable regulations in this part.

(b) An application may be filed under the act of February 15, 1901, for a stock-watering reservoir site. Rights-of-way will not be approved for stock-watering reservoirs on wildlife refuges. An application under the act for a "water plant" site or for a pipeline right-of-way may include an area for a well to supply the water; but if, because the lands affected are within a grazing district established under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315 et seq.), as amended, or for any other reason, the granting of a right-of-way for a stock-watering reservoir site, or for a water plant site or for a pipeline would adversely affect the interest of the Government, the application therefor will not be allowed. If the lands affected are within a grazing district, an application for a stock-watering reservoir or water well site should be filed under section 4 of said act of June 28, 1934, if the applicant is qualified under the section and if the reservoir or well is necessary to the care and management of the permitted livestock and primarily for that purpose. Regulations under the said section 4 are contained in § 161.14 of this chapter.

(c) Applications for rights-of-way for telephone, telegraph, and power transmission lines may also be submitted under either the act of February 15, 1901, or the act of March 4, 1911, in accordance with the applicable regulations contained in this part. Applications for radio, television and other forms of communication transmitting, relay and receiving structures and facilities should be submitted under the act of March 4, 1911, as amended.

(d) Any application under the act of March 4, 1911 for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

§ 244.42 *Plant sites; buildings to be platted on maps.* (a) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4 [21] by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the

[17] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[18] The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (M. 30846), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

[19] See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 472).

[20] See 29 Op. Atty. Gen. 303.

[21] See appendix for forms.

map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act of February 15, 1901. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land surveys.

(b) If the application is for a power plant site it must also contain a statement giving a description of the proposed power plant including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the project and whether the power plant is to be interconnected with other generating facilities owned by the applicant or others; and whether the power generated is to be sold to others at wholesale or retail or used by the applicant for its own domestic, agricultural, or industrial purposes.

§ 244.43 *Transmission lines.* When an application is made for a right-of-way for a transmission line, it must also contain the following:

(a) A description of the plant or connecting generating plants which generate or will generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the authorized officer, the character, capacity, and location of such plants.

(b) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for which the line is designed and at which it is to be operated initially, and a statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps).

§ 244.44 *Terms and conditions.* By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 244.9:

(a) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact, and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(b) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

§ 244.45 *No rights acquired prior to filing and approval of application.* Application under the act of February 15, 1901, or the act of March 4, 1911, for permission to use the desired right-of-way through the public lands and reservations must be filed and approved before any rights can be claimed thereunder.

§ 244.46 *Unsurveyed lands.* Permission may be given under the act of February 15, 1901, and the act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

§ 244.47 *Expiration and renewal of right-of-way.* Unless otherwise specified in a right-of-way granted under the act of March 4, 1911, and unless sooner canceled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with § 244.3, a written application to renew the right-of-way, and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

SUBPART E—RIGHTS-OF-WAY THROUGH NATIONAL FORESTS FOR DAMS, RESERVOIRS, WATER PLANTS, DITCHES, FLUMES, PIPES, TUNNELS, AND CANALS FOR MUNICIPAL OR MINING PURPOSES, UNDER THE ACT OF FEBRUARY 1, 1905 [32]

AUTHORITY: §§ 244.48 to 244.51 issued under sec. 4, 33 Stat. 628; 16 U. S. C. 524.

§ 244.48 *Statutory authority.* Section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 524), grants rights-of-way through national forests to citizens and corporations of the United States, for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, for municipal or mining purposes, and for the purpose of the milling and reduction of ores, during the period of the beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are respectively situated.

§ 244.49 *When construction may commence.* No construction will be allowed in national forests until an application for right-of-way has been regularly filed in accordance with §§ 244.1 to 244.20, 244.48 to 244.51, and has been approved, or unless permission for construction in advance of the right-of-way grant has been specifically given.

§ 244.50 *Water plant structures.* When application is made for a right-of-way for water plants, § 244.42 should be followed, with appropriate changes in the prescribed forms.

§ 244.51 *Procedure where unsurveyed land is involved.* Maps showing reservoirs, canals, water plants, and other structures wholly upon unsurveyed lands, will be received and acted upon in the manner prescribed for surveyed lands.

SUBPART F—RIGHTS-OF-WAY UNDER THE ACT OF JANUARY 21, 1895, OVER PUBLIC LANDS FOR TRAMROADS AND OTHER ROADS FOR LOGGING AND MINING PURPOSES,[33] EXCEPT LOGGING ROADS OVER REVESTED AND RECONVEYED AND INTERMINGLED PUBLIC LANDS IN OREGON [34]

AUTHORITY: §§ 244.52 and 244.53 issued under 28 Stat. 635; 43 U. S. C. 956.

§ 244.52 *Statutory authority.* The act of January 21, 1895 (28 Stat. 635; 43 U. S. C. 956), authorizes the Secretary under such general regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, quarrying, or of cutting timber and manufacturing lumber. The act does not authorize the use of rights-of-way within the limits of any park or military reservation. The act is made applicable to national forests and reservoir sites by the act of March 3, 1899 (30 Stat. 1233; 16 U. S. C. 525, 43 U. S. C. 665, 958). Where the authorized officer determines it to be in the public interest, he will require applicants under this section to execute the same type of right-of-way and road use agreements for the connecting road system as may be required under Part 115 of this chapter with appropriate modifications to meet local conditions: *Provided*, That where the land over which the right-of-way is requested is under the jurisdiction of an agency other than the Bureau of Land Management, such requirement shall be made only with the concurrence of the authorized officer of such agency. The authorized officer may require an applicant for or holder of a tramroad right-of-way to execute a bond on Form 4–414, modified to refer to the applicable sections of this part, in an amount, not less than $500 per mile or fraction thereof, to be determined by the authorized officer conditioned on compliance with §§ 244.1 to 244.21 and 244.52 and 244.53. The arbitration procedures involved in the stipulations shall be in accordance

[32] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[33] In an opinion of July 16, 1942 (58 I. D. 29), the Solicitor of the Department of the Interior held that the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), superseded the part of the 1895 act authorizing rights-of-way for canals and reservoirs.

[34] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

with State law, if any is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

§ 244.53 *Tramroads defined.* Tramroads are considered as including tramways, railroads, and motor-truck roads to be used in connection with mining, quarrying, logging, and the manufacturing of lumber.

CROSS REFERENCE: Applications for logging road permits over revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands and intermingled public lands administered by the Bureau of Land Management which are in and west of Range 8 East, Willamette Meridian, Oregon, must be made under Part 115 of this chapter.

SUBPART G—TRANSFERS OF PUBLIC LANDS AND RESERVATIONS FOR HIGHWAYS, ROAD BUILDING MATERIAL AND MAINTENANCE SITES, ROADSIDE AND LANDSCAPE DEVELOPMENT AREAS AND FLIGHT STRIPS, UNDER THE FEDERAL AID HIGHWAY ACT [32]

AUTHORITY: §§ 244.54 to 244.56 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.54 *Statutory authority.*—(a) *Highways and material sites.* (1) Section 17 of the Federal Aid Highway Act of November 9, 1921 (42 Stat. 216; 23 U. S. C. 18), authorizes the transfer of public lands and reservations of the United States to the State highway departments on determination by the Secretary of Commerce [33] that such lands are necessary for the right-of-way for any highway or forest road or as a source of materials for the construction and maintenance of such roads and highways, and after his request for such transfer with a map showing the portions of such lands which it is desired to appropriate.[34] The section does not authorize transfers to Territories.

(2) This statute provides that if within a period of 4 months after such filing the Secretary of the department supervising the administration of such land or reservation shall not have certified to the Secretary of Commerce that the proposed transfer of such lands is contrary to public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land or materials may be appropriated and transferred to the State highway departments for such purposes.[35] If and when the need for any such land or materials shall no longer exist, notice of that fact must be given by the State highway department to the Secretary of Commerce, and such lands or materials will immediately revert to the control of the Secretary of the Department from which they had been appropriated.[36]

(b) *Roadside and landscape development areas.* The act of June 8, 1938 (52 Stat. 633; 23 U. S. C. 10b), authorizes rights-of-way for roadside and landscape development under section 17 of the Federal Aid Highway Act.

(c) *Flight strips.* Section 8 of the act of November 19, 1941 (55 Stat. 767; 23 U. S. C. 108), authorizes rights-of-way under the Federal Aid Highway Act for flight strips adjacent to public highways or roadside-development areas along such highways.

(d) *Extent of grant.* Rights-of-way granted pursuant to the Federal Aid Highway Act, as supplemented and amended, do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a right-of-way. Where the holder of the highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way granted pursuant to the Federal Aid Highway Act, as supplemented and amended, except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than two miles long and are not part of any other pipe line crossing public lands. Applications shall be made under §§ 244.39 to 244.47, inclusive, with respect to any right-of-way for an electric transmission facility subject to this exception, and under §§ 244.60 to 244.66, inclusive, for pipe line facilities subject to this exception. Where the holder of the right-of-way consents to the construction of usual highway facilities, as stated above, such holder shall be responsible for compliance with § 244.9 in connection with the construction and maintenance of such facilities.

§ 244.55 *Filing of application.* Where a right-of-way is desired under the provisions of section 17 of the act of November 9, 1921, and the amendment or supplements thereto, for any of the purposes mentioned in § 244.54, an application and maps should be filed in the manner prescribed by §§ 244.3 and 244.6 (a). Such application should be filed by the State highway department of the particular State and not by any political subdivision of the State. No application will be received by the Bureau for rights-of-way affecting lands entirely within a national forest or an Indian reservation.

§ 244.56 *Action on application.* Upon receipt of an application filed under section 17 of the act of November 9, 1921, or acts supplemental thereto, which affects unpatented lands or patented lands, acquired by the United States, under the jurisdiction of this Department, Bureau procedure relating to rights-of-way will be followed, and in addition the manager will return a duplicate map or maps to the State highway department which will forward them to the Secretary of Commerce for his determination that the lands are necessary for the purposes desired, as required by the act. Upon the receipt of such determination, if all else be regular, the right-of-way will be approved.

SUBPART H—RIGHTS-OF-WAY FOR THE CONSTRUCTION OF HIGHWAYS OVER PUBLIC LANDS UNDER R. S. 2477

AUTHORITY: §§ 244.57 to 244.59 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.57 *Statutory authority.* R. S. 2477 (43 U. S. C. 932), grants rights-of-way for the construction of highways over public lands, not reserved for public uses.

§ 244.58 *Effective date and extent of grant.* (a) Grants of rights-of-way referred to in the preceding section become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. No application should be filed under R. S. 2477, as no action on the part of the Government is necessary. Rights-of-way granted by R. S. 2477 do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a right-of-way. Where the holder of the highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way granted by R. S. 2477, except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than two miles long and are not part of any other pipe line crossing public lands. Applications shall be made under §§ 244.39 to 244.47, inclusive, with respect to any right-of-way for an electric transmission facility subject to this exception, and under §§ 244.60 to 244.66, inclusive, for pipe line facilities subject to this exception.

(b) Holders of grants under R. S. 2477 shall be subject to the terms and conditions of the following paragraphs of § 244.9 (b), (c), (d), (e), (i), (k). Where the holder of the highway consents to the construction of usual highway facilities, as provided above, such holder shall be responsible for compliance with the designated paragraphs of § 244.9 in connection with the construction and maintenance of such facilities.

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[32] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[33] Originally the Federal Aid Highway Act provided that various functions should be administered by the Secretary of Agriculture. Through a series of transfers, the latest of which is 1949 Reorganization Plan No. 7, effective August 19, 1949 (14 F. R. 5228, 63 Stat. 1070), these functions have vested in the Secretary of Commerce.

[34] Considered as including maintenance and stock-pile sites.

[35] By decision of the Secretary, Nevada Department of Highways, A.24151, September 17, 1945, it was held that the language of the act imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

[36] Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau of Land Management.

§ 244.59 *Procedure when reserved land is involved.* When a right-of-way is desired for the construction of a highway under R. S. 2477, over public land reserved for public uses, and such reserved land is under the jurisdiction of the Department of the Interior, an application should be made in accordance with § 244.3 for consideration of the revocation or modification of the reserve so as to permit the operation of the statute and construction or establishment of the highway. Such application should be accompanied by a map, drawn on tracing linen, with two print copies thereof, showing the location of the proposed highway with relation to the smallest legal subdivisions of the lands affected. Unless and until the reservation shall have been revoked or modified so as to permit the construction of the highway, subject to such terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve, no rights to establish or construct the highway will be acquired by reason of the filing of such application.

SUBPART I—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR OIL AND NATURAL GAS PIPELINES AND PUMPING PLANT SITES UNDER THE MINERAL LEASING ACT [33]

AUTHORITY: §§ 244.60 to 244.66 issued under sec. 28, 49 Stat. 678; 30 U. S. C. 185.

§ 244.60 *Statutory authority.* (a) Section 28 of the act of February 25, 1920 (41 Stat. 449), as amended by the acts of August 21, 1935 and August 12, 1953 (49 Stat. 678; 67 Stat. 557; 30 U. S. C. 185), authorizes the Secretary to grant rights-of-way through public lands, including the forest reserves of the United States, for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of the act (41 Stat. 437; 30 U. S. C. 22, 48, 181) to the extent of the ground occupied by the said pipeline and 25 feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by him, and upon the express conditions that such pipeline, if for oil, or for natural gas and not excepted from the common carrier provisions of section 28 of the act of February 25, 1920, as amended, as stated in paragraph (b) of this section, shall be constructed, operated and maintained as a common carrier and that every pipeline holder shall accept, convey, transport, or purchase without discrimination oil or natural gas produced from Government lands in the vicinity of the pipeline in such proportionate amount as the Secretary of the Interior may, after a full hearing, with due notice thereof to the interested parties, and a proper finding of facts, determine to be reasonable.[34]

(b) The amendatory act of August 12, 1953, cited in paragraph (a) of this section provides that the common carrier provisions of section 28 of the act of February 25, 1920, shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (52 Stat. 821; 15 U. S. C. 717w) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

§ 244.61 *Who may file application.* Application may be filed by citizens of the United States, associations of such persons, any corporation organized under the laws of the United States, or of any State or Territory, and municipalities.

§ 244.62 *Common carrier stipulation.* Each application for a pipeline right-of-way, if for oil, or for natural gas and the pipeline has not been excepted from the common carrier provisions of section 28 of the act of February 25, 1920, as amended, as stated in § 244.60 (b), must include the following stipulation:

> The applicant agrees to operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, to file rate schedule and tariff for the transportation of oil or gas, as the case may be, as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary may prescribe.

§ 244.64 *Use of pipeline.* The applicant shall state in the application the specific use, within the purview of the act, to which the pipeline is to be put, and any approval of the right-of-way shall be limited to such use, unless otherwise stated in the approval. No change in the use of the pipeline from that authorized by the approval of the right-of-way shall be allowed except as follows:

(a) In the case of pipelines engaged in interstate transportation, a change may be made only with approval first obtained from the authorized officer, and upon such terms and conditions as he may prescribe as a prerequisite to the approval of the change of use. If the authorized officer does not disapprove or otherwise act upon an application for a change in use by the end of the forty-fifth day after the application is filed, he shall be deemed to have approved it without conditions other than those previously existing.

(b) In case of pipelines engaged solely in intrastate transportation, a change may be made by the grantee in the use of the pipeline for the transportation of products within the purview of the act, from that specified in the approval of the right-of-way, provided, written notice of such change is filed with the manager not less than 15 days in advance of the actual change of use. Such notice must be accompanied by a showing as to whether the change in use is to be temporary or permanent, and a statement that such change will not result in any hardship or injustice to persons operating under Federal leases who may be dependent on the pipeline as the means of transportation of their products to existing markets, and must be accompanied by the consent in writing of such lessees to the change of use.

§ 244.65 *Approval of right-of-way.* The approval of such right-of-way shall be subject to the express conditions that the use of the pipeline for the transportation of oil, gas, or other similar products, shall be limited to such products produced in conformity with State and Federal laws, including laws prohibiting waste.

§ 244.66 *Pumping plant site.* A site for a pumping station or other structures reasonably necessary to the operation of a pipeline on a right-of-way approved under section 28 of the act of February 25, 1920, or as amended by the act of August 21, 1935, may be granted under the same section (36 Op. Atty. Gen. 480). When an application is made for a right-of-way for a site, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4 [35] by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act.

SUBPART J—RIGHTS-OF-WAY OVER LANDS SUBJECT TO A MINERAL LEASE

§ 244.67 *Statutory authority; applications.* (a) Section 29 of the act of February 25, 1920 (41 Stat. 449, 30 U. S. C. 186), provides in part:

> (a) That any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes.

(b) Where another statutory provision covers the type of right-of-way desired, applications shall be made in

[33] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[34] By opinion of the Attorney General of January 3, 1941 (40 Op. Atty. Gen. 9), and departmental decision, Chiles P. Plummer, A-23988, February 24, 1945, this statute was construed as not applying to purchased or acquired lands as they are not considered public lands within the meaning of the act.

[35] See appendix for forms.

accordance with such statute and the applicable regulations.

(c) Where there is no other statutory provision covering the type of right-of-way desired, applications shall be filed in accordance with §§ 244.1 to 244.21, inclusive.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

SUBPART K—RIGHTS-OF-WAY FOR FEDERAL IRRIGATION PURPOSES UNDER THE ACT OF DECEMBER 5, 1924

§ 244.68 *Statutory authority.* Section 4, subsection P, of the act of December 5, 1924 (43 Stat. 704; 43 U. S. C. 417), provides that where, in the opinion of the Secretary, a right-of-way over public land is required in connection with a reclamation project, the Secretary may reserve the same to the United States by filing in the appropriate land office copies of an instrument giving a description of the right-of-way and notice that the same is reserved to the United States for Federal irrigation purposes under this section, in which event entry for such land and the patent issued therefor shall be subject to the right-of-way so described in such instrument; and reference to each such instrument shall be made in the appropriate tract books and also in the patent.

(R. S. 2478; 43 U. S. C. 1201)

SUBPART L—RIGHTS-OF-WAY FOR TRANSMISSION LINES IN CONNECTION WITH BOULDER CANYON PROJECT UNDER THE BOULDER CANYON PROJECT ACT

§ 244.69 *Statutory authority.* Section 5 (d) of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057; 43 U. S. C. 617d), authorizes the use by any agency receiving a contract for the purchase of electrical energy from Boulder Canyon Project of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

(R. S. 2478; 43 U. S. C. 1201)

SUBPART M—EMERGENCY ACCESS PERMITS FOR SALVAGE OPERATIONS

AUTHORITY: §§ 244.70 to 244.92 issued under 28 Stat. 635, 50 Stat. 874; 43 U. S. C. 956.

§ 244.70 *Statutory authority.* (a) The act of January 21, 1895 (28 Stat. 635, 43 U. S. C. 956), authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tram roads to the extent of 50 feet on each side of the center line of the tram road, by any citizen or association of citizens of the United States engaged in the business, among others, of cutting timber. The act of January 21, 1895, is made applicable to the revested Oregon and California railroad and the reconveyed Coos Bay wagon road grant lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(b) The act of August 28, 1937 (50 Stat. 874), provides for the conservation and the management of the said revested and reconveyed lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

§ 244.71 *Statement of policy.* (a) Timber lands of the United States administered by the Bureau of Land Management in western Oregon, western Washington and northwestern California and intermingled and adjacent timber lands in other ownerships during the course of the years 1950 and 1951 have been visited by wind storms of unusually high velocity which have caused extensive wind throw of standing timber. In addition, fires of unusual intensity and magnitude during the summer of the year 1951 burned through extensive acreages of standing timber in the area. Therefore, in view of the extraordinary, immediate, emergency situation, short-term emergency access permits will be issued in accordance with the terms of §§ 244.70 to 244.92 to authorize use of lands of the United States administered by the Bureau of Land Management for the purpose of access to such timber salvage operations. Such permits will not authorize the use of such lands for the removal of other timber; long-term access to any timber controlled by an applicant, whether salvage or healthy, may be obtained over lands administered by Bureau pursuant to § 115.154 et seq. of this chapter, or §§ 244.39 and 244.40.

(b) An emergency access permit will authorize access to conduct a salvage operation for a term of not more than one year, with additional time allowed for necessary road construction. No extension except as authorized pursuant to § 244.78, and no renewal of any such permit will be granted nor will more than one such permit be issued respecting any specific salvage operation.

§ 244.72 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 244.70 to 244.92:

(a) "Bureau" means Bureau of Land Management.

(b) "Area Administrator" means the Area Administrator, Bureau of Land Management, or his authorized representative.

(c) "District Forester" means a district forester of the Bureau who is stationed in western Oregon, western Washington or northwestern California.

(d) "Tramroads" means tramways and wagon or motor truck roads to be used in connection with logging and the manufacturing of lumber.

(e) "Salvage area" means any timber land in western Oregon, western Washington or northwestern California either (1) within the exterior boundary of an area burned by a forest fire where the resulting fire hazard has not been abated, or (2) containing merchantable windthrown trees, or (3) which contains standing trees killed by or dying from Douglas fir beetle infestation.

(f) "Salvage operation" means the removal of trees that, in the judgment of the District Forester, are in a salvage area and subject to rapid deterioration because they have been killed or injured by some catastrophic natural cause such as wind, fire, disease or insect infestation, and of timber which, in the judgment of the District Forester, is susceptible to insects. A salvage operation may include, in addition, the removal of healthy intermingled and adjacent trees, provided:

(1) Either the total volume of the trees to be removed does not exceed 100,000 board feet, or

(2) Such healthy trees are, in the judgment of the District Forester, physically located so that their removal is required by normal logging practices, or their removal is economically necessary to make a minimum practical logging operation; for a salvage operation in which logs can be yarded with crawler type tractors, the volume of such healthy timber shall not exceed 35 percent of the total volume to be removed, and for a salvage operation in which logs must be yarded with donkey engine the volume of the healthy timber may not exceed 65 percent of the total volume to be removed.

(g) "Timber susceptible to insects" means healthy and drought weakened living trees most immediately adjacent to and not exceeding in number the currently critically infested trees which, in turn, are immediately adjacent to an area covered with trees which are dead or dying as the result of an attack by Douglas fir beetles.

(h) "Critically infested tree" means a tree infested with Douglas fir beetles to such an extent that such infestation may be reasonably expected to cause the death of such tree.

(i) "Emergency access permit" means a permit issued pursuant to §§ 244.70 to 244.92.

(j) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the control of forest insects, pests and disease, and other activities of a similar nature.

(k) "Licensee" means with respect to any road or right-of-way, any person who is authorized to remove forest products derived from a salvage operation conducted on lands of the United States. A licensee is not an agent of the United States.

(l) "Direct control" of a road, right-of-way, or land, by an applicant for an emergency access permit, means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with §§ 244.70 to 244.92.

(m) "Indirect control" of a road, right-of-way, or land, by an applicant for an emergency access permit means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his

predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 244.73 *Nature of emergency access permit.* (a) An emergency access permit does not constitute an easement and does not confer any right on the permittee to any material for construction or other purposes. An emergency access permit is merely a non-exclusive license to transport across lands of the United States administered by the Bureau of Land Management and specified in such emergency access permit, forest products derived from a specified salvage operation.

(b) An emergency access permit, when issued, is intended only to afford to the permittee access necessary for an immediate salvage operation in timber which is to be specifically described in such emergency access permit. Such an emergeny access permit is not intended to afford access for the harvesting of timber other than that described in such permit. Its sole function is as an aid to conservation in the immediate removal of timber, of the type described in § 244.72 (f), which constitutes a present menace to healthy timber in the area. Such emergency access permit is not intended, therefore, to accomodate logging activities of a continuing nature. Where there is more than one salvage operation to be conducted on land tributary to the same road or same road system, an emergency access permit may be issued to embrace any one or more of such operations, or a separate emergency access permit may be issued for each such operation. But with respect to any single salvage operation, no more than one emergency access permit will be issued and no renewal or extension thereof will be granted except an extension for road construction purposes, pursuant to § 244.78: *Provided, however,* That if a permittee's access to a salvage operation is suspended by virtue of an award of arbitrators made pursuant to § 244.81, or pursuant to an agreement, approved by the District Forester, with a licensee, the term of the permit shall be extended by adding thereto a period equal to the period of such suspension.

§ 244.74 *Filing of application.* An application for an emergency access permit must be submitted in duplicate on Form 4–1213 and filed in the office of the appropriate district forester. Application forms will be furnished by the District Forester on request. No application will be received for filing subsequent to one year from the date when §§ 244.70 to 244.92 are published in the FEDERAL REGISTER.

§ 244.75 *Contents of application.* (a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of Part 137 of this chapter.

(b) An application by an unincorporated association must disclose the names of all the members of such association.

(c) An application by a private corporation must include the statement of the president, vice president or secretary of such corporation that the corporation is authorized to transact business within the State involved.

(d) Where the application is for an emergency access permit across lands over any portion of which the applicant proposes to construct a road, the application must be accompanied by two copies of a sketch map showing the approximate route of the proposed road. The authorized officer, where he finds it to be in the public interest, may require an applicant to furnish a more accurate map showing the survey of the proposed road and the specifications to which the applicant proposes to construct such road.

(e) Where the application is for the use of an existing road, the applicant must furnish a map adequate to show the location of such road, together with a statement of the nature of any improvement he proposes to make on such road.

(f) Every application must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested route of access will connect, the portion of such road systems which the applicant directly controls within the meaning of § 244.72 (k), the portions thereof which the applicant indirectly controls within the meaning of § 244.72 (l), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has indirect or no control, he must furnish a statement showing, for the two years preceding the date of the filing of the application, the date and nature of any change in his control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. The map must bear the certification of the applicant that the facts as to control as set forth in such map are true to the best of the applicant's information and belief.

§ 244.76 *Reciprocal road use agreement; recordation.* (a) Unless the authorized officer finds that use of the road system (including both existing roads and lands over which such roads are practically able to be extended, for authority to traverse any portion of which system the applicant seeks an emergency access permit) will not be convenient or economically necessary for access to and the removal of forest products from salvage operation on lands administered by the Bureau, the authorized officer, as a condition precedent to the issuance of such permit, shall require the applicant:

(1) As to such portions of such road system as are directly controlled by the applicant, to grant to the United States and its licensees rights of use; and

(2) As to such portions of such road system as are indirectly controlled by the applicant, either to obtain rights of use for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive to the United States, its licensees and permittees any exclusive or restrictive rights he might have to such portions of the road system as are indirectly controlled by him.

(b) Rights of use granted to the United States and its licensees under paragraph (a) of this section shall be for a period of time to be fixed pursuant to § 244.78 and for the purposes set forth in § 244.77. Where the United States or its licensees exercises such right of use, the permittee shall be entitled to receive compensation therefor to be fixed in accordance with the standards and procedures set forth in § 244.79 or §§ 244.80 and 244.82.

(c) Where the authorized officer finds that no such rights will be needed by the United States for the conduct of salvage operations on its lands tributary to such road system, he may issue an emergency access permit without requesting the applicant to grant any rights to the United States under this section.

(d) Any grant of rights to the United States made pursuant to this section unless modified under § 244.79, shall be executed on Form 4–1214, which shall constitute and form a part of any emergency access permit issued upon the application involved. The applicant shall record such grant in the office of land records of the county or counties in which the roads or lands subject to the agreement are located and submit to the issuing officer not later than 30 days after the issuance of the emergency access permit, a true copy of such agreement bearing the certificate of the appropriate county official as to such recordation. Failure either to cause such recordation or to furnish such certificate thereof in accordance with this paragraph shall void such emergency access permit.

§ 244.77 *Use by the United States and its licensees of rights received from a permittee.* The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from salvage operations on lands administered by the Bureau. However, the type and size of

vehicle which may be used by the licensee on the permittee's road shall be governed by § 244.70 or § 244.81.

§ 244.78 *Duration and location of rights granted or received by the United States.* The rights granted by the United States under §§ 244.70 to 244.92, will be for a stated term of not to exceed one year for the transportation of forest products to be derived from a specified salvage operation plus not to exceed 3 months for such road construction as may be necessary: *Provided, however,* That upon a permittee's showing, made prior to the expiration of the period, if any, allowed for such construction, that unusual weather conditions have delayed completion of such construction, a district forester may in his discretion extend the period for such construction for not to exceed a total of three additional months: *And provided further,* That if a permittee's access to a salvage operation is suspended by virtue of an award made by arbitrators pursuant to § 244.81 or pursuant to an agreement, approved by the authorized officer, with a licensee, the term of the permit shall be extended by adding thereto a period equal to the period of such suspension. Rights granted to the United States shall be for such term as will enable a licensee to commence during either the calendar year in which the permit is issued or during one of the two next succeeding calendar years a salvage operation on lands administered by the Bureau, and to complete such salvage operation in accordance with the provisions of such authorization; normally such a licensee will be allowed only one year to complete a salvage operation plus not to exceed three months for the construction of any necessary access roads. In any event, a grant made to the United States under § 244.76 shall finally expire not later than four years and six months after the date when such grant is made.

§ 244.79 *Permittee's agreement with United States respecting compensation and adjustment of road use.* (a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; a reasonable fee for use by a licensee for access to and the removal of forest products from salvage operations on lands administered by the Bureau; provisions for road maintenance; the use, in addition to the uses set forth in § 244.77, which the United States and its licensees may make of the road system involved; a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products derived from salvage operations conducted on lands administered by the Bureau; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the regional administrator may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such agreement, subsequent contracts for salvage operations on lands managed by the Bureau and tapped by such road system, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the agreement.

(b) The provisions of §§ 244.80 and 244.81 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 244.80 *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (a) In the event the United States exercises the rights received from a permittee pursuant §§ 244.70 to 244.92 to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 244.79, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 244.82.

(b) During the pendency of such arbitration proceedings, the licensee shall be entitled to use the road, right-of-way or land involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by him and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which may accrue by reason of the licensee's use of the road, as the regional administrator may prescribe.

(c) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs any extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 244.77. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage, and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(d) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(e) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 244.81 *Agreements and arbitration between permittee and licensee respecting adjustment of road use.* (a) When the United States exercises the right received under §§ 244.70 to 244.92 to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct such licensee in such use. If there has been no agreement under § 244.79 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 244.82.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking

into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the salvage timber involved; the extent to which each of the parties may practicably use his resources in the conduct of other salvage operations; the extent to which the timber to be salvaged constitutes a threat to healthy timber; the extent to which Federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 244.82 *Arbitration procedure.* (a) As to arbitration proceedings relating to the terms or conditions of use of roads, rights-of-way or lands in Oregon:

(1) Within ten days after the delivery of a written request for arbitration under § 244.80 or § 244.81, each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(2) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 244.80 and 244.81.

(3) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 244.80 and 244.81 for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the area administrator, either personally or by registered mail.

(4) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matters as may appear relevant to the arbitrators.

(b) Arbitration proceedings involving the terms or conditions of use of roads, rights-of-way or lands in California or Washington shall be in accordance with the respective State law, if any, is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

§ 244.83 *Payment required for Government timber.* An applicant will be required to pay in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, in the construction or operation of the road on lands administered by the Bureau.

§ 244.84 *Payment to the United States for road use.* Where the permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of the Bureau of Land Management, he will be required to pay to the United States for the use thereof, except where he transports forest products purchased from the United States through the Bureau, a reasonable fee to be determined by the authorized officer: *Provided, however,* That this section shall not apply where payment for such road use to another permittee is required under §§ 244.70 to 244.92.

§ 244.85 *Bond in connection with existing roads.* An applicant for an emergency access permit to use an existing Government road which is under the administrative jurisdiction of the Bureau will be required, for the protection of such existing road, to execute a bond on Form 4–414 (a) in an amount to be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof, conditioned on compliance with §§ 244.70 to 244.92 and the terms and conditions of the permit.

§ 244.86 *Approval of permit.* Upon the applicant's compliance with the appropriate provisions of §§ 244.70 to 244.92 and if it is determined that the approval of the application will be in the public interest, the authorized officer may issue an appropriate permit, upon Form 4–1213.

§ 244.87 *Terms and conditions of permit.* (a) As to all emergency access permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the authorized officer and making payment therefor.

(3) To take adequate precaution to prevent and suppress forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way; to do no burning on or near the right-of-way without State permit during the seasons that permits are required but in any event to set no fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 244.80 to 244.82.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under § 244.76, to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under §§ 244.70 to 244.92, to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(8) In the exercise of the rights granted by the permit, not to discriminate against any employee or applicant for employment because of race, creed, color or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the authorized officer may otherwise permit or direct, to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use: *Provided, however,* That the road and all usable road improvements shall be left in place.

(b) As to emergency access permits for the use of an existing road: In addition, every permittee to whom an emergency access permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost

thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 244.88 *Assignment of permit.* Any proposed assignment of an emergency access permit must be submitted in duplicate, within 90 days after the date of its execution, to the District Forester, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 244.75 and 244.76; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

§ 244.89 *Causes for termination of permittee's rights.* (a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under §§ 244.70 to 244.92 if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, misrepresents any material fact to the Bureau, in accordance with any requirement of such permit or knowing such representation to be false, or make such representation in reckless disregard of the truth.

(b) The authorized officer, in his discretion may elect to terminate any permit issued under §§ 244.70 to 244.92, if the permittee shall fail to comply with any of the provisions of such regulations or make default in the performance or observation of any of the conditions of the permit, and such failure or default shall continue for 10 days after service of written notice thereof.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to §§ 244.70 to 244.92, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under §§ 244.70 to 244.92 to submit to and be bound by arbitration pursuant to §§ 244.79 to 244.81.

§ 244.90 *Remedies for violations by licensee.* (a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract which will require the licensee to comply with all the applicable provisions of §§ 244.70 to 244.92, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract. In such event the permittee shall be bound by the decision of the authorized officer subject, however, to a right of appeal pursuant to § 244.92 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative a permittee who believes that a licensee has violated the terms of the timber sale contract respecting the use of the permittee's roads may proceed against the licensees in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 244.91 *Disposition of property on termination of permit.* Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed six months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 244.92 *Appeals.* An appeal, pursuant to the Rules of Practice, Part 221 of this chapter, may be taken from any final decision to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

APPENDIX

FORMS [1]

Reference should be made to the appropriate section of the regulations to determine when each of the forms is required.

Forms Nos. 2, 4, 6, 7, 9, and 10 may be signed by any officer or employee of the company who is authorized to sign them. However, if they are executed by a person other than the President, they must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Forms 1 and 2 to be placed on maps. See section 244.6 (a) (7).

ENGINEER'S STATEMENT

(Form 1)

---------- states he is by
(Name of engineer)
occupation a ---------- em-
(Type of engineer)
ployed by the ---------- to
(Company)
make the survey of the----------,
(Kind of works)
as described and shown on this map; that the survey of said works was made by him (or under his supervision) and under authority, commencing on the ------ day of ---------- 19----, and ending on the ------ day of ---------- 19----; and that such survey is accurately represented upon this map.

(Engineer)

APPLICANT'S CERTIFICATE

(Form 2)

This is to certify that ----------
(Engineer)
who subscribed the statement hereon is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown; and that this map is filed as a part of the complete application, and in order that the applicant may obtain the benefits of ----------; and I further certify that the
(Cite statute)
right-of-way herein described is desired for ----------.
(State purpose)

[SEAL] ----------
(Signature of applicant)

(Title)

Attest: (Company)

FORMS FOR PLANT SITES ONLY

See sections 244.42 (a) and 244.66.

(Form 3)

---------- states that
(Name of engineer)
he is the chief engineer of (or the person employed by) the ----------,
(Company)
under whose supervision the survey was made of the grounds selected by the company for structures for a plant site under the act of Congress approved February 15, 1901 (February 1, 1905, act of March 4, 1911, as amended, or act of February 25, 1920, as amended), said grounds (here describe as required by regulation, sec. 244.31); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said Act.

(Signature of engineer)

(Form 4)

I, ----------, do hereby certify
(Applicant) (Company officer)
that I am the ---------- of the --------
(Title)
----------; that the survey of the struc-
(Company)
tures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of ----------, its chief engineer (or person employed in the premises), whose statement precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures required (here described as required by regulation, sec. 244.30), for plant site under the act of Congress approved February 15, 1901 (February 1, 1905, March 4, 1911, as amended, or February 25, 1920, as amended); and that the company, by resolution of its board of directors, passed on the ------ day of ---------- 19----, directed the proper officers to present the

[1] Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act invoked, and to the nature of the project.

said drawing for approval in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:

_____

FORMS FOR PROOF OF CONSTRUCTION

See section 244.15.

(Form 5)

_____ states that he is
(Name of engineer)
the chief engineer (or was employed to supervise or check the construction of the canals, ditches, laterals, and reservoirs) for the _____; that said (canals,
(Company)
ditches, laterals, and reservoirs) have been constructed under his supervision; that construction was commenced on the _____ day of _____ 19____, and completed on the _____ day of _____ 19____; that the constructed (canals, ditches, laterals, and reservoirs) as aforesaid, conform to the map which received the approval of the Department of the Interior on the _____ day of _____ 19____.

_____
(Signature of engineer)

(Form 6)

I, _____ certify
(Applicant) (Company officer)
that I am the _____ of the _____;
(Title) (Company)
that the (canals, ditches, laerals, and reservoirs) were actually constructed as set forth in the accompanying statement of _____, chief engineer (or the person employed by the company in the promises), and on the exact location represented on the map approved by the Department of the Interior on the _____ day of _____ 19____; and that the company has in all things complied with the requirements of the act of (March 3, 1891) granting rights-of-way for (canals, ditches, laterals, and reservoirs) through public lands of the United States.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:

_____

FORMS FOR RESERVOIR DECLARATORY STATEMENT

(Form 7)

See section 244.30.
Res. D. S.
No. _____

Land Office at _____,
_____ 19____.

I, _____,
(Applicant) (Company officer)
of _____,
(Post office address)
do hereby certify that I am _____
(Title)
of the _____, and on behalf of
(Company)
said company, and under its authority, do hereby apply for the reservation of land in _____ county, State of _____, for the construction and use of a reservoir for furnishing water for livestock under the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952). The location of said reservoir and of the land necessary for its use, is as follows: _____[1] of section _____ in township _____ of range _____ M., containing _____ acres.

To the best of my knowledge and belief the said land is not occupied or otherwise claimed, and is not mineral or otherwise reserved. The said reservoir is to be used in connection with_____[2]
(Business of applicant)

The land owned or claimed by the applicant within the vicinity (within 3 miles) of the said reservoir is as follows:

_____
_____
(Describe by legal subdivision, section, township, and range)

No part of the land to be reserved under this application is or will be fenced unless written permission is first obtained from the Department of the Interior; the same will be kept open to the free use of any person desiring to water animals of any kind; the land will not be used for any purpose except the watering of stock; and the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

The water of said reservoir will cover an area of _____ acres in _____ of section _____ in township _____, of range _____ of said lands; the capacity of the reservoir will be _____ gallons, and the dam will be _____ feet high. The source of the water for said reservoir is _____
(Type and location
_____, and there are
of spring, stream, runoff, etc.)
no streams or springs within 2 miles of the land to be reserved except as follows:

_____
(Insert names or other identification)

The applicant has filed no other declaratory statements under this act, except as follows:

No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.
No. _____, _____ land office, area to be reserved _____ acres.
Total, _____ acres, of which Nos. _____ _____ are located in said county.

It is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:
_____

Land Office at _____

I, _____, manager of the land office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the Act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

Fees, $_____ paid.

_____
(Manager)

(Form 8)

See section 244.33.

_____ says that he is the
(Chief engineer)
person who was employed to make the survey of a reservoir covering an area of _____ acres, the initial point of the survey being _____, said
(Describe as required by § 244.33)
reservoir having been constructed upon the _____[1] of section _____, township _____, range _____ M., as proposed by reservoir declaratory statement No. _____, which was filed in the local land office at _____, under the provisions of the
(City)
act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952); that the said survey was made on the _____ day of _____ 19____; that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of _____ gallons of water.

_____
(Signature of engineer)

(Form 9)

See section 244.33.

I, _____, do
(Applicant) (Company officer)
hereby certify that I am the _____
(Title)
of the _____ which filed (or
(Company)
that I am the person who filed) reservoir declaratory statement No. _____ in the local land office at _____; that the proposed reservoir has been constructed upon the _____[1] of section _____, township _____, range _____ M., covering an area of _____ acres; that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purpose, and in the manner prescribed by the said act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 752), the provisions of which have been and will be complied with in all respects.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:

_____

(Form 10)

See section 244.35.

_____ says
(Applicant) (Company officer)
that he is the _____ of the _____
(Title)
_____ which filed (or that he is the
(Company)
person who filed) reservoir declaratory statement No. _____ in the local land office at _____; that the reservoir con-
(City)
structed in pursuance thereof, as heretofore certified has been kept in repair; that water has been kept therein to the extent of not less than _____ gallons during the entire calendar year of 19____; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said year; and that the said company (or person) has in all respects complied with the provisions of the act of

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

[2] Statement of business should include full information concerning the extent to which applicant is engaged in grazing, breeding, driving, or transporting livestock; the number and kinds of such stock; the place where they are being bred or grazed; whether within an enclosure or upon unenclosed lands; and the points from which and to which they are being driven or transported.

January 13, 1897 (29 Stat. 484; 43 U. S. C. 952).

[SEAL]

(Signature of applicant)

(Title)

(Company)

Attest:

SUBCHAPTER T—SALE, LEASE, OR USE, AND ACQUISITIONS

PART 250—PUBLIC SALES

Sec.

250.1 Statutory authority.
250.2 Definitions.
250.3 Application.
250.4 Action upon the application or in the absence of application.
250.5 Effect of application.
250.6 Land subject to sale as isolated tracts.
250.7 Land subject to sale as mountainous or too rough for cultivation; qualifications of applicant.
250.8 Mineral lands.
250.9 Publication of notice; time and proof of publication; posting required; reimbursement for publication costs.
250.10 The bidding, place for sale.
250.11 Action at close of bidding.
250.12 Action after purchaser is declared.
250.13 Appeals.

AUTHORITY: §§ 250.1 to 250.13 issued under R. S. 2478; 43 U. S. C. 1201.

§ 250.1 *Statutory authority.*[1] The sale at public auction of isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not isolated, of not exceeding 760 acres, the greater parts of which are mountainous or too rough for cultivation, is authorized by section 2455 of the Revised Statutes, as amended by section 14 of the act of June 28, 1934 (48 Stat. 1274; 43 U. S. C. 1171) and the act of July 30, 1947 (61 Stat. 630).

§ 250.2 *Definitions.* When used in this part:

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Area Administrator" means the area administrator for the area in which the land is situated.

(d) "Manager" means the manager of the land office for the district in which the land is situated. When there is no land office in a State, it means the officer who has been authorized to perform the functions of the manager for sales under this part of public lands in that State.

(e) "Applicant" or "purchaser" includes an individual, a partnership, an association, or a corporation.

(f) "Land office" means the land office for the district in which the lands are situated.

§ 250.3 *Application.* (a) An application to have tracts ordered into the market must be executed in duplicate on Form 4–008e. Applications shall be filed in the proper land office in the State, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

(b) The application need not be under oath but must be signed by the applicant and two corroborating witnesses having personal knowledge of the facts stated therein.[2]

§ 250.4 *Action upon the application or in the absence of application.* (a) If an application is not properly executed or not corroborated, if the applicant does not show himself qualified, or if the tract appears not to be subject to disposition, the application will be rejected. If part of the tract is appropriated, the application will be rejected as to that part, and, in the absence of an appeal, the description thereof eliminated from the application, and such further action will be taken as though it had never been included therein.

(b) The authorized officer may classify under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U. S. C. 315f) as amended, land for offering under this part, and he may authorize such offering of the land for sale if he determines, in accordance with the existing regulations and procedures, that such land is suitable for disposal as an isolated or as a rough or mountainous tract, as the case may be.

(c) The authorized officer may authorize the offering of an isolated tract for sale either upon application or on his own motion.

§ 250.5 *Effect of application.* The filing of an application in conformity with the regulations in this part will not segregate the lands applied for from other application under the public land laws, or defeat a prior valid right initiated under any such law. However, until the issuance of a cash certificate, the authorized officer may at any time determine that the lands should not be sold, the applicant or any bidder has no contractual or other rights as against the United States, and no action taken will create any contractual or other obligation of the United States.

§ 250.6 *Land subject to sale as isolated tracts.* (a) There is no limitation as to the number of isolated-tract applications which may be filed, nor as to the amount of such land which may be applied for or purchased by any one person or group. An application may include several incontiguous tracts, but it may not embrace an aggregate area in excess of 1,520 acres, and tracts with an area over 1,520 acres will not be ordered into the market. Each isolated tract will be offered separately and a separate cash certificate will be issued for each tract, except to the extent that they are bought by the same person.

(b) As a general rule, no tract will be deemed isolated unless it is completely surrounded by lands held in non-Federal ownership, or is so effectively separated from other federally owned lands by some permanent withdrawal or reservation as to make its use with such lands impracticable. A tract is considered isolated if the contiguous tracts are all patented, even though there are other public lands cornering upon the tract.

§ 250.7 *Land subject to sale as mountainous or too rough for cultivation; qualifications of applicant.* (a) Legal subdivisions not exceeding 760 acres, the greater part of which is mountainous or too rough for cultivation, may be offered for sale only upon the application of any person who owns land or holds a valid entry on lands adjoining such tract and regardless of the fact that such tract may not be actually isolated.

(b) An applicant for sale of a tract which is mountainous or too rough for cultivation must show that he is the owner of the whole title, that is, the fee owner, of land adjoining the land applied for, or that he holds a valid entry embracing adjoining land, in connection with which entry he has met the requirements of the law. A showing that the applicant owns cornering land or holds a valid entry of a cornering tract would not qualify him.

(c) An application under this section may not embrace more than 760 acres. An applicant may file any number of applications provided the land applied for together with such land previously purchased does not exceed 760 acres in area. The limitation under this section relates only to applications under this section. In acting on applications for rough or mountainous tracts, regard will be had to the character of each subdivision applied for. An entire tract composed of more than one legal subdivision will not be offered upon the ground that the greater part of the tract is mountainous or too rough for cultivation, if taken as a whole.

§ 250.8 *Mineral lands.* (a) Mineral lands may not be sold except under specific statutory authority which exists for the sale of lands valuable for certain minerals with a reservation of those minerals to the United States. The regulations relating to applications for the surface of such lands are contained in Part 102 of this chapter. They must be complied with whenever an application is filed for land, withdrawn, classified, or

[1] The provisions of R. S. 2455 (43 U. S. C. 1171) authorizing public sales, were extended, with certain conditions, to the areas mentioned below, by the statutes indicated:

Area	*Statute*
Chippewa Indian lands, Minn.	Feb. 4, 1919 (40 Stat. 1055; 43 U. S. C. 1172).
Oregon and California railroad grant lands, Oreg., Class 3.	May 25, 1920 (41 Stat. 622; 43 U. S. C. 1174).
Oregon and California railroad grant and Coos Bay wagon-road grant lands, Oreg.	Section 3, August 28, 1937 (50 Stat. 875).
Oklahoma	April 24, 1928 (45 Stat. 457; 43 U. S. C. 1171a).
Alabama coal lands.	May 23, 1930 (46 Stat. 377; 43 U. S. C. 1171b).

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

valuable for such minerals, where such land is embraced by mineral permits or leases, or applications for such permits or leases, or where the land lies within the geological structure of a producing oil or gas field.

(b) The notice of sale for publication and posting will provide that the land will be sold subject to reservations to the United States of the appropriate minerals, and in accordance with the provisions of the applicable act or acts which authorize the making of the reservation. The cash certificate and patent will provide for such reservation and will refer to such act or acts.

§ 250.9 *Publication of notice; time and proof of publication; posting required; reimbursement for publication costs.* (a) Upon the issuance of a decision authorizing the sale, a notice for publication will be sent the applicant with instructions that he publish it at his expense in the newspaper designated. Payment for publication must be made by the applicant directly to the publisher. The notice must be published prior to the date of sale in the designated newspaper, if a daily paper, in the Wednesday issue for five consecutive weeks; if a weekly, in five consecutive issues; and if a semi-weekly or tri-weekly, in the issue of the same day of each week, for five consecutive weeks. The manager will cause a similar notice to be posted in his office during the entire period of publication.

(b) The applicant must file in the land office, prior to the date fixed for the sale, evidence that publication has been had for the required period. Such evidence may consist of the statement of the publisher, accompanied by a copy of the notice published.

(c) Where a party expends money for publication of notice of a public sale, and the authorization for the sale is canceled, or a sale, if made, is vacated, because retention of the land in Federal ownership is deemed to be in the public interest, such party will be reimbursed by the Government for the expense so incurred. Where such action is taken at the request of a Federal agency other than the Bureau of Land Management, that agency will be requested to reimburse such party for the expense. Where an authorization for sale is canceled, or a sale, if made, is vacated because the appraised price or the sale price, of the land is found to be inadequate, and the land is again offered for sale, the republication will be made at the expense of the Government, and the person awarded the land must reimburse and pay directly to the applicant the amount expended for the first publication of notice. Such payment shall be made in the manner prescribed in and shall be governed by § 250.12 (a).

§ 250.10 *The bidding; place for sale.* (a) The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice. The land will be offered for sale at the land office of the district in which the land is situated, if there is a land office in the State. If there is no land office in the State, the sale may be held at a place within the region in which the lands are situated, to be designated by the authorized officer.

(b) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(c) Bids sent by mail will be considered only if received at the place and prior to the hour fixed in the notice of the sale. These bids must be accompanied by certified checks, post office money orders, bank drafts, or cashiers' checks for the amounts of the bids and must be enclosed in sealed envelopes which must be marked as prescribed in the notice of sale. The envelopes containing the sealed bids will not be opened until the time fixed for the sale.

(d) The manager will commence the sale by reading the public announcement thereof and by opening the sealed bids and announcing such bids. He will then receive bids from the persons present.

(e) All bidders are warned against violation of the provisions of 18 U. S. C. 1860, prohibiting unlawful combination or intimidation of bidders.

§ 250.11 *Action at close of bidding—*(a) *Declaration of highest bidder.* When all persons present shall have ceased bidding, the manager will, in the usual manner, declare the bidding closed, subject to the preference right of purchase of owners of contiguous land (see paragraph (b) of this section), announce the amount of the highest bid and declare the offerer thereof (or his principal) the highest bidder, provided that the latter immediately pays to the manager the amount of the bid, if he has not already done so. In the absence of such payment, the manager will at once proceed with the sale, excluding the bid made by the highest bidder and starting with the next highest bid not withdrawn. In the event the bids of two or more persons sent by mail are the same in amount and are the highest offered, the first received, as shown by the hour and date noted on the envelope, will be accepted by the manager. In no event may the land be sold or a purchaser declared before the end of the 30-day period for the assertion by contiguous land owners of their preference right of purchase.

(b) *Preference right of purchase; declaration of purchaser.* The owners of contiguous lands have a preference right, for a period of 30 days after the highest bid has been received, to purchase the land offered for sale at the highest bid price or at three times the appraised price if three times such appraised price is less than the highest bid price. Such preference right may also be asserted at any time prior to the commencement of such period. Such preference right is not extended to the owner or owners of cornering lands.

(1) (i) A preference right to purchase must be supported by proof of the claimant's ownership of the whole title to the contiguous lands (that is, he must show that he had the whole title in fee), and must be accompanied by the purchase price of the land.[2]

(ii) Failure to submit to the land office satisfactory proof during the 30-day period after the highest bid has been received will cause the preference right to be lost as to the particular public sale. Such proof must consist of (*a*) a certificate of the local recorder of deeds, or (*b*) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at or after the date of the sale. However, if the preference-right claimant does not own adjoining land at the close of the preference-right period, his preference-right claim may be lost.

(iii) After a case has been closed, the data filed pursuant to this section may be returned.

(2) If there is only one qualified preference-right claimant, or if there are conflicting qualified preference-right claimants and there is an amicable agreement among them, the manager will declare such claimant or claimants the purchasers.

(3) Where there is a conflict between two or more persons claiming a preference right of purchase, they will be allowed 30 days from receipt of notice within which to agree among themselves upon a division of the tracts by subdivisions. In the absence of an agreement an equitable division of the land will be made taking into consideration such factors as (i) the equalizing of the number of acres which each claimant will be permitted to purchase, (ii) desirable land use, based on topography, land pattern, location of water, and similar factors, and (iii) legitimate historical use, including construction and maintenance of authorized improvements. If equitable considerations dictate, all of the subdivisions may be awarded to one of the claimants. Where only one subdivision is offered for sale and it adjoins the lands of two or more preference right claimants, it will, in the absence of equitable considerations requiring otherwise, be awarded to the applicant for the sale if he is a qualified person who properly asserts such a preference right within or prior to the 30-day preference-right period. The manager will make the award by declaring the appropriate claimant or claimants purchasers of the land.

(4) If, by the end of the preference-right period, no preference right has been asserted, the sale will be declared closed and the manager may declare the highest bidder the purchaser.

§ 250.12 *Action after purchaser is declared—*(a) *Payment of cost of publication by purchaser.* If the applicant for the sale is an unsuccessful bidder, the person awarded the land must reimburse and pay directly to him the amount expended for publication of notice and file evidence thereof in the district land office within 10 days from the date he is declared the purchaser. If the evidence is not furnished, the manager will reject the bid and will accept the bid next in

[2] Although one who holds a valid adjoining entry may file an application for the sale of lands which are mountainous or too rough for cultivation, he may not assert a preference right of purchase unless he has acquired the whole title to adjoining lands.

order, subject to the same conditions. Where an equitable apportionment of the land is made between two or more claimants, pursuant to § 250.11 (b), each of the claimants must bear an equal share of the expense.

(b) (1) Unless he has previously done so, the purchaser must, within 10 days after he has been so declared, file with the manager a statement of his citizenship, or if a partnership, a statement of the citizenship of its members. If the purchaser is an unincorporated association, a statement must be filed showing the citizenship of each member. A corporation is required to file a certified copy of its articles of incorporation showing that it is organized under the laws of the United States, or of some State, Territory or possession thereof, and that it is authorized to acquire and hold real estate in the State or Territory in which the land is situated, and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.

(2) If the purchaser declared by the manager is an alien individual, a partnership a member of which is an alien, an unincorporated association any appreciable number of the members of which are aliens, or a corporation, any appreciable percentage of the stock of which is held by aliens, and if the sale to such purchaser has not previously been approved by the Secretary, the declaration of the purchaser is subject to approval by the Secretary of the Interior and the manager will withhold the cash certificate until such approval has been given. Such purchaser may submit a statement of reasons why the declaration should be approved despite the question of citizenship.

(c) When there has been full compliance with the regulations in this part, the manager will issue a cash certificate to the purchaser.

§ 250.13 *Appeals.* An appeal pursuant to the Rules of Practice (Part 221 of this chapter) may be taken from any decision of the manager to the Director, and, from the decision of the Director to the Secretary.

PART 251—AIRPORTS AND AVIATION FIELDS

LEASING OF PUBLIC LANDS FOR AIRPORTS AND AVIATION FIELDS AND WITHDRAWALS OF SUCH LANDS FOR AIRPORT PURPOSES

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251.1 Statutory authority.
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USE FOR AIRPORT PURPOSES BY PUBLIC AGENCIES UNDER FEDERAL AIRPORT ACT OF MAY 13, 1946, OF LANDS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE INTERIOR

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251.18 Definitions.
251.19 Request by Administrator for transfer of property interest.
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251.21 Publication and posting required where fee title to public lands is to be transferred.
251.22 Special provisions in the instrument of transfer.

AUTHORITY: §§ 251.1 to 251.22 issued under R. S. 2478, sec. 1, 45 Stat. 728, as amended; 43 U. S. C. 1201, 49 U. S. C. 2M.

LEASING OF PUBLIC LANDS FOR AIRPORTS AND AVIATION FIELDS AND WITHDRAWALS OF SUCH LANDS FOR AIRPORT PURPOSES

§ 251.1 *Statutory authority.* The act of May 24, 1928 (45 Stat. 728; 49 U. S. C. 211–214), as amended by the act of August 16, 1941 (55 Stat. 621), authorizes the Secretary of the Interior in his discretion and under such regulations as he may prescribe, to lease for use as a public airport, any contiguous, unreserved and unappropriated public lands, not to exceed 2,560 acres in area. It also authorizes him to grant permission for the establishment of beacon lights and other air navigation facilities, except terminal airports, upon unreserved and unappropriated public lands and to withdraw such lands for such purposes.

§ 251.2 *Lands which may be leased.* Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the act of May 24, 1928.

§ 251.3 *Prior valid rights.* All leases will be subject to valid existing rights initiated prior to the date the application for lease is filed.

§ 251.4 *Applications for lease.*[1] Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. Applications will be limited to citizens of the United States, or associations of such citizens, to corporations organized under the laws of the United States or of any State or Territory thereof, and municipalities. No specific form of application is required, and no blanks will be furnished, but the application which must be signed by the applicant, but need not be under oath, should include in substance the following points:

(a) Applicant's name and post-office address.

(b) If a corporation, a certified copy of the articles of incorporation.

(c) If a city or town, evidence of authority of the mayor or other officer who may be authorized to execute such lease.

(d) Description of the land for which the lease is desired by legal subdivisions, if surveyed, and by metes and bounds, if unsurveyed.

§ 251.5 *Report by Administrator, Civil Aeronautics Administration; execution of lease.* Upon receipt of the application one copy will be referred to the Administrator, Civil Aeronautics Administration, for consideration as to what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that department. After the Administrator, Civil Aeronautics Administration, has reported, a lease on Form 4–455 will be prepared and sent to the applicant for execution.

§ 251.6 *Lessee to make report within 6 months on airport equipment.* The lessee shall, within 6 months from the date of the lease, equip the airport as required by the Administrator, Civil Aeronautics Administration, and file a report thereof in the land office.

§ 251.7 *Inspection of airport by Civil Aeronautics Administration and report thereon.* At any time during the term of the lease the Administrator, Civil Aeronautics Administration, may have an inspection made of the airport, and if it does not comply with the ratings set by the Civil Aeronautics Administration that fact, with a statement as to wherein it fails, will be referred to the Bureau of Land Management for appropriate action.

§ 251.8 *Reasons for which lease may be canceled.* The authorized officer may, in his discretion, cancel a lease issued under the act of May 24, 1928, for any of the following reasons: If the lessee fails to use the leased premises or any part thereof, or uses it or any part thereof for a purpose foreign to the proper use, or shall fail to pay the annual rental or any part thereof, or shall fail to maintain the premises according to the ratings set by the Civil Aeronautics Administration, or

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

shall fail to comply with the regulations in this part or the terms of the lease.

§ 251.9 *Period of lease; renewal thereof.* Leases under the act of May 24, 1928, shall be for a period not to exceed 20 years and may be renewed for like period.

§ 251.10 *Annual rental.* Every lessee under the act of May 24, 1928 (45 Stat. 728; 49 U. S. C. 211–214), as amended August 16, 1941 (55 Stat. 621), shall pay to the lessor an annual rental of not less than $10 for an area not exceeding 640 acres, and not less than $5 for each additional 640 acres or fraction thereof. The rental terms of each lease shall be subject to reconsideration and revision at 3-year intervals. The lessee shall be required to submit a report to the Bureau of Land Management, showing the facts as to the gross receipts within 90 days after each anniversary date of the lease. In the event the average annual gross receipts reported during any such interval from operations on the leased land, from all sources, exceed $5,000, the rentals for the succeeding interval or intervals may be increased to such reasonable amount as may be fixed by the authorized officer, but not exceeding 1 percent of such average. Due consideration will be given in fixing the rentals to all pertinent facts and circumstances, including other holdings of the lessee, if any, in connection with which the receipts are obtained. The first annual rental payment shall be made when the application is filed in the land office. All subsequent payments shall be paid in advance on or before the anniversary date of the lease.

§ 251.11 *Use of airport by Government departments and agencies; control for military purposes.* The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and with the approval of the Bureau of Land Management, any departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airports.

§ 251.12 *Regulations governing use of the airport.* The lessee will submit to the Administrator, Civil Aeronautics Administration, for his approval, regulations to govern the use of the airport.

§ 251.13 *Establishment of beacon lights, etc.; withdrawals therefor by the Bureau of Land Management.* Government departments and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities, except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the rules and regulations prescribed by §§ 251.1 to 251.12, except no rental will be charged. They will be withdrawn by the Bureau of Land Management, for that purpose on a sufficient showing of the necessity of a withdrawal for such purpose. However, to insure uniformity and centralized control over such facilities, all such applications will be referred to the Administrator, Civil Aeronautics Administration for consideration and comment.

§ 251.14 *Segregation of land by application for lease; airport withdrawals which may be made by the Bureau of Land Management.* While an application for a lease of not exceeding 2,560 acres of public lands for a public aviation field under sections 1, 2, and 3 of the act of May 24, 1928 (45 Stat. 728, 729; 49 U. S. C. 211–213), will operate as a segregation of the lands described therein from the time such application is filed in the proper land office, no authority is given the Bureau to withdraw public lands for terminal airports. The Bureau may, however, withdraw such lands for beacon lights or other air navigation purposes, including emergency or intermediate landing fields between terminal airports. Such withdrawals may be made on his own motion or at the instance of the Civil Aeronautics Administration or other Federal agencies, or lessees of terminal airports, or the applicants for such leases.

§ 251.15 *Withdrawals for airport terminals to be made by public land order.* Prior to the approval of the act of May 24, 1928, public lands were subject to withdrawal by the President for public purposes, and the authority of the President to make such withdrawals is in no manner restricted by the act of May 24, 1928. Where, therefore, unappropriated public lands are desired by the Civil Aeronautics Administration or other Federal agencies for airport terminals, requests for their withdrawal by a public land order may be submitted to the appropriate Land Office of the Bureau of Land Management, for consideration. All requests for withdrawal should specifically state whether the area is desired for beacon lights, emergency or intermediate landing fields, or terminal airports.

§ 251.16 *Appeals.* Any party aggrieved by any action taken under this part may appeal to the Secretary of the Interior pursuant to Part 221 of this chapter.

USE FOR AIRPORT PURPOSES BY PUBLIC AGENCIES UNDER FEDERAL AIRPORT ACT OF MAY 13, 1946, OF LANDS UNDER JURISDICTION OF THE DEPARTMENT OF THE INTERIOR

§ 251.17 *Statutory authority.* (a) Section 16 of the Federal Airport Act of May 13, 1946[1] (60 Stat. 179; 49 U. S. C. 1115) provides that whenever the Administrator of Civil Aeronautics determines that the use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project under the act, or for the operation of any public airport, he shall file with the head of the Department or agency having control of such lands a request that such property interest therein as he may deem necessary be conveyed to the public agency sponsoring the project in question or owning or controlling the airport.

(b) Upon receipt of the request from the Administrator of Civil Aeronautics, the head of the Department or agency having control of the lands in question is directed to determine whether the requested conveyance is inconsistent with the needs of the Department or agency and to notify the Administrator of his determination within a period of four months after receipt of the Administrator's request. Upon the determination of the head of the Department or agency that it is not so inconsistent, he is authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested.

§ 251.18 *Definitions.* As used in the regulations in this part, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) "The act" means the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U. S. C. 1101).

(b) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(c) "Director" means the Director of the Bureau of Land Management or his duly authorized representative.

(d) "Administrator" means the Administrator of Civil Aeronautics or his duly authorized representative.

(e) "Applicant" means any public agency as defined in 14 CFR 555.4, which, either individually or jointly with one or more other such public agencies, submits to the Administrator, an application requesting that public lands or interests therein, be transferred to such applicant under the Federal Airport Act.

(f) "Property interest" means the title to or any other interest in land or any easement through or other interest in air space.

(g) "Instrument of transfer" includes a patent, deed, lease or other instrument transferring a property interest.

§ 251.19 *Request by Administrator for transfer of property interest.* Each request by the Administrator in behalf of the applicant for the transfer of a property interest in public lands or other federally owned lands under the jurisdiction of the Department of the Interior should be addressed to the Bureau of Land Management, should be in duplicate, and should contain the following:

(a) A copy of the application filed by the requesting public agency with the Administrator.

(b) A description of the land, if surveyed, by legal subdivisions, specifying section, township, and range. Unsurveyed land should be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie should be made to some prominent topographic feature and the approximate latitude and longitude should be given when practicable.

§ 251.20 *Action on the request.* (a) The Secretary will determine whether the requested transfer is inconsistent with the needs of the Department or any agency thereof, and if it is not, the cov-

[1] The regulations of the Civil Aeronautics Administration under this act are found in 14 CFR, Part 555.

enants, terms and conditions, if any, under which such transfer should be made. Any such conveyance will be made subject to valid existing rights of record, and to those disclosed as a result of posting, publication, or otherwise.

(b) Ordinarily where the lands involved are situated within a national park or monument or within an Indian reservation the transfer will not be authorized.

§ 251.21 *Publication and posting required where fee title to public lands is to be transferred.* Before a transfer of fee title to public lands is made, the Bureau of Land Management will require the applicant to publish, at its own expense, in a newspaper of general circulation in the county in which the land is situated, a notice stating that a request has been made by the Administrator on behalf of the applicant (giving its name and address) to acquire title to public lands (describing them) under the act, for the purpose of carrying out a project under the act, or for the operation of a public airport, as the case may be, and that the purpose of the notice is to give persons claiming an interest in the land or having bona fide objections to the proposed transfer an opportunity to file within 30 days after the date of the first publication, a protest, together with evidence that the protest has been served on the applicant. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue, if a weekly, in four consecutive issues, and if a semi-weekly or tri-weekly, in any of the issues on the same day each week for four consecutive weeks. The notice will also be posted during the entire period of publication in the land office, Bureau of Land Management, for the district in which the lands are situated, or if there is no land office for the State, in the office of the Director, Washington 25, D. C. No transfer will be made until proof of publication and posting of the notice has been filed.

§ 251.22 *Special provisions in the instrument of transfer.* Each instrument of transfer made hereunder of fee title or a lesser estate in the lands shall contain:

The covenants, terms and conditions requested by the Administrator, as well as those required for the protection of the Department of the Interior or any agency thereof.

PART 252—PRIVATE CASH AND PREEMPTION ENTRIES; PRICE OF PUBLIC LANDS [1]

Sec.
252.1 Private cash entries not permitted, except in Missouri.
252.2 Minimum and double minimum price of the public lands.

[1] Section 4 of the act of March 3, 1891 (26 Stat. 1097) repealed the laws allowing preemptions of the public lands but provided for the perfecting of all bona fide claims theretofore lawfully initiated.

Section 10 of the said act of March 3, 1891 (26 Stat. 1099; 25 U. S. C. 426) permitted further preemptions to be made on certain Indian lands. However, on June 1, 1938, there was little or no such land remaining subject to preemption, due either to the disposal of the land or to its withdrawal from entry and disposal. For this reason, the regulations governing preemption entries have not been codified.

§ 252.1 *Private cash entries not permitted, except in Missouri.* The first section of the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 700), provides that from and after its passage "no public lands of the United States, except those in the State of Missouri, shall be subject to private entry." This relates to the private sale or entry of "offered" lands under sections 2354 and 2357, Revised Statutes (43 U. S. C. 673, 678). No sale at private entry will be admissible under said first section, except in Missouri, in which State all public lands are subject to private sale by section 2 of the act of Congress approved May 18, 1898 (30 Stat. 418; 43 U. S. C. 675), but in making purchase under that act the purchaser is required to show the absence of any prior adverse settlement right.

(R. S. 2478; 43 U. S. C. 1201)

§ 252.2 *Minimum and double minimum price of the public lands.* (a) Except as specifically provided by law (See R. S. 2455, as amended; 43 U. S. C. 1171), no land shall be sold, either at public or private sale, for less than $1.25 per acre, which is therefore called the "minimum price," and lands held for sale at that price are called "minimum lands." (R. S. 2357)

(b) The double minimum price established by law is $2.50 per acre, and lands held for sale at that price are called "double minimum lands."

(c) Alternate reserved sections within the limits of railroad grants are double minimum in price (R. S. 2357; 43 U. S. C. 678), except such as were put in market at the enhanced price prior to January 1, 1861, and were subject to entry June 15, 1880, all of which were reduced in price to $1.25 per acre by the third section of the act of Congress of June 15, 1880 (21 Stat. 238; 43 U. S. C. 679), and except those opposite those portions of railroads not completed on March 2, 1889, which were reduced in price by section 4 of the act of that date (25 Stat. 854; 43 U. S. C. 681), or where a different price is provided for in statutes for the disposal of lands under special conditions.

(R. S. 2478; 43 U. S. C. 1201)

PART 253—CEMETERY SITES

Sec.
253.1 Statutory authority.
253.2 General limitations and conditions.
253.3 Applications.
253.4 Purchase price, publication, and protests.

AUTHORITY: §§ 253.1 to 253.4 issued under R. S. 2478; 43 U. S. C. 1201. Interpret or apply 34 Stat. 1052; 43 U. S. C. 682.

§ 253.1 *Statutory authority.* The act of March 1, 1907 (34 Stat. 1052; 43 U. S. C. 682), authorizes the Secretary of the Interior to sell and convey lands for cemetery purposes to religious or fraternal associations or private corporations, empowered by the laws under which they are organized or incorporated to hold lands for such purposes.

§ 253.2 *General limitations and conditions.* (a) No association or corporation can secure title to more than 80 acres of public lands under the act.

(b) Only unreserved and unappropriated nonmineral public lands are available for selection. Applicants will not be granted title to public lands subject to section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U. S. C. 315f), as amended, unless and until the lands are classified as suitable for cemetery purposes and not needed for any other public purpose or higher use.

(c) Patents will issue only for surveyed land and only in the name of the association or corporation.

(d) All patents will contain a clause providing that if the land or any part of it should be sold or cease to be used for cemetery purposes, title shall revert to the United States.

§ 253.3 *Applications.* (a) Applicants under the act must submit, in duplicate, an application to the appropriate office of the Bureau of Land Management. No specific form is required but the application must show (1) the name and address of the association or corporation, (2) legal description of the lands desired or if unsurveyed, sufficient information to identify the location, boundaries, and the area of the tract which must be as nearly rectangular as possible, (3) the authority that empowered the association or corporation to hold lands for cemetery purposes in the State or Territory in which the land is located, (4) the official character and express authority of the officer or officers applying on behalf of the association or corporation, and (5) that the lands are not adversely occupied or used.

(b) Each application must be accompanied by a filing fee of $10.

§ 253.4 *Purchase price, publication, and protests.* (a) Purchase price will be fixed by appraisal of the fair market value of the lands but at not less than $1.25 per acre and must be paid before patent will issue.

(b) Applicants will be required to publish once a week for five consecutive weeks in accordance with § 106.18 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(c) Applicants must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

PART 254—SALE, GRANT, OR LEASE OF PUBLIC LANDS FOR RECREATION AND PUBLIC PURPOSES

Sec.
254.1 Statutory authority.
254.2 Who may apply.
254.3 Lands subject to disposition.
254.4 Purposes for which lands may be acquired.
254.5 General limitations and conditions on dispositions.

Sec.
254.6 Classifications.
254.7 Applications.
254.8 Purchase price and lease rentals.
254.9 Lease provisions.
254.10 Publications; protests; patents; transfers.
254.11 Applications for transfer, change of use, and for renewal of leases.
254.12 Lands patented under prior acts; applications for transfer and change of use.
254.13 Cooperation with the National Park Service.
254.14 Minerals; timber.
254.15 Appeals.

AUTHORITY: §§ 254.1 to 254.15 issued under 44 Stat. 741, 68 Stat. 173; 43 U. S. C. 869.

§ 254.1 *Statutory authority.* The act of June 14, 1926 (44 Stat. 741), as amended by the act of June 4, 1954 (68 Stat. 173; 43 U. S. C. 869), authorizes the Secretary of the Interior, under specified conditions, to lease or sell lands for recreational and public purposes. This legislation is referred to as "the act" in these regulations in this part.

§ 254.2 *Who may apply.* The following are qualified to make applications under the act: States and the Territory of Alaska; Federal, State, and Territory of Alaska instrumentalities, and political subdivisions, including counties and municipalities; and nonprofit associations and nonprofit corporations.

§ 254.3 *Lands subject to disposition.* The act is applicable to any public domain lands except (a) lands withdrawn or reserved for national forests, national parks and monuments, and national wildlife refuges; (b) Oregon and California revested railroad grant lands and Coos Bay reconveyed wagon-road grant lands; and (c) Indian lands and lands set aside or held for use by or the benefit of Indians.

§ 254.4 *Purposes for which lands may be acquired.* (a) Qualified applicants are permitted by the act to acquire available lands for use for any public purposes for which they are authorized by their creating authority to hold lands. Nonprofit associations and nonprofit corporations are permitted, in addition, to acquire lands for use for any recreational purpose consistent with their creating authority.

(b) No applicant can secure lands under the act, however, for any use authorized under any other public land law. This restriction does not apply to the use of lands for residence, business, recreation, and community-site purposes authorized by the act of June 1, 1938 (52 Stat. 609; 43 U. S. C., 682a, Part 257 of this chapter) as amended.

§ 254.5 *General limitations and conditions on dispositions.* (a) Applicants will not be granted title to or use of land under the act unless and until (1) the land is first classified as suitable for the purpose sought and not needed for any other public purpose or is not more valuable and suitable for some other use, including the development of power; and, (2) if the land is under the jurisdiction of any agency or instrumentality outside the Department of the Interior, that agency or instrumentality consents to the proposed disposition.

(b) Applicants will not be granted title to or use of land under the act except for an established or definitely proposed project. A definitely proposed project is a project which has been authorized by competent authority irrespective of whether or not it has been financed and otherwise fully implemented, providing that there exists the probability that it will be fully implemented within a reasonable time.

(c) No applicant can receive under the act patent for more than 640 acres in any one calendar year.

(d) No patent will be issued under the act unless and until the land is officially surveyed.

(e) All leases and patents issued under the act will reserve to the United States all minerals, together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

(f) Municipal corporations cannot secure land under this act if it is not within convenient access to the municipality and within the same State or Territory as the municipality. Other qualified applicants cannot secure land outside of their political boundaries or other area of jurisdiction.

§ 254.6 *Classifications.* (a) Lands in Alaska classified under the act and lands in the States classified pursuant to the act under section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U. S. C. 315f), as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

(b) Classifications made pursuant to the act on the motion of the Government for which no application is filed within 18 months after issuance will be vacated and the land restored to its former status.

§ 254.7 *Applications.* (a) Applicants under the act must submit, in triplicate, to the appropriate office of the Bureau of Land Management an application on Form 4–1267, executed in accordance with the instructions on the form. Each application must be accompanied by (1) three copies of a statement describing the proposed use of the lands, showing that the application involves an established or definitely proposed project, and giving as much detail concerning the plan of development and improvement of the project as is necessary to describe the project and its purpose adequately and the proposed disposition of any revenues to be realized from it and (2) a filing fee of $10.

(b) The acreage applied for in any one application for patent cannot exceed 640 acres and no more than 640 acres will be conveyed to any one grantee in any one calendar year.

§ 254.8 *Purchase price and lease rentals.* (a) Conveyances under the act for historic monument purposes will be made without any monetary consideration.

(b) Sales to nonprofit associations or nonprofit corporations for other than historic monument purposes will be made at prices fixed through appraisal of the fair market value of the land, taking into consideration the purposes for which the lands will be used.

(c) All other sales will be made at prices fixed through (1) appraisal of the fair market value of the lands or otherwise, taking into consideration the purpose for which the land will be used or (2) any method which considers the purpose for which the land will be used.

(d) Annual rentals under leases will be fair and reasonable and will be based on the value of the lands as determined by the requirements of paragraphs (b) and (c) of this section.

(e) A patent applicant, when the land has been appraised, will be required to pay the full purchase price before the patent will be issued. The rental under a lease shall be payable annually in advance. Upon appraisal of the land, a lease applicant will be required to pay the first year's rental before the lease will be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term will be returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease.

§ 254.9 *Lease provisions.* (a) The term of leases under the act will be fixed by the authorized official but will not exceed 20 years. Leases will be renewable at the discretion of such official.

(b) Leases will be issued on Form 4–1270 and will contain the usual terms and conditions required by law, public policy, and, insofar as possible, by Department of the Interior procedure.

(c) Leases will contain such terms and conditions which the signing officer or the administering agency considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interests.

(d) Leases will be terminable by the authorized official upon failure of the lessee to comply with the terms of the lease, upon a finding that all or part of the land is being devoted to other than the use authorized by the lease, or upon a finding that the land has not been used by the lessee for the purpose specified in the lease for any consecutive period specified by the authorized official but not more than 5 years or less than 2 years.

(e) Leases will not be transferable except with the consent of the proper official. Transferees must meet all the qualifications of applicants under the act and will be subject to all the terms and conditions of the regulations in this part.

§ 254.10 *Publications; protests; patents; transfers.* (a) Applicants for patents under the act will be required upon demand to publish once a week for four consecutive weeks in accordance with § 106.14 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent under the applications. A protestant must serve on

the applicant a copy of the objections and furnish evidence of such service.

(b) Such applicants must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

(c) All patents under this act will contain a clause providing that if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without consent of competent authority, title shall revert to the United States. This clause will terminate 25 years after issuance of the patent. Transferees must meet all the qualifications of applicants under the act and will be subject to the terms and conditions of the regulations in this part.

§ 254.11 *Applications for transfer, change of use, and for renewal of leases.* (a) Applications under the act for permission to add to, or to change the use specified in a lease or patent, applications to transfer title or lease to a third party, and applications for renewal of a lease must be filed in triplicate with the appropriate office of the Bureau of Land Management. No form is specified but the matter should be fully explained by the applicant.

(b) Applications for permission to add to or to change use must be accompanied by three copies of the showing required by § 254.7 (a) (1).

(c) Applications for approval of transfers of title or lease must be accompanied by three copies of Form 4–1267 executed by the proposed transferee in accordance with § 254.7.

(d) Applications for renewal of leases must be accompanied by three copies of a statement showing, in detail sufficient to describe the situation adequately, the past use of the lands and the proposed use after renewal of the lease.

(e) Each application must be accompanied by a filing fee of $10.

(f) Prior to approval of an application filed under paragraph (b) of this section the land may be reappraised in accordance with § 254.8 and the beneficiary required to make such payments as are found justified by such reappraisal.

§ 254.12 *Lands patented under prior acts; applications for transfer and change of use.* (a) Applications under section 4 of the act for permission to transfer title or to change the use in respect to land covered by any patent issued prior to June 4, 1954, must be submitted in conformance with § 254.11.

(b) The land, however, will not be subject to reappraisal and the beneficiary will not be required to make any payment other than the filing fee.

§ 254.13 *Cooperation with the National Park Service.* In furtherance of the purposes of the act of June 23, 1936 (49 Stat. 1894; 16 U. S. C. 17k), the National Park Service will review and make recommendations on all applications for recreational purposes submitted by States and the Territory of Alaska or their political subdivisions.

§ 254.14 *Minerals; timber.* (a) Any minerals subject to the leasing laws reserved to the United States in the lands patented or leases under the terms of the act may be disposed of to any qualified person under applicable laws and regulations. Until rules and regulations are issued, other minerals are not subject to disposition or to prospecting except by an authorized Federal agency.

(b) A lessee under the act will not be permitted to cut timber from the leased lands without prior permission from the appropriate officer.

§ 254.15 *Appeals.* An appeal pursuant to the Rules of Practice, Part 221 of this chapter, may be taken from the decision of the authorized officer of the Bureau of Land Management.

PART 255—TOWN SITES [1]

TOWN SITES RESERVED BY THE PRESIDENT OR BY PUBLIC LAND ORDER

Sec.
255.1 Reservation of public lands for town site purposes.
255.2 Survey of reserved land into blocks and lots; appraisal thereof.
255.3 Schedule of appraisement; disposal of copies thereof.
255.4 Time, place, and terms of sale.
255.5 Publication in FEDERAL REGISTER; sale to be given other publicity.
255.6 Lot purchase limitation authorized; manner of making bids.
255.7 Penalty for combinations in restraint of the sale.
255.8 Reoffering at public sale; private entry.

TOWN SITES PLATTED BY OR FOR OCCUPANTS

255.9 Town site settlement.
255.10 Filing with county recorder of plat, field notes, and statement of improvements.
255.11 Filing in district land office, in duplicate, of transcript of plat, field notes, and statement.
255.12 Notice to be issued by regional administrator; preemption proofs; public sale of unclaimed lots.
255.13 Adjustment of town-site survey to township survey.
255.14 Survey by Department of the Interior; increase in price of lots.
255.15 Minimum price of lots.
255.16 Preemption claims, publishing and posting of proof notices.
255.17 Preemption proof.
255.18 Hearings.
255.19 Conflicting mineral claims.
255.20 Lots wholly or partly covered by mineral patents.
255.21 Forfeiture of preemption right.
255.22 Conduct of sale; minimum sale price; private entry.

TOWN SITES ENTERED BY TRUSTEES

255.26 Statutory authority.
255.27 Who may make town-site entry.
255.28 Entry must be made in trust.
255.29 Execution of trust.
255.30 Area that may be entered.
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255.33 Proof; posting and publication of proof notice.
255.34 Area enterable.
255.35 Conflicting mineral claims.
255.36 Government reservations not subject to entry.
255.37 Prior use and occupation of land as mill site.
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TOWN SITES IN RECLAMATION PROJECTS

255.42 Withdrawal and survey of land.
255.43 Procedure governing appraisement and sale.
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255.47 Public reserves; patents therefor.

GRANT OF LANDS IN RECLAMATION TOWN SITES FOR SCHOOL PURPOSES

255.48 Application to be made by school district; action thereon.

PUBLIC RESERVES IN OKLAHOMA TOWN SITES

255.49 Applications for patents on behalf of the municipalities.
255.50 Disposal of unpatented public reserves in vacated town sites.
255.51 Disposal of patented public reserve in vacated town sites.

TOWN SITES ON MINERAL LANDS

255.52 Rights of mineral claimant; exclusion of mineral claim or mill site from town-site entry.

RIGHTS OF TRANSFEREES OF TOWN LOTS

255.53 Patent to issue in name of original purchaser.

QUALIFICATIONS OF TOWN-LOT PURCHASERS

255.54 Evidence of citizenship or incorporation required.

AUTHORITY: §§ 255.1 to 255.54 issued under R. S. 2478; 43 U. S. C. 1201. Interpret or apply R. S. 2380–2389, as amended, 2391–2394, secs. 1, 3, 4, 19 Stat. 392, as amended, sec. 16, 26 Stat. 1101, 26 Stat. 502, 32 Stat. 820; 43 U. S. C. 711–731.

CROSS REFERENCES: For Bureau of Reclamation, see Chapter II of this title. For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For patents, see Part 108 of this chapter. For surveys, see Part 280 of this chapter. For town sites, Alaska, see Part 80 of this chapter.

TOWN SITES RESERVED BY THE PRESIDENT OR BY PUBLIC LAND ORDER

§ 255.1 *Reservation of public lands for town site purposes.* Public lands have been reserved by the President for town site purposes, from time to time, under section 2380 of the Revised Statutes (43 U. S. C. 711). Reservations for such purposes may now be made by public land order, by the Secretary of the Interior, pursuant to Executive Order No. 9337 [1] of April 24, 1943 (3 CFR, 1943 Cum. Supp.) The reservations may be made by the Secretary of the Interior on his own motion, or petitions may be addressed to him requesting the reservations. Such petitions should be filed with the area administrator for the area in which the lands are situated.

[1] This part contains the general town-site regulations.

There are hundreds of Government town sites in which the disposal of particular lots is governed by special acts of Congress and by special regulations. Such regulations have not been codified, in view of their limited application.

Information respecting the regulations governing town-lot sales in any particular Government town site will be furnished on request by the Director of the Bureau of Land Management.

[1] Superseded by E. O. 10355 (17 F. R. 4831, 3 CFR, 1952 Supp.)

§ 255.2 *Survey of reserved land into blocks and lots; appraisal thereof.* Town sites reserved under section 2380, Revised Statutes, or under any other law directing their disposition under section 2381, Revised Statutes (43 U. S. C. 712) will be surveyed, when ordered by the Bureau of Land Management, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the area administrator. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for public purposes will not be appraised.

§ 255.3 *Schedule of appraisement; disposal of copies thereof.* The schedule of appraisement must be prepared in triplicate on forms furnished by the area administrator, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to said officer.

§ 255.4 *Time, place, and terms of sale.* A notice of sale will be issued in each case by the authorized officer prescribing the time when, the place where, and the terms under which the lots will be offered.

§ 255.5 *Publication in Federal Register; sale to be given other publicity.* Every notice of sale shall be published in the FEDERAL REGISTER and every sale shall be given such other publicity, without cost to the Government, as may be deemed proper by the authorized officer.

§ 255.6 *Lot purchase limitation authorized; manner of making bids.* In appropriate cases the authorized officer may limit the number of lots each person may buy. Bids and payments may be made through agents, but not by mail, or at any time or place other than that fixed in the notice of sale.

§ 255.7 *Penalty for combinations in restraint of the sale.* All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or prevent the sale, and all persons so offending will be prosecuted under 18 U. S. C. 1860.

§ 255.8 *Reoffering at public sale; private entry.* (a) An offering at public sale may be adjourned or closed, in the discretion of the area administrator or other officer conducting the sale. If adjourned, the unsold lots will be held for future disposition at public sale. If closed, the unsold lots will become subject to private entry at the appraised price.

(b) Lots sold at public sale and forfeited because of nonpayment of the purchase price, or for any other reason, will be held for further offering at public sale, unless reentry of the lots at private sale, at a designated price, is authorized by the notice under which the lots are sold.

(c) Lots sold at private sale should be accompanied by an application therefor, signed by the applicant.

TOWN SITES PLATTED BY OR FOR OCCUPANTS

§ 255.9 *Town site settlement.* Sections 2382 to 2386, of the Revised Statutes (43 U. S. C. 713–717), authorize the platting of town sites by or for the occupants and the disposal of such town sites, where town site settlement has been or may be made upon unreserved public lands subject to such settlement. Public lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, or 6964 of February 5, 1935, are not subject to occupation for town site purposes unless first classified for such occupation, pursuant to Part 296 of this chapter.

§ 255.10 *Filing with county recorder of plat, field notes, and statement of improvements.*[1] (a) The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets, and alleys to be made, and the plat and field notes thereof to be filed with the recorder of the county in which the land is situated. The plat must show (1) that the land does not include an area in excess of 640 acres, unless the lots, buildings, and improvements cover a greater area, and then only to the extent so occupied and improved; (2) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of the town-site survey are tied to a designated, permanent, and thoroughly identified monument; (3) that the streets, squares, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town, are correctly delineated thereon; and (4) the exterior lines of all existing railroad rights-of-way and statement grounds. The lots should not exceed 4,200 square feet, except in cases where the configuration necessitates a different area. The above-required facts should be embodied in the statement of the surveyor entered upon the margin of the plat.

(b) A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and over the signature of the party acting for and on behalf of the occupants of the land.

§ 255.11 *Filing in land office, in duplicate, of transcript of plat, field notes, and statement.* Within one month after filing such plat, field notes, and statement, a transcript thereof in duplicate, each duly verified by the certificate of the county recorder, and accompanied by the statement of two persons that such town has been established in good faith, and showing the number of inhabitants thereof, and when it was so established, shall be filed with the manager of the land office in which the town site is located.

§ 255.12 *Notice to be issued by regional administrator; preemption proofs; public sale of unclaimed lots.* After the town site plat has been approved by the Bureau of Land Management, a notice will be published in the FEDERAL REGISTER stating the conditions under which preemption proofs may be submitted by the lot claimants and the time, place, and conditions for the offering of the unclaimed lots at public sale. This notice should be given such other publicity without cost to the Government as is deemed appropriate.

§ 255.13 *Adjustment of town-site survey to township survey.* When the town site is upon land over which the township surveys have not been extended, the area cadastral engineering officer will be notified and thereafter, when the township surveys have been extended over the land, the exterior lines of the town site may be adjusted thereto where it can be done without impairing vested rights.

§ 255.14 *Survey by Department of the Interior; increase in price of lots.* Refusal or failure to file such transcript, plat, field notes, and statement, with the testimony, as required, within 12 months from the establishment of a town on the public domain, will authorize the Bureau of Land Management to cause a survey and plat to be made thereof, the lots in which shall be disposed of at an increase of 50 per centum on the minimum price.

§ 255.15 *Minimum price of lots.* The minimum price for all lots of 4,200 square feet or less is $10 per lot, except in cases where the survey into lots and blocks is made by the Government, in which case the minimum price is $15 per lot for such lots. The minimum price for all lots in excess of 4,200 square feet will be computed by adding to said minimum price of $10 or $15, as the case may be, the sum of $4 for each additional 1,000 square feet or fractional part thereof in excess of 4,200 square feet unless the regional administrator shall fix a different rate.

§ 255.16 *Preemption claims, publishing and posting of proof notices.* (a) A preemption right of purchase at the minimum price, at any time before the day fixed for the public sale, of not exceeding two lots, is accorded an actual resident, to secure which he must file in the district office his application therefor, and therein state the date of settlement, the value and character of his improvements thereon, that he is 21 years of age or over or the head of a family, and that he is a citizen of the United States or has declared his intention to become such. The notice of intention to make proof must be filed by the applicant and the notice for publication must be issued, and posted by the manager, and published at the expense of the applicant once a week for 5 consecutive weeks, in accordance with § 106.14 of this chapter.

(b) Where a husband and wife are joint settlers, and the husband purchases two lots, as stated, the wife may also purchase an "additional lot" upon which she has placed substantial improvements.

§ 255.17 *Preemption proof.* Preemption proof may be made before the manager, or any officer duly authorized by law, and must show (a) due publication of the manager's notice, (b) the claim-

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

ant's age, (c) his citizenship, in the manner required by Part 137 of this chapter, and (d) his actual residence upon one lot and substantial improvements on the second lot, if two lots be included in the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price for the lot or lots must be paid when the proof is made. Entry of public lands under other laws, or in other town sites, or ownership of more than 320 acres, will not disqualify an applicant from making such entry. No entry can be made of an improved lot on which the claimant does not reside unless his residence lot is included in the same or a previous entry.

§ 255.18 *Hearings.* Hearings will be ordered and conducted in accordance with the Rules of Practice, Part 221 of this chapter, where two or more adverse applications are filed for the same lot, or where a sufficient contest affidavit is filed against an application, on or before the day fixed for making proof, but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within 30 days from notice thereof.

§ 255.19 *Conflicting mineral claims.* Mineral surveys, locations, applications, and entries covering lots in such town sites will not prevent the entry of such lots hereunder and the issuance of patent thereon, but such mineral claims, if held under prior and valid mineral rights, are amply protected by the law from prejudice by the allowance of such town-lot entries and patents, and paramount patents may be issued thereafter to such mineral claimants.

§ 255.20 *Lots wholly or partly covered by mineral patents.* Lots wholly covered by outstanding mineral patents are not subject to entry under the town site law, and applications therefor will be rejected. Lots partly covered by mineral patents may be entered at the price fixed for the whole lot, but the certificate and receipt must contain at the end of the description an exception clause as follows: Excepting and excluding the portion of said lot (or lots) embraced in mineral patent (or patents) heretofore issued.

§ 255.21 *Forfeiture of preemption right.* All right to preempt and purchase occupied and improved lots for which no entry has been allowed prior to or on the date fixed for the public sale will be forfeited unless a contest be pending thereon, and such lots will be offered for sale together with the unoccupied lots. When notified of the date fixed for the public sale, the manager will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale.

§ 255.22 *Conduct of sale; minimum sale price; private entry.* The public sale will be conducted in the form and manner provided for the sale of town lots under §§ 255.4 to 255.8. No lot shall be sold for less than the minimum price fixed therefor, and such lots as may not be disposed of at public sale shall thereafter be liable to further public sale or to private entry at such minimum, or at such reasonable increase or diminution as the authorized officer may order after at least 3 months' notice thereof, to be published in the FEDERAL REGISTER.

TOWN SITES ENTERED BY TRUSTEES

§ 255.26 *Statutory authority.* Public lands settled upon and occupied as a town site are thereby segregated from entry under the agricultural land laws, and may be entered under sections 2387 to 2389, Revised Statutes (43 U. S. C. 718–720), subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, Revised Statutes (43 U. S. C. 717, 721–723).[3]

§ 255.27 *Who may make town-site entry.* If the town is incorporated, the entry must be made by the corporate authorities or by the mayor or other principal officer authorized so to do by resolution or ordinance of the town board or city council. If the town is not incorporated, the entry must be made by the judge of the county court upon petition addressed to him therefor, signed by such number of actual occupants of lots therein as may be required by the laws of the State in which the town is situated. Private individuals, organizations, or corporations are not authorized to make such entries.

§ 255.28 *Entry must be made in trust.* The entry must be made in trust (a) as to the occupied lots, for the several use and benefit of the occupants thereof according to their respective interests, and (b) as to the unoccupied lots, for the use and benefit of the municipality, the public, or the occupants collectively as a community. Such entries cannot be made for the benefit of one individual, or organization, or corporation, but only for the benefit of the actual inhabitants and occupants of an established town. Prospective town sites can not be so entered.

§ 255.29 *Execution of trust.* The execution of the trust as to the disposal of the lots and the proceeds of sales is to be conducted under regulations prescribed by the State laws. Acts of trustees not in accordance with such regulations are void.

§ 255.30 *Area that may be entered.* The amount of land that may be entered under sections 2387 to 2389 inclusive of the Revised Statutes (43 U. S. C. 718–720) is proportionate to the number of inhabitants. One hundred and less than 200 inhabitants may enter not to exceed 320 acres; 200 and less than 1,000 inhabitants may enter not to exceed 640 acres; and where the inhabitants number 1,000 and over, an amount not to exceed 1,280 acres may be entered; and for each additional 1,000 inhabitants, not to exceed 5,000 in all, a further amount of 320 acres may be allowed. When the number of inhabitants of a town is less than 100 the town site shall be restricted to the land actually occupied for town purposes, by legal subdivisions.

§ 255.31 *Entry of unsurveyed land; special survey therefor.* Unsurveyed public land upon which a town has been established may be entered under sections 2387 to 2389, inclusive, of the Revised Statutes (43 U. S. C. 718–720). In such case a special survey should be procured by application to the area cadastral engineering officer therefor, the cost of which survey will be paid out of the available appropriations for public surveys. When the plat of such survey is filed in the land office, application may be made to enter the land described therein.

§ 255.32 *Declaratory statements.* Declaratory statements may be filed as the initiatory step for the entry of the land in all cases where the occupants are not ready to apply for entry, and should be so filed in order to protect their rights. The statement should be signed and filed by the officer entitled to make entry under the law, and should show the number of inhabitants, that the land is occupied for trade, business, and other town-site purposes, and the date when first so occupied, and declare the purpose of the occupants to enter it under the town-site laws. It should include only such lands as the town is entitled to enter by Government subdivisions where surveyed, and if not surveyed the land should be described so it may be easily identified.

§ 255.33 *Proof; posting and publication of proof notice.* The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases, and in manner and form and for the time provided in the act of March 3, 1879 (20 Stat. 472; 43 U. S. C. 251). The notice must be published once a week for five consecutive weeks, in accordance with § 106.18 of this chapter. The proof may be made before the manager or any officer duly authorized by law, and must show, by record or documentary evidence, where such evidence is usually required, and where not so required, by the testimony of at least two of the advertised witnesses, (a) due publication of the manager's notice; (b) if an incorporated town, proof of incorporation, which should be a certified copy of the order of incorporation, or, if by legislative enactment, a citation to such act; (c) certified record evidence of the election, qualification, and the authority of the officer making entry; (d) the number of town-site occupants and claimants on each occupied Government subdivision; (e) the number of inhabitants in the town site; (f) the character, extent, and value of town-site improvements located on each Government subdivision; and (g) the date when the land was first used for town-site purposes.

§ 255.34 *Area enterable.* Entry cannot be made hereunder of a greater quantity of land than 2,560 acres, unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

[3] Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to town-site settlement until such settlement has been authorized by classification. See Part 296 and §§ 297.11 and 297.12 of this chapter.

§ 255.35 *Conflicting mineral claims.* Under sections 2386 and 2392 of the Revised Statutes (43 U. S. C. 717, 722), and section 16 of the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 728), the title to lands acquired under sections 2387 to 2389, inclusive, of the Revised Statutes (43 U. S. C. 718–720) will be subject to all valid prior rights to unpatented mining claims or possessions held under existing law, and paramount patents may be issued thereafter to such mineral claimants, notwithstanding the prior town-site patent.

(b) All lands covered by patented minerals claims must be omitted from townsite entries. Government subdivisions of land, made fractional by the omission of such patented claims, will be designated by lot numbers on segregation diagram prepared by the regional cadastral engineer.

§ 255.36 *Government reservations not subject to entry.* Reservations for the use of the United States Government are not subject to town-site entry.

§ 255.37 *Prior use and occupation of land as mill site.* The continued use and occupation within a town site of a duly located mill-site claim under section 2337, Revised Statutes (30 U. S. C. 42), from a time prior to a settlement and occupation thereof for town-site purposes, will defeat the rights of the claimant under the town-site laws to any part of the land within such mill site.

§ 255.38 *Railroad rights-of-way.* Railroad rights-of-way and station grounds, when approved by the Department of the Interior, are subject to all valid rights existing at the date of filing the application for such rights-of-way or station grounds.

§ 255.39 *Change in method of entering town site.* Where proceedings have been had for the entry of lots under sections 2382 to 2386, inclusive, of the Revised Statutes (43 U. S. C. 713–717) but no patent has issued thereunder, the occupants may avail themselves, if the town authorities choose to do so, of the provisions of said sections 2387 to 2389 Revised Statutes (43 U. S. C. 718–720) and make proof and entry thereunder: *Provided, however,* That in addition to the minimum price for the land applied for there shall be paid, before patent issues therefor, by the parties applying for such change of entry, all costs of surveying and platting such town site and expenses incident thereto incurred by the Government under the provisions of said sections 2382 to 2386. On application to the Bureau of Land Management the applicants will be informed of the amount of said expense to be paid in excess of the purchase price of the land, in order to effectuate such change of entry.

§ 255.40 *Additional entries of contiguous tracts.* Where town-site entry has been or may be made, under the provisions of sections 2387 to 2393 of the Revised Statutes (43 U. S. C. 718–723), additional entries may be made, under the provisions of section 4 of the act approved March 3, 1877 (19 Stat. 392; 43 U. S. C. 727), of such contiguous tracts as may be occupied for town-site purposes, but such additional entry shall not, together with all prior entries made for such town site, be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in section 2389, Revised Statutes: *Provided, however,* That such area shall not exceed 2,560 acres. Such additional entries will be made in the same manner and under the same regulations as are provided for entries under said sections 2387 to 2393, inclusive.

TOWN SITES IN RECLAMATION PROJECTS

§ 255.42 *Withdrawal and survey of land.* The Commissioner of Reclamation, with the concurrence of the Bureau of Land Management, may withdraw and reserve such lands for town site purposes, under the acts of April 16 and June 27, 1906 (34 Stat. 116, 519; 43 U. S. C. 434, 448, 561–563, 568, 594), as they may deem advisable. The Commissioner of Reclamation shall, when in his judgment the public interests require it, from time to time, cause not less than a legal subdivision, according to the official township surveys, of the lands so reserved to be surveyed into town lots, with appropriate reservations for public purposes. The plats and field notes of such surveys shall be prepared in triplicate for each town site, and shall be submitted for the approval of the Director, Bureau of Land Management.

§ 255.43 *Procedure governing appraisement and sale.* The Commissioner of Reclamation shall from time to time, with the concurrence of the appropriate officer of the Bureau of Land Management, authorize the appraisement and sale of lots in reclamation town sites. Notices of sale will be issued and other actions taken by those officers in accordance with the town site regulations contained in §§ 255.1 to 255.8.

§ 255.44 *Installment payments.* Under authority of section 2 of the act of June 11, 1910 (36 Stat. 466; 43 U. S. C. 565), the order for sale may authorize the payment of the purchase price of lots, sold in town sites created under the laws in said act mentioned, to be made in annual installments.

§ 255.45 *Reappraisement and sale of unsold lots.* The Commissioner of Reclamation, with the concurrence of the authorized officer of the Bureau of Land Management, may direct that unsold lots shall be reappraised under the first section of the said act of June 11, 1910 (36 Stat. 465; 43 U. S. C. 564). The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value.

§ 255.47 *Public reserves; patents therefor.* The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances, the municipality shall apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required in § 255.49.

GRANT OF LANDS IN RECLAMATION TOWN SITES FOR SCHOOL PURPOSES

§ 255.48 *Application to be made by school district; action thereon.* (a) At any time after the approval of the survey of any Government reclamation town site and the subdivision thereof into town lots, with appropriate reservations for public purposes, a school district, in order to obtain title under the act of October 31, 1919 (41 Stat. 326; 43 U. S. C. 570), should file, through its proper officers, its application for patent to the unreserved, unappropriated, undisposed of lands it may desire, not exceeding 6 acres in area, therein specifically describing the same by lot and block numbers, as delineated and designated on the approved town-site plat; submit sufficient and satisfactory reasons showing that the area applied for is needed for its use; that the land is unappropriated and subject to disposition under the act, in order that the Department of the Interior may be fully advised that there is no adverse claim for the land applied for; and therewith furnish the certificate of the superintendent of public instruction, or other officer performing such function, having jurisdiction over the county in which the town site is situate, showing that the district is a duly organized district under the laws of the State and entitled to hold real estate in its corporate name.

(b) The applicant must also procure and file with the application, at the time of the filing of the same or as early as practicable after the filing of such application, a statement by the official having charge of the project in which the land is located, showing that the disposal of the land applied for will not in any manner interfere with said project, such statement having been previously approved by the Commissioner of Reclamation.

(c) There is no limit to the number of applications which may be filed by a qualified school district, the only limitation being that the total acreage which may be patented to such a district shall not exceed 6 acres in area within any Government reclamation town site situated within such school district. Whenever, therefore, more than one application is filed by the same applicant, such applicant should refer by serial number, to all previous applications filed by it.

(d) The application and proof must be filed in the district land office wherein the land applied for is situate, and if the manager thereof finds the same sufficient and if the Bureau of Reclamation makes favorable report upon the said application, the manger will issue certificate of entry, the same to provide that if any land so conveyed cease entirely to be used for school purposes title thereto shall revert to and revest in the United States.

PUBLIC RESERVES IN OKLAHOMA TOWN SITES

§ 255.49 *Applications for patents on behalf of the municipalities.* Applications for patents to the tracts reserved for public purposes, in all towns in Oklahoma created under section 22 of the act

of May 2, 1890 (26 Stat. 91; 43 U. S. C. 1094), or under any other act where tracts have been reserved for such purposes under said section 22, may be filed on behalf of the municipalities whose corporate limits cover the land in which such reservations are situated. The application should be made by the mayor or other proper municipal officer and describe the reservations to be patented according to the approved plats of said town site, and the same should be accompanied with the proof of the municipal organization of the town, similar to that above provided for the disposition of the proceeds derived from the commutation of homestead entries for town-site purposes under said section 22, and proof must also be filed therewith of the authority of the officer filing the application to make the same with the proper record evidence of his election and qualification as such officer. The application and proof must be filed in the Bureau of Land Management and if the same is found sufficient, the certificate of entry will issue in the form provided therefor.

§ 255.50 *Disposal of unpatented public reserves in vacated town sites.* Under the act approved May 11, 1896 (29 Stat. 116; 43 U. S. C. 1119), where a town site or an addition to a town site in a homestead commuted to a town-site entry under the second proviso of section 22 of the act approved May 2, 1890 (26 Stat. 91; 43 U. S. C. 1094), has been vacated under the laws of Oklahoma and patents for the public reservations therein have not been issued, such reservations will be disposed of in the following manner:

(a) Application for a patent to such reservations may be filed by the original entryman within 6 months from the vacation of the town site, and proof must be filed by him, with the Bureau of Land Management of the due vacation of such town site in accordance with the requirements of the laws of Oklahoma, which proof must consist of a copy of the record evidence of such vacation, duly certified. Such proof must also be accompanied with evidence that the corporate authorities of the municipality, if one be organized, in which the reservations were situated prior to such vacation, have been personally served 30 days prior to making such proof with notice of the application and of the date the proof will be made. If the proof be found sufficient the entry will be allowed for the reservations as described in the town-site plat upon receipt of the payment of the homestead price. If the municipality is represented at the time of making proof, it may be heard in opposition to the application and decision be rendered thereon subject to appeal as in other cases.

(b) In case of the failure of the original entryman to apply for patent to such reservations within 6 months from the vacation of such town site, or in case such reserves have been patented to the municipality and it has ceased to exist by reason of such vacation, the reservations will be disposed of as isolated tracts under the provisions of section 2455, Revised Statutes (43 U. S. C. 1171), and the acts amendatory thereof, and the regulations issued thereunder.

§ 255.51 *Disposal of patented public reserves in vacated town sites.* Reservations may be sold by an existing municipal corporation, upon the vacation of the town site, where patent has been issued to such municipality therefor, the proceeds of such sale to be covered into the school fund of such corporation. (City of Enid, 30 L. D. 352.)

TOWN SITES ON MINERAL LANDS

§ 255.52 *Rights of mineral claimant; exclusion of mineral claim or mill site from town-site entry.* (a) The general town-site laws, comprised in sections 2380 to 2394, Revised Statutes (43 U. S. C. 711–724), authorize the entry of town sites, or the sale of lots therein, upon public lands which may include unpatented mineral claims, but the rights of mineral claimants upon any land entered or sold under said town-site laws are expressly protected by sections 2386 and 2392, Revised Statutes (43 U. S. C. 717, 722). These two sections recognize the superior rights, as against any town-site claimant—whether corporate, community, or individual—of all claimants for mineral veins possessed agreeably to local custom, or for any valid mining claim or possession held under existing law. The precedence and superiority so accorded to mineral claims, however, depend in final analysis upon the question of fact whether, at date of town-site entry or lot sale, the lands claimed under the mining laws were "known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them" (39 L. D. 356). Where an affirmative showing in such behalf is made in due course by the mineral claimant, his right to a patent for the land (subject to the distinction hereinafter noted as to incorporated towns), will not be prejudiced by any previous town-site entry, deed, or patent covering the same land (26 L. D. 144; 29 L. D. 426; 32 L. D. 211; 34 L. D. 276 and 596).

(b) Under said general town-site laws, as construed by the Department of the Interior and the courts, an entry including unpatented mineral lands may be made for an incorporated town as well as for an unincorporated town, the law requiring that in the former case the entry shall be made by the corporate authorities, and in the latter by the county judge (34 L. D. 24). While such general right of entry by or for incorporated towns and cities is therefore independent of anything contained in section 16 of the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 728), it will be seen that that section in terms announces the right to enter mineral lands. The protection afforded to mineral claims by the body of section 16 is similar to that given generally in said sections 2386 and 2392, Revised Statutes, but the proviso to section 16 is as follows:

Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

(c) The Department of the Interior has never viewed said proviso as warranting, under any circumstances, the allowance of entry for a mineral vein independently of "the surface ground appertaining thereto," nor is such an entry provided for in the general mining laws. But said proviso creates one distinction between unincorporated and incorporated towns as regards the relative rights of town-site occupants and mineral claimants; which is, that whereas the town-site patent will, in either case, carry absolute title to any mineral not known to exist at the date of town-site entry, the adverse rights of mineral and town-lot claimants within incorporated towns are hinged upon priority of initiation. That is to say, that after entry is made for such town, no entry by a mineral-vein applicant will be allowed for any land owned and occupied under the town-site law by a party whose possession antedated the inception of the mineral applicant's claim, even though such land was known, at date of the town-site entry, to contain valuable minerals.

(d) Subject to the distinction above noted, the foregoing principles apply to all mineral claims within town sites entered or disposed of under any of the laws above mentioned, and also to mineral claims within town sites disposable under special acts containing no reference to the rights of mining claimants.

(e) The law does not require that town-site entries shall exclude any mineral claim or possession except such as may have been patented (29 L. D. 21). Mineral claims which have not been patented may be excluded from a town-site entry at the option of the town-site applicant, who must, in that event, furnish satisfactory proof that the exclusion covers a "valid mining claim or possession held under existing law" (33 L. D. 542). The exclusion of a mill-site claim from a town-site entry is necessary only in cases where the mill-site claimant shall have been in occupation of the ground, under regular location, from a time antedating its occupation for town-site purposes. The issue of priority in such cases may be raised by the town-site applicant, the mill-site claimant, or the Government.

RIGHTS OF TRANSFEREES OF TOWN LOTS

§ 255.53 *Patent to issue in name of original purchaser.* The purchaser of a town lot, which is sold on the installment plan, may transfer his equitable interest in the lot, prior to the payment of the last installment of the purchase price, but the Government will not recognize anyone but the original purchaser and will issue all necessary papers and also the patent in his name. By such course, the Government is relieved of all unnecessary responsibility and the patent, when issued, inures to the benefit of the transferee.

QUALIFICATIONS OF TOWN-LOT PURCHASERS

§ 255.54 *Evidence of citizenship or incorporation required.* Unless otherwise provided by law, every person purchasing a town lot at public or private sale, under any law governing the sale and disposal of town sites on the public domain, will

be required to furnish evidence that he is a citizen of the United States or has declared his intention to become such and every corporation purchasing a town lot will be required to furnish evidence, including a certified copy of its articles of incorporation, showing that it is a corporation organized under the laws of the United States or of any State, Territory, or possession thereof and that it is authorized to acquire and hold real estate in the State in which the town-site is situated. In view of the provisions of section 2 of the act of March 2, 1897 (29 Stat. 618; 8 U. S. C. 72), the foregoing requirement respecting the citizenship of individuals is not applicable to the Territory of Alaska.

PART 256—GIFTS OF LAND

Sec.
256.1 Statutory authority.
256.2 Offer to convey.
256.3 Action by Bureau of Land Management.
256.4 Deed of conveyance.

AUTHORITY: §§ 256.1 to 256.4 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a. Interpret or apply sec. 8, 48 Stat. 1272, as amended; 43 U. S. C. 315g.

§ 256.1 *Statutory authority.* Subsection (a) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976) and section 1 of the act of June 19, 1948 (62 Stat. 533; 43 U. S. C. 315g), provides:

> That where such action will promote the purposes of a district or facilitate the administration of the public lands, the Secretary is authorized to accept on behalf of the United States any lands within or without the exterior boundaries of a grazing district as a gift.

§ 256.2 *Offer to convey.*[1] Gifts of lands within or without the exterior boundaries of a grazing district may be accepted by the Secretary of the Interior on behalf of the United States "where such action will promote the purposes of a district or facilitate the administration of the public lands." Any person desiring to make such a gift of lands should submit to the State Supervisor of the State in which the lands are located, an offer to voluntarily convey and transfer the lands to the United States, describing such lands by legal subdivisions of the public land surveys. The offer should be accompanied by a statement showing that the offeror is the record owner in fee of the lands so offered, free and clear of all encumbrances, and that there are no persons claiming the land adversely to the offeror. The statement should also show whether there are any unpaid taxes or assessments levied or assessed against the offered land or that could operate as a lien thereon, and whether there is a tax or assessment due on such lands or that could operate as a lien thereon but which tax or assessment is not yet payable and that there are no unredeemed tax deeds outstanding against such lands offered to be conveyed to the United States. The offer and statement should be submitted in triplicate.

§ 256.3 *Action by Bureau of Land Management.* After consideration by the Bureau of Land Management the State Supervisor shall advise the offeror of the agreement to accept the land involved as a gift, and that the offeror should submit a voluntary deed of conveyance to the United States of the land so offered, a statement that such offeror has not conveyed or encumbered the land in any manner from the time of making the offer up to and including the date of recordation of the deed, and evidence by the proper county official showing that all taxes or assessments levied or assessed against the offered land or that could operate as a lien thereon have been paid in full, whether there is a tax or assessment due on such lands or that could operate as a lien thereon but which tax or assessment is not yet payable and that there are no unredeemed tax deeds outstanding against such lands offered to be conveyed to the United States.

§ 256.4 *Deed of conveyance.* The deed of conveyance to the United States must be executed, acknowledged, and duly recorded in accordance with the laws of the State in which the lands are situated. The deed should recite that it is made "as a gift", as authorized by section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g). Where such deed is made by an individual, it must show whether the person making the conveyance is married or single. If married, the wife or husband of such person, as the case may be, must join in the execution and acknowledgment of the deed in such manner as to bar effectually any right of curtesy or dower, or any claim whatsoever to the land conveyed, or it must be fully and satisfactorily shown that under the laws of the State in which the land conveyed is situated, such husband or wife has no interest, whatsoever, present or prospective, which make his or her joining in the deed of conveyance necessary. Where the deed of conveyance is by a corporation, it should be recited in the instrument of transfer that the deed was executed pursuant to an order or by the direction of the board of directors, or other governing body, and a copy of such order or direction must accompany such instrument of transfer and both should bear the impression of the corporate seal.

PART 257—LEASE OR SALE OF SMALL TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL, OR BUSINESS SITES

Sec.
257.1 Statutory authority; lands which may be leased or sold.
257.2 Definitions.
257.3 Policy.
257.4 Classification of land.
257.5 Qualifications of lessees; restrictions on lease.
257.6 Preference rights of offerors; veterans' preference.
257.7 Offer to lease; general procedure.
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257.9 Filing fee.
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257.12 Assignment of lease; subleasing not permitted.
257.13 Option to purchase; sale; patent.
257.14 Renewal of lease.
257.15 Minerals; timber.
257.16 Rectangular surveys; supplemental plats; streets and roads.
257.17 Irregular tracts; cost of special survey.
257.18 Tracts on unsurveyed land.
257.19 Termination or cancellation; removal of improvements.
257.20 Offers to lease public land in Alaska in terminated lease.
257.21 Appeals.

AUTHORITY: §§ 257.1 to 257.21 issued under 52 Stat. 609, as amended; 43 U. S. C. 682a.

§ 257.1 *Statutory authority; lands which may be leased or sold.* (a) The act of June 1, 1938 (52 Stat. 609), as amended by the act of July 14, 1945 (59 Stat. 467; 43 U. S. C. 682a) authorizes the Secretary of the Interior, in his discretion, to lease or sell a tract, not exceeding 5 acres in reasonably compact form, of any vacant, unreserved, surveyed public land, or surveyed public land withdrawn or reserved by the Secretary of the Interior for any purposes, or surveyed lands withdrawn by Executive Orders Nos. 6910 of November 26, 1934, and 6964 of February 5, 1935, for classification, which the Secretary may classify as chiefly valuable as a home, cabin, camp, health, convalescent, recreational, or business site. The act is applicable to lands in such areas as grazing districts, but is not applicable to lands withdrawn by the Secretary solely under delegated authority (e. g., under Executive Order No. 9337, of April 24, 1943), or to land in such reservations as national forests, national parks or national monuments, or to the revested Oregon and California Railroad or the reconveyed Coos Bay Wagon Road grant lands, in Oregon. The lands may not be leased or sold until classified for small tract purposes; and may not be occupied until a lease is executed and delivered to the lessee.

(b) The act applies to public lands in Alaska, and permits employees of the Department of the Interior stationed in Alaska, in the discretion of the Secretary, to purchase or lease one tract in Alaska for any purpose under the act, except as a business site.

§ 257.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Area administrator" means the proper area administrator, Bureau of Land Management.

(d) "Manager" means manager of the land office for the district where the land is situated. Where there is no land office, it means the area administrator.

(e) "The act" means the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended.

(f) Sites: (1) A "home site" is a site suitable for a permanent, year-round residence for a single person or a family.

(2) A "cabin site" is a site suitable for a summer, week-end, or vacation residence.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(3) A "camp site" is a site suitable for temporary camping and for the erection of simple or temporary structures and shelters, such as tents, tent platforms, etc.

(4) A "health site" is a site suitable for the temporary or permanent residence of a single person or of a family for the prevention or cure of disease or illness.

(5) A "convalescent site" is a site suitable for residence of a single person or family for the purpose of recuperation from a disease or illness.

(6) A "recreational site" is a site chiefly suitable for noncommercial outdoor recreation.

(7) A "business site" is a site suitable for some form of commercial enterprise.

§ 257.3 *Policy.* (a) It is the policy of the Secretary in the administration of the act of June 1, 1938, to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end offers to lease sites will be considered in the light of their effect upon the conservation of natural resources and upon the welfare not only of the offerors themselves but of the communities or areas in which they propose to settle. Leases will not be awarded, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to public use. Nor will isolated or scattered settlement be permitted which would impose heavy burdens upon State or local governments for roads, schools, and police, health, and fire protection. Types of settlements or businesses which might create "eyesores" along public highways and parkways will be guarded against, and lands will not be leased or sold under the act if such action would unreasonably interfere with the use of water for grazing purposes or unduly impair the protection of watershed areas.

(b) No direct sale of lands will be made under the act. Use and improvement of the land under lease will be required before it may be purchased. Leases of lands which are classified for lease and sale will contain an option permitting the lessee to purchase as provided in § 257.13. Lands classified for lease only will not be sold and the option to purchase clause will not apply to such lands.

§ 257.4 *Classification of land.* (a) The authorized officer may classify lands under the act either on his own motion or upon the filing of an offer to lease, but no lease will be issued or sale authorized prior to classification of the land for such disposal. If the offer is in proper form and the status of the land warrants its consideration for classification under the act, the authorized officer upon receipt of the offer will proceed to make a determination whether the land should be classified for small tract purposes. If the tract is not suitable for such purposes, the offer to lease will be denied. Where the land has been withdrawn under the statutory powers of the Secretary, the concurrence of the bureau or agency having supervision over the land must be obtained prior to classification.

(b) Land may be classified as suitable for one or more of the types of sites specified in § 257.2, for disposal in tracts of 5 acres or less, depending on the character of the land, and either for lease and sale, or for lease only, as specified in the classification order. Lands may be classified for lease and sale where found to be primarily suitable for use in accordance with the act, and where the disposal will not interfere with the use of private lands or with the administration of other Federal lands.

§ 257.5 *Qualifications of lessees; restrictions on lease.* (a) An offer to lease may be made by any person who is a citizen of the United States, or has declared his or her intention to become a citizen, who is 21 years of age or more, or, if under that age, is the head of a family. Unless warranted by special circumstances, where a husband and wife are living together, only one of them may acquire a tract under the act. Employees of the Department of the Interior stationed in Alaska may lease or purchase one tract in Alaska for any purpose under the act except business.

(b) Generally, no person will be permitted to hold, by lease or purchase, more than one tract under the act. Where more than one tract is needed, however, except as otherwise authorized by the manager, each tract must be the subject of a separate offer to lease, complete in itself, and must be accompanied by a satisfactory showing that the allowance of more than one lease is warranted by the circumstances. In each offer to lease the offeror must furnish data sufficient to identify all other offers or applications under the act, if any, filed by him or by any member of his family residing with him. Such data should include the serial number of each such offer or application, the land office where filed, and the name and relationship to offeror.

§ 257.6 *Preference rights of offerors; veterans' preference.* (a) Where an offer to lease a tract is filed prior to the receipt by the manager of notice that the area is under consideration for small tract classification, a preference right to lease will be accorded the offeror only if the land is thereafter classified for the type of site for which the offer was made, and the offeror agrees to conform his offer to the area and dimensions of the tract as specified in the classification order. An offer to lease, filed subsequent to the receipt by the manager of notice of contemplated classification and prior to issuance of the order, will not be accorded such preference right, but the offer will be retained by the manager pending classification of the land. If the land is classified for disposal under the act, the offer will be considered as a filing during an applicable period for simultaneous filings, provided the offer covers a tract subsequently established by the classification order, or the offeror conforms his offer thereto. If, however, the classification order provides for the use of the special procedure pursuant to § 257.8, such offer will be returned to the offeror, and will be accompanied by Form 4–775, "Drawing Entry Card", where it appears from the offer that the offeror, because of veterans' preference, is entitled to participate in the drawing under the special procedure.

(b) Where, prior to September 27, 1954, land is classified by the authorized officer on his own motion or the classification order embraces additional land, other than the tract for which a preference right is accorded under paragraph (a) of this section, veterans of World War II only and other persons entitled to credit for service of veterans of World War II, in accordance with §§ 181.40 and 181.41, will have a preference right, for 90 days after the effective date of the classification of the lands, to file an offer to lease any of the remaining tracts (sec. 4, act of September 27, 1944; 58 Stat. 748; 43 U. S. C. 282). This preference right does not apply to veterans of World War I or other wars of the United States.

(c) Upon the expiration of the veterans' preference period, referred to in paragraph (b) of this section, any lands in the classification order not disposed of or embraced in pending valid offers to lease will become subject to filing of offers to lease by the public generally.

§ 257.7 *Offer to lease; general procedure.* (a) An offer to lease a site under the act must be filed on Form 4–776, "Offer to Lease and Lease under Small Tract Act", and in conformity with the instructions therein. Copies of the form may be obtained from the manager or the Director; and must be completed and filed in duplicate (in triplicate, if for a business site), in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the offers for lands in North or South Dakota shall be filed in the land office at Billings, Montana; offers for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. The duplicate forms need not be executed under oath but they must be signed by the offeror.[1] The offeror's signature to the offer will also constitute his signature to the lease, when the offer is accepted and executed by the proper officer on behalf of the United States.

(b) If the land has not been classified under this act, the offeror should describe the desired tract, not to exceed five acres, by aliquot parts of a legal subdivision. Where the land has been classified, the offeror should describe the selected tract in accordance with the classification order or plat of survey. In such cases the offeror may also indicate that in the event the selected tract is not available for lease to him, he is willing to accept a lease for any other available tract described in the classification order, which the manager may allocate to him.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 257.8 *Special procedure; drawing; notice.* (a) The special procedure provided in this section will be used whenever, in the opinion of the authorized officer, a multiplicity of filings by those entitled to claim veterans' preference for service in World War II is anticipated during a simultaneous filing period to be provided for in an order of classification, in excess of the number of tracts available for lease, necessitating a drawing to determine priority.

(b) Any person who believes he has the necessary qualifications, including veterans' preference, upon request to the manager designating the classification order by number, may obtain Form 4–775, "Drawing Entry Card." The entry card, completely filled out in accordance with the accompanying instructions, must be returned within the filing period specified in the classification order in order to be eligible to participate in the drawing; it should not be accompanied by any payment of filing fee or rental. An entrant may file only one entry card under each classification order; if more than one card is filed, the entrant shall be ineligible to participate in the drawing or to obtain a lease under the classification order. A drawing of all properly filed cards will be held on the day stated in the classification order to establish an adequate list of eligibles and of alternates to whom will be allocated, in consecutive order, the available tracts.

(c) The successful entrants, to whom a tract has been awarded in the drawing, will be furnished in duplicate Form 4–776, "Offer to Lease and Lease", bearing the description of the tract allocated to the entrant. The forms must be completely filled out, signed and returned, accompanied by the proper rental and filing fees and evidence of qualification, within the time allowed by the manager. Where an entrant does not sign the lease forms or he was not qualified to enter the drawing, or for any reason fails to comply with the requirements within the time allowed, the award will be withdrawn and canceled upon the records, and the lot will become available to the alternate next in line of drawing.

(d) Entrants who are unsuccessful in the drawing and to whom no lot was allocated will be informed thereof by the return of their respective drawing-entry cards carying a notation to that effect. After the lots have been awarded and leases executed, the entry cards of the remaining unsuccessful alternates will be returned to them.

§ 257.9 *Filing fee.* Every offer to lease a small tract must be accompanied by a filing fee of $10. No fee is required for the filing of a "Drawing Entry Card" or with an application for purchase, or for renewal of a lease, based on an outstanding lease. The filing fee will be retained in all cases, except where for any reason no lease is awarded to the offeror and no tract is allocated to him in accordance with § 257.7 (b).

§ 257.10 *Rental payment.* (a) If the land has been classified, the offer to lease must also be accompanied by the rental, as specified in the classification order, for the entire lease period. If, for any reason, a lease is not issued, the rental payment will be returned.

(b) Unless otherwise provided in the classification order, land classified for lease and sale will be leased for a three-year term with a rental of $15; land classified for lease only, except a business site lease, will be for a five-year term with a rental of $25 for the lease period. For a business site lease for five years the minimum rental is $100 for the lease period; the annual rental, however, will be based on percentages of the gross income as specified in the lease, Form 4–776.

Where the land has not yet been classified, an offer to lease a tract, for other than a business site, must be accompanied by a minimum rental payment of $15, and for a business site, $100. If the rental provided in the subsequent order of classification is greater than the rental payment accompanying the offer to lease, the deficiency must be paid before the lease will issue.

(c) If an offer to lease is not properly executed or is not accompanied by the required filing fee and rental payment or is otherwise irregular, it will not be accepted but will be returned to the offeror in the form received.

§ 257.11 *Issuance of lease.* The manager may issue leases for not to exceed five years, upon lands classified for lease only, and for not to exceed three years upon lands classified for lease and sale: *Provided,* (a) The offeror upon issuance of the lease will have only one tract under the act, and (b) the offer covers a tract established by the classification order. The lease, part of Form 4–776, will issue and be valid when executed by the proper officer on behalf of the United States. The lease will contain provisions relating to the improvements to be placed on the lands and such other conditions of occupancy as are set forth in the order of classification, including an appropriate set-back of the improvements from the boundaries of the leased tract. Plans for improvements may be submitted to the manager, for approval in advance of construction.

§ 257.12 *Assignment of lease; subleasing not permitted.* (a) The manager may act upon and approve assignments of leases. No assignment will be recognized unless and until approved by the appropriate officer. An assignment will not be approved until substantial improvements, suitable to the type of use for which the lease issued, are constructed on the land, except where, upon a showing made by the lessee satisfactory to the manager and corroborated by the statement of at least one witness, the lessee's failure to construct such improvements was caused by unforseen or unavoidable misfortune.

(b) Proposed assignments of leases must be submitted for approval in duplicate within 90 days from the date of execution. The proposed assignment must contain all the terms and conditions agreed upon by the parties thereto, must be accompanied by the same showing as to qualifications and holdings of the assignee as was required of the lessee in § 257.5, and must be supported by a statement that the assignee agrees to be bound by the provisions of the lease.

(c) The subleasing, in whole or in part, of a tract leased under the act will not be approved, and will constitute a violation of the terms of the lease.

§ 257.13 *Option to purchase; sale; patent.* (a) Lands will not be sold directly under the act but only on the basis of an outstanding lease, containing an applicable option to purchase clause. The option to purchase will apply only to tracts classified for lease and sale, and will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at or after the expiration of one year from the date the lease issued, provided the improvements required by the lease have been made, and the lessee or his successor in interest has otherwise complied with the terms and conditions of the lease. The option to purchase clause will set forth the appraised value of the unimproved land at the date the lease was issued. The net price at which the land may be purchased will consist of the appraised value plus the cost of survey, if any, necessary to describe the land properly, as provided in § 257.17, and minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of the application to purchase.

(b) An application to purchase should be filed with the manager in duplicate on Form 4–775a during the term of the lease but not more than 30 days prior to the expiration of one year from the date of lease issuance, together with a statement as to the cost, type, and character of the improvements constructed on the land.

(c) If a sale is authorized, the applicant will be allowed 60 days from service of notice thereof to pay the amount required. If the purchase price is $100 or less, the entire amount must be paid within the 60-day period. If the price is more than $100 and not more than $200, at least $100 must be paid within the 60-day period and the balance within one year after such payment. If the price is more than $200, at least one-third of the purchase price but not less than $100 must be paid within the 60-day period, and the balance in two equal installments due, respectively, within one and two years after the date of the first payment.

§ 257.14 *Renewal of lease.* (a) An offer for the renewal of a lease must be filed not more than six months or less than 60 days prior to the expiration of the lease, and will accord the lessee or his approved successor in interest a preference right to a new lease only if it is determined that a new lease should issue, and upon such conditions and for such duration as may be fixed.

(b) The manager may act upon offers for renewal and issue new leases only if the land was classified for lease only, and the lessee has constructed satisfactory improvements on the tract appropriate to the type of use for which the lease originally issued, such as a substantial and presentable dwelling suitable for year-round or seasonal use where the land was classified for residence purposes. A lease for land classi-

fied for lease only will not be renewed if satisfactory improvements have not been constructed thereon during the lease term.

(c) A lease for land classified for lease and sale is not subject to renewal, except upon a showing satisfactory to the manager, corroborated by the statement of at least one witness, that the lessee's failure to apply for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee.

§ 257.15 *Minerals; timber.* (a) Any lease or patent issued under the act will reserve to the United States all deposits of coal, oil, gas, or other minerals, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary may prescribe. Any minerals subject to the leasing laws in the lands patented or leased under the terms of the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal. No provision is made at this time to prospect for, mine, or remove the other kinds of minerals that may be found in such lands; and until rules and regulations have been issued, such reserved deposits will not be subject to prospecting or disposition.

(b) (1) Because of the need for strategic and fissionable source minerals as well as minerals important to the economic and industrial welfare of the Nation and its security, the Director may authorize any Federal agency to enter upon any of the lands classified for small tract purposes within the State of Florida (and such other States or Territory for which approval of this action may be given by the Secretary of the Interior), for exploratory purposes to determine whether such lands are mineral in character and the nature, extent and incidence of such mineral, if any, even though such lands are under lease or have been patented in accordance with paragraph (a) of this section.

(2) The exploratory work conducted under the authority of this section, shall not be construed as permitting damage to the permanent structures or buildings of the small tract lessees or patentees or their lawful successors in interest.

(c) A lessee will not be permitted to cut timber from the leased lands without written permission from the manager. Such permission will be granted only if it is necessary to cut the timber to clear the land or to erect improvements thereon.

§ 257.16 *Rectangular survey; supplemental plats; streets and roads.* (a) The official township plats ordinarily provide the basis for descriptions of tracts, in compact form, in units of 5 acres or aliquot parts thereof. However, as an aid in the identification of the tracts on the ground, frequently it is desirable to subdivide, by survey, the areas classified for administration as small tracts in order that at least one corner of each such tract be marked on the ground. The condition of the original survey and the ease of identification of the individual tracts on the ground are governing factors in deciding whether additional surveys should be made. Such surveys, made simply for the purpose of marking corners of legal subdivisions of the rectangular surveys, are not considered as "special surveys," and the cost thereof will not enter into the selling price of the land. For convenience in description the tracts may be identified by lot numbers, but only by preparation of an official supplemental plat for that purpose by protraction from the subsisting record or based upon supplemental surveys in the field. Such identification will be effective as of the date of official filing of the plat in the land office.

(b) Where a tract is situated in the fractional portion of a sectional lotting, a supplemental plat may be required to afford a suitable description. The plat will be prepared at the time the lease issues. If the subdivision of the sectional lotting would result in narrow strips or other areas containing less than 2½ acres, not suitable for sale or lease as separate units, such excess areas, in the discretion of the manager, may be included in the adjoining 5-acre tracts.

(c) Unless otherwise provided in the classification order, the leased land will be subject to a right-of-way of not to exceed 33 feet in width along the boundaries of the tract for street and road purposes and for public utilities. The location of such access streets or roads may be indicated on a working copy of the official plat maintained in the land office; or where the land has been classified for lease and sale, the right-of-way may be definitely located prior or subsequent to the issuance of patents; and an appropriate clause reserving the easement for such right-of-way will be incorporated into each lease or patent.

§ 257.17 *Irregular tracts; cost of special survey.* Where, in the opinion of the authorized officer, the rectangular form is not the most desirable plan for development of an area, tracts irregular in form, not in excess of 5 acres each, may be leased or sold in accordance with the regulations in this part. In this matter the authorized officer may initiate action as an administrative measure, or may act upon an offer to lease. An offer to lease such tract should contain a metes and bounds description sufficiently complete to identify the location and boundaries of the land. A special official survey will be required of an irregular tract for purpose of identification and description in the lease or patent. If the action is initiated upon an offer to lease, the offeror will be required to make an advance payment to the manager, equal to the estimated cost of executing the survey, before the field work will be undertaken; he will be credited with any excess payments prior to the issuance of lease or patent. In the case of special surveys as administrative measures the cost of the survey will be considered as a normal expense under the regular appropriation available for surveying the public lands; and when the tracts are sold, the selling price shall not be less than the cost of survey of the particular tract. If there is a group of contiguous or closely associated tracts to be surveyed at one time, the cost of survey will be prorated among the several tracts on an acreage basis.

§ 257.18 *Tracts on unsurveyed land.* Unsurveyed public lands are not subject to lease or sale under the act. An offer filed for such lands will be rejected. However, if desired, the offeror may file a request for the survey of the lands with the regional administrator. The description must be sufficiently complete to identify the location, boundary, and area of the land. There should also be given, if possible, the approximate description or location of the land by section, township and range. A person who requests the survey of an area acquires no preferential right to apply for the land under the act upon the completion of the survey and the official filing of the plat. After the survey is completed and the official plat is placed on record, the surveyed area will be subject to the provisions of the act and an offer to lease may then be filed.

§ 257.19 *Termination or cancellation; removal of improvements.* (a) The lessee may terminate the lease, if he is not in default thereunder, subject to the consent of the authorized officer, by filing a notice of relinquishment of the lease in the proper land office. The manager may cancel any lease where the lessee has failed to comply with any of the terms, covenants, and stipulations of the lease, or to abide by any of the regulations in this part, and such default has continued for 30 days after written notice thereof.

(b) No refund will be made of rental for the unexpired term of a lease relinquished by the lessee or canceled by the manager for cause.

(c) Upon the termination, cancellation, or expiration of a lease, the lessee will have a period of 90 days within which to remove his improvements from the land or to make other disposition thereof; upon his failure to do so within the time allowed, the improvements will become the property of the United States.

§ 257.20 *Offers to lease public land in Alaska in terminated lease.* (a) When a small tract lease of public land in Alaska has terminated because of the expiration of the term for which it was issued, or where such a lease is canceled on relinquishment or for any other reason, the land during the remainder of the calendar month in which the lease expires and during the calendar month following such expiration, or during the remainder of the calendar month in which the notation of such cancellation is made on the land office tract books and during the calendar month following such notation, will not be subject to further application under the small tract laws except as follows:

(1) During the period from the 5th to the 15th, inclusive, of the month following the expiration of the lease, or the notation of the cancellation of the lease on the land office tract books, any qualified person may file in the proper office a "Lease Termination Drawing Card", Form 4–1215, describing the tract desired.

(2) If more than one card is received during the period mentioned in subparagraph (1) of this paragraph, all cards will be included in a drawing to be held

at a subsequent date in the same month, the date to be fixed by the manager or other authorized officer. The drawing will determine priority and establish an adequate list of eligibles and of alternates entitled to file a lease offer for the land. If one card only is received, the land will be allocated to that applicant. An applicant may not file more than one card for each tract made available pursuant to this section. If pursuant to any such card any tract is allocated to an applicant, no additional allocation to him under any other such card will be made. A lease offer must be filed by a successful applicant within such time as may be allowed for that purpose by the manager or other authorized officer.

(b) On and after the first business day of the month following the drawing provided for in paragraph (a) of this section, the land, if not then included in a small tract lease, may be applied for under the small tract law by any qualified person as provided in § 257.7, subject, however, to the prior right to lease the land under that law acquired by any applicant by the filing of a Lease Termination Drawing Card, and also subject to the right of the prior lessee to remove his improvements, if any, as provided in § 257.19.

(c) Except in Alaska, small tract lease offers for lands in terminated small tract leases will be processed in the order in which they are filed after the lands become subject to appropriation. If conflicting lease offers are filed simultaneously, the rights of the applicants will be determined by a drawing, pursuant to § 295.8 of this chapter.

§ 257.21 *Appeals.* An appeal pursuant to the rules of practice, Part 221 of this chapter, may be taken from the decision of any subordinate officer of the Bureau of Land Management to the Director, and from the Director's decision to the Secretary.

PART 258—SPECIAL LAND-USE PERMITS FOR PUBLIC LANDS WITHIN OR OUTSIDE OF GRAZING DISTRICTS

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SPECIAL LAND-USE PERMITS FOR ADVERTISING DISPLAYS ON THE PUBLIC LANDS

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258.26 Special land-use permit regulations.

AUTHORITY: §§ 258.1 to 258.26 issued under R. S. 2478; 43 U. S. C. 1201.

IN GENERAL

§ 258.1 *Statutory authority.* Authority to issue special land-use permits for public lands within or outside of grazing districts for purposes other than grazing is found in R. S. 453 (43 U. S. C. 2), which provides that the Director, Bureau of Land Management, shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise regarding such public lands.

§ 258.2 *Policy; use of lands.* (a) It is the policy of the Secretary of the Interior, in the administration of the public lands within or outside of grazing districts, to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by the existing public land laws. Permits for such special use will not be issued, however, in any case where the provisions of the existing public land laws may be invoked. For example, they will not be issued to authorize the use of the public lands for home, cabin, camp, health, convalescent, recreational, or business sites for which leases may be issued under the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), or for the development of minerals, or for the securing of rights-of-way obtainable under existing laws, or for any use directly or indirectly relating to grazing.

(b) The contemplated use must not be in conflict with any Federal or State laws.

(c) An applicant must state in his application the use to which he intends to put the lands, and he will not be permitted to devote them to any other use, unless he secures an additional permit.

§ 258.3 *Qualifications of applicants.* Any person, over 21 years of age, who is a citizen of the United States, or who has declared his intention to become a citizen, or any group or association composed of such persons, or any corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in the State in which the land involved is situated, or any agency of the Federal Government, or any State or political subdivision thereof, may file such application.

§ 258.4 *Execution of applications.* Applications must be executed in duplicate on Form 4-972.[1] The application must be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the application for land in North or South Dakota shall be filed in the land office at Billings, Montana; application for land in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. Application for O & C land in Oregon shall be filed in the appropriate district forestry office.

§ 258.5 *Fees.* A fee of $5 will be required with each application, except applications by agencies of the Federal Government and agencies of the States and political subdivisions thereof. The fee paid by an applicant will be returned if the application is rejected.

§ 258.6 *Occupancy of land prior to permit.* An application for special land-use permit will not entitle the applicant to occupy the land prior to the issuance of a permit. Any occupation of the land prior to the issuance of a permit, or use thereafter except in accordance with the terms of the permit, is hereby prohibited.

§ 258.7 *Term of permit; renewal.* A special land-use permit may be issued for a period of not exceeding 5 years and will be revocable for any breach of condition thereof. It also will be revocable in the discretion of the authorized officer, at any time, upon notice, if in his judgment the lands should be devoted to another use. Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will be considered the preferred applicant for a new permit under regulations then in force, provided no superior claim to the land has been asserted in the meantime.

§ 258.8 *Rental.* (a) Each permittee will be required to pay to the Bureau of Land Management, in advance, the annual rental fixed by the permit, which shall be based upon the value of the land for the use to which it is to be put. The annual rental may be adjusted from year to year, in the discretion of the authorized officer. In no case, however, will the minimum rental charge be fixed at less than $5 per annum.

(b) Special land-use permits applied for by agencies of the Federal Government and agencies of States and political subdivisions thereof may, in the discretion of the authorized officer, be issued without rental charge.

§ 258.9 *Permit area; description and marking of land.* A special land-use permit will not be issued for more than 5 acres, except upon a showing of special need, satisfactory to the authorized officer. The land must be vacant public land, or public land withdrawn or reserved under authority of the Secretary of the Interior, surveyed or unsurveyed. If surveyed, the land must be described in the application by legal subdivisions of the public land surveys. The smallest legal subdivision in a quarter-quarter section or fractional lot that will be considered is 2½ acres. Where, however, a fractional lot contains less than 2½ acres, a permit may be issued for the entire lot. If unsurveyed, the land must be described by metes and bounds, with substantial monuments at each corner and with a tie to a nearby corner of the public land surveys, if feas-

[1] Filed as part of the original document. Copies may be obtained on request from any land office or from the Bureau of Land Management, Washington 25, D. C.

ible. If such tie is not feasible, the location must be otherwise identified with certainty, preferably with reference to prominent topographic or cultural features. The land must be taken in rectangular form, if at all practicable.

§ 258.10 *Land not segregated.* A special land-use permit will be subject to valid adverse claims theretofore or thereafter acquired and to the filing of applications and the acquisition of rights by others, as follows:

(a) Applications and selections may be made under nonmineral laws, subject to the revocation of the permit.

(b) The mineral contents in the land shall at all times be subject to prospecting, location, developing, mining, entering, leasing, or patenting under the provisions of the applicable general mining laws or mineral leasing laws.

(c) The special land-use permit shall be subject to any permit issued under the act of June 8, 1906 (34 Stat. 225; 16 U. S. C. 431–433), to explore for objects of antiquity on the public lands.

(d) The special land-use permit shall not restrict the acquisition by grant or permit of rights-of-way under existing laws.

§ 258.11 *Timber.* A special land-use permit will not entitle an applicant to cut and remove timber from the land. If he wishes to cut and remove the timber, application therefor must be made in accordance with the governing laws and regulations.

§ 258.12 *Special stipulations in permit.* If it is found that unusual conditions or the protection of the public interests require the insertion of special stipulations in the permit, the applicant will be advised thereof prior to its issuance.

§ 258.13 *Assignment of permit.* A permittee will not be allowed to assign a permit or any interest therein without the approval of the authorized officer. Proposed assignments must be supported by a statement signed by the assignee agreeing to be bound by the provisions of the permit, if the assignment is approved, and a showing that the assignee possesses the qualifications set out in § 258.3.

§ 258.14 *Removal of improvements.* The permittee, if all rental charges due the Government have been paid, may remove within such reasonable time as may be allowed by the authorized officer after the revocation or expiration of a permit, all structures which have been placed upon the premises by him or his assignor. If the permittee fails to make payment of the rental charges within 30 days from receipt of notice requiring payment, or upon revocation or expiration of the permit fails to remove the structures within the time required by the authorized officer, the structures will become the property of the United States.

§ 258.15 *Refund.* No refund of rentals properly paid will be made because of the revocation of the permit, at any time, or because of interference with or prevention of the exercise of the privileges conferred by the permit by mineral prospectors, locators, licensees, permittees, lessees, or patentees, or by permittees under the act of June 8, 1906 (34 Stat. 225; 16 U. S. C. 431–433), or by grantees or permittees of rights-of-way under existing laws.

SPECIAL LAND-USE PERMITS FOR ADVERTISING DISPLAYS ON THE PUBLIC LANDS

§ 258.16 *Advertising displays on public lands without permits unauthorized.* The erection or maintenance on the public lands of advertising displays, without permission, is unauthorized by law. Any person erecting or maintaining one or more advertising displays on the public lands, except under authority of a permit issued by the authorized officer as hereinafter provided for, shall be deemed a trespasser.

§ 258.17 *Words "advertising displays" defined.* The words "advertising displays," as used in the regulations in this part shall include structures of any kind with or without lighting effects erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever, including statuary, may be placed for advertising purposes, but shall not include:

(a) Official notices or advertisements posted by or under the direction of any public or court officer, in the performance of his official duties.

(b) Danger, precautionary, and informative signs erected by officials of the Federal Government, or officials of the State or of any subdivision thereof, or of any nonprofit organization in the State, relating to the premises, or warning of the conditions of travel on a highway, or of forest fires, or road symbols, or speed limits.

(c) Highway markers or signs relating to any city, town, village, or historic place or shrine.

(d) Notice of any railroad, bridge, ferry, or other transportation or transmission company, necessary for the direction or safety of the public.

(e) Official signs, notices, or symbols for the information of aviators, as to location, direction, or landings, and conditions affecting safety in aviation.

(f) Signs containing 16 square feet or less bearing an announcement of any town, village or city, or nonprofit association, or chamber of commerce, advertising itself, or local industries, buildings, meetings, or attractions, but not advertising any particular individual or corporation engaged in business for a profit, providing not more than one sign bearing the same or similar announcement shall be placed on any one approach to the city or village involved.

(g) Signs erected by Red Cross authorities relating to Red Cross Emergency Stations.

(h) Signs advertising bona fide agricultural county, district, or State fairs.

§ 258.18 *Permittees.* Permits will be issued only to the owners, operators, or proprietors of business establishments or their agents advertising their own business and products sold on the premises, situated not more than 30 miles, measured by highway travel, from the advertising displays.

§ 258.19 *Applications for permits.* (a) Applications for permits must be executed in duplicate on Form 4–972b.[1] Each application must contain a sufficient recital of the facts relative to the advertising display, including its size, and lighting effect, if any, to enable its substantial production from the description. A sketch or photograph showing the display, and a photograph showing the location on which it is to be placed, should be furnished. The application should identify the highway or other medium of travel along which it is proposed to erect the display and should give the distance and direction of the site, measured by highway travel, to the nearest cities or towns. If the land on which it is desired to place the display has been surveyed, its description should be given in terms of the public land surveys. The application must be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. Applications for O & C lands in Oregon must be filed in the appropriate district forestry office.

(b) Where public lands in more than one land district are involved, a separate application covering the lands in each district must be filed.

§ 258.20 *Fees and charges.* (a) A fee of $5 must accompany each application for a permit to erect one or more advertising displays. The fee will be returned, if the application is rejected.

(b) The initial and annual charges for advertising displays shall be as follows: Not less than 20 cents per annum for each square foot of sign surface, not less than $1 per annum for each display and not less than $5 per annum for one or more displays authorized by the same permit. The amount of the charge, subject to such minima, will be fixed by the authorized officer. Due consideration will be given in fixing the amounts to all pertinent facts and circumstances, including the charges made for corresponding privileges on privately owned lands similarly situated.

(c) When conflicting applications are filed, due consideration will be given to the showing of each applicant and such action will be taken as is deemed to be warranted by the facts and circumstances.

(d) The annual charges must be paid each year in advance.

(e) Where charges are paid in advance and a permit is canceled before the expiration of the period for which it was issued, a proportionate refund of the charges will be made.

[1] Filed as part of the original document. Copies may be obtained on request from any land office or from the Bureau of Land Management, Washington, D. C.

§ 258.21 *Permits.* Special-use permits to erect and maintain advertising displays on the public lands may be issued, by or under authority of the authorized officer, and in his discretion, on Form 4–972c, for periods of not exceeding 5 years, in accordance with §§ 258.16 to 258.26. The permits will be revocable in the discretion of the authorized officer at any time.

§ 258.22 *Renewal of permit.* A permit issued in accordance with §§ 258.16 to 258.26 may be renewed, in the discretion of the authorized officer, upon the filing of an application for renewal not more than 6 months nor less than 60 days prior to its expiration.

§ 258.23 *Identification of authorized advertising displays.* Each advertising display erected or maintained under a permit issued pursuant to §§ 258.16 to 258.26, should, for convenient identification, have the serial number of such permit marked or painted thereon.

§ 258.24 *Unauthorized advertising displays.* (a) Persons who heretofore have erected advertising displays on the public lands must either obtain permits to continue such displays, if authorized by §§ 258.16 to 258.26, or must remove the displays, as promptly as possible.

(b) Where an unauthorized advertising display on the public lands is found, the United States will take appropriate steps to secure its removal, unless the owner obtains a permit. The owner, if known, will be given notice in writing of the requirements. Displays erected prior to October 13, 1941, must be removed within 6 months from and after the date of the approval of §§ 258.16 to 258.26, unless application for a permit is made within that period. Displays erected prior to October 13, 1941, for which applications for permits are made but for which permits are refused, and unauthorized displays thereafter erected must be removed within such reasonable time as may be fixed by the regional administrator. If the owner fails to remove the display within the time allowed, it may be removed by the United States and the owner will be held liable to the United States for expenses incurred in removing it. If the owner is unknown, or cannot be found, the display may be removed by the United States, without notice. A registered letter addressed to the owner at his last known place of residence, if returned unclaimed, will be considered sufficient service of notice.

§ 258.25 *Restrictions on advertising displays.* (a) No advertising display shall be permitted which, in the opinion of the authorized officer, would mar the landscape, hide road intersections or crossings, or which, in his opinion is otherwise objectionable.

(b) No advertising display shall be affixed to, or painted on, any tree or rock situated on the public lands, or on any other natural object on such lands.

(c) No advertising display shall be erected more than 30 miles, measured by highway travel from the point where the service advertised is rendered, the merchandise is sold, or the business advertised is located.

(d) All advertising displays shall conform to the applicable State laws and local ordinances or regulations.

(e) No advertising display shall be erected within 1,000 feet of any other such display on public or privately owned lands, and not more than one advertising display, or sign, per mile, advertising one concern, establishment, or product, shall be permitted, in the absence of necessity, satisfactory to the authorized officer.

(f) Serial signs (any series of small signs intended to be read in sequence which individually do not give the complete advertisement) are prohibited.

(g) Signs shall not be permitted within 15 miles of entrances to national parks or national monuments, measured by highway travel, unless approved by the National Park Service.

§ 258.26 *Special land-use permit regulations.* All the provisions of the special land-use permit regulations (§§ 258.1 to 258.15), not inconsistent with §§ 258.16 to 258. 25, inclusive, are hereby extended to and made applicable to special land-use permits for advertising displays.

PART 259—DISPOSAL OF MATERIALS

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259.26 Trespass; penalty for unauthorized removal of material.
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AUTHORITY: §§ 259.1 to 259.27 issued under sec. 1, 61 Stat. 681; 43 U. S. C. 1185.

§ 259.1 *Statutory authority.* (a) The act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185) authorizes the disposal of materials, including but not limited to sand, stone, gravel, yucca, manzanita, mesquite, cactus, common clay, and timber or other forest products, on public lands of the United States, if the disposal is not otherwise expressly authorized by laws of the Unted States, including the United States mining laws, and is not expressly prohibited by laws of the United States, nor detrimental to the public interests. The act of August 31, 1950 (64 Stat. 572; 43 U. S. C. Sup. 1188) added to the act of July 31, 1947, a section 4 authorizing the disposal of sand, stone, gravel, and vegetative materials located below high-water mark of navigable waters of the Territory of Alaska.

(b) The provisions of this act do not apply to lands in any national forest, national park or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

(c) Except as to the land specified in paragraph (b) of this section, the disposal may be made of materials on lands withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or a State, territory, county, municipality, water district, or other local Government subdivision or agency, with the consent of said Federal department or agency, or of such State, Territory, or local governmental unit.

§ 259.2 *Definitions.* (a) "Authorized officer" means the Government official who has been duly authorized to sign the contract for the disposal of materials or to issue a permit under the act and to take action under such contract or permit.

(b) "Officer in charge" means such officer as may be designated by the signing officer or other authorized Government official to supervise operations under such contract or permit.

(c) "The act" means the act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185–1188, as amended).

§ 259.3 *Disposals which must be made under other statutes; rights under other statutes.* (a) The disposal of materials will be made under other acts where there is any such statutory authority. Dead or down timber, or timber which has been seriously or permanently damaged by forest fires, shall not be disposed of under the act but rather under the act of March 4, 1913 (37 Stat. 1015; 16 U. S. C. 614, 615), as amended, and the regulations thereunder (Part 284 of this chapter). However, where such dead, down, or damaged timber is intermingled with timber which is live, standing, and of merchantable size and character, and it is not feasible to sell the two classes of timber separately, consideration will be given to the disposal of both classes in a single transaction under the act and the regulations in this part.

(b) The disposal of timber in Alaska, where statutory authority under other acts exists, will be made under such statutes and the applicable regulations (Part 79 of this chapter). Sales of more than a two years' supply of timber for domestic use in Alaska may be authorized under the act. Timber on the revested Oregon and California Railroad and Reconveyed

Coos Bay Wagon Road Grant Lands will be disposed of under the applicable act and regulations (Part 115 of this chapter).

(c) The limitations on free-use privileges under the act because of the existence of other statutory authority for the free use of timber are set out in § 259.21.

(d) Sand, stone, and gravel of such quality and quantity as to be subject to the mining laws, will not be disposed of under the act.

(e) Where there are valid, existing claims to the land by reason of settlement, entry, or similar rights obtained under the public land laws, no disposal of the materials on the land may be made under the act. If the disposal of materials is consistent with such interest in the land, as in the case of lawful grazing or mining use, the materials may be disposed of under the act under such conditions as the authorized officer, in his discretion, may specify.

(f) The purchaser of materials shall have a prior right to the materials in accordance with the terms and provisions of the contract of purchase as against any subsequent claimant or entryman of the land affected.

(g) The proceeds derived from such sales shall be deposited in the Treasury of the United States and shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials from school section lands in Alaska, reserved under the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as amended, shall be deposited in the United States Treasury for payment annually to the Territory of Alaska, pursuant to the act of August 31, 1950 (64 Stat. 571; 43 U. S. C. 1187).

SALES

§ 259.4 *Sale and appraisal.* (a) All materials to be sold under the provisions of the act shall be appraised and in no case shall they be sold at less than the appraised price. They shall be sold to a responsible qualified purchaser under the appropriate form of contract and upon such additional terms as the signing officer considers advisable.

(b) Where the appraised value of the materials is $1,000 or less, it may be sold to a responsible qualified applicant or to the highest qualified bidder at public auction or under sealed bids. Sale without competitive bidding may be made in the discretion of the authorized officer where he determines it is unlikely a competitive interest exists. Not more than $1,000 worth of materials may be sold non-competitively to any one applicant in any period of twelve consecutive months. However, this limitation shall not be applicable to sales of $1,000 or less of salvage timber or of small isolated tracts of mature or over-mature timber when, in the judgment of the authorized officer, such sale is in the public interest.

(c) If the appraised value exceeds $1,000, however, a sale may be authorized only to the highest responsible qualified bidder at public auction or under sealed bids.

(d) Offerings of material for sale may be made without the receipt of applications, when such action is in the public interest.

(e) Whenever in his judgment it is in the public interest to do so, the authorized officer may authorize the sale of all of one type or kind of nonvegetative material on or in specific tracts of land where the quantity of such material cannot be determined prior to extraction or removal thereof. The contract of sale shall set forth the price per unit payable to the United States, the minimum annual payment and such other terms as the authorized officer shall consider advisable. All such sales shall be made competitively to the highest qualified bidder at public auction or under sealed bids, after publication and posting of notice as provided in § 259.7.

§ 259.5 *Who may apply.* An applicant may be (a) an individual, (b) a partnership, (c) an unincorporated association, or (d) a corporation organized under the laws of the United States or of a State or Territory thereof and authorized to transact business in the State or Territory in which the lands are situated.

§ 259.6 *Application; contents.* (a) An application to purchase hereunder may be filed in any office of the Bureau of Land Management. The application should be made on Form 4–059 and contain the following data:

(1) The full name and address of the applicant.

(2) If for a noncompetitive sale, the contract numbers of all noncompetitive contracts entered into by the applicant with the Government under this act during the twelve-month period preceding the filing of the application.

(3) A description of the lands, if surveyed, according to legal subdivision; if the lands are unsurveyed, they must be sufficiently described to permit their identification and the approximate acreage of the lands described.

(4) A detailed statement as to the nature and estimated quantity of each species or kind of material desired, the purpose for which it is desired, its estimated unit and total value, and when the taking could be commenced and completed.

§ 259.7 *Publication and posting.* (a) In any proposed sale for more than $1,000 notice must be published prior to the date of sale at the expense of the Government in a newspaper published in the county in which the materials are located. If the materials are in two or more counties, notice may be published in any one of the counties. If no newspaper is published in such county, then publication shall be made in a newspaper of general circulation in the county. The notice must be published on the same day weekly for four consecutive weeks.

(b) In any proposed non-competitive sale for $1,000 or less, the authorized officer may require notice of sale to be posted in such place and for such period as he may prescribe. The authorized officer may require additional notice, including publication in a newspaper at least once but not more than four times. Where the authorized officer determines that a competitive sale of such material shall be ordered, publication shall be made in a newspaper at least once but not more than four times.

§ 259.8 *Deposits with bids.* A minimum deposit of at least ten percent of the appraised value of the materials to be sold must accompany each bid. However, the authorized officer, in his discretion, may require a deposit in excess of the ten percent minimum. Each deposit must be made by money order, cashier's check or certified check, drawn payable to the Bureau of Land Management except that a bid may be accompanied by a corporate surety bid bond (Form 4–061) in the amount of the required deposit, conditioned upon execution by the bidder, if the contract is awarded to him, of the required contract with the Government within 30 days after the copies of the contract are transmitted to him for execution in accordance with § 259.10 (a). Deposits with bids are required as a guarantee of good faith, and when payment in full is not made in advance the deposit of the successful bidder will be retained until the contract is completed. The deposit will then be returned, provided the purchaser has faithfully performed the terms of the contract. If a bond is furnished and accepted, the deposit will then be credited toward the initial payment under the contract. Deposits made with bids will be returned to the unsuccessful bidders after award of the contract.

§ 259.9 *Action on bids; qualifications of bidders.* (a) If no bid is received within the time specified in the notice of sale for the receipt of bids, the authorized officer, in his discretion, if he determines that no significant rise has occurred in the market price of the materials over the appraised price, may keep open the period for the receipt of bids for all or any part of an additional 90-day period and may sell the materials without readvertising in the following manner:

(1) If, during the extended period for the receipt of bids, a written or oral offer is made for the materials at not less than the advertised minimum appraised price, such offer shall be posted in the office of the authorized officer for a period of not less than 5 days from receipt thereof. If no other offers are received during the five-day posting period, the contract may be awarded to the sole bidder, if qualified.

(2) If, however, during such posting period, other offers are received, then all bidders at the end of the original posting period of five days shall be required to participate in oral competitive bidding at a time and place to be designated by the authorized officer, and the contract will be awarded to the highest qualified bidder.

(b) In any sale of materials, if not paid for in full in advance, the authorized officer may, in his discretion, and before award of the contract, require a financial statement or other information concerning the ability of the applicant or bidder to perform the contract, as well as data covering plant, equipment, etc.

(c) Based upon evidence of the highest bidder's ability to fulfill the terms of the contract, the authorized officer, in his discretion, may require payments larger than the minimum installments specified in § 259.12 and in the notice of sale, or he may reject the highest bid and award the contract to the next highest qualified bidder. Nothing herein shall be construed as limiting the right to reject any or all bids in the interest of the Government.

(d) In addition to the foregoing, if the successful bidder is (1) a partnership or an association it may be required to file a certified copy of whatever written articles of partnership or association its members may have executed; (2) a corporation, it may be required to file a certified copy of its articles of incorporation. If not organized under the laws of the State or Territory embracing the lands affected, such corporation shall file a certificate by the proper officer of the State or Territory in which the lands are situated showing the corporation's authority to do business in such State or Territory.

§ 259.10 *Contracts.* (a) The Bureau of Land Management shall prepare contracts on Form 4–054 for sales of over $1,000 and on Form 4–058 for sales of $1,000 or less. Contracts for the disposal of all of a single type or kind of nonvegetative material, as authorized by § 259.4 (e) shall be prepared on Form 4–1164 and shall be signed on behalf of the United States by the authorized officer.

(b) If the successful bidder fails to sign and return the contract and furnish a satisfactory bond within 30 days, or if he otherwise fails to comply with the applicable regulations, that part of his deposit representing the minimum deposit required by the notice of sale, shall be retained as liquidated damages and disposed of as other receipts under the act. In such case the contract may be awarded to the next highest qualified bidder without readvertisement.

§ 259.11 *Bond.* In all sales in which payment in full is not made in advance, a bond of not less than 15 percent of the contract price of materials sold in the public-land States, or 25 percent of the contract price of materials sold in Alaska, must be furnished by the purchaser. In any sale the authorized officer, in his discretion, may require a bond in excess of that amount. Bonds hereunder shall be executed on Form 4–057. The bond must be that of a corporate surety shown on an approved list issued by the Treasury Department, or a cash bond. United States bonds, or cash, may be furnished in lieu of a surety bond, if accompanied by a proper personal bond and power of attorney authorizing the Secretary, in case of default, to collect, sell, assign, or transfer the said bonds without notice, at public or private sale, free from any equity of redemption, and without appraisement or valuation.

§ 259.12 *Payment.* (a) No part of the material sold under the contract may be severed, extracted, or removed unless advance payment has been made as hereinafter provided.

(b) In all sales in which the determination of the total amount due can be made only after severance or extraction has been completed, the total advance payments required to be made must be sufficient to cover the estimated quantity of the materials sold under the contract. Each such payment shall be held in suspense until the quantity of materials covered thereby has been determined. If thereafter it be determined that the last advance payment under the contract is in excess of the value of the materials, such excess shall be returned to the purchaser.

(c) In any sale of $1,000 or less the authorized officer, in his discretion, may require payment in full at the time of execution of the contract or may permit payment in advance of severance or extraction to be made in not to exceed five approximately equal installments.

(d) In sales of more than $1,000 and not in excess of $100,000, the authorized officer may require full payment in advance, or may permit payment in advance of severance or extraction in not to exceed ten approximately equal installments.

(e) In any sale of over $100,000, the methods and conditions of payment shall be determined at the time such sale is authorized provided that the amount of the installments so fixed shall be not less than $10,000 each.

(f) In any sale of materials in the public-land States for which payment in installments is permitted, the purchaser shall make an initial payment equivalent to two installments as follows: One installment prior to the approval of the contract and the second installment within six months thereafter, or prior to the commencement of operations thereunder, whichever is earlier. The first installment shall be retained by the Government as additional security for the full and faithful performance of the contract, and shall be applied in whole or in part toward the final installment thereunder. On the basis of his initial payment, the purchaser may sever or extract materials under the contract of a value not to exceed one-half of such initial payment. The remaining installments shall become due and payable without prior notice whenever the value of the materials severed or extracted under the contract shall equal the sum of the payments made by the purchaser (exclusive of one-half of the initial payments, as provided in this paragraph).

(g) In any sale of materials in Alaska for which payment in installments is permitted, the purchaser shall make payment of one installment prior to the approval of the contract. The purchaser may sever or extract materials under the contract of a value not to exceed such payment. The remaining installments shall become due and payable without prior notice whenever the value of the materials severed or extracted under the contract shall equal the sum of the payments made by the purchaser.

(h) All payments hereunder shall be made by money order, cashier's check or certified check drawn payable to the Bureau of Land Management.

§ 259.13 *Passage of title; risk of loss.* The title to the material covered by the contract will pass to the purchaser only upon payment for, and severance or extraction of, the material. The purchaser shall assume complete risk of loss for all materials, the title to which has passed. If material covered by the contract, title to which has not passed, is damaged or destroyed by fire or otherwise, the purchaser shall be liable for all loss suffered if the purchaser, his contractors or subcontractors, or the employees of any of them, are directly or indirectly responsible for the damage. If such material is damaged or destroyed without fault on their part, the purchaser shall be liable for the loss sustained to the extent that it is caused by his failure to sever, extract or remove the damaged material as expeditiously as possible under the existing circumstances and the terms of the contract.

§ 259.14 *Reappraisals.* (a) No reappraisals of materials sold under the contract will be made during the life of the contract if the term of the contract is for two years or less. If the term is for more than two years, prior to the commencement of the third and each subsequent year, the material sold under the contract, but not yet severed or extracted, shall be reappraised by the Government in accordance with standard appraisal techniques. Upon reappraisal, the contract unit price of any material severed or extracted during the new contract year shall be the same percentage of the new appraised price as the original contract price was of the original appraised price.

(b) Notice of the adjusted prices to be fixed under the contract shall be sent registered mail by the authorized officer to the purchaser at least thirty days before the beginning of the contract year. Not later than thirty days after the receipt of notice, the purchaser may submit his objections, if any, in writing to the authorized officer. In the absence of such objection, or if the authorized officer does not find the objections sufficient and so advises the purchaser, or, subject to the final determination of an appeal, if taken, from the decision of reappraisal of the materials, the new prices shall be in effect and shall govern the payments to be made for all materials severed or extracted during the new contract year.

§ 259.15 *Assignments.* The purchaser may assign the contract or any interest therein only with the consent of the authorized officer. The proposed assignment shall be forwarded to the authorized officer in triplicate within thirty days from the date of its execution. Except as hereinafter provided, the assignment shall contain all the terms and conditions agreed upon by the parties thereto, the assignee's agreement to be bound by the terms of the contract, and shall be accompanied by a proper bond if one has been required under the contract, or the agreement of the surety to remain bound after the approval of the assignment, or, if no bond has been required under the contract, by an agreement to furnish and maintain a proper bond, if required. An assignment to a

lending agency as security for a loan may provide that the assignee shall receive merely the purchaser's title to the contract without assuming any liability thereunder, and that the assignor shall remain bound to perform under the contract. In such case, before approval of the assignment, the assignor must submit the written consent of his surety to remain bound under the terms of the contract. Nothing herein shall limit or restrict the right of the Government to suspend operations under, or terminate or cancel, the contract in accordance with §§ 259.16 and 259.19.

§ 259.16 *Termination of contracts.* (a) The authorized officer may terminate a contract at the request of the purchaser upon satisfactory showing that the termination will not adversely affect the public interest, and that all charges due the Government thereunder have been paid.

(b) Any contract, unexecuted in whole or in part, for disposal under section 4 of the act of materials from lands, title to which is transferred to a future State upon its admission to the Union, and which is situated within its boundaries, may be terminated or adopted by such State in such manner as the State may by law determine.

§ 259.17 *Extension of time.* The authorized officer, in his discretion, upon written request by the purchaser, not less than 90 days nor more than 150 days before expiration of the contract, may grant an extension of time within which to complete the contract if the purchaser shows that his delay in performance is due to circumstances beyond his control and that the extension will not prejudice the Government's interest. No extension may be granted, except in contracts for one year, without reappraisal of the materials remaining to be taken under the contract. Such reappraisals shall be made in accordance with the provisions of § 259.14, except that, in granting an extension of any contract whose original term was 2 years or more, the adjusted price of the materials to be severed or extracted during the extended term shall not be less than the contract price prevailing at the end of the original contract term.

§ 259.18 *Removal of personal property upon termination of contract.* (a) Upon termination of a contract the purchaser shall have the right at any time within one year thereafter to remove his equipment, improvements, or other personal property from the Government land, provided all charges due the United States under the contract have been paid. The authorized officer, in his discretion, may grant the purchaser's request for an extension of time for removal. Any improvements, equipment, or personal property remaining on the Government land at the end of such period shall become the property of the United States.

(b) Improvements necessary for the severance, extraction or removal of other government-owned materials may be left on the Government land for such period and under such terms as may be prescribed by the authorized officer.

§ 259.19 *Default, suspension, cancellation, damages and expenses incurred by Government chargeable to purchaser.* (a) If any of the requirements of the contract are disregarded, the officer in charge, after giving oral or written notice, may suspend the purchaser's operations until there is satisfactory compliance therewith.

(b) If, after notice has been given, the purchaser fails to comply with all of the provisions of the contract, the authorized officer shall serve the purchaser with written notice requiring performance thereof within 30 days under penalty of cancellation of the contract and forfeiture of the bond and all monies paid. If the purchaser continues in default after the 30 days, the authorized officer may cancel the contract.

(c) The purchaser shall be liable for damage resulting from the breach of contract, including depreciation in the value of the remaining material based upon a determination by the authorized officer, and for any expense incurred by the Government by reason of the continued default.

§ 259.20 *Duration of contract.* (a) The maximum periods which shall be allowed after the date of the contract, for the severance or extraction of the materials purchased, except as the contract may be extended in accordance with § 259.17, shall be as follows: For sales of $1,000 or less, one year; for sales of over $1,000 but not exceeding $10,000, two years; for sales over $10,000 but not exceeding $100,000, five years; and for sales exceeding $100,000, such term as shall be fixed in the notice of sale by the authorized officer, except that in any contract for the sale of timber from an intermediate cutting the term of such contract may be fixed by the authorized officer in his discretion in the notice of sale. The authorized officer may provide that contracts shall have maximum periods longer than those prescribed above in the case of timber sales in Alaska under this part, where in his opinion the allowance of such longer periods will promote the development of the Territory, and such period shall be stated in the notice of sale where one is required.

(b) Contracts on Form 4–1164 shall be for a term of not more than 5 years, as fixed in the notice of sale, and for so long thereafter as the material subject to the contract is being produced or removed in paying quantities.

FREE USE

§ 259.21 *Free-use privilege; limitations.* (a) Any person, or any association or corporation not organized for profit, may be permitted to take and remove, without charge, materials subject to the act, for use other than for commercial or industrial purposes or resale. Such permittee is granted a right to remove materials while the permit remains in force and, in accordance with the provisions of the permit, as against a subsequent applicant who may wish to obtain the same material by purchase. However, the materials may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, or similar rights obtained under the public land laws.

(b) Authority under other acts also exists for the free use of timber, under specified circumstances, (1) in certain states by settlers on public lands, citizens and bona fide residents of the State, and corporations doing business in the State (Part 284 of this chapter), and (2) in Alaska by actual settlers, residents, individual miners, prospectors for minerals, churches, hospitals, and charitable institutions (Part 79 of this chapter). Free-use timber applications may be considered under the act, rather than under the statutes and regulations mentioned, only when the applicants cannot qualify under such statutes and regulations, as in the case of any Federal, State, or territorial agency, unit, or subdivision, including municipalities, and Alaskan non-profit associations and corporations which are not engaged in church, hospital, or charitable activities.

(c) The material applied for must be for the applicant's own use and only one free-use permit may be issued to any applicant in any calendar year. No green trees of saw-timber size will be disposed of under free-use permit in the States unless it is in the interest of the Government. Disposal of trees of saw-timber size in Alaska is permitted. A free-use permit may be granted for timber of a stumpage value not in excess of $25, or for other materials subject to disposal under the act of an in-place value not in excess of $25 in any calendar year. However, if it is in the interest of the Government to dispose of timber or other materials applied for under the act, a permit may be granted for materials not in excess of $200 in value. The material removed may not be bartered or sold.

(d) A free-use permit may be issued to any Federal, State, or Territorial agency, unit, or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the materials to be severed, extracted, or removed, provided that the applicant makes a satisfactory showing to the authorized officer that such materials will be used for a public project. Such permits shall constitute a superior right to remove the materials and will continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

(e) Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the material to meet his needs.

(f) All materials disposed of under free use shall be severed, extracted, or removed in accordance with approved forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed and other values of the land and resources. In the free-use disposal of timber and other vegetative materials cutting and removal shall be accomplished in such manner as to leave the stand in condition for continuous production.

§ 259.22 *Application for permit.* An application for permit, in duplicate,

must be made on Form 4–056 and filed in any office or with any employee of the Bureau of Land Management authorized to issue such permit. However, a free use permit on Form 4–1192 may be granted for the removal of not more than three Christmas trees upon oral or written request.

§ 259.23 *Issuance and cancellation of permit; removal of materials; bond.* (a) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of Form 4–056 shall be returned to the applicant showing the approval or rejection of such application.

(b) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions or the regulations, or if the permit has been issued erroneously.

(c) No materials shall be removed until the permit is issued. A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

§ 259.24 *Removal by agent.* A free-use permittee may procure the materials by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor, and money expended in procuring the material and processing it, and, no charge shall be made for the material itself. No part of the material may be used in payment for services in obtaining or processing it.

§ 259.25 *Termination of permit; extensions; notice of completion of removal operations.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the signing officer. An extension not to exceed one year may be granted by the authorized officer. However, the authorized officer may grant permits to any Federal, State, or Territorial agency, unit or subdivision, including municipalities, for such periods as he may deem appropriate. The permittee must notify the officer in charge upon completion of removal.

GENERAL

§ 259.26 *Trespass; penalty for unauthorized removal of material.* The severance, extraction, or removal of materials from public land under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to criminal prosecution for such unlawful acts.

§ 259.27 *Appeals.* A party aggrieved by any official action regarding his application, contract, or permit, may appeal from the decision of any subordinate official to the Director of the Bureau of Land Management, and from the Director's decision to the Secretary of the Interior pursuant to the Rules of Practice (Part 221 of this chapter).

SUBCHAPTER U—STATE AND RAILROAD GRANTS

PART 270—STATE GRANTS FOR EDUCATIONAL, INSTITUTIONAL, AND PARK PURPOSES

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EXCHANGES OF LANDS SELECTED BY THE STATE OF CALIFORNIA UNDER ACT OF JUNE 29, 1936 (49 STAT. 2026)

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AUTHORITY: §§ 270.1 to 270.41 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For exchanges, see Parts 147 to 152 of this chapter. For general orders of withdrawal and modification, see § 297.11, 297.12, 297.18 of this chapter. For land classifications, see Part 296 of this chapter. For national park and national monuments, see Part 206 of this chapter. For patents, see Part 108 of this chapter. For school land reservation; grant for university; Alaska; see Part 76 of this chapter. For National Park Service, Department of the Interior; see Parks, Forests, and Memorials, 36 CFR Chapter I.

SELECTION BY STATES

§ 270.1 *Land subject to selection; application considered as petition for classification.*[1] (a) In accordance with the provisions of the act of February 28, 1891 (26 Stat. 796; 43 U. S. C. 851), all lands selected by States under grants for educational and other purposes, must be from the unappropriated nonmineral surveyed public land, within the State making the selection, and their nonmineral character must be shown by the statement of some responsible party, having and testifying to a personal knowledge of the land, and shall apply to each smallest legal subdivision of land selected.

(b) An application for selection will be considered as a petition for classification of the land under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315f), in the manner prescribed by Part 296 of this chapter.

CROSS REFERENCE: For selection with mineral reservations, see § 270.21 and Part 102 of this chapter.

§ 270.2 *Area which may be embraced in a selection list.* The selections in any one list, under special grants, or grants in quantity, should not exceed 6,400 acres, and the selections in any one list of indemnity school lands must not in the aggregate exceed 640 acres.

§ 270.3 *Selected and base tracts must correspond in area.* All lists of indemnity school lands must be prepared so that each selected tract will correspond in area with the base tract, and separate base or bases must be assigned to each smallest legal subdivision of land selected.

§ 270.4 *Assignment permitted of part of legal subdivision as the basis for selection.* The assignment of a portion of the smallest legal subdivision of a school section as the basis, in whole or in part, for indemnity selections, is permitted; but such assignment is an election by the State to take indemnity for the entire subdivision, and is a waiver of its right to such subdivision, and any remaining balance must be used for future selections.

§ 270.5 *Cause for indemnity selection to be stated.* The cause of the loss for which indemnity is selected must be specifically stated, whether by entry,

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

reservation, or the fractional condition of the township.

§ 270.6 *Certificate as to right of selection.* The selecting agent must file with each list of selections of indemnity school lands a certificate, showing that indemnity has not previously been granted for the assigned base lands, and that no previous selection is pending for such assigned base; and with each list of selections of lands under quantity or special grants, a certificate that the selections and those pending, together with those approved, do not exceed the total amount granted for the purpose stated.

§ 270.7 *Certificates that base lands are unencumbered.* Where indemnity is sought for school lands in place, because of their inclusion within any Indian, military, or other reservation, the list of selections must, in every case, be accompanied by a certificate of the officer or officers charged with the care and disposal of school lands, that the State has not previously sold or disposed of, or contracted to sell or dispose of, any of said lands used as bases, or any part thereof; that the said lands are not in the possession of, or subject to the claim of any third party, under any law or permission of the State; and, within 30 days after the allowance by the manager of any such list of selections, the State must, in addition, file a certificate from the recorder of deeds or official custodian of the records of transfers of real estate, in the proper county, or from a reliable and responsible abstractor or abstract company, satisfactory to the Bureau of Land Management that no instrument purporting to convey, or in any way encumber, the title to any of said lands used as bases, is of record, or on file, in the office of such custodian, and upon the report of the local office of the failure of the State to file such certificate within the required time, any selection upon such base lands may be canceled without previous notice.

§ 270.8 *Legal fees for State selections.* (a) The legal fees required by law must accompany all lists of selections.

(b) No more than one number must be given to any list of selections, notwithstanding it may contain more than one selection.

§ 270.9 *Designation of newspaper for publication of notice.* Notice of selection of all lands must be given by publication in a daily or weekly newspaper of general circulation in the county where the lands are located, the paper to be designated by the manager.

§ 270.10 *Preparation of notice for publication.* (a) Notices for publication will be prepared by the manager at the time of the acceptance of the selections, and will be transmitted by registered mail to the proper State official for publication in the paper or papers designated.

(b) To save expense, the manager may embrace two or more lists in one publication when it can be done consistently with the requirement of publication in a newspaper of general circulation in the county where the land is situated.

(c) The published notice will embrace only the selected lands described by the largest legal subdivisions embraced in the separate lists.

§ 270.11 *Proof of publication of notice, and protests or contests.* (a) The proof of publication will be the statement of the publisher, or foreman of the newspaper employed, that the notice (a copy of which must be attached to the statement was published in such newspaper for five successive weeks. If a daily paper is designated the notice should be published in the Wednesday issue for five consecutive weeks, if weekly, in five consecutive issues, and if semiweekly, in either issue for five consecutive weeks. Such statement must show that the notice was published in the regular and entire issue of the paper, and that the notice was published in the newspaper proper and not in a supplement. Statements of publication not in conformity with these requirements will be rejected by the manager.

(b) The proof of publication of notice must be filed with the manager within 90 days after receipt of notice for publication. Failure by the State to furnish proof of publication within the time limited will be cause for the rejection of the selection.

(c) During the period of publication, or any time thereafter, and before final approval and certification, the manager may receive a protest or contest as to any of the tracts applied for.

(d) Where lands sought to be selected are alleged, by way of protest, to be mineral, or where applications for patent therefor are presented under the mining laws, or are otherwise adversely claimed, proceedings in such cases will be in the nature of a contest and will be governed by the Rules of Practice in force in contest cases.

CROSS REFERENCE: For Rules of Practice governing contests and protests, see Part 221 of this chapter.

§ 270.12 *Selection of lands restored from withdrawal.* Surveyed lands of the United States, reserved or withdrawn from entry, location, and selection under the general land laws, and thereafter restored to the public domain (not under a special statute) may be selected in satisfaction of grants or reservations in aid of common schools, if of the character contemplated thereby, in such manner as shall be prescribed in the proclamations or notices of restoration.

§ 270.13 *Amendment of selection by substitution of valid base.* (a) No application will be allowed for lands covered by an existing selection or entry, nor will any right be recognized as initiated by the tender of any such application. In any case, however, where for good and sufficient reason a selection has been held for cancellation, the State may be permitted to relinquish such selection, and with such relinquishment tender a new application for the same land. This relinquishment and application must be accompanied by a statement of the officer or officers of the State charged with the selection of lands, showing that proper precaution was taken in the first instance, to avoid the tender of a defective selection.

(b) Amendment of indemnity school land selections by the substitution of new and valid base, in whole or in part, in place of that originally tendered, defective from any cause, may be allowed, in the discretion of the authorized officer of the Bureau of Land Management. Applications in such cases must be accompanied by a statement of the officer or officers indicated in paragraph (a) of this section, fully explaining the tender of the original defective base and how the error or mistake occurred. If it is believed that every reasonable effort was made and precaution taken to avoid the tender of such defective base, the substitution of the new and valid base may be permitted in cases where no intervening claims exist.

§ 270.14 *Effective date of relinquishment.* The cancellation of selections will become effective as of the date of receipt of order of cancellation by the land office, after which, and not before, the land, if not reserved, will be subject to disposition under the general land laws.

CROSS REFERENCE: For requirements as to classifications, see Part 296 of this chapter.

§ 270.15 *When title to school section vests in State.* When a school section has been identified by survey, and no claim is asserted thereto under the mining or other public land laws, the presumption is that title to the land has passed to the State, but such presumption may be overcome by the submission of satisfactory proof to the contrary.

§ 270.16 *Indemnity for entire legal subdivision partly covered by mineral entry.* Where mineral entry was made of any portion of the smallest legal subdivision of a school section, that fact will be taken as determining the right of the State to indemnity for the entire legal subdivision upon proper showing that the State has not made any disposition of the land not embraced in such mineral entry.

§ 270.17 *School section not a valid basis for indemnity selection by reason of mineral character only.* The grant made by the act of January 25, 1927 (44 Stat. 1026; 43 U. S. C. 870, 871), was a grant in praesenti and, since section 1 of this act vested title in the State to all unappropriated, unreserved mineral school sections in place, for which a State had not been indemnified, and since the States were limited, under section 2 of said act, to indemnity for mineral lands only where "lost to the State under this or other acts" it seems clear that a State may not, since the date of said act, assign school-section lands as base for indemnity selections by reason only of the mineral character of such school-section lands. They acquire title by virtue of the grant of January 25, 1927, and have no loss for which they may be indemnified.

§ 270.18 *Certificate showing selection made pursuant to laws of the State.* (a) All lists of indemnity school land selections and selections by States, under special grants or grants in quantity (including Carey Act selections) must be accompanied by a certificate from the selecting agent, showing that the selections are made under and pursuant to the laws of the State. This certificate may be incorporated in an appropriate

place at the top of the page, in the printed form used for making such selections, or it may be made upon a separate form, and attached in a suitable manner to the list.

(b) No application to select will be received or allowed by the manager unless accompanied by this certificate.

(c) State indemnity selections, when satisfactorily completed in accordance with law and the governing regulations, will be embraced in clear lists for approval by the authorized officer of the Bureau of Land Management, and thereafter certified to the State.

§ 270.19 *Notice to State or Territory of settlement claim on school section.* (a) In any case where, upon an ex parte showing of settlement prior to survey of the lands in the field, an entry is allowed under section 2275, Revised Statutes, as amended by act of February 28, 1891 (26 Stat. 796; 43 U. S. C. 851), of lands within a section that has been granted, reserved, or pledged for the use of schools or colleges, it will be the duty of the manager to at once advise the proper State or Territorial authorities thereof by registered mail.

(b) A State or Territory protesting against the allowance of an entry will be required to attack same by affidavit of its authorized agent, duly corroborated, as prescribed in §§ 221.2 and 221.3 of this chapter, when it will become the manager's duty to order a hearing to determine the respective rights of the parties (Baxter v. Crilly, 12 L. D. 684).

§ 270.20 *Notice to State or Territory of final entry for lands in school section.* In all cases of notice of intention to submit final proof on entries for lands embraced in sections that have been granted or reserved to the State or Territory for school purposes, the manager will require the entryman in the published notice to specially cite the State or Territory, and serve a copy of such notice, either personally or by registered mail, on the proper State or Territorial authorities, and furnish evidence of such service prior to or at the time of the submission of proof, as in other cases of adverse claims.

§ 270.21 *Selection of lands withdrawn or classified as valuable for coal.* (a) The provisions of the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83, 84, 85), entitled "An act to provide for agricultural entries on coal lands," were by the act of April 30, 1912 (37 Stat. 105; 30 U. S. C. 90), extended to the several States in making selections of lands in satisfaction of grants made by Congress. The conditions and reservations as prescribed by the former act are embodied in said act of April 30, 1912, unchanged.

(b) It will be the manager's duty to accept, subject to future approval, selections, otherwise unobjectionable, presented by the several States in satisfaction of congressional grants, embracing lands withdrawn or classified as coal lands, or valuable for coal, if accompanied by a certificate or statement, in case of each application to select, of the officer or officers authorized to act for and in behalf of the State, to the effect that the application is made in accordance with, and subject to, the provisions and reservations of the act of June 22, 1910 (36 Stat. 583), as supplemented by the act of April 30, 1912 (37 Stat. 105).

(c) Should the State deny the existence of coal in the land sought to be selected the manager will proceed in accordance with existing regulations in such cases.

CROSS REFERENCE: For agricultural entries on mineral lands, see Part 102 of this chapter.

§ 270.22 *Issuance of supplemental patents without reservation of coal.* The act of April 14, 1914 (38 Stat. 335; 30 U. S. C. 82), affects all filings, locations, selections, or entries upon which patent or its equivalent has issued or may issue, and in appropriate cases of State indemnity selections a patent will be issued in substantially the following form:

The United States of America, to all to whom these presents shall come, greeting:

Whereas, on ----------, there was certified to the State of ---------- the following described lands: ---------- reserving to the United States all coal in said lands, and to it, or persons authorized by it, the right to prospect for, mine, and remove coal from the same upon compliance with the conditions of and subject to the limitations of the Act of ----------; and

Whereas, the lands so conveyed have been subsequently classified as noncoal in character:

Now, therefore, know ye that the United States of America, in accordance with the Act of Congress approved April 14, 1914 (38 Stat. 335), does hereby remise, release, and forever quitclaim unto the said State of ---------- and to its assigns all rights, title, interest, and estate to and in the above-described lands which may be vested in and possessed by it by virtue of the reservation hereinbefore mentioned and recited.

§ 270.22a *Appeals.* A State aggrieved by any action of the Director may appeal to the Secretary of the Interior, pursuant to Part 221 of this chapter.

SCHOOL LAND GRANTS TO CERTAIN STATES EXTENDED TO INCLUDE MINERAL SECTIONS

§ 270.23 *Beneficiary States; conditions under which grant becomes effective.* (a) The first paragraph of section 1 of the act approved January 25, 1927 (44 Stat. 1026; 43 U. S. C. 870), reads as follows:

That, subject to the provisions of subsections (a), (b), and (c) of this section, the several grants to the States of numbered sections in place for the support or in aid of common or public schools be, and they are hereby, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State or States as indemnity or in lieu of any land so granted by numbered sections.

(b) The beneficiaries of this grant are the States of Arizona, California, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The grant also extends to the unsurveyed school sections reserved, granted, and confirmed to the State of Florida by the act of Congress approved September 22, 1922 (42 Stat. 1017; 16 U. S. C. 483, 484).

(c) The additional grant thus made, subject to all the conditions in the statute making same, applies to school-section lands known to be of mineral character at the effective date thereof as hereinafter defined. It does not include school-section lands nonmineral in character, those not known to be mineral in character at time of grant, but afterwards found to contain mineral deposits, such lands not being excepted from the grants theretofore made (Wyoming et al. v. United States, 255 U. S. 489–500, 501, 65 L. ed. 742–748), nor does it include lands in numbered school sections in lieu of or as indemnity for which lands were conveyed to the States first above named, or to the State of Florida with respect to school-section lands coming within the purview of the act of September 22, 1922, prior to January 25, 1927.

(d) Determinations made prior to January 25, 1927, by the Secretary of the Interior or the Commissioner of the General Land Office to the effect that lands in school sections were excepted from school-land grants because of their known mineral character do not, of themselves, prevent or affect in any way the vesting of title in the States pursuant to the provisions of the statute making the additional grant.

(e) Subsection (a) of section 1 of the act provides:

That the grant of numbered mineral sections under this Act shall be of the same effect as prior grants for the numbered nonmineral sections, and title to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered nonmineral sections.

§ 270.24 *Effective date of grant.* Grants to the States of school lands in place (the numbered sections), of the character and status subject thereto, as a rule, are effective and operate to vest title upon the date of the approval of the statute making the grant or the date of the admission of the State into the Union, as to lands then surveyed, and as to the lands thereafter surveyed upon the date of the acceptance of the survey thereof by the Director of the Bureau of Land Management. (United States v. Morrison, 240 U. S. 192, 60 L. ed. 599; United States v. Sweet, 245 U. S. 563, 62 L. ed. 473; Wyoming et al. v. United States, supra.) It is held, therefore, that the grant made by the first paragraph of section 1 of the act of January 25, 1927, subject to the provision therein with respect to indemnity or lieu lands, to the provisions of subsections (b) and (c) of said section 1 and following the plain provisions of subsection (a) thereof is effective upon the date of the approval of the act (January 25, 1927) as to lands then surveyed and the survey thereof accepted by the Director of the Bureau of Land Management and as to the unsurveyed school sections in the State of Florida granted to that State by the act of September 22, 1922. The grant, as to other lands thereafter surveyed, subject to the same provisions is effective upon the acceptance of the survey thereof as above indicated.

§ 270.25 *States not permitted to dispose of lands except with reservation of minerals.* (a) Subsection (b) of section

1 of the act of January 25, 1927, provides:

That the additional grant made by this Act is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct, the proceeds of rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: *Provided*, That any lands or minerals disposed of contrary to the provisions of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

(b) The lands granted to the States by the act of January 25, 1927, and the mineral deposits therein are to be disposed of by the States in the manner prescribed in subsection (b) thereof, provision being made for judicial forfeiture in case of disposal of any of the lands or minerals contrary to the provisions of the act.

§ 270.26 *Lands excluded from grant.* (a) Subsection (c) of section 1 of the act of January 25, 1927, provides:

That any lands included within the limits of existing reservations of or by the United States, or specifically reserved for waterpower purposes, or included in any pending suit or proceedings in the courts of the United States, or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such application, claim, or right is relinquished or canceled, and all lands in the Territory of Alaska are excluded from the provisions of this act.

(b) School-section lands included within the limits of existing reservations of or by the United States, specifically reserved for waterpower purposes, or included in any suit or proceedings in the courts of the United States, prior to January 25, 1927, and all lands in the Territory of Alaska are excluded from the provisions of the act. (See § 270.29.)

(c) The words "existing reservations" as used in subsection (c) are construed generally and subject to specific determination in particular cases if the need therefor shall arise, as including Indian and military reservations, naval and petroleum reserves, national parks, national forests, stock driveways, reservations established under the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143), as amended by the act of August 24, 1912 (37 Stat. 497; 43 U. S. C. 142), and all forms of Executive withdrawal recognized and construed by the Department of the Interior as reservations, existent prior to January 25, 1927.

CROSS REFERENCES: For Indian reservations, see Part 177 of this chapter. For national forests and national parks, see Parts 205 and 206 of this chapter. For naval petroleum reserves, see § 192.5 of this chapter.

§ 270.27 *Claims protected.* (a) Valid applications, claims, or rights protected by the provisions of subsection (c) of section 1 of the act of January 25, 1927, include applications, entries, selections, locations, permits, leases, and other forms of filing, initiated or held pursuant to existing laws of the United States prior to January 25, 1927, embracing known mineral school-section lands then surveyed and otherwise within the terms of the additional grant, and as to lands thereafter surveyed, valid applications, claims, or rights so initiated or held prior to the date of the acceptance of the survey. The additional grant to the State will attach upon the effective date of the relinquishment or cancelation of any claim, so asserted, in the absence of any other valid existing claim for the land and if same be then surveyed. Should the validity of any such claim be questioned by the State, proceedings with respect thereto by protest, contest, hearing, etc., will be had in the form and manner prescribed by existing rules governing such cases. This procedure will be followed in the matter of all protests, contests, or claims filed by individuals, associations, or corporations against the States affecting school-section lands.

(b) The present grant, like other grants in aid of public or common schools, is subject to the rights and claims of those who settle upon, with a view to homestead entry, or occupy, with a view to desert-land entry, prior to survey in the field, lands which on survey are found to be in numbered school sections.

CROSS REFERENCE: For Rules of Practice, see Part 221 of this chapter.

§ 270.28 *Lands included in grant.* (a) Section 2 of the act of January 25, 1927 (44 Stat. 1027; 43 U. S. C. 871) reads as follows:

SEC. 2. That nothing herein contained is intended or shall be held or construed to increase, diminish, or affect the rights of States under grants other than for the support of common or public schools by numbered school sections in place, and this Act shall not apply to indemnity or lieu selections or exchanges or the right hereafter to select indemnity for numbered school sections in place lost to the State under the provisions of this or other Acts, and all existing laws governing such grants and indemnity or lieu selections and exchanges are hereby continued in full force and effect.

(b) The only grants affected in any way by the provisions of the act of January 25, 1927, are those of numbered sections of land in place made to the States for the support of common or public schools. The adjudication of claims to land asserted under other grants, for indemnity or lieu lands and exchanges of lands, will proceed as theretofore, being governed by the provisions of existing laws applicable thereto. The States will be afforded full opportunity, however, if the facts and conditions are such as to authorize such action, either to assign new base in support of or to withdraw pending unapproved indemnity school land selections in support of which mineral school-section lands have been tendered as base.

§ 270.29 *Grant of mineral school sections effective upon restoration of land from reservation.* (a) By the act of January 25, 1927 (44 Stat. 1026; 43 U. S. C. 870, 871), which grants to the States certain school-section lands that are mineral in character, it is provided by subsection (c) of section 1 that where such lands are embraced within an existing reservation at the date of said act of 1927, they are thereby excluded from the grant made by said act.

(b) Under the amendatory act of May 2, 1932 (47 Stat. 140; 43 U. S. C. 870), it is provided that in the event of the restoration of the lands from such reservation, the grant to the State of such mineral school-section lands will thereupon become effective.

(c) Adjudications in connection with the State's title to school sections will be governed by the provisions of this amendatory act of May 2, 1932.

PATENTS FOR GRANTED SCHOOL SECTIONS

§ 270.30 *Statutory authority.* The act approved June 21, 1934 (48 Stat. 1185; 43 U. S. C. 871a) provides for the issuance of patent, upon application by a State for the numbered school sections in place granted for the support of common schools.

§ 270.31 *Purpose of law; application for patent.* (a) The purpose of the act of June 21, 1934, is to provide the States, upon application, with evidence of title to the designated school-section lands granted by the Enabling Acts, by the act of January 25, 1927 (44 Stat. 1026; 43 U. S. C. 870, 871), and by any other act of Congress. The words "and by any other act of Congress" are construed to embrace any grant or grants of numbered school sections in place made to any of the public-land States.

(b) There will be no filing or conveyance fees required on the part of the States in connection with the patenting of school sections in place under this act.

(c) The act places no limitation upon the areas which may be applied for under one application. No fixed rule is necessary in regard to the area which may be included in any one patent. This matter will be handled in such manner as will permit the best results from an administrative standpoint.

(d) Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 270.32 *Publication of notice; protests.* An applicant for patent under the act of June 21, 1934, will be required to publish notice of its application, at its own expense, in a daily, weekly, or semi-weekly paper, published in the vicinity of the land, once each week for five consecutive weeks, and to furnish proof thereof by a statement of the publisher or foreman of the newspaper employed. Notices for publication will be prepared by the manager and will be transmitted to the proper State official for publication in the paper designated. Where publication is made in a daily paper, the

notice should appear in the Wednesday issue for five consecutive weeks; if in a semiweekly paper, in either issue for five consecutive weeks. The notice should require persons asserting claims to any of the lands advertised to file protest or notice of their claims in the land office within 30 days from the date of last publication, in order to receive proper consideration before the issuance of a patent.

§ 270.33 *Date title vested in the State; conditions or limitations to be made in patent; hearings.* (a) Determination of the date when title vested in the State and of "prior conditions, limitations, easements, or rights, if any," to which the land is subject, will be ascertained from the records in the Bureau of Land Management and in the Geological Survey, and appropriate mention of such facts made in the patent.

(b) Should hearings be ordered the costs will be assessed between the parties thereto in the manner provided by the Rules of Practice, Part 221 of this chapter. Orders authorizing the issuance of patents for school sections under the act of June 21, 1934, will be signed by the Director of the Bureau of Land Management.

EXCHANGES OF LANDS SELECTED BY THE STATE OF CALIFORNIA UNDER ACT OF JUNE 29, 1936 (49 STAT. 2026)

§ 270.38 *Exchanges by the State with individuals after acquiring title; joint application and deeds of conveyance; certificates of non-encumbrance.* (a) Under the provisions of the act of June 29, 1936 (49 Stat. 2026), the State of California, with the approval of the Director, Bureau of Land Management, and under rules prescribed by the Secretary, may exchange lands patented under this act with a reservation of minerals to the United States, for privately owned lands within the area described of approximately equal value, containing the natural features sought to be preserved by the act. The lands to be acquired by the State through such exchange will be subject to the same conditions and reservations prescribed by said act, including the reversionary clause.

(b) A proposal for an exchange desired to be made by the State in accordance with these provisions of the act must be submitted to the Bureau of Land Management for consideration. Such a proposal for exchange should be filed in the appropriate land office together with a statement by the agent of the State showing that the lands patented to the State under said act and those desired to be acquired by the State in exchange, are of approximately equal value, and that the tracts to be acquired contain characteristic desert growth and scenic or other natural features desired to be preserved as a part of the California State park system.

(c) The proposal for exchange should be in the form of a joint application signed by the proper State official and by the owner of the land which the State desires to acquire in exchange, definitely describing by legal subdivisions of the Government surveys the lands relinquished by the State and those desired by the State in exchange therefor. Such joint application should be accompanied with a deed or reconveyance to the United States of the tract patented to the State under the act of June 29, 1936 (49 Stat. 2026), and with a deed of conveyance to the United States from the owner of the tract desired by the State in exchange, such deeds to be duly executed in accordance with the laws of the State, and both deeds to be unrecorded. There should also be filed a certificate by the proper State officer and a certificate by the county recorder showing no encumbrances of the land reconveyed by the State to the United States.

§ 270.39 *Abstract of title.* There must be filed a duly authenticated abstract of title to the tract conveyed to the United States and desired by the State in exchange, showing title to such land in the party conveying to the United States. The certificate of authentication of the abstract must be signed by the recorder of deeds under his official seal and must show that the title memorandum is a full, true, and complete abstract of all matters of record or on file in his office, including conveyances, mortgages, or other encumbrances. The custodian of tax records must certify that all taxes levied or assessed against the land or that could operate as a lien thereon, have been paid in full, and that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of his office. The absence of judgment liens or pending suits against the grantor, which might affect the title to the land, must be shown by the official certificates of the clerks of the courts of record whose judgments under the laws of the United States or of the State constitute a lien on the land conveyed. Such abstract may be authenticated by an abstractor or obstract company satisfactory to the Bureau of Land Management, as provided in § 211.1 of this chapter.

§ 270.40 *Reports as to values of lands involved in exchange; fees and publication not required.* (a) A report will be made by the Bureau of Land Management as to the comparative values of the lands involved, those relinquished by the State and those desired by the State in lieu thereof and a report will be requested by the Bureau of Land Management from the National Park Service as to the value for park purposes of the lands desired by the State.

(b) Publication of notice of the proposed exchange will not be required and payment of fees will not be required in connection therewith.

§ 270.41 *Deeds to be returned for recording and abstract for completion; patents.* (a) If all be regular and the reports be satisfactory, the proposed exchange will be approved. Upon the approval of the exchange the deeds of conveyance will be returned for recording and the abstract of title to be brought down to show such recordation.

(b) Upon the receipt in the Bureau of Land Management of the recorded deeds, a patent will be issued to the State for the tract desired in exchange, such patent to contain the mineral reservation and the forfeiture provision prescribed by the act of June 29, 1936 (49 Stat. 2026), and as contained in the patent issued to the State for the lands originally selected. A patent also will be issued to the party exchanging with the State for the tract reconveyed by the State to the United States.

PART 271—SWAMP-LAND GRANTS

Sec.
271.1 Selection and patenting of swamp lands.
271.2 Applications in conflict with swamp-land claims.

NOTE: Circular dated Mar. 17, 1896, containing the swamp-land laws and regulations, states:

"As soon as practicable after the passage of the swamp-land grant of September 28, 1850, viz, on the 21st of November, 1850, the commissioner transmitted to the governors of the respective States to which the grant applied copies of office circular setting forth the provisions of said Act, giving instructions thereunder, and allowing the States to elect which of two methods they would adopt for the purpose of designating the swamp lands, viz:

1. The field notes of Government survey could be taken as the basis for selections, and all lands shown by them to be swamp or overflowed, within the meaning of the act, which were otherwise vacant and unappropriated September 28, 1850, would pass to the States.

2. The States could select the lands by their own agents and report the same to the United States surveyor general with proof as to the character of the same.

The following States elected to make the field notes of survey the basis for determining what lands passed to them under the grant, viz: Louisiana, Michigan, and Wisconsin. Later the State of Minnesota adopted this method of settlement.

The authorities of the following States elected to make their selections by their own agents and present proof that the lands selected were of the character contemplated by the swamp grant, viz: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Misasissippi, Missouri, and Ohio. Later Oregon adopted this method.

The States of Alabama, Arkansas, Indiana, Mississippi, and Ohio adopted the second method at the beginning, but they changed to the first method, i. e., to the field notes of survey, as a basis of settlement, in recent years.

The authorities of California did not adopt either method, and the passage of the Act of July 23, 1866, rendered such action on their part unnecessary.

In Louisiana the selections under the grant of March 2, 1849, forming the bulk of the selections in said State, are made in accordance with the terms of said act by deputy surveyors, under the direction of the United States surveyor general, at the expense of the State."

The grant of swamp lands, under acts of March 2, 1849, and September 28, 1850, is a grant in presenti. See United States Supreme Court decisions Railroad Co. v. Fremont County (9 Wall. 89, 19 L. ed. 563); Railroad Co. v. Smith (id. 95, 19 L. ed. 599); Martin v. Marks (7 Otto 345, 24 L. ed. 940); decisions of the Secretary of the Interior, December 23, 1851 (1 Lester's L. L. 549), April 25, 1862, and opinion of Attorney General, November 10, 1858 (1 Lester's L. L. 564).

The act of September 28, 1850, did not grant swamp and overflowed lands to States admitted into the Union after its passage. See decision of Secretary of the Interior, August 17, 1858; Commissioner, General Land Office, May 2, 1871 (Copp's L. L. 474), affirmed by Secretary June 1, 1871, and Commissioner, General Land Office, January 19, 1874 (Copp's L. L. 473), affirmed by Secretary July 9, 1875.

A State having elected to take swamp land by field notes and plats of survey is bound by them, as is also the Government. See

Secretary's decisions, October 4, 1855 (1 Lester's L. L. 553), August 1, 1859 (id. 571), December 4, 1877 (4 Copp's L. L. 149), and September 19, 1879.

The Swamp-Land Acts do not contain any exception or reservation of mineral lands and none is to be implied, since at the time of their enactment the public policy of withholding mineral lands for disposition only under laws including them, was not established. Work, Secretary of the Interior, v. Louisiana (269 U. S. 250, 70 L. ed. 259).

§ 271.1 *Selection and patenting of swamp lands.* (a) All lands properly selected and reported to the Bureau of Land Management as swamp will be compared with the records of the said office, and lists of such lands as are shown to be swamp or overflowed, within the meaning of the acts of March 2, 1849, and September 28, 1850 (9 Stat. 352, 519), and that are otherwise free from conflict will be made out by such office and approved.

(b) When the lists have been approved a copy of each list will be transmitted to the governor of the State, with the statement that on receipt of his request patent will issue to the State for the lands. A copy of each list also will be transmitted to the manager of the land office for the district in which the lands are situated, and he will be requested to examine the same with the records of his office and report any conflicts found.

(c) Upon receipt of a request from the governor for patent, and a report from the manager as to status, patents will issue to the State for all the lands embraced in said lists so far as they are free from conflict.

(d) Under the provisions of the act of March 2, 1849, granting swamp lands to the State of Louisiana, a certified copy of the list approved by the Director, transmitted to the Governor, has the force and effect of a patent.

(R. S. 2478; 43 U. S. C. 1201)

CROSS REFERENCE: For patents, in general, see Part 108 of this chapter.

§ 271.2 *Applications in conflict with swamp-land claims.* Applications adverse to the State, in conflict with swamp-land claims, will be governed by the following rules:

(a) In those States where the adjudication of swamp-land claims is based on the evidence contained in the survey returns, applications adverse to the State for lands returned as swamp will be rejected unless accompanied by a showing that the land is non-swamp in character.

(b) In such case, the claim adverse to the State must be supported by a statement of the applicant under oath, corroborated by two witnesses, setting forth the basis of the claim and that at the date of the swamp-land grant the land was not swamp and overflowed and not rendered thereby unfit for cultivation. In the absence of such affidavit the application will be rejected. If properly supported, the application will be received and suspended subject to a hearing to determine the swamp or non-swamp character of the land, the burden of proof being upon the non-swamp claimant.

(c) In those States where the survey returns are not made the basis for adjudication of the swamp-land selections, junior applications for lands covered by swamp-land selections may be received and suspended, if supported by non-swamp affidavits corroborated by two witnesses, subject to hearing to determine the character of the land, whether swamp or non-swamp, and the burden of proof will be upon the junior applicant. Likewise, the State, if a junior applicant, may be heard upon furnishing an affidavit corroborated by two witnesses alleging that the land is swamp in character within the meaning of the swamp-land grant, in which case the burden of proof at the hearing will be upon the State.

(d) Where hearings are ordered in any such cases, the Rules of Practice governing contests will be applied, except as herein otherwise provided.

(R. S. 2478; 43 U. S. C. 1201)

CROSS REFERENCE: For Rules of Practice governing contests, see Part 221 of this chapter.

PART 272—CAREY ACT GRANTS

GRANTS TO STATES FOR IRRIGATION UNDER STATE SUPERVISION

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272.28 Status of lands.

PREFERENCE RIGHT OF ENTRY ON RESTORATION OF SEGREGATED CAREY ACT LANDS

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GRANTS TO STATES FOR IRRIGATION UNDER STATE SUPERVISION [1]

AUTHORITY: §§ 272.1 to 272.17 issued under sec. 4, 28 Stat. 422, as amended; 43 U. S. C. 641.

§ 272.1 *Statutory authority.* Under the provisions of section 4 of the act of August 18, 1894 (28 Stat. 422; 43 U. S. C. 641), known as the Carey Act, as amended and supplemented [2] the States are allowed 10 years from the date of the approval by the Director of an application for segregation of the lands in which to irrigate and reclaim the lands. The Director may, however, in his discretion extend the time for a period of 5 years. The Director may, in his discretion, restore to the public domain any lands not irrigated and reclaimed at the end of the 10 year period or any exten-

[1] For Forms 1 to 8, inclusive, referred to under §§ 272.1 to 272.18, see 37 L. D. 632-638.

[2] Carey Act statutes:

Section 4 of the act of August 18, 1894 (28 Stat. 422; 43 U. S. C. 641), known as the Carey Act, authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to patent to States, in which there are desert lands, not to exceed 1,000,000 acres of such lands to each State, under the conditions specified in the act. The lands selected by the several States are segregated from the public domain for a period of 10 years, the States undertaking within that time to cause an adequate irrigation system to be constructed and a sufficient water supply to be made available in a substantial ditch for the reclamation of the lands by irrigation. The lands when patented are disposed of by the States to actual settlers.

The act of June 11, 1896 (29 Stat. 434; 43 U. S. C. 642), authorizes a lien on the land for the cost of construction of the irrigation works and permits the issuance of patent without actual cultivation of the land.

Section 3 of the act of March 3, 1901 (31 Stat. 1188; 43 U. S. C. 641), authorizes an extension of the period of segregation for not exceeding 5 years.

The act of March 1, 1907 (34 Stat. 1056), extends the provisions of the law to the former Southern Ute Indian Reservation in Colorado.

The Joint Resolution approved May 25, 1908 (35 Stat. 577), grants to the State of Idaho an additional 1,000,000 acres.

The act of May 27, 1908 (35 Stat. 347; 43 U. S. C. 645), grants to the State of Idaho an additional 1,000,000 acres, and to the State of Wyoming an additional 1,000,000 acres.

The act of February 18, 1909 (35 Stat. 638; 43 U. S. C. 646), extends the provisions of the Carey Act to the States of Arizona and New Mexico.

The act of February 24, 1909 (35 Stat. 644; 43 U. S. C. 647), extends the provisions of the Carey Act to the former Ute Indian Reservation in Colorado.

The act of March 15, 1910 (36 Stat. 237; 43 U. S. C. 643), authorizes a temporary withdrawal for one year of lands, which the State may propose to select with a view to enabling the State to examine the lands and plan the method of reclamation.

The act of February 16, 1911 (36 Stat. 913), extends the Carey Act to the former Ft. Bridger Military Reservation in Wyoming.

The act of February 21, 1911 (36 Stat. 925; 43 U. S. C. 523-525), permits the sale of

sion thereof. If actual construction of the reclamation works has not been commenced within 3 years after the segregation of the land or within such further period not exceeding 3 years as may be allowed for that purpose by the Director, the Director may, in his discretion restore the lands to the public domain.

§ 272.2 *Character of land subject to selection.* (a) The lands selected must all be desert lands as defined by the acts of March 3, 1877 (19 Stat. 377; 43 U. S. C. 321–323) as amended by section 2 of the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 321, 323, 325, 327–329), and the decisions and regulations of the Department of the Interior therein provided for.

(b) Lands which produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

(c) Lands occupied by bona fide settlers, and lands containing valuable minerals, except as stated in § 272.12, are not subject to selection.

§ 272.3 *Map required exhibiting plan of irrigation.* Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Director, Bureau of Land Management, the State shall file a map of the land selected and proposed to be irrigated, which shall exhibit a plan showing the mode of contemplated irrigation and the source of the water. In accordance with the requirements of section 4 of the act of August 18, 1894 (28 Stat. 422; 43 U. S. C. 641), the State must give full data to show that the proposed plan will be sufficient to thoroughly irrigate and reclaim the land and prepare it to raise ordinary agricultural crops, for which purpose a statement by the State engineer of the amount of water available for the plan of irrigation will be necessary. The other data required can not be fully prescribed, as it will depend upon the nature of the plan submitted. All information necessary to enable the Bureau of Land Management to judge of its practicability for irrigating all the land selected must be submitted. Upon the filing of the map showing the plan of irrigation, and the lands selected, such lands will be withheld from other disposition until final action is had thereon by the Director, Bureau of Land Management. If such final action be a disapproval of the map and plan, the lands selected shall, without further order, be subject to application as if such reservation had never been made; and the managers will make the appropriate notations on the tract books and plat books, opposite those previously made, in accordance with the requirements of § 272.7.

§ 272.4 *Information on map.* The map must be on tracing linen, in duplicate, and must be drawn to a scale not greater than 1,000 feet to 1 inch. A smaller scale is desirable, if the necessary information can be clearly shown. The map and field notes in duplicate must be filed in the land office for the district in which the land is located. If the lands selected are located in more than one district, duplicate map and field notes need be filed in but one district and single sets in the others. Each legal subdivision of the land selected should be clearly indicated on the map by a check mark, thus: √. The map and field notes must show the connections of termini of a canal or of the initial point of a reservoir with public survey corners, the connections with public survey corners wherever section or township lines are crossed by the proposed irrigation works, and must show full data to admit of retracing the lines of the survey of the irrigation works on the ground.

§ 272.5 *List of selected lands to accompany map.* The map should bear a statement of the engineer who made or supervised the preparation of the map and plan, Form 1,[2] and also of the officer authorized by the State to make its selections under the act, Form 2. The map should be accompanied by a list in triplicate of the lands selected, designated by legal subdivisions, properly summed up at the foot of each page, and at the end of the list. If the lands selected are located in more than one district, a list in triplicate must be filed in each office, describing the lands selected in that district. Clear carbon copies are preferred for the duplicate and triplicate lists. The lists should be dated and verified by a certificate of the selecting agent, Form 3. The party appearing as agent of the State must file with the manager written and satisfactory evidence, under seal, of his authority to act in the premises; such evidence once filed need not be duplicated during the period for which the agent was appointed. The State should number the lists in consecutive order, beginning with No. 1, regardless of the land office in which they are to be filed. Form of title page to be prefixed to the lists of selections will be found marked "A." Lists received at the Bureau of Land Management containing erasures will not be filed, but will be returned in order that new ones may be prepared. When a township has not been subdivided, but has had its exteriors surveyed, the whole township may be designated, omitting however, the sections to which the State may be entitled under its grant of school lands. When the records are in such condition that the proper notations may be made, a section or part of a section of unsurveyed land may be designated in the list; but no patent can issue thereon until the land has been surveyed.

§ 272.6 *Contract to be filed.* A contract in the form prescribed (Form 5) in duplicate, signed by the State officer authorized to execute such contract, must also be filed. A carbon copy of the contract will not be accepted. The person who executes the contract on behalf of the State must furnish evidence of his authority to do so.

§ 272.7 *Action by the manager.* For rejected selections a new list will be required, upon which the manager will note opposite each tract the objections appearing on the records and endorse thereon his reasons in full for refusing to certify the same. The State will be allowed to appeal in the manner provided for in the Rules of Practice, Part 221 of this chapter. It is required that clear lists of approvals shall in every case be made out by the selecting agents, if after the above examination one or more tracts have been rejected, showing clearly and without erasure the tracts to which the manager is prepared to certify. On the map of lands selected the manager will mark rejected such tracts as he has rejected on the lists.

§ 272.8 *Rights-of-way over public lands not selected by State.* When the canals or reservoirs required by the plan of irrigation cross public land not selected by the State, an application for right-of-way over such lands under sections 18 to 21, act of March 3, 1891 (26 Stat. 1101, 1102; 43 U. S. C. 946–949), should be filed separately, in accordance with the regulations under said act.

CROSS REFERENCE: For regulations concerning applications for rights-of-way under act of March 3, 1891, see §§ 244.14–244.21 of this chapter.

§ 272.9 *Lands reserved upon approval of map.* In the preceding sections instructions are given for the designation of the lands by the proper State authorities. Upon the approval of the map of the lands and the plan of irrigation, the contract is executed by the Secretary of the Interior, or an officer authorized by him and approved by the President. Upon the approval of the map and plan, the lands are reserved for the purposes of the act, said reservation dating from the date of the filing of the map and plan in the land office. A copy of the list is forwarded to the State authorities.

§ 272.10 *List for patent required.* When patents are desired for any lands that have been segregated, the State should file in the land office a list, to which is prefixed a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law (Form 6), followed by a state-

surplus water by the United States Bureau of Reclamation for use upon Carey Act lands.

The act of March 4, 1911 (36 Stat. 1417; 43 U. S. C. 645), grants the State of Nevada an additional 1,000,000 acres.

The Joint Resolution of August 21, 1911 (37 Stat. 38; 43 U. S. C. 645), grants the State of Colorado an additional 1,000,000 acres.

The act of February 14, 1920 (41 Stat. 407; 43 U. S. C. 644), relates to preference rights of State Carey Act entrymen upon lands restored to the public domain from Carey Act segregations.

The act of January 6, 1921 (41 Stat. 1085; 43 U. S. C. 641), further amends the Carey Act by limiting the time within which the work of reclamation must be commenced.

[2] For Forms 1 to 8, referred to in §§ 272.1 to 272.17, see 37 L. D. 632 to 638.

ment of the State engineer, or other State officer whose duty it may be to superintend the reclamation of the lands (Form 7).

§ 272.11 *Certificate required of the State officer.* The certificate of the presiding officer of the State land board, Form 6, is required in order to show that the State laws accepting the grant of the lands have been duly complied with.

§ 272.12 *Proof of water supply and construction; minerals.* (a) The statement of the State engineer or other officer, Form 7, is required in order to show compliance with the provisions of the law, that an ample supply of water has been actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, for each tract in the list, sufficiently to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops. A separate statement by the State engineer must be furnished, giving all the facts as to the water supply and the nature, location, and completion of the irrigation works.

(b) If there are some high points which it is not practicable to irrigate, the nature, extent, location, and area of such points should be fully stated. If no part of a legal subdivision is susceptible of irrigation, such legal subdivision must be relinquished. The lands patented to the State must be nonmineral in character, or, if mineral, they must be subject to disposal with a reservation of the mineral deposits, and must be patented with such reservation, as explained in Part 102 of this chapter.

§ 272.13 *Lists for patent to be numbered.* These lists will be called "lists for patent," and should be numbered by the State consecutively, beginning with No. 1. The list should also show, opposite each tract, the number of the approved segregation list in which it appears. The aggregate area should be stated at the foot of each page and at the end of the list.

§ 272.14 *Publication and posting of notice.* When a list for patent is filed in the land office there shall also be filed by the State a notice, in duplicate, prepared for the signature of the manager, describing the land by sections, and portions of sections, where less than a section is designated (Form 8). This notice shall be published at the expense of the State once a week in each of five consecutive weeks, in a newspaper of established character and general circulation, to be designated by the manager as published nearest the land, as provided in § 106.14 of this chapter.

§ 272.15 *Proof of publication.* At the expiration of the period of publication the State shall file in the land office proof of publication and of payment for the same.

§ 272.16 *Price for Indian lands.* Before patents are issued for lands within the former Southern Ute and the Ute Indian Reservations in Colorado, the State will be required to pay the price of $1.25 per acre. The State will be advised of the number of acres which will be included in the patent and payment shall be made to the manager of the proper land office, who will issue a receipt as in other cases. The money will be accounted for in the same manner as other moneys received from the disposal of such lands.

§ 272.17 *Certification for approval and patent.* Upon the receipt of the papers in the Bureau of Land Management such action will be taken in each case as the showing may require, and all tracts that are free from valid protest, and respecting which the law and regulations have been complied with, will be patented.

EXTENSIONS OF SEGREGATIONS

§ 272.18 *Applications for extensions.* All applications for extensions of time to commence construction of the reclamation works, or to irrigate and reclaim the lands, as outlined in § 272.1, must be submitted to the Bureau of Land Management. Such applications will be entertained only upon the showing of the happening of some event preventing compliance by the State with the requirements within the time allowed, which could not have been reasonably anticipated or guarded against, such as the destruction of irrigation works by storms, floods, or other unavoidable casualties, unforseen structural or physical difficulties encountered in the operations, or errors in surveying and locating needed ditches or canals.

(Sec. 4, 28 Stat. 422, as amended; 43 U. S. C. 641)

TEMPORARY WITHDRAWALS

AUTHORITY: §§ 272.19 to 272.27 issued under sec. 4, 28 Stat. 422, as amended; 43 U. S. C. 641.

§ 272.19 *Statutory authority.* (a) Under the provisions of the amendatory act of March 15, 1910 (36 Stat. 237; 43 U. S. C. 643), public lands of the United States may be temporarily withdrawn upon proper application by a beneficiary State in order that proper surveys may be prepared and investigation made preliminary to the filing of application by such State for the segregation of such lands under the Carey Act.

(b) If such application is not filed within 1 year from the date of withdrawal, the lands so withdrawn will, as directed by the act, be immediately restored from such withdrawal.

(c) No provision is made for the extension of such a temporary withdrawal.

§ 272.20 *Applications for withdrawal.* (a) To obtain the benefits of the amendatory act of March 15, 1910, the State, through its proper official, will be required to file in the land office in the land district within which the lands sought to be withdrawn lie, an application therefor, which shall set forth the name of the individual or corporation proposing to reclaim the lands; that all of the forms and conditions imposed by the State law upon such proposer prior to segregation have been complied with; that from the showing made by the proposer (or state other source of information) it is believed that sufficient water to irrigate the whole of the lands asked to be withdrawn, over and above prior appropriations, is available; and that the proposer has either acquired title to such water or applied for the same, and that the lands are desert in character.

(b) Appended to the application should be a list of the lands asked to be withdrawn. If the lands are unsurveyed, the fact should be set forth, together with a statement that an application for the survey thereof has been filed in the office of the area cadastral engineer for the district in which the lands are situated.

§ 272.21 *Statement supporting application.* (a) Accompanying each application for withdrawal should be filed a statement, based upon personal examination, that the lands sought to be withdrawn are desert in character, as contemplated by the Carey Act, and are nonmineral. The application for withdrawal, however, may include lands which are subject to selection by the State with a reservation of the mineral deposits, as explained in Part 102 of this chapter.

(b) The required statement should be made either by the proposer, his or its engineer, or by the State engineer, or one of his assistants.

§ 272.22 *Land in more than one land district.* Where the lands sought to be withdrawn are situated in more than one land district, a list must be filed in each district, describing the lands in that district.

§ 272.23 *Action of manager.* Upon the filing of such application the manager will at once note the same upon his records, and will thereafter reject all applications to enter, purchase, or select any of such lands, excepting when settlement or application to enter, purchase, or select prior to the date of filing of the State's application is alleged or disclosed of record.

§ 272.24 *Commencement of survey of proposed irrigation system.* (a) Within 3 months after the date of filing the application for withdrawal in the local office the State must file a corroborated statement by the proposer, his or its engineer, or the State engineer that the work of surveying and laying out the proposed irrigation system has been actually commenced in the field and is being energetically prosecuted. This statement should show the work accomplished and the result.

(b) In default of such showing by the State, the withdrawal will be promptly revoked.

§ 272.25 *Restoration of withdrawn tracts not susceptible of irrigation.* In the event that any of the tracts withdrawn are found to be above the proposed irrigation works, or for any other reason not susceptible of irrigation, the fact and description of the nonreclaimable land by smallest legal subdivisions should be at once communicated to the Bureau of Land Management, that they may be relieved from the withdrawal.

§ 272.26 *Causes for revocation of withdrawal.* If at any time after withdrawal it is shown that the State is not energetically prosecuting the investigation and survey of the lands, that the same are not reclaimable by the proposed system of reclamation, are not desert in character, or for any reason are not

subject to the provisions of the Carey Act, or that the proposer is not proceeding in good faith, the withdrawal will be at once revoked.

§ 272.27 *Notations of withdrawals and restoration procedure.* The one year mentioned in the act as the period of withdrawal will commence on the date of approval of the application by the Bureau of Land Management.

LANDS APPLIED FOR, SEGREGATED OR WITHDRAWN

§ 272.28 *Status of lands.* Lands embraced in pending applications filed by States under the act of August 18, 1894 (28 Stat. 422; 43 U. S. C. 641), and described in accompanying maps and plans of irrigation; lands withdrawn under the act of March 15, 1910 (36 Stat. 237; 43 U. S. C. 643); and lands covered by approved segregations under the said act of August 18, 1894, are not subject to settlement, application, entry, or other filings while reserved, withdrawn, or segregated, and applications to file, select, or enter shall be rejected by the manager.

(Sec. 4, 28 Stat. 422, as amended; 43 U. S. C. 641)

PREFERENCE RIGHT OF ENTRY ON RESTORATION OF SEGREGATED CAREY ACT LANDS

AUTHORITY: §§ 272.29 to 272.37 issued under 41 Stat. 407; 43 U. S. C. 644.

§ 272.29 *Statutory authority.* The act approved February 14, 1920 (41 Stat. 407; 43 U. S. C. 644), provides that on the restoration of segregated Carey Act lands, entrymen of such lands under the State laws may be accorded a preference right of entry under applicable land laws.

§ 272.30 *Director to ascertain status of lands under State laws.* Prior to the restoration to entry of lands theretofore segregated under the Carey Act, the Bureau will take steps to ascertain from the proper State officers whether any entries have been allowed under the State law for any of the segregated lands, which are to be restored, and if any such entries have been allowed, the status thereof and action taken by the State with reference thereto.

§ 272.31 *Restoration when there are no entries under the State laws.* If it is shown with reasonable certainty, either from the report of the State officers or by other available information, that there are no entries under the State law on the basis of which a claim to preference right of entry might be asserted and maintained, then the act of February 14, 1920, may be disregarded in the restoration of the lands to entry.

§ 272.32 *Restoration when there are entries under State laws.* If it appears from the report of the State officers or otherwise that there are entries under the State law which may properly be the basis of preference right under this act, in the order restoring the lands, the authorized officer will make suitable provision for the filing of applications to enter or select of the same as if such preference-right under the act of February 14, 1920 (41 Stat. 407; 43 U. S. C. 644).

CROSS REFERENCE: For preference rights accorded for service in World War II, see §§ 181.44–181.46 of this chapter.

§ 272.33 *Conflicting applications.* In case the preference-right claim is allowed, any conflicting applications will be rejected as to the land embraced in the allowed preference claim; in case the preference-right claim is rejected, conflicting applications will then be disposed of the same as if such preference-right claim had not been filed.

§ 272.34 *Persons entitled to preference right.* The act of February 14, 1920, applies only to cases of entries in good faith in compliance with the requirements of the State law, with a view to reclaiming the land and procuring title pursuant to the provisions of the Carey Act; the act does not apply to cases where persons have settled on or improved the segregated land, either with the approval of the State authorities or otherwise, not pursuant to the State laws or not in anticipation of reclaiming the lands and procuring title under the Carey Act, but for the purpose of initiating some kind of a claim to the land on its restoration because of failure of the project or cancellation of the segregation.

§ 272.35 *Persons not entitled to preference right.* The act of February 14, 1920, does not apply to cases where the State entry has been canceled or forfeited for default on the part of the State entryman in carrying out his part of the contract, unless such default on the part of the State entryman as the result of conditions which culminated in the elimination of the lands from the project; the allowance of a subsequent entry for the same land by the State would be presumptive that the default was the fault of the State entryman whose entry was forfeited or canceled.

§ 272.36 *Carey Act preference right superior to soldiers' preference rights.* Any rights to which a claimant may be entitled under the act of February 14, 1920 (41 Stat. 407; 43 U. S. C. 644), are not affected by the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 282), as amended, giving preference rights to ex-service men, for by the terms of the act rights thereunder are made subject to "prior existing valid settlement rights and preference rights conferred by existing laws or as against equitable claims subject to allowance and confirmation"; rights under the act of February 14, 1920, are considered to be within the class described by the language quoted.

CROSS REFERENCE: For preference rights accorded for service in World War II, see §§ 181.44–181.46 of this chapter.

§ 272.37 *Adjudication of preference-right applications.* Applications to enter or select under applicable public land laws in the exercise of the preference rights granted by this act of February 14, 1920, will be considered and adjudicated the same as other applications under such laws, except as otherwise provided in the act of February 14, 1920; that is to say, each applicant must be qualified under the law under which he seeks to make entry or selection, and he must fully comply with such law in order to secure patent, with the single exception that one who exercises his preference right by making entry under the homestead law "shall be entitled to a credit, as residence upon his new homestead entry allowed hereunder, of the time he has actually lived upon the claim as a bona fide resident thereof."

PART 273—RAILROAD GRANTS, ETC.

ADJUSTMENT OF RAILROAD GRANTS

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ISSUANCE OF PATENTS FOR LANDS SOLD TO INNOCENT PURCHASERS FOR VALUE BY CERTAIN RAILROAD CARRIERS

273.68 Statutory authority.
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AUTHORITY: §§273.4 to 273.73 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For patents, in general, see Part 108 of this chapter. For relinquishments, cancellations, and reinstatements, see Part 105 of this chapter. For rights-of-way for railroads and station grounds, see Part 243 of this chapter. For Rules of Practice, see Part 221 of this chapter. For surveys, in general, see Part 280 of this chapter.

ADJUSTMENT OF RAILROAD GRANTS

§ 273.4 (1) *Lands erroneously patented or certified to a railroad company.* (a) (1) The fourth section of the act of March 3, 1887 (24 Stat. 557; 43 U. S. C. 897) relates to all lands which have been erroneously certified or patented on account of railroad grants, except those mentioned in the third section, and by the grantee company sold to citizens or to persons who have declared their intention to become citizens of the United States; and provides that after the title to such lands has been restored to the United States as contemplated by the second section of the act, persons who have purchased such land in good faith, their heirs or assigns, shall be entitled to the lands upon making proof at the proper land office, whereupon patents

shall issue relating back to the date of the original certification or patenting, and the grantee company will be required to pay the United States for such lands at the price at which other similar lands are legally held by the Government.

(2) The purchaser from the company is not debarred by the act from recovering from the company the amount of purchase money paid by him less the amount paid by the company to the United States for the land.

(3) A mortgage or pledge of such lands is not a sale within the intention of the act.

(4) No forfeiture is declared by this act against any land grants for conditions broken (and no entry is authorized for lands legally within such grant), but no rights of the United States on account of breach of conditions are waived by the act.

(b) An applicant for land under this section will be required to publish notice of intention to make proof as in homestead cases, and the proof must show:

(1) That he is, or has declared his intention to become, a citizen of the United States.

(2) That he is a bona fide purchaser from the company or some person claiming title under it, and the character of the instrument conveying the land to him.

(3) The amount of purchase money paid to the company.

(4) What part, if any, of the purchase money paid to the company has been refunded to him or any person acting as his agent.

(5) Whether he has instituted proceedings against the company for the recovery of any portion of the purchase money; if so, for what portion.

(6) The value and character of the improvements, if any, made or acquired by him upon the land.

(7) Whether there is any person of the first class under the third section of the act entitled to the right of entry under the homestead laws.

(c) Upon the submission of satisfactory proof as prescribed in paragraph (b) (1) to (7) of this section the manager will issue certificate, in duplicate, numbered in the regular cash series with annotations thereon showing that the entry is allowed without payment under the fourth section of the act of March 3, 1887 (24 Stat. 557; 43 U. S. C. 897).

CROSS REFERENCE: For regulations concerning publication of proof notices, see § 106.18 of this chapter.

§ 273.5 *Bona fide purchasers from railroads of lands excepted from grant may purchase Government title.* (a) (1) The fifth section of the act of March 3, 1887 (24 Stat. 557; 43 U. S. C. 898), relates to lands within the limits of railroad grants, co-terminus with constructed portions of the lines of road, not conveyed on account of, but excepted from, the grants.

(2) Under this section, when the company has sold to citizens of the United States or persons who have declared their intention to become such citizens, the numbered sections prescribed in the grant and co-terminus with the constructed portions of the road, within either the granted or indemnity limits, and which upon the adjustment of the grant are shown to be excepted from the operation of the grant, it shall be lawful for such purchasers (if their purchases are bona fide) to purchase said land from the Government by payment of the Government price for like lands, unless said lands were at the date of purchase in the bona fide occupancy of adverse claimants under the preemption or homestead laws, in which case the preemptor or homestead claimant may be permitted to perfect his proof unless he has since voluntarily abandoned the land.

(3) Under the last proviso of said section, however, if a settlement was made on said lands subsequent to December 1, 1882, by persons claiming the same under the settlement laws of the United States, it will defeat the right of the purchaser, whether said purchase was made prior or subsequent to December 1, 1882, and the settler will be allowed to prove up for said lands as in other like cases.

(b) Applicants to purchase under this section will be required to publish notice of intention as directed by instructions under the third and fourth sections, and the proof must show:

(1) That the tract was of the numbered sections prescribed by the grant.

(2) That it was co-terminous with constructed parts of said road.

(3) That it was sold by the company to the applicant, or one under whom he claims, as a part of its grant.

(4) That it was excepted from the operation of the grant.

(5) That at the date of said sale it was not in the bona fide occupancy of adverse claimants under the preemption or homestead laws, whose claims and occupancy have not since been voluntarily abandoned.

(6) That it has not been settled upon subsequent to the 1st day of December, 1882, by any person or persons claiming the right to enter the same under the settlement laws.

(7) That the applicant is, or has declared his intention to become, a citizen of the United States.

(8) And that he, or one under whom he claims, was a bona fide purchaser of the land from the company.

(c) The proof upon the points as outlined in paragraph (b) of this section, being found satisfactory, the entry will be allowed and the usual cash certificate and receipts will be issued thereon reciting the fact that the entry is in accordance with the fifth section of the act of March 3, 1887 (24 Stat. 557; 43 U. S. C. 898).

(d) No entry will be allowed under this section until it shall have been finally determined by this Department that the land was excepted from the grant.

ADJUSTMENT OF CONFLICTS BETWEEN NORTHERN PACIFIC RAILROAD GRANT AND SETTLERS

§ 273.31 *When individual claimant may select other land.* Upon the filing with and acceptance by the Bureau of Land Management of a relinquishment by a qualified settler, or his heirs or assigns, for any part of an odd-numbered section in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad, now Railway Company, pursuant to the act of July 1, 1898 (30 Stat. 620), the individual claimant, upon receiving notice of the acceptance of his relinquishment, will be entitled, upon proper application, to select other lands, according to the condition and limitations of said act.

§ 273.36 *Applications to select lieu lands.*[1] Applications to select lieu lands under the act of July 1, 1898, by an individual claimant must be presented to the land office of the district within which the lands selected are situate. The application must particularly state the description and acreage of the lands relinquished, the acceptance by the Bureau of Land Management of the relinquishment, and the description of the lands selected, and must be accompanied by proof that the land selected is of the character subject to selection. If the records of the land office do not show to the contrary, the character of the land will be deemed to be prima facie established where the application is supported by the statement of the individual claimant, based upon a personal examination of the land.

CROSS REFERENCE: For land classification requirements in connection with the selected lands, see Part 296 of this chapter.

§ 273.37 *Selection segregates land.* When any lands, whether surveyed or unsurveyed, have been selected under the act of July 1, 1898, by an individual claimant, no right thereto can be initiated by settlement or entry while such selection remains of record.

§ 273.38 *Proof of individual claimant.* Where lands are selected by an individual claimant in lieu of lands the claim to which has not been carried to final entry and certificate, or to the submission of final proof entitling him to final entry and certificate, the claimant will be required to perfect his right to the lands selected by compliance with the law relating to that class of claims, and to submit proof thereof in the usual way, but credit will be given for his bona fide residence, improvements, cultivation, or reclamation, as the case may be, and for any payment of fees or purchase money upon the land relinquished, it being the purpose of the act of July 1, 1898, to give individual claimants the same status with respect to the lieu lands selected by them which they occupied with respect to the lands relinquished.

§ 273.39 *Unsurveyed land not to be patented.* Unsurveyed lands will in no event be patented until after survey.

§ 273.40 *Unsurveyed land selected by individual claimant; patenting after survey.* Unsurveyed lands selected by an individual claimant in lieu of lands the claim to which has been regularly carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, will

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

not be patented until after the expiration of 4 months from the date of the receipt at the land office of the approved plat of the township embracing the lands so selected; and surveyed lands selected by an individual claimant in lieu of lands the claim to which has reached a like status will not be patented until after the expiration of 4 months from the date of selection.

ADJUSTMENT OF CERTAIN CLAIMS WITHIN THE INDEMNITY LIMITS OF THE NORTHERN PACIFIC RAILROAD GRANT

§ 273.45 *Statutory authority.* The act of March 2, 1901 (31 Stat. 950), extends the provisions of the act of July 1, 1898 (30 Stat. 620) to certain claims to lands within the indemnity limits of the Northern Pacific Railroad grant.

§ 273.46 *Governing regulations.* As far as applicable, the regulations under the act of July 1, 1898 (§§ 273.31 to 273.40) will be followed in the adjustment of claims of individuals under the act of March 2, 1901.

ADJUSTMENT OF CERTAIN CLAIMS WITHIN THE LIMITS OF THE NORTHERN PACIFIC RAILROAD GRANT IN WASHINGTON AND OREGON

§ 273.50 *Statutory authority.* The act of May 17, 1906 (34 Stat. 197), extends the acts of July 1, 1898 (30 Stat. 620) and March 2, 1901 (31 Stat. 950) to certain claims in Washington and Oregon.

§ 273.51 *Governing regulations.* The regulations issued under the act of July 1, 1898 (§§ 273.31 to 273.40) will be followed so far as applicable, in the adjustment of claims of individuals under the act of May 17, 1906.

ADJUSTMENT OF CERTAIN CLAIMS WITHIN THE LIMITS OF THE NORTHERN PACIFIC RAILROAD GRANT IN WASHINGTON

§ 273.52 *Statutory authority.* The act of Congress approved on February 27, 1917 (39 Stat. 946) provides for the adjustment of conflicting claims to Northern Pacific Railway lands, in Washington.

§ 273.53 *Adjustment of claims.* The regulations under the act of July 1, 1898, §§ 273.31 to 273.40, will govern, so far as applicable, claims of individuals arising under the said act of February 27, 1917.

ISSUANCE OF PATENTS FOR LANDS SOLD TO INNOCENT PURCHASERS FOR VALUE BY CERTAIN RAILROAD CARRIERS

§ 273.68 *Statutory authority.* Subsection (b) of section 321, Part II, Title III, of the Transportation Act of 1940, approved on September 18, 1940 (54 Stat. 954), authorizes the issuance of patents for the benefit of certain innocent purchasers for value of land-grant lands from railroad carriers which have released their land-grant claims.

NOTE: Notices of releases of land grant claims by railroad carriers listing the carriers, the date of the approval of the release and the land-grant predecessors involved dated Dec. 17, 1940, May 17, 1941 and June 29, 1942, appear at 6 F. R. 449, 2634, and 7 F. R. 5319.

§ 273.69 *Lands for which applications may be made.* Subsection (b) of section 321, Part II, Title III, of the Transportation Act of 1940 provides that in the case of a railroad carrier, or a predecessor, which received a land grant to aid in the construction of any part of its railroad, the laws relating to compensation for certain Government transportation services shall continue to apply as though subsection (a) of section 321 had not been enacted unless the carrier shall file on or before September 18, 1941, with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands so granted, claimed to have been granted or claimed should have been granted. Section 321 provides further that nothing therein shall be construed as preventing the issuance of patents confirming the title to such uncertified or unpatented lands as the Secretary of the Interior shall find have been sold prior to September 18, 1940, to innocent purchasers for value. Subsection (b) of section 321 authorizing the issuance of such patents is not an enlargement of the grants, and does not extend them to lands not already covered thereby and, therefore, has no application to lands which for various reasons, such as mineral character, prior grants, withdrawals, reservations, or appropriation, were not subject to the grants. It does apply, however, to lands selected under remedial or lieu acts supplemental to the original grants as well as to primary and indemnity lands. Classification under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315f), will not be required where the sold land is such as the company was authorized by law to select.

§ 273.70 *Applications.* Application, and supporting evidence, must be filed by the carrier in the proper land office, accompanied by the fees and commissions required in connection with railroad-grant listings and selections. The application should state that it is filed under the railroad land grant act involved, properly cited, and subsection (b) of section 321, Part II, Title III of the Transportation Act of 1940, approved September 18, 1940 (54 Stat. 954). The application must be supported by a showing that the land is of the character which would pass under the grant involved, and was not be some superior or prior claim, withdrawal, reservation, or other reason, excluded from the operation of the grant. Full details of the alleged sale must be furnished, such as dates, the terms thereof, the estate involved, consideration, parties, amounts and dates of payments made, and amounts due, if any, description of the land, and transfers of title. The use, occupancy, and cultivation of the land and the improvements placed thereon by the alleged purchaser should be described. All statements should be duly corroborated. Available documentary evidence, including the contract or deed, should be filed, which may be authenticated copies of the originals. An abstract of title may be necessary, dependent upon the circumstances of the particular case. No application for a patent under this act will be favorably considered unless it be shown that the alleged purchaser is entitled forthwith to the estate and interest transferred by such patent. Evidence of a recorded deed of conveyance from the carrier to the purchaser may be required. Where the company has on file an application in which the sold land is embraced, it need not file a new application, but may file a request for amendment of the pending application to come under the Transportation Act of 1940, together with the showing, supra, required as to the bona fide sale.

§ 273.71 *Publication of notice.* The manager shall direct the publication of notice of the application. The notice will be published at the carrier's expense in a newspaper of general circulation in the vicinity of the land. If a daily newspaper be designated, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, for five consecutive issues; and if semiweekly, in either issue for five consecutive weeks. The carrier must furnish evidence of such publication in due course. Notice need not be published, in case of amendment of a pending application, where publication has already been had.

§ 273.72 *Surveying and conveyance fees.* The carrier must pay the cost of the survey of the land, paying also one-half the cost of any segregation survey in accordance with the laws and regulations pertaining to the survey and patenting of railroad lands. (See 43 U. S. C. 881 et seq.; also § 216.15 of this chapter.)

§ 273.73 *Patents.* (a) If all be found regular and in conformity with the governing law and regulations, patent shall be issued in the name of the grantee under the railroad grant, the carrier paying the customary fees for the writing and issuance of a patent pursuant to a railroad land grant.

SUBCHAPTER V—SURVEYS AND RESURVEYS

PART 280—SURVEYS

SURVEYING THE PUBLIC LANDS

Sec.
280.1 Cadastral surveying activities under jurisdiction of the Director, Bureau of Land Management.
280.2 Application for original survey.
280.3 Application for survey of mining claims.
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SURVEY OF ISLANDS OR OTHER LANDS OMITTED FROM THE ORIGINAL SURVEY

280.5 Application for survey of islands or other omitted lands.
280.6 Notice of intended application to be served on State officials and adjacent land owners.
280.7 Evidence required as to character of land and its existence at time of original survey.
280.8 Diagram required with application.
280.9 Cost of survey borne by Government.
280.10 No preference right gained by filing of application for survey.

AUTHORITY: §§ 280.1 to 280.10 issued under R. S. 2478; 43 U. S. C. 1201.

§ 280.1 *Cadastral surveying activities under jurisdiction of the Director,*

Bureau of Land Management. (a) In the establishment of the Bureau of Land Management by Reorganization Plan No. 3 of 1946, the office of Supervisor of Surveys was abolished and the functions and powers thereof were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director, Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of Chief Cadastral Engineer has been abolished, and the functions of that office have been delegated to the Director.

(b) By this sequence, the cadastral surveying work of the Bureau of Land Management has been placed under the immediate jurisdiction of the Director, subject to the direction and control of the Secretary of the Interior. Certain functions relating to specific phases of the cadastral surveying work have been delegated to the area administrators.

§ 280.2 *Application for original survey.* Application for the original extension of the rectangular system of public land surveys to include unsurveyed townships should be filed in duplicate with the State Supervisor for the State in which the lands are situated. The application may be in letter form, and should describe the unsurveyed area by township and range of the public surveys, and should set forth the interest of the applicant in the land and the basis of need for extension of the surveys.

§ 280.3 *Application for survey of mining claims.* Application for the survey of a mining claim should be filed with the State Supervisor for the State in which the claim is situated.

§ 280.4 *Mineral surveyors to be appointed by regional administrators.* The appointment of mineral surveyors pursuant to section 2334 of the Revised Statutes (30 U. S. C. 39) and § 185.50 of this chapter, will be made by the area administrators; application for such appointment should be made to the appropriate area administrator.

SURVEY OF ISLANDS OR OTHER LANDS OMITTED FROM THE ORIGINAL SURVEY

§ 280.5 *Application for survey of islands or other omitted lands.* Application for the survey of an island or other land omitted from the original survey should be made on Form 4–022a, or its equivalent, and filed in duplicate with the State Supervisor for the State in which the lands are situated.

§ 280.6 *Notice of intended application to be served on State officials and adjacent land owners.* (a) Notice of intention to apply for the survey of an island or other land omitted from the original survey must be served on the adjacent land owners, and the Attorney General and the Secretary of State for the State in which the land is situated, at least 30 days prior to the date of application for survey. Service may be had by registered mail or in person, evidence of which may consist of the registry return receipt or signed acknowledgment of service. A copy of each notice, with proof of service thereof, must be filed with the application. Failure to obtain evidence of service may be explained.

(b) No particular form of notice is prescribed. The notice must make it clear, however, that the land covered by the application is contended to be public land of the United States and subject to survey and administration as such, and that any protest against the proposed survey should be filed with the appropriate State Supervisor. It must be shown what particular surveyed lands opposite the island, or adjoining the unsurveyed land, are owned by the adjacent land owner on whom the notice is served.

§ 280.7 *Evidence required as to character of land and its existence at time of original survey.* An application for the survey of an island or other land omitted from the original survey must be accompanied by evidence showing that the land was in existence and above ordinary high-water elevation when the State was admitted into the Union, and when the adjacent lands were surveyed. Such evidence should consist of statements from at least two persons familiar with the land, as to its size, elevation, and appearance, and the species, size, and age of the timber growth thereon, or nature of other vegetation.[1]

§ 280.8 *Diagram required with application.* A diagram showing the approximate configuration of the island or other land applied for, and its location with reference, to the public land surveys, must accompany the application.

§ 280.9 *Cost of survey borne by Government.* In the event of approval of the application, the costs of the survey will be borne by the Government.

§ 280.10 *No preference right gained by filing of application for survey.* Should the island or other land be surveyed as public land, no preference right to acquire the same under the laws governing the disposal of public lands will be gained by the filing of the application for survey.

PART 281—RESURVEYS

RESURVEY OF TOWNSHIP WITHOUT COST TO APPLICANT, WHEN TITLE TO AT LEAST 50 PERCENT OF THE AREA IS IN THE UNITED STATES

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281.1 Statutory authority.
281.2 Purpose of act.
281.3 Filing of application.
281.4 Eligibility for resurvey, determined by ownership of land.
281.5 Showing required of applicants.
281.6 Application must be made by a majority of the land owners; notice to others.
281.7 Showing required as to condition of original survey.
281.8 Eligibility for resurvey, determined by physical character of remaining public land.
281.9 Small areas will not be resurveyed.

RESURVEY OF TOWNSHIP, COST TO BE PRORATED BETWEEN APPLICANTS AND UNITED STATES, WHEN MORE THAN 50 PERCENT OF THE AREA IS PRIVATELY OWNED

281.10 Statutory authority.
281.11 Filing of applications.
281.12 Showing required of applicants as to ownership of land.
281.13 Showing required of applicants as to necessity for resurvey.
281.14 Application must be made by three-fourths of the land owners; notice to others.
281.15 Deposit required; preliminary examination at Government expense.
281.16 Approximate cost; restoration of lost or obliterated corners in limited area within province of local surveyor.

CROSS REFERENCES: For surveys, see Part 280 of this chapter. For surveys, Alaska, see Part 78 of this chapter.

RESURVEY OF TOWNSHIP WITHOUT COST TO APPLICANT, WHEN TITLE TO AT LEAST 50 PERCENT OF THE AREA IS IN THE UNITED STATES

AUTHORITY: §§ 281.1 to 281.9 issued under R. S. 2478; 43 U. S. C. 1201.

§ 281.1 *Statutory authority.* The act of March 3, 1909 (35 Stat. 845), as amended by the Joint Resolution of June 25, 1910 (36 Stat. 884; 43 U. S. C. 772), authorizes the Secretary of the Interior to cause to be made such resurveys of the public lands as after full investigation he may deem essential to properly mark the boundaries of the public lands remaining undisposed of.

§ 281.2 *Purpose of act.* The real interest of the Government in the resurvey of the public lands is well stated in the said act of March 3, 1909, "to properly mark the boundaries of the public lands remaining undisposed of." Its duty being thus defined, the Bureau of Land Management will refrain from attempting to do more in the relocation of the corners of privately owned lands in a township being resurveyed than to reestablish such corners from the best available evidence of the original survey.

§ 281.3 *Filing of application.* The application prepared in accordance with §§ 281.1–281.9, should be submitted to the State Supervisor for the State in which the lands are situated.

§ 281.4 *Eligibility for resurvey, determined by ownership of land.* As a general rule, and in the absence of any particular governmental purpose to be subserved, no township is eligible for resurvey unless title to at least 50 percent of the area of the lands embraced therein remains in the United States. For the purpose of determining the eligibility of a township under this rule, lands covered by approved selections, school sections, and entries upon which final certificates or patents have been issued are to be considered as alienated lands. Townships within the primary limits of railroad land grants are generally ineligible.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.

§ 281.5 *Showing required of applicants.* The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action, based either upon general obliteration of evidences of the original survey or upon conditions so grossly defective as to preclude the possibility of a reasonably certain identification of the subdivisions of the subsisting survey or a satisfactory local restoration thereof.

§ 281.6 *Application must be made by a majority of the land owners; notice to others.* A majority of the settlers in each township are required to join in the application, and, in addition, there must appear the endorsements of the entrymen and owners, including the State, whose holdings represent the major part of the area entered or patented, with a description opposite each name of the lands actually occupied, entered, or owned, and a statement as to whether the applicant is a settler, entryman, or owner thereof. Where an entryman or owner, including the State, has failed for any reason whatsoever to join in the application, evidence of service of notice upon him for at least 30 days in advance of the filing of the application is required in order that he may be afforded ample opportunity to make timely protest against the granting of such resurvey if in his opinion such action is undesirable.

§ 281.7 *Showing required as to condition of original survey.* Applications for the resurvey of each township must be supported by evidence in the form of a statement, preferably from the county or other competent surveyor, showing in detail that the evidences of the original survey have been obliterated to such an extent as to make it impracticable to apply the suggestions of the circular issued by the Bureau of Land Management for the necessary restoration of the lines and corners in the proper identification of the legal subdivisions occupied by the present or prospective entrymen or that the obliteration of the original monuments has become so advanced that the land boundaries can be identified only through extensive retracements by experienced engineers of the Bureau of Land Management.

§ 281.8 *Eligibility for resurvey, determined by physical character of remaining public land.* (a) In general, no resurvey will be undertaken unless the preliminary examination of the township develops evidence of existing settlement and agricultural possibilities sufficient to support the presumption that the unappropriated lands therein are such as to attract bona fide entrymen, thus eliminating townships which, although theoretically eligible, are of such a physical character that the resurvey thereof would serve no useful purpose.

§ 281.9 *Small areas will not be resurveyed.* In the application of the terms of the act of March 3, 1909 (35 Stat. 845), as amended, it is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township, such work being within the province of the local surveyors, and the authority of the public survey office will be limited to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. Employees of the Bureau of Land Management are prohibited from participating in the resurvey of a township, the reestablishment of lost corners, or in the subdivision of sections for private parties, even if the expense is borne by the county or municipal authorities or by individuals.

RESURVEY OF TOWNSHIP, COST TO BE PRORATED BETWEEN APPLICANTS AND UNITED STATES, WHEN MORE THAN 50 PERCENT OF THE AREA IS PRIVATELY OWNED

AUTHORITY: §§ 281.10 to 281.16 issued under 40 Stat. 965, as amended; 43 U. S. C. 773.

§ 281.10 *Statutory authority.* (a) The act of September 21, 1918 (40 Stat. 965; 43 U. S. C. 773), provides authority for the resurvey by the Government of townships heretofore held to be ineligible for resurvey under existing departmental regulations by reason of disposals in excess of 50 percent of the total area thereof.

(b) Under the act mentioned, and upon the application of the owners of three-fourths of the privately owned lands[1] in any township previously surveyed, or upon the application of a court of competent jurisdiction, accompanied by a deposit of funds sufficient to cover the estimated cost, inclusive of the necessary office work, of the resurvey of all of the privately owned lands in such township, the Area Administrator, Bureau of Land Management, is authorized, in his discretion, to cause to be made a resurvey of the township in question in accordance with the laws and regulations governing surveys and resurveys of the public lands; the cost of the resurvey of the residue of the public lands in such township to be paid by the Government from the current annual appropriation for the survey and resurvey of the public lands in addition to the portion thereof made available for resurveys and retracements by the provisions of the act of March 3, 1909 (35 Stat. 845), as amended by Joint Resolution of June 25, 1910 (36 Stat. 884; 43 U. S. C. 772). The total cost of the resurvey of the township is thus divided between the Government and the petitioners in proportion to the extent of their respective holdings.

(c) It is further provided that any portion of such deposit in excess of the actual cost of the field and office work incident to such resurvey of privately owned lands shall be repaid pro rata to the applicants for resurvey or to their legal representatives.

§ 281.11 *Filing of applications.* (a) Applications for resurvey based upon the provisions of the act of September 21, 1918, prepared in accordance with §§ 281.10 to 281.16, should be submitted to the State Supervisor for the State in which the lands are situated. Prior to filing formal application, however, the interested parties should obtain from the proper office, as above designated, an estimate of the cost of the proposed resurvey.

§ 281.12 *Showing required of applicants as to ownership of land.* (a) The applicants for resurvey are required to preface their petition by the statement that the extent of privately owned lands within the township is in excess of 50 percent of the total area thereof. If necessary, information in this connection may be obtained by the petitioners from the manager of the land office having local jurisdiction.

(b) Failure to comply with the condition set forth in paragraph (a) of this section or material error in the showing made, will not only result in delaying action upon the petition, but may require its rejection if it is found that the township is not properly subject to resurvey under the terms of the governing act.

§ 281.13 *Showing required of applicants as to necessity for resurvey.* The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action. In general, it must be shown that the evidences of the original survey are so widely obliterated or that the prevailing survey conditions are so grossly defective as to preclude the satisfactory identification of the subdivisions of the subsisting survey or that the evidences of the original survey are in such an advanced state of deterioration that action looking to their preservation and perpetuation is expedient as in the public interest.

§ 281.14 *Application must be made by three-fourths of the land owners; notice to others.* The owners of three-fourths of the privately owned lands within the township are required to join in the application, and all petitioners in whom ownership is vested, either individuals, the State, or corporations such as railroad companies whose interests are involved, are further required to supply, following their respective signatures, an accurate description by legal subdivision, section, township, and range of the lands to which title is claimed. Moreover, it must appear that notice of the proposed resurvey has been served upon all owners who have for any reason failed to join in the petition, and, in addition, it is highly desirable that all record entrymen who, under the terms of the act are not required to become parties to the petition, be similarly informed to the end that their objections, if any, may be heard and subsequent protest based upon the plea of ignorance may, insofar as possible, be avoided.

§ 281.15 *Deposit required; preliminary examination at Government expense.* (a) The deposit required of the petitioners by law must accompany the application and must be made in the amount, at the place and in the manner prescribed by the instructions which will accompany the estimate.

§ 281.16 *Approximate cost; restoration of lost or obliterated corners in limited area within province of local surveyor.* (a) The cost of resurvey

[1] For the purpose of the administration of this act, lands embraced in school sections, in approved State and railroad selections, and in entries upon which final certificate or patent has issued are regarded as alienated lands.

procedure is as a rule considerably in excess of that incident to the execution of original surveys and may range between rather wide limits. Where the obliteration is not excessive and the evidences of the original survey are harmoniously related, extensive verifying retracements will be unnecessary and ordinary dependent methods of resurvey can usually be applied. If, however, the obliteration is general or total, many miles of preliminary retracement may be required in order to obtain technical control, and where, by reason of errors in the original survey, the existing evidences thereof are discordant and conflicting locations have resulted, the procedure required may, in the case of densely entered townships, involve an expense of $5,000 or more per township.

(b) The applicants for resurvey should understand, therefore, that although the estimate supplied will be as nearly correct as the available information will permit, its accuracy cannot be guaranteed, and, consequently, all such estimates are subject to revision, if necessary, as the work proceeds and the field conditions are more fully developed. Any deposit in excess of actual cost will be returned to the applicants as provided by law, but in cases where the cost exceeds the deposit made in accordance with the estimate, an additional deposit will be required, failing which, operations will be suspended.

(c) In the application of the terms of this act it is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township, such work being within the province of the local surveyor, and the authority of the regional cadastral engineer will be restricted to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners.[2] Employees of the Government are prohibited from participating in the resurvey of a township or the reestablishment of lost corners or in the subdivision of sections for private parties, even if the expense is borne by the county or State authorities or by individuals, except as such action is specifically authorized by the Director, Bureau of Land Management, in accordance with the provisions of existing statutes.

SUBCHAPTER W—TIMBER AND STONE LANDS

PART 284—TIMBER CUTTING, SALE, OR USE

SALE OF DEAD, DOWN, OR DAMAGED TIMBER

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CROSS REFERENCES: For amendments of entries, see Part 104 of this chapter. For grazing leases, see Part 160 of this chapter. For oil and gas permits and leases, see Part 192 of this chapter. For timber trespass, see §§ 288.1, 288.2 of this chapter. For Glacier National Park timber disposal regulations of the National Park Service, see Parks, Forests, and Memorials, 36 CFR Part 22. For regulations of the Forest Service, Department of Agriculture, relating to timber, see Parks, Forests, and Memorials, 36 CFR Part 221. For regulations of the Bureau of Indian Affairs relating to sale of timber products, see Indians, 25 CFR Part 62.

SALE OF DEAD, DOWN, OR DAMAGED TIMBER

AUTHORITY: §§ 284.1 to 284.19 issued under R. S. 2478, sec. 1, 37 Stat. 1015, as amended; 43 U. S. C. 1201, 16 U. S. C. 614.

§ 284.1 *Statutory authority.* The act of March 4, 1913 (37 Stat. 1015), as amended by the act of July 3, 1926 (44 Stat. 890; 16 U. S. C. 614, 615), permits the sale of all dead or down timber and timber seriously or permanently damaged by forest fires on vacant public lands outside of national forests, including ceded Indian lands, and including lands in the Territory of Alaska, and also lands embraced within unperfected or unapproved claims, grants, or selections over which the Department of the Interior has jurisdiction.

§ 284.2 *Sale and cruise of timber.* (a) Application requesting the sale of timber of the classes described in § 284.1 must be made in duplicate on Form 4–173a, and shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico.

§ 284.3 *Advertisement; posting of notice.* The authorized officer will, if he deems it advisable, offer the timber for sale under sealed bids by advertising as follows:

(a) In cases of small quantities of timber amounting in value to $1,000 or less, the sale shall be advertised for at least ten days by the posting of notices only.

(b) Where the timber to be sold exceeds $1,000 in value, the sale shall be advertised in a newspaper of general circulation in the county in which the timber to be sold is situated, once a week for four consecutive weeks next preceding the time set for the opening of the bids. And if the proposed sale be for 20,000,000 feet, board measure, or more, of timber available by location to a single logging operation, an advertisement of the proposed sale shall be inserted once in two lumber trade journals of general circulation.

(c) Where, in the judgment of the authorized officer, immediate sale of timber exceeding $1,000 in value is necessary in order to prevent loss to the Government due to expected rapid deterioration of the timber from insect or fungus attacks or from other causes, the sale may be effected, notwithstanding the provisions of paragraph (b) of this section, after the posting of public notices for not less than ten days and the publication of notice once during the ten-day posting period in a newspaper of general circulation in the county wherein the timber to be sold is situated.

§ 284.4 *Information to be given in notice of sale.* The notice of sale must announce the time and place of filing bids; contain a careful description of the land on which the timber is situated, giving the township and range and legal subdivision, or approximate legal subdivision, whether surveyed or unsurveyed, and shall also designate the location with reference to water courses, mountain tops, or other well-known natural objects; and state the scale in board feet and minimum stumpage value of the timber to be sold, the sum re-

[2] This circular is issued by the Bureau of Land Management for the guidance of county surveyors and others. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C.

quired to be deposited with the bid, the conditions by which the purchaser will be bound, and the name and address of the officer, from whom full information can be obtained. It shall also be stated that bidders offering a sum based on a rate less than the minimum stumpage price of the timber mentioned therein will not be considered and that the right to reject any or all bids is reserved.

§ 284.5 *Submission of bids; deposit required; citizenship requirements.* (a) Each bid submitted must be enclosed in a sealed envelope and transmitted to the officer in charge having jurisdiction of the timber sale. The envelope must be marked "Bid for timber, sale date _____, 19____."

(b) Only bids for all of the timber offered in the advertisement for sale as a unit will be considered. Each bid should state clearly the amount per thousand feet which the bidder will pay for the timber, as well as the total amount offered.

(c) Each bid shall be accompanied by a certified check or post-office money order for at least 20 percent of the total amount bid, the remittance to be made payable to the Bureau of Land Management.

(d) Every bidder, if an individual, will be required to show that he is a citizen of the United States or has declared his intention to become such citizen; if a partnership or association, that each member of the firm is such a citizen or declarant; or, if a corporation, that the corporation was organized under the laws of the United States or of some State, Territory, or possession thereof, and that its stock is owned by such citizens or declarants.

§ 284.6 *Contract and bond.* The successful bidder will be allowed 30 days from notice of the award to execute, in quadruplicate, Form 4–173c "Timber Contract", and file therewith a cash bond or a bond having as surety a bonding company shown in the then current approved list of the Treasury Department. The bond should be prepared and executed on Form 4–173d and shall be conditioned on the faithful performance of the contract and on the observance of the applicable laws and regulations. The penalty of the bond shall be fixed by the officer who is authorized to execute the contract in a sum of not less than 25 percent of the amount of the bid. If the contract and bond are not submitted within the 30 days, the officer who is authorized to execute the contract will revoke the award by written notice, and award the timber to the next highest bidder.

§ 284.7 *When deposit will be forfeited or returned.* (a) Should a bidder whose bid has been accepted fail to submit a contract and bond, as required by § 284.6, the amount called for therein will be collected and retained by the United States as a forfeit.

(b) Upon the acceptance of a bid, the remittances of the bidders whose bids were rejected shall be returned to them.

§ 284.8 *Commencement of cutting operations.* The cutting and removal of the timber may be commenced at any time after the delivery of the contract to the purchaser.

§ 284.9 *Marking and measurement of timber.* Before timber is offered for sale, it will be carefully cruised. Since the timber sold under authority of the acts cited in § 284.1 will usually consist of only a part of the trees within a given area and a small amount in isolated or scattered tracts, the amount to be sold will be definitely ascertained through a determination of the volume of individual trees and the marking of the trees before the timber is offered for sale. In a white pine, ponderosa pine, or southern pine region, this determination of volume will be made on the basis of the Scribner Decimal C Log Rule with a maximum log length of 16 feet and in the Douglas fir region upon the basis of the Scribner Decimal C Log Rule with a maximum log length of 32 feet.

§ 284.10 *Forest Practice Rules.* All timber sales will be made subject to the provisions of the "Forest Practice Rules," which are appended to and made a part of the timber contract. (See § 284.6.)

§ 284.11 *Report by purchaser.* The purchaser shall furnish such reports on the logging operations as the authorized officer may require.

§ 284.12 *Expense chargeable to purchaser, on default.* If the purchaser fails to comply with any of the provisions of his contract, as to the disposal of the debris, or otherwise, and it becomes necessary for the United States to remove the debris or to incur other expense because of such default, the expense shall be charged to the purchaser: *Provided, however,* That written notice shall first be given by the authorized officer that such action will be taken if the rules are not complied with within 30 days from the service of such notice.

§ 284.13 *Extension of period for cutting operations.* The authorized officer shall determine the period within which all of the timber embraced within a sale shall be cut and removed, and completion of the cutting and removing within such period as shall be thus fixed shall be made a condition in the contract and in the bond. The action of the authorized officer shall be governed by the quantity of timber involved, the topography of the land, the accessibility of the timber, and any other circumstances that may have an influence on the cutting and removing. Owing to the nature of the timber subject to disposal under §§ 284.1 to 284.19, the cutting should be done as rapidly as possible and the final time limits should be restricted as far as practicable logging conditions will permit. Any extension of the period fixed in the contract will be granted only upon a showing that the completion of the cutting was unavoidably delayed by causes over which the purchaser had no control and that the interests of the Government will not be prejudiced thereby, and must be approved by the officer executing the contract.

§ 284.14 *Timber on unperfected claims, selections, and grants.* Timber of the character described in the act of March 4, 1913, as amended, located upon existing unperfected claims and upon unapproved selections and grants, may be disposed of in the same manner and under the same conditions as set forth in §§ 284.1 to 284.11: *Provided, however,* That an application shall first be filed with the proper land office by such claimant, selector, or grantee, or by a prospective purchaser, with the written consent of such claimant, selector, or grantee, requesting that the timber on said claim, selection, or grant be offered for sale. Nothing herein shall prohibit such claimant, selector, or grantee from bidding for the timber thus offered.

CROSS REFERENCE: For procedure in connection with applications, see § 284.2.

§ 284.15 *Rights of settlers, homesteaders, and mineral claimants.* Nothing in the act of March 4, 1913, as amended, or in §§ 284.1 to 284.19, shall be construed to abrogate or in any way modify the rights of settlers or homestead entrymen to cut and dispose of timber on their homestead claims, as explained in §§ 284.36 to 284.39, or the rights of miners to the enjoyment of the surface embraced within the area of their mining claims, as provided by section 2322, United States Revised Statutes (30 U. S. C. 26).

§ 284.16 *Timber for use of settlers or residents.* If it shall be shown that there are settlers or residents within the vicinity of the vacant lands involved, who are in urgent need of timber for domestic purposes and it shall be necessary to procure the same from lands covered by applications for dead, down, or damaged timber, permits may be granted under applications filed in accordance with the provisions contained in the acts of June 3, 1878 (20 Stat. 88; 16 U. S. C. 604–606), or March 3, 1891 (26 Stat. 1093; 16 U. S. C. 607), and acts amendatory thereof and supplemental thereto: *Provided, however,* That said applications shall be filed prior to the advertising of the timber for sale, as set forth in §§ 284.3 and 284.4 The amounts of timber thus applied for shall be deducted from the amount offered for sale and the advertisement shall state that the sale shall be subject to the rights of such applicants to procure the amounts of timber applied for.

§ 284.17 *Disposition of moneys.* All sums deposited and paid in connection with timber sales made under §§ 284.1 to 284.19 will be deposited in the Treasury as required by the act of March 4, 1913, as amended (37 Stat. 1015; 44 Stat. 890; 16 U. S. C. 614, 615), or as otherwise provided by law.

§ 284.18 [Reserved.]

§ 284.19 *Unauthorized cutting.* The cutting or removing of the timber referred to in §§ 284.1 to 284.17 in any other manner than that authorized by such sections will be considered a trespass.

FREE USE OF TIMBER ON MINERAL AND NONMINERAL PUBLIC LANDS

AUTHORITY: §§ 284.23 to 284.33 issued under sec. 1, 20 Stat. 88, as amended, 26 Stat. 1093, as amended; 16 U. S. C. 604, 607.

§ 284.23 *Statutory authority; who may take timber.* Under authority of the act of June 3, 1878 (20 Stat. 88; 16 U. S. C. 604–606) and March 3, 1891 (26 Stat. 1093; 16 U. S. C. 607), as supplemented by the act of January 11, 1921 (41 Stat. 1088; 16 U. S. C. 604, 612), settlers upon public lands, citizens and bona fide residents of the State, and corporations doing business in the State may obtain free use permit for timber.

CROSS REFERENCE: For additional free use privileges, see §§ 259.24–259.28 of this chapter.

§ 284.24 *Lands on which timber may be cut.* Free-use permits to cut timber may be issued covering public lands as follows: (a) Mineral lands, unoccupied and unreserved and not subject to entry under existing laws of the United States, except for mineral entry, in the States of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. (Act of June 3, 1878, 20 Stat. 88; 16 U. S. C. 604–606); (b) Nonmineral, unoccupied, and unreserved public lands in the States mentioned and also in the States of California, Oregon, and Washington.

§ 284.25 *Kind of timber which may be cut.* The proper protection of the timber and undergrowth necessarily varies with the nature of the topography, soil, and forest. No timber not matured may be cut, and each tree taken must be utilized for some beneficial domestic purpose. Persons taking timber for specific purposes will be required to take only such matured trees as will work up to such purpose without unreasonable waste. Stumps will be cut so as to cause the least possible waste and all trees will be utilized to as low a diameter in the tops as possible. All brush, tops, logs, and other forest débris made in felling and removing timber under §§ 284.23 to 284.34 shall be disposed of as best adapted to the protection of the remaining growth and in such manner as shall be prescribed by the authorized officer, and failure on the part of the applicant, or an agent cutting for an applicant, to comply with this requirement will render him liable for all expenses incurred by the authorized officer in putting this regulation into effect.

§ 284.26 *Area of land to be cut over.* The permits shall limit the area of cutting to embrace only so much land as is necessary to produce the quantity of timber applied for.

§284.27 *Use which may be made of timber.* Timber may be cut under approved permit when actually needed for firewood, fencing, building, or other agricultural, mining, manufacturing, and domestic purposes.

§ 284.28 *Exportation of timber.* Timber may not be exported from the State in which it is cut except: (a) Timber from a specified area in Wyoming may be exported into Idaho (act of July 1, 1898, 30 Stat. 618; 16 U. S. C. 607, 611); (b) Timber from a specified area in Montana may be exported into Wyoming (act of March 3, 1901, 31 Stat. 1439; 16 U. S. C. 607, 613); (c) Under the act of March 3, 1919 (40 Stat. 1321; 16 U. S. C. 608), citizens of Malheur County, Oregon, may cut timber in Idaho and remove such timber to Malheur County, Oregon; (d) Under the act of March 3, 1919 (40 Stat. 1322; 16 U. S. C. 609), citizens of Modoc County, California, may cut timber in Nevada and remove such timber to Modoc County, California; (e) Timber from a specified area in Arizona may be exported into Utah (act of February 27, 1922, 42 Stat. 398; 16 U. S. C. 610); (f) Citizens of Bear Lake County, Idaho, may cut timber from public lands in Lincoln County, Wyoming, and remove such timber to Bear Lake County, Idaho, but no live standing timber may be taken without compensation (act of August 21, 1935, 49 Stat. 665; 16 U. S. C. 611a).

§ 284.29 *Duration of permit.* All rights and privileges under a permit shall terminate at the expiration of the period of 1 year from the date of approval of the permit.

§ 284.30 *Information to be furnished by applicant.* (a) Applications should be filed in duplicate and should set forth the names and post-office addresses of the applicants, and any agent or agents who may be employed to procure the timber. Where a corporation is the applicant, the State in which it was incorporated should also be shown.

(b) Blank forms for making application may be procured from the State Supervisor for the State in which the timber to be removed is located.

(c) Applications should show the amount of timber required by each applicant; the use to be made thereof; a description of the land from which the timber is to be cut, by subdivision, section, township, and range, if surveyed, or by natural objects sufficient to identify the same if unsurveyed; and the date it is desired to begin cutting.

§ 284.31 *Cutting of timber by agents.* Where one or more persons desire timber, and are not in a position to procure the same for themselves, an agent or agents may be appointed for that purpose. Such agent shall not be paid more than a fair recompense for the time, labor, and money expended in procuring the timber and manufacturing the same into lumber, and no charge shall be made for the timber itself. The said compensation must be set forth in a written contract to be entered into by the parties, and a copy thereof must be filed with the application.

§ 284.32 *Cutting of timber by agent who is a sawmill operator.* If the amount of timber applied for exceeds $50 in stumpage value, for any continuous period of 12 months, and the timber is to be procured by an agent who is a sawmill operator, a bond equal to three times the amount of the stumpage value of the timber applied for will be required, conditioned upon the faithful performance of the requirements.

§ 284.33 *Liability of applicant.* Where permits are secured by fraud, or where timber is not taken or used in accordance with the terms of the law or §§ 284.23 to 284.34, the Government may enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands. For criminal liability, see 18 U. S. C. 1852.

USE BY SETTLERS AND HOMESTEADERS OF TIMBER ON THEIR PENDING CLAIMS

AUTHORITY: §§ 284.36 to 284.39 issued under R. S. 2478; 43 U. S. C. 1201.

§ 284.36 *Timber cutting on unperfected claims.* Homestead claimants who have made bona fide settlements upon public land, surveyed or unsurveyed, and who are living upon, cultivating, and improving the same in accordance with law and the rules and regulations of the Department of the Interior, with the intention of acquiring title thereto, are permitted to cut and remove, or cause to be cut and removed, from the portion thereof being cleared for cultivation, so much timber as is actually necessary for that purpose, or for buildings, fences, and other improvements on the land entered. (See 18 U. S. C. 1852.)

§ 284.37 *Clearing for cultivation.* In clearing for cultivation, should there be a surplus of timber over what is needed for the purposes above specified, the claimant may sell or dispose of such surplus; but it is not allowable to denude the land of its timber for the purpose of sale or speculation before the title has been conveyed to him by patent.

§ 284.38 *Abandonment of claim.* The abandonment of a claim after the timber has been removed is presumptive evidence that the claim was made for the primary purpose of obtaining the timber.

§ 284.39 *Exchange of timber for lumber.* A bona fide claimant is also permitted to exchange timber for lumber for improvements upon his claim, provided he exchanges timber for lumber of equal value, and only so much as is actually necessary for the required improvements, exclusive of the cost of cutting, sawing and hauling such timber or lumber to and from the mill. In other words, he has a right to cut as many trees as may be necessary to make or complete his improvements, whether 30, 40, or more, but any cutting in excess of the number of trees required for the improvements would be unlawful.

USE OF TIMBER ON LANDS COVERED BY GRAZING LEASES, BY LESSEES, AND OTHERS

§ 284.41 *Procedure.* (a) Before taking timber under a lease issued under section 15 of the Taylor Grazing Act, as amended by the act of June 26, 1936 (49 Stat. 1978; 43 U. S. 315m), the lessee should file application for and procure a permit in accordance with the regulations issued under the acts of June 3, 1878 (20 Stat. 88; 16 U. S. C. 604–606), and March 3, 1891 (26 Stat. 1093; 16 U. S. C. 607), §§ 284.23 to 284.35.

(b) Where application is made by a person other than the lessee to take timber from lands embraced in a grazing lease issued under section 15 of the said act, investigation should be made to ascertain the facts in the case and whether or not the cutting of the timber applied for would adversely affect the lands for grazing purposes. If no objection appears, the permit may issue but should

contain a provision that the timber cutting thereunder must be done in such manner as will not interfere with the rights of the lessee.

(c) All applications for timber should be filed with the State Supervisor for the State in which the timber to be cut is located and should comply with the regulations contained in §§ 284.23 to 284.35.

(Sec. 1, 30 Stat. 88, as amended, 26 Stat. 1093, as amended; 16 U. S. C. 604, 607)

FREE USE OF TIMBER UPON OIL AND GAS LEASES

AUTHORITY: §§ 284.42 to 284.52 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

§ 284.42 *Statutory authority.* Authority for the issuance of regulations governing the free use of timber for fuel in drilling operations by oil and gas lessees is contained in section 32 of the act of February 25, 1920 (41 Stat. 450; 30 U. S. C. 189).

§ 284.43 *Application.* Any oil and gas lessee, or assignee, desiring timber to be used for fuel in drilling operations on a lease not within a national forest, shall file application therefor, on the prescribed form with the officer who issued the lease.

§ 284.44 *Notice of rejection of application; right of appeal.* The applicant shall be notified by registered mail in all cases where the permit applied for is not granted and he shall be allowed 30 days from service of notice within which to appeal from such decision to the Director of the Bureau of Land Management.

§ 284.45 *Notice by applicant to settler or entryman.* Where the land involved in the oil and gas lease is occupied by a settler or is embraced in an unperfected homestead entry, the applicant must serve notice by registered mail, on the settler, or entryman, showing the amount and kind of timber he has applied for.

(a) Evidence of service of such notice must be furnished.

(b) The settler or entryman shall be allowed 30 days from service of notice within which to show cause why the permit should not be granted.

(c) Permits in such cases will be issued only where there is an abundance of timber on the land, and the removal thereof will not materially affect the use of the land by the agricultural claimant.

§ 284.46 *Notice of action on application.* The applicant shall be notified by registered mail in all cases where the permit applied for is not granted and the settler or homestead entryman shall be notified in a like manner before the issuance of the permit in all cases where protests are filed against the issuance of such permit.

§ 284.47 *Land not subject to permit.* No permit will be issued where title to the surface has passed from the United States.

§ 284.48 *Land subject to permit.* A permit granted under §§ 284.42 to 284.53 shall not embrace any land not included in the oil and gas lease, issued or assigned to the applicant.

§ 284.49 *Termination of right to cut timber.* All rights and privileges under a permit issued under these instructions, shall terminate upon the expiration or cancellation of the oil and gas lease, or upon the discovery of oil in sufficient quantity for use as fuel in drilling operations.

§ 284.50 *Cutting and use of timber.* Timber cut under a permit issued under §§ 284.42 to 284.52 may be used for fuel in drilling operations conducted on the land embraced in the oil and gas lease, and all brush, tops, lops, and other débris made in felling and removing the timber shall be disposed of as best adapted to the protection of the remaining growth, and in such manner as shall be prescribed by the authorized officer and failure on the part of the permittee to comply with this requirement will render him liable for all expenses incurred in putting this regulation into effect.

§ 284.51 *Civil and criminal liability of permittee.* Where permits are secured by fraud or timber is not used in accordance with §§ 284.42 to 284.52, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

§ 284.52 *Unauthorized cutting.* The cutting of timber for sale and speculation, or for use by others than the permittee, is strictly prohibited.

PART 285—TIMBER AND STONE ENTRIES

Sec.

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AUTHORITY: §§ 285.1 to 285.26 issued under sec. 3, 20 Stat. 90; 43 U. S. C. 313.

CROSS REFERENCES: For general orders of withdrawal, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter. For publication of proof notices in timber and stone land purchases, see § 106.8 of this chapter. For Glacier National Park timber disposal regulations of the National Park Service, Department of the Interior, see Parks, Forests and Memorials, 36 CFR Part 22. For regulations of the Forest Service, Department of Agriculture, relating to timber, see Parks, Forests, and Memorials, 36 CFR Part 221. For regulations of the Bureau of Indian Affairs relating to sale of timber products, see Indians, 25 CFR Part 62.

§ 285.1 *Statutory authority.* (a) All unreserved, unappropriated, nonmineral, surveyed public lands within the public-land States, which are valuable chiefly for the timber or stone thereon and unfit for cultivation at the date of sale, may be sold under the act of June 3, 1878 (20 Stat. 89; 43 U. S. C. 311–313), as amended by the acts of August 4, 1892 (27 Stat. 348) and May 18, 1898 (30 Stat. 418; 43 U. S. C. 311), at their appraised value, but in no case at less than $2.50 per acre, in contiguous legal subdivisions upon which there is no existing mining claim or the improvements of any bona fide settler claiming under the public land laws. The act specifically prohibits the making of entries thereunder for land containing valuable deposits of gold, silver, cinnabar, copper, or coal, but entries thereunder may be allowed under the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), for land withdrawn or classified as valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, provided the applicant files his consent, witnessed by two persons or acknowledged before an officer having an official seal, to have the entry stand subject to the provisions and limitations of said act.

(b) Applications for timber and stone entries are considered to be "nonmineral applications". They are, therefore, subject to the provisions of §§ 102.30 to 102.34, inclusive, of this chapter, which deal generally with the filing of nonmineral applications for lands embraced in mineral leases or permits or applications therefor.

§ 285.2 *Definitions.* The terms used in § 285.1 may be defined substantially as follows for the purpose of construing and applying this law:

(a) *Unreserved and unappropriated lands.* Lands which are not included within any military, Indian, or other reservation, or in a national forest, or in a withdrawal by the Government for reclamation or other purposes, or which are not covered or embraced in any entry, location, selection, or filing which withdraws them from the public domain.

(b) *Unoccupied lands.* Lands belonging to the United States upon which there are no improvements belonging to any person who has initiated and is properly maintaining a valid mining or other claim to such lands under the public land laws. Abandoned and unused mines, shafts, tunnels, or buildings occupied by mere trespassers not seeking title under any law of the United States do not prevent timber and stone entries if the land is otherwise capable of being so entered.

(c) *Nonmineral lands.* Such lands as are not known to contain any substance recognized and classed by standard au-

thorities as mineral, in such quantities and of such qualities as would, with reasonable prospects of success in developing a paying mine thereon, induce a person of ordinary prudence to expend the time and money necessary to such development.

(d) *Timber.* Trees of such kind and quantity, regardless of size, as may be used in constructing buildings, irrigation works, railroads, telegraph and telephone lines, tramways, canals, or fences, or in timbering shafts and tunnels or in manufacturing, but does not include trees suitable for fuel only.

(e) *Lands valuable chiefly for timber, but unfit for cultivation.* Lands which are more valuable for timber than they are for cultivation in the condition in which they exist at the date of the application to purchase, and therefore include lands which could be made more valuable for cultivation by cutting and clearing them of timber. The relative values for timber or cultivation must be determined from conditions of the land existing at the date of the application to purchase.

§ 285.3 *Appraisal of land; minimum price.* Any land subject to sale under the act of June 3, 1878, as amended, may, under the direction of an authorized officer of the Bureau of Land Management upon application or otherwise, be appraised by smallest legal subdivisions, at their reasonable value, but at not less than $2.50 per acre. No sales shall be made under said act except as provided in this part.

§ 285.4 *Where entries may be made.* Lands may be entered under the Timber and Stone Act of June 3, 1878, as amended, except as denied by special laws, in all of the public-land States; but such entries may not be made in Alaska.

§ 285.5 *Who may make entry.* One timber and stone entry may be made for not more than 160 acres (a) by any person who is a citizen of the United States, or who has declared his intention to become such a citizen, if he is not under 21 years of age, and has not already exhausted his right by reason of a former application for an entry of that kind, or has not already acquired title to or is not claiming under the homestead or desert land laws through settlement or entry made since August 30, 1890, any other lands which, with the land he applies for, would aggregate more than 320 acres; or (b) by an association of such persons; or (c) by a corporation, each of whose stockholders is so qualified.

§ 285.6 *Conditions under which married woman may make entry.* A married woman may make entry if the laws of the State in which she applies permit married women to purchase and hold for themselves real estate, but she must make the entry for her own benefit and not in the interest of her husband or any other person.

§ 285.7 *Method of obtaining title.* Any qualified person may obtain title under the timber and stone law by performing the following acts: (a) Personally examining the land desired; (b) presenting an application[1] accompanied by a filing fee of $10; (c) depositing with the manager the appraised price of the land; (d) publishing notice of his application and proof; (e) making satisfactory final proof.

§ 285.8 *Examination of land necessary.* Examination of the land must be made by the applicant in person not more than 30 days before the date of his application, in order that he may knowingly state the facts as to its character and condition.

§ 285.9 *Application; filing fee; classification of land.* (a) The application must contain the applicant's estimate of the timber based on examination, and his valuation of the land and the timber thereon, by separate items. It must be executed in duplicate, after having been read to or by the applicant and must be signed by him. An application is not acceptable if executed more than 10 days before its deposit in the mails for filing in the land office. Each applicant must, at the time he presents his application, deposit with the manager a filing fee of $10. In a State in which there is no land office, applications shall be filed with the Bureau of Land Management, Washington 25, D. C., except that applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. The applications must be filed within the time mentioned.

The application will be considered as a petition for the classification of the land, as provided in Part 296 of this chapter.

§ 285.10 *Applications by associations or corporations.* Applications by associations or corporations must, in addition to the facts recited in the foregoing statement, show that each person forming the association or holding stock in the corporation is qualified to make entry in his own right and that he is not a member of any other association or a stockholder in any other corporation which has filed an application for other lands under the timber and stone laws.

§ 285.11 *Notation of appraisement; appraisement effective for 1 year.* If the land, or part thereof, is classified and opened for entry as requested, the manager will note the price on his records, as of the date when the land becomes subject to entry, and for 1 year thereafter the land may be sold at such price. After the lapse of 1 year, an application under the act of June 3, 1878, as amended, will be referred by the manager to the State Supervisor for consideration as to whether the conditions then existing demand a new appraisal.

§ 285.12 *Notice of appraisement; payment or protest.* Upon receiving notice of the classification and opening of the land, or part thereof, the manager will inform the applicant that he must, within 30 days from service of notice, deposit with the manager, in lawful money, in post-office money orders or certified checks drawn in favor of the Bureau of Land Management which can be cashed without cost to the Government, or in other acceptable form of remittance, the appraised price of the land and timber thereon, or within such time file his protest against the appraisement, depositing with the manager a sum sufficient to defray the expenses of a reappraisement (which sum, not less than $100, must be fixed by the manager and specified in the notice to the applicant), together with his application for reappraisement at his own expense.

§ 285.13 *Objection to appraisement; application for reappraisement.* Any applicant filing his protest against an appraisement, and his application for reappraisement, must support it by a showing, corroborated by two competent, credible and disinterested persons, in which he must set forth specifically his objections to the appraisement. He must indicate his consent that the United States shall be reimbursed, for the cost of the reappraisement from the amount deposited by him for the reappraisement.

§ 285.14 *Cost of reappraisement.* The United States will be reimbursed for the cost of the reappraisement from the deposit made by the applicant. The amount, if any, remaining on deposit after paying the expenses of said reappraisement will be returned to the applicant.

§ 285.15 *Publication and posting of proof notice.* After the appraisement or reappraisement and deposit of purchase money and fee have been made, the manager will fix a time and place for the offering of final proof and name the officer before whom it shall be offered and post a notice thereof in the land office and deliver a copy of the notice to the applicant, to be by him and at his expense published in the newspaper of accredited standing and general circulation published nearest the land applied for. This notice must be continuously published in the paper for 60 days prior to the date named therein as the day upon which final proof must be offered.

CROSS REFERENCE: For publication of proof notices, see §§ 106.6 and 106.14 of this chapter.

§ 285.16 *Time, place, and method of making final proof.* Final proof should be made at the time and place mentioned in the notice, and, as a part thereof, evidence of publication, as required by § 285.15, should also be filed. If final proof is not made on that day or within 10 days thereafter, the applicant may lose his right to complete entry of the land. Upon satisfactory showing, however, explaining the cause of his failure to make the proof as above required, and in the absence of adverse claim the manager may authorize him to readvertise and complete entry under his previous application.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 285.17 *On death of applicant, heirs may make proof; patent to heirs.* If an applicant dies after the filing of an allowable application under the timber and stone laws, his heirs will be permitted to make proof and payment, but patent will issue to the heirs of the applicant.

§ 285.18 *Protests and contests.* Protests may be filed at any time before an entry is allowed, and contest may be filed at any time before patent issues, by any person who will furnish the manager with a corroborated affidavit alleging facts sufficient to cause the cancellation of the entry, and will pay the cost of contest.

CROSS REFERENCE: For rules of practice governing contests and protests, see Part 221 of this chapter.

§ 285.19 *Penalty for false statements.*[1] If an applicant makes a false statement in his application he will be liable to indictment and punishment as provided by law; and if he be guilty of fraud or attempted fraud in connection with his efforts to obtain title, his application and entry will be disallowed and all moneys paid by him will be forfeited to the Government, and his rights under the Timber and Stone Acts will be exhausted.

§ 285.20 *Allowable application exhausts right.* The filing of an application under the timber and stone laws, for land subject thereto, and to the completion of which the Government interposes no obstacle, exhausts the right of the applicant under the act of June 3, 1878, as amended.

§ 285.21 *Segregative effect of application.* After an application has been presented under the timber and stone laws, no other person will be permitted to file on the land embraced therein under any public-land law until such application shall have been finally disposed of adverse to the applicant.

§ 285.22 *Entry of lands upon final disallowance of application.* Lands appraised or reappraised under the timber and stone laws, but not sold, may, upon the final disallowance of the application, be entered by any qualified person, under the provisions of the said laws, at its appraised, or reappraised value, if subject thereto.

§ 285.23 *Entry of lands applied for but not appraised.* Lands applied for but not appraised and not entered under the timber and stone regulations may, when the rights of the applicant are finally terminated, be disposed of as though such application had not been filed.

§ 285.24 *Where lands have not been reappraised.* Any lands which have not been reappraised may be reappraised upon the request of an applicant therefor under the timber and stone regulations who complies with the requirements of § 285.13.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 285.25 *Right acquired through securing reappraisement.* An applicant securing a reappraisement under the timber and stone regulations shall acquire thereby no right or privilege except that of purchasing the lands at their reappraised value, if he is qualified, and if the lands are subject to sale under his application; and he must otherwise comply with the regulations in this part, but shall not, in any event, be entitled to the return of any money deposited by him and expended in such reappraisement.

§ 285.26 *The State Supervisor may direct reappraisement.* The State Supervisor may at any time direct the reappraisement of any tract or tracts of public lands, when, in his opinion, the conditions warrant such action.

SUBCHAPTER X—TRESPASS

PART 288—GENERAL TRESPASS REGULATIONS[1]

MEASURE OF DAMAGES, WHEN PRESCRIBED BY STATE LAW

Sec.
288.1 Measure of damages to be applied.

MEASURE OF DAMAGES, WHEN NOT PRESCRIBED BY STATE LAW

288.2 Timber trespass.
288.3 Turpentine trespass.
288.4 Ores trespass.
288.5 Oil trespass.
288.6 Coal trespass.

BASIS ON WHICH PAYMENT MUST BE MADE FOR COAL MINED PRIOR TO ISSUANCE OF PERMIT, LEASE, OR LICENSE

288.7 Coal mined by permittee, lessee, or licensee.
288.8 Coal mined by successful bidder at public sale.

PROCEDURE IN COAL TRESPASS CASES

288.10 Coal permit, lease or license not to issue until trespass account settled.

COAL MINING BY SURFACE OWNER

288.11 Right of surface owner to mine coal for domestic use.

SALE, LEASE OR PERMIT TO TRESPASSER

288.12 When timber or material may be sold, or a lease or permit issued, to a trespasser.

AUTHORITY: §§ 288.1 to 288.12 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For trespass in national forests, see Parks, Forests, and Memorials, 36 CFR Part 261. For unlawful enclosures or occupancy, see Part 289 of this chapter.

MEASURE OF DAMAGES, WHEN PRESCRIBED BY STATE LAW

§ 288.1 *Measure of damages to be applied.* The rule of damages to be applied in cases of timber, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of Mason et al. v. United States (260 U. S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed.

[1] In addition to liability for trespass on the public lands, as indicated in this part, persons responsible for such trespass may be prosecuted criminally under any applicable Federal law. Penalties are prescribed by the following statutes:
Timber trespass. 18 U. S. C. 1852, 1853.
Turpentine trespass. 18 U. S. C. 1854.
Coal trespass. 18 U. S. C. 1851.

MEASURE OF DAMAGES, WHEN NOT PRESCRIBED BY STATE LAW

§ 288.2 *Timber trespass.* For timber trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Where the trespass is willful, the full value of the property at the time and place of demand, or of suit brought, with no deduction for labor and expense.

(b) In case of innocent trespasses neither the trespassers nor their transferees shall be required to pay more than the stumpage value, or the value of the timber in standing trees taken by them, as damages to the Government.

(c) In case of a purchase without notice of wrong from a willful trespasser, the value at the time of purchase.

§ 288.3 *Turpentine trespass.* For turpentine trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Innocent trespass: Value of the gum and injury done to the trees. United States v. Taylor (35 Fed. 484).

(b) Willful trespass: Value of the product manufactured from the crude turpentine by the settler, or any person into whose possession same may have passed, without credit for labor bestowed on the turpentine by the wrongdoer. Union Naval Stores Co. v. United States (240 U. S. 284, 60 L. ed. 644).

§ 288.4 *Ores trespass.* (a) For ores trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) Measure of damages is the same as in the case of coal. Benson Mining and Smelting Co. v. Alta Mining and Smelting Co. (145 U. S. 428, 36 L. ed. 762); Durant Mining Co. v. Percy Consolidated Mining Co. (93 Fed. 166).

§ 288.5 *Oil trespass.* For oil trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Innocent trespass: Value of oil taken, less amount of expense incurred in taking the same.

(b) Willful trespass: Value of the oil taken without credit or deduction for the expense incurred by the wrongdoers in getting it. Mason v. United States (273 Fed. 135).

§ 288.6 *Coal trespass.* For coal trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) For innocent trespass, payment must be made for the value of the coal in place before severance. United States v. Homestake Mining Company (117 Fed. 481).

(b) For willful trespass, payment must be made for the full value of the coal at the time of conversion without deduction for labor bestowed or expense incurred in removing and marketing the coal. Liberty Bell Gold Mining Company v. Smuggler-Union Mining Company (203 Fed. 795). The mining of coal in

trespass is presumed to be willful, in the absence of persuasive evidence of the innocence and good faith of the trespasser. United States v. Ute Coal and Coke Company (158 Fed. 20).

BASIS ON WHICH PAYMENT MUST BE MADE FOR COAL MINED PRIOR TO ISSUANCE OF PERMIT, LEASE, OR LICENSE

§ 288.7 *Coal mined by permittee, lessee, or licensee.* All coal mined either under a pending application for permit, lease, or license, or without such pending application, is a trespass and the coal so mined must be settled for on a trespass basis. However, where a permittee applies, prior to the expiration of his permit, for a lease, the mining of coal by him from the date of the filing of the lease application to the date of the issuance of the lease, or, if the lease application is rejected, to the date of notice to him of the final rejection of his application does not constitute a trespass.

§ 288.8 *Coal mined by successful bidder at public sale.* The successful bidder at public sale for a coal leasing unit does not acquire any right to mine coal until he has complied with all the formalities required by the regulations, including the furnishing of a bond, and a lease has been issued to him. Coal mined by such applicant prior to the date of the issuance of a lease is in trespass and must be paid for on a trespass basis.

PROCEDURE IN COAL TRESPASS CASES

§ 288.10 *Coal permit, lease, or license not to issue until trespass account settled.* No coal permit, lease, or license will be issued to anyone known to have mined coal in trespass until the trespass account is settled.

COAL MINING BY SURFACE OWNER

§ 288.11 *Right of surface owner to mine coal for domestic use.* The owner of land patented with a reservation of the coal deposits, either under the act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), or under the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), has the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits.

SALE, LEASE OR PERMIT TO TRESPASSER

§ 288.12 *When timber or material may be sold, or a lease or permit issued, to a trespasser.* (a) For the purpose of this section, a trespasser is a person who is responsible for the unlawful use of or injury to property of the United States.

(b) No sale of timber or material will be made, and no permit or license will be issued, to a trespasser who has not satisfied his liability to the United States, except where:

(1) The Government has seized the materials cut, harvested, removed, or mined in trespass and the sale is made to the person who allegedly committed the trespass, at not less than the appraised value of the materials at the time of seizure, and without relieving the trespasser of liability for trespass damages to the extent that such damages exceed the amount paid for the materials; or

(2) The alleged trespasser files a bond conditioned upon payment of the amount of damages found by the authorized officer, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or

(3) The authorized officer finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability, or as to the extent of liability, or that the extent of the damages has not yet been determined, and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States; or

(4) The authorized officer finds in writing that:

(i) There is no other qualified bidder or that no other qualified bidder will meet the high bid, and

(ii) The sale or lease to the alleged trespasser is necessary to protect substantially the interest of the Government, either by preventing deterioration of or damage to the resource to be sold or loss or damage to other resources, or by accepting a highly advantageous price, and

(iii) The timber management or other resource management program of the Government will not be adversely affected by the sale.

PART 289—UNLAWFUL ENCLOSURES OR OCCUPANCY

Sec.

289.1 Enclosures of public lands in specified cases declared unlawful.
289.2 Duty of district attorney.
289.3 Responsibility for execution of law.
289.4 Filing of charges or complaints.
289.12 Settlement and free passage over public lands not to be obstructed.

AUTHORITY: §§ 289.1 to 289.12 issued under R. S. 2478; 43 U. S. C. 1201.

§ 289.1 *Enclosures of public lands in specified cases declared unlawful.*[1] Section 1 of the act of February 25, 1885 (23 Stat. 321; 43 U. S. C. 1061), declares any enclosure of public lands made or maintained by any party, association, or corporation who "had no claim or color of title made or acquired in good faith, or an asserted right thereto, by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such enclosure was or shall be made" to be unlawful and prohibits the maintenance or erection thereof.

§ 289.2 *Duty of district attorney.* Section 2 of the act of February 25, 1885 (23 Stat. 321; 43 U. S. C. 1062, 28 U. S. C. 41, Par. 21), provides that it shall be the duty of the district attorney of the United States for the proper district on affidavit filed with him by any citizen of the United States that such unlawful enclosure is being made or maintained, showing the description of the lands enclosed with reasonable certainty so that the enclosure may be identified, to institute a civil suit in the proper United States district or circuit court or territorial district court in the name of the United States and against the parties named or described who shall be in charge of or controlling the enclosure complained of.

§ 289.3 *Responsibility for execution of law.* The execution of this law devolves primarily upon the officers of the Department of Justice, but as it is the purpose to free the public lands from unlawful enclosures and obstructions, it is deemed incumbent upon the officers of the Department of the Interior to furnish the officers of the Department of Justice with the evidence necessary to a successful prosecution of the law.

§ 289.4 *Filing of charges or complaints.* All charges or complaints against unlawful enclosures or obstructions upon the public lands should be filed with the proper State Supervisor. Such charges or complaints, when possible, should give the name and address of the party or parties making or maintaining such enclosure or obstruction and should describe the land enclosed in such a way that it may be readily identified. The section, township, and range numbers should be given, if possible.

§ 289.12 *Settlement and free passage over public lands not to be obstructed.* Section 3 of the act of February 25, 1885 (23 Stat. 322; 43 U. S. C. 1063), provides that no person by force, threats, intimidation, or by any fencing or enclosing or any other unlawful means shall prevent or obstruct or shall combine or confederate with others to prevent or obstruct any person from peaceably entering upon or establishing a settlement or residence upon any tract of public land subject to settlement or entry under the public land laws of the United States or shall prevent or obstruct free passage or transit over or through the public lands.

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[1] Section 4 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1271; 43 U. S. C. 315c), provides:

"Fences * * * and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve."

Section 10, paragraph (4) of the Federal Range Code, § 161.10 of this chapter, containing rules for the administration of grazing districts prohibits "Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit."

Section 2 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1270; 43 U. S. C. 315a), provides that "any willful violation of the provisions of this act" or of "rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500."

Violations of any of the provisions of the act of February 25, 1885, constitute a misdemeanor (Sec. 4, 23 Stat. 322; 35 Stat. 40; 43 U. S. C. 1064).

SUBCHAPTER Y—WATERS

PART 292—PUBLIC WATER RESERVES

LANDS CONTAINING SPRINGS OR WATER HOLES NEEDED OR USED BY THE PUBLIC FOR WATERING PURPOSES

Sec.

292.1 Withdrawal of lands from settlement, location, sale, or entry; reservation for public use.

Sec.
292.2 Purpose of withdrawal.
292.3 Showing as to springs or water holes required in connection with selections, filings, or entries.
292.4 Application of order of withdrawal to specified cases.
292.5 Lands not needed or used by the public for watering purposes.

LANDS CONTAINING HOT SPRINGS OR SPRINGS THE WATERS OF WHICH POSSESS CURATIVE PROPERTIES

292.6 Withdrawal of land from settlement, location, sale, or entry; reservation for lease.
292.7 Purpose of withdrawal.
292.8 Showing as to hot or medicinal springs required with applications to enter or select; permission to use lands.
292.9 Application of order of withdrawal to specified cases.

USE OF LANDS WITHDRAWN AS PUBLIC WATER RESERVES

292.10 Statutory authority; governing regulations.
292.11 Stipulations and agreements required.
292.12 Who may make application; form and contents.
292.13 Map and field notes required when water is to be conducted outside of the reserve.
292.14 When reservoir declaratory statement may be required.
292.15 Conditions of permit; failure to comply with same; assignment.
292.16 Changes in system or new structures may be authorized.

LEASING OF PUBLIC LANDS NEAR OR ADJACENT TO SPRINGS, FOR BATH HOUSES, HOTELS, OR OTHER IMPROVEMENTS

292.17 Statutory authority.
292.18 Lands which may be leased.
292.19 Form and contents of application.
292.20 Authority of the manager to regulate prices.
292.21 Application for lease.
292.22 Granting of lease is discretionary.
292.23 Appeals.

CROSS REFERENCES: For Bureau of Reclamation, see Chapter II of this title. For waters, Alaska, see Part 82 of this chapter. For regulations of the Geological Survey, Department of the Interior, governing the acquisition and leasing of water wells, see Mineral Resources, 30 CFR Part 241.

LANDS CONTAINING SPRINGS OR WATER HOLES NEEDED OR USED BY THE PUBLIC FOR WATERING PURPOSES

AUTHORITY: §§ 292.1 to 292.5 issued under sec. 11, 39 Stat. 865; 43 U. S. C. 301.

§ 292.1 *Withdrawal of lands from settlement, location, sale, or entry; reservation for public use.*[1] By Executive order of April 17, 1926, it was ordered that every smallest legal subdivision of the public-land surveys which is vacant, unappropriated, unreserved, public land and contains a spring or water hole, and all land within one quarter of a mile of every spring or water hole located on unsurveyed public land be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of section 10 of the act of December 29, 1916 (39 Stat. 865; 43 U. S. C. 300), and in aid of pending legislation.

§ 292.2 *Purpose of withdrawal.* The Executive order of April 17, 1926, was designed to preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes. It is not therefore to be construed as applying to or reserving from homestead or other entry lands having small springs or water holes affording only enough water for the use of one family and its domestic animals. It withdraws those springs and water holes capable of providing enough water for general use for watering purposes.

§ 292.3 *Showing as to springs or water holes required in connection with selections, filings, or entries.*[2] (a) It must be shown by a duly corroborated statement in connection with every selection, filing, or entry made upon or subsequent to the date of Executive order of April 17, 1926, or theretofore filed but not allowed, that no spring or water hole exists, if it be a fact, upon any legal subdivision of the land sought to be appropriated, if surveyed, and if unsurveyed, within one-quarter of a mile from the exterior boundaries of said land. If there be any spring or water hole the showing should state the exact location and size thereof; together with an estimate of the quantity of water in gallons which it is capable of producing daily, and any other information necessary to determine whether or not it is valuable or necessary as a public water reserve.

(b) The showing mentioned will not be required in connection with proposed State exchanges or indemnity school and other State selections, involving public lands in grazing districts, where agreements as to the exchanges or selections have been reached by representatives of the State, and the Bureau of Land Management.

§ 292.4 *Application of order of withdrawal to specified cases.* (a) In case the attempted appropriation of the land is one the allowance of which is within the discretion of the Secretary of the Interior or the Bureau of Land Management, the showing required by § 292.3, must be furnished, irrespective of the date of filing of the application, entry, or selection, before favorable action is taken thereon.

(b) This requirement shall not apply, however, to selections or filings made in pursuance of grants which have been determined to be "grants in praesenti," and to have attached and become effective prior to April 17, 1926, or to valid settlement claims initiated prior to said date and thereafter maintained in accordance with the law applicable thereto.

(c) Geological Survey designation lists, under the Enlarged Homestead Acts will contain a paragraph that:

This area contains no springs or water holes of the type intended to be withdrawn by Executive order of April 17, 1926, creating public water reserve No. 107, and, therefore, is unaffected by it.

(d) Where orders of designation under the said acts contain the quoted paragraph in paragraph (c) of this section, it will not be necessary for an entryman to make the showing required by § 292.3.

§ 292.5 *Lands not needed or used by the public for watering purposes.* (a) The object of the Executive order of April 17, 1926, was to:

preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes.

(b) In the States of Alabama, Arkansas, Florida, Louisiana, Michigan, Minnesota, Missouri, Mississippi, and Wisconsin the springs or water holes, if any, on the public lands are not needed or used by the public for watering purposes. The conditions in those States are entirely different from those in the other public-land States where grazing is carried on to a considerable extent and not only springs and water holes but other available sources of water supply are sometimes quite scarce. There are no lands in the States mentioned that come within the purview of the Executive order of April 17, 1926. Therefore, a nonwater hole and nonspring statement is not required in connection with applications for lands in such States. Neither will such statement be required in connection with applications for lands in Federal reclamation projects.

LANDS CONTAINING HOT SPRINGS OR SPRINGS THE WATERS OF WHICH POSSESS CURATIVE PROPERTIES

AUTHORITY: §§ 292.6 to 292.9 issued under R. S. 2478; 43 U. S. C. 1201.

§ 292.6 *Withdrawal of land from settlement, location, sale, or entry; reservation for lease.* (a) By E. O. 5389, July 7, 1930, it was ordered "that every smallest legal subdivision of the public land surveys which is vacant, unappropriated unreserved public land and contains a hot spring, or a spring the waters of which possess curative properties; and all land within one-quarter of a mile of every such spring located on unsurveyed public land, exclusive of Alaska, be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for lease under the provisions of the act of March 3, 1925 (43 Stat. 1133), subject to valid existing rights."

(b) By Public Land Order No. 399 of August 20, 1947, Executive Order 5389 was amended by deleting therefrom the words "exclusive of Alaska," so that the said order as amended applies to lands containing hot or medicinal springs in Alaska as well as elsewhere in the United States.

§ 292.7 *Purpose of withdrawal.* The Executive order mentioned in § 292.6 was designed to preserve for general public use and benefit the unreserved public lands, containing hot springs or springs the waters of which possess curative properties, in order that they might be leased under the provisions of the act of March 3, 1925 (43 Stat. 1133; 43 U. S. C.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[2] By E. O. 5106 of May 4, 1929 (§ 297.6) Alaska was excluded from the public water reserve created by E. O. of Apr. 17, 1926.

971), and the regulations issued thereunder, contained in §§ 292.17 to 292.23.

§ 292.8 *Showing as to hot or medicinal springs required with applications to enter or select; permission to use lands.* (a) An applicant to enter or select lands situated outside of a national forest in any State or in the Territory of Alaska must show that no hot spring or other spring having waters possessing curative properties exists, if it be a fact, upon any legal subdivision of land sought to be appropriated, if surveyed, and if unsurveyed, that no portion of the land applied for is within an area of one-quarter of a mile from such spring.

(b) If there be any such spring upon or adjacent to the land as stated, the applicant must show the exact location and size thereof, together with an estimate of the quantity of water in gallons which it is capable of producing daily and any other information necessary to determine whether or not it is valuable or necessary within the meaning of said Executive order. The showing must be duly corroborated.

(c) Permission may be obtained to use or improve lands containing such springs under the said act of March 3, 1925.

(d) The showing mentioned will not be required in connection with proposed State exchanges or indemnity school and other State selections involving public lands in grazing districts, where agreements as to the exchanges or selections have been reached by representatives of the State and the Bureau of Land Management.

§ 292.9 *Application of order of withdrawal to specified cases.* (a) In case the attempted appropriation of lands is one the allowance of which is within the discretion of the Secretary of the Interior or the Bureau of Land Management, the showing referred to in § 292.8 must be furnished irrespective of the date of filing of the application, entry, or selection before favorable action is taken thereunder.

(b) The said requirement shall not apply, however, to selections or filings made in pursuance of grants which have been determined to be "grants in praesenti" and to have attached and become effective prior to July 7, 1930, or to valid existing rights, initiated prior to said date and thereafter maintained in accordance with the laws applicable thereto.

(c) Geological Survey designation lists, under the Enlarged Homestead Act, will contain a paragraph stating:

> This area contains no spring of the type intended to be withdrawn by Executive order of July 7, 1930, No. 5389, and therefore is unaffected by it.

(d) Where orders of designation under the Enlarged Homestead Acts contain the above-quoted paragraph, it will not be necessary for entrymen to make the showing required by § 292.8.

(e) Also in cases of applications or entries for lands within Federal reclamation projects, where a report is made by the Bureau of Reclamation that the lands contain no spring of the type intended to be withdrawn by E. O. 5389, July 7, 1930, it will not be necessary for the claimant to make the showing required by § 292.8.

USE OF LANDS WITHDRAWN AS PUBLIC WATER RESERVES

AUTHORITY: §§ 292.10 to 292.16 issued under R. S. 2478; 43 U. S. C. 1201.

§ 292.10 *Statutory authority; governing regulations.* Permission may be obtained to use or improve lands withdrawn as or in connection with public water reserves, under the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143, 16 U. S. C. 471), or any other act, by filing application for such permission under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), in accordance with the regulations governing said act, as found in §§ 244.22 to 244.29 of this chapter, as supplemented by §§ 292.10 to 292.16.

§ 292.11 *Stipulations and agreements required.* As a condition precedent to the granting of any such permission, the applicant will be required to execute such stipulations and agreements as may be deemed proper and necessary by the manager of the proper land office, to safeguard the public interests, after investigation of the facts, circumstances, and conditions in connection with each individual case.

§ 292.12 *Who may make application; form and contents.* (a) Any citizen or association of citizens of the United States, or any corporation, duly created and existing under and by virtue of the laws of any State of the United States, who may desire to improve the productivity of any water hole or source of water supply within the boundaries of any public water reserve, or to conduct such waters from their source within such a reserve to a point or place more convenient for public use, may file in the office of the manager of the land office for the district, within which the reservation is situated, an application for permission so as to use the reserved land, or conduct the waters over or through the same.

(b) Such application should be in the form of a statement, duly corroborated by at least two persons, setting forth in detail the plan of the applicant for the improvement and care of the public water reserve, the public necessity for such improvement, the reasons why such plan will be more conducive to the public good and better conserve the waters for public use, and any other facts and circumstances pertinent thereto.

§ 292.13 *Map and field notes required when water is to be conducted outside of the reserve.* If the waters are to be conducted from their source within the reserve to a point outside of the reserve, the application should be accompanied by a map and separate field notes in duplicate, the map being delineated upon tracing linen, and prepared in accordance with the regulations governing the submission of applications under the act of February 15, 1901, also evidence that applicant has applied to the proper State official for permission to appropriate the waters to the uses contemplated and has prosecuted such application in good faith to date of the filing of the application.

§ 292.14 *When reservoir declaratory statement may be required.* If the place of use of the water is upon unreserved public land the applicant may be called upon to file a reservoir declaratory statement under the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952–955), as well as the application under the act of February 15, 1901, if deemed advisable.

§ 292.15 *Conditions of permit; failure to comply with the same, assignment.* (a) Each permit shall contain, besides those found necessary in individual cases, the following conditions:

(1) That the right to appropriate the waters of the State to the uses contemplated shall be obtained within 1 year from and after the issuance of the permit and the permittee shall file a certificate to that effect issued by the proper State authority.

(2) That the proposed system shall be fully completed in substantial conformity with the plan upon which the permit is predicated, within 2 years from and after the issuance of such permit, unless a different period is specifically provided for in such permit.

(3) That the permittee shall, during the month of January, in each year after the completion of such system, file with the manager of the land district within which the system is located, a statement of maintenance, in substantially the following form:

> ---------- , of
> (Name)
> ---------- , states
> (Address)
> that he is the President of the ---------- company (or person) to whom permit (give land district and serial number), was issued by ---------- , (give date), in connection with public water reserve No. ____, that the system as set forth and described in said permit has been kept in repair and water sufficient for the public needs has been kept therein during the whole of the calendar year of 19__, that the same has been kept open to the public at all times during the year, and that the said permittee has in all things, complied with the provisions of said permit, and the stipulations therein contained and the acts under which said permit was issued.
>
> ----------
> (Signature)
>
> ----------
> (Date)

(b) In the event that the State certificate as to the right to appropriate the water is not filed within 1 year, or proof of the construction of the system, consisting of the statement of the permittee duly corroborated by two witnesses within 2 years or such other period as may be mentioned in the permit, or statement of maintenance is not filed as hereinbefore provided or in case any of the terms, conditions, provisions, or stipulations of the permit shall not be well and in good faith performed, observed, and carried out, then such permit shall become and be subject to cancellation. Nothing hereinbefore contained, however, is to be construed as limiting the power or authority of the manager to cancel and determine the permit at any time when in his judgment such action is desirable.

(c) Permits issued hereunder are transferable only upon the written authority and consent of the manager.

§ 292.16 *Changes in system or new structures may be authorized.* If, at any time, it becomes necessary for the permittee to change his system or to erect structures other than those authorized by his permit, application for permission so to do, in the form of a statement setting forth in detail the reason and necessity for the change must be filed, and no such change shall be made until authorized in writing by the manager.

LEASING OF PUBLIC LANDS NEAR OR ADJACENT TO SPRINGS, FOR BATH HOUSES, HOTELS, OR OTHER IMPROVEMENTS

AUTHORITY: §§ 292.17 to 292.23 issued under 43 Stat. 1133; 43 U. S. C. 971.

§ 292.17 *Statutory authority.* The act of March 3, 1925 (43 Stat. 1133; 43 U. S. C. 971) authorizes the issuance of leases for periods not exceeding 20 years of tracts of land near or adjacent to mineral, medicinal, or other springs located upon unreserved public lands or public lands withdrawn for the protection of such springs, for the erection of bath houses, hotels, or other improvements for the accommodation of the public. Leases may issue under the act to any responsible persons or associations, which words are construed to include private corporations and municipalities.

§ 292.18 *Lands which may be leased.* Leases may issue for surveyed or unsurveyed unreserved public lands in the several States and in Alaska, situated near or adjacent to mineral, medicinal, or other springs, which are located upon unreserved public lands, and for public lands which have been withdrawn for the protection of such springs.

§ 292.19 *Form and contents of application.* An application for lease should be made in duplicate, and should cover or include the following:

(a) Applicant's name and address.

(b) If applicant is a private corporation, a certified copy of the articles of incorporation.

(c) If applicant is a municipality, the law or charter and procedure taken by which the municipality has become a legal body corporate.

An application by a private corporation or municipality should show that it is legally qualified to take the lease requested and that the taking of such lease has been duly authorized by its governing body.

(d) An accurate description of the land desired. If the land is surveyed it should be described with reference to the public-land surveys. A lease may be granted for part of a legal subdivision or for more than one legal subdivision, in the discretion of the manager. If the land is unsurveyed, the description thereof should conform to requirements set forth in § 101.6 of this chapter.

(e) The names and addresses of three persons to whom reference may be made as to applicant's reputation and business standing and as to his ability, both from a financial standpoint and otherwise, to carry out the contemplated project.

(f) The period of time for which the lease is desired, not to exceed 20 years, and the purpose for which the lease is sought, whether for the erection of a bathhouse, hotel, or other improvement for the accommodation of the public. It is important that the application should specify all purposes for which it is intended or desired to use the land, as a lease, if issued, will authorize the use of the land only for the purposes specified in the application, and its use for any other purpose will not be permitted. Thus, if an applicant for a hotel in addition to using the land for ordinary hotel purposes, wishes to operate a billiard hall or moving-picture theater, etc., on the land, that fact should be disclosed in the application.

(g) Details as to the proposed improvements, including the estimated cost of construction and of subsequent maintenance; also the time when construction work will begin and when it will be completed, if the proposed lease is granted.

§ 292.20 *Authority of the manager to regulate prices.* All leases issued under the act of March 3, 1925, will contain stipulations authorizing the manager to fix the rates and prices for accommodations and services whenever this is deemed necessary. The charges which may be made may or may not be regulated by the manager as may be deemed proper in the particular case.

§ 292.21 *Application for lease.* An application for lease should be filed in duplicate in the proper land office.

§ 292.22 *Granting of lease is discretionary.* The granting of an application for lease is discretionary, and any application may be granted or denied in part or in its entirety as may appear to be warranted in the particular case.

§ 292.23 *Appeals.* Any party aggrieved by any action of the manager may appeal to the Director, Bureau of Land Management, and the Secretary of the Interior, pursuant to the Rules of Practice (Part 221 of this chapter).

SUBCHAPTER Z — WITHDRAWALS, RESTORATIONS, CLASSIFICATIONS, AND EXECUTIVE ORDERS

PART 295—WITHDRAWALS AND RESTORATIONS [1]

WITHDRAWAL OF PUBLIC LANDS FOR WATER-POWER SITES, IRRIGATION, CLASSIFICATION OF LANDS, OR OTHER PUBLIC PURPOSES

Sec.

295.1 Statutory authority.
295.2 Claims not affected by orders of withdrawal.
295.3 Agricultural entries of withdrawn coal lands.

[1] The text of the General Executive Orders withdrawing the remaining public lands from entry is given in §§ 297.11 and 297.12.

The said orders did not affect lands then in reservations. Therefore, lands in national forests and in reclamation projects included in such reservations prior to the dates of said orders, and not otherwise reserved, are subject to disposition under the Forest Homestead Act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–508, 509) and under the Reclamation Homestead Act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.), respectively.

With respect to mineral lands, the said orders do not prevent prospecting, locating, developing, mining, entering, leasing, or patenting of the withdrawn lands, under the provisions of the applicable mineral or mineral leasing laws. (§ 296.8)

EFFECT OF WITHDRAWALS MADE SUBSEQUENT TO COMPLETION OF STATE AND OTHER SELECTIONS

Sec.

295.5 Governing rules.

WITHDRAWAL FOR STOCK DRIVEWAYS AND WATER HOLES

295.6 Withdrawal of lands for stock driveways.
295.7 Application for stock-driveway withdrawal; lease and exchange applications to be received under certain conditions.

SIMULTANEOUS APPLICATIONS

295.8 Processing of simultaneous applications.

WITHDRAWAL OR RESERVATION OF LANDS FOR THE USE OF FEDERAL OR STATE AGENCIES

295.9 Application by Federal or State agency.
295.10 Segregative effect of application by Federal or State agency.
295.11 Action on application by Federal or State agency.

WITHDRAWAL OF PUBLIC LANDS FOR WATER-POWER SITES, IRRIGATION, CLASSIFICATION OF LANDS, OR OTHER PUBLIC PURPOSES

AUTHORITY: §§ 295.1 to 295.3 issued under R. S. 2478; 43 U. S. C. 1201.

§ 295.1 *Statutory authority.* (a) The act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143, 16 U. S. C. 471), provides that the President may at any time in his discretion temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification, or other public purposes to be specified in the orders of withdrawal, such withdrawal to remain in force until revoked by him or by an act of Congress.

(b) The provision of the said act of June 25, 1910, that all lands withdrawn under the provisions of that act shall, at all times, be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, "so far as the same apply to minerals other than coal, oil, gas, and phosphates," is changed by an amendment to said act, made by the act of August 24, 1912 (37 Stat. 497; 43 U. S. C. 142), so as to provide that such lands shall, at all times, be open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

§ 295.2 *Claims not affected by orders of withdrawal.* Section 2 of the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 142) contains further provision to the effect that there shall be excepted from the force and effect of any withdrawal all lands which are on the date of withdrawal embraced in any lawful homestead, or desert-land entry theretofore made or upon which any valid settlement has been made, and is at that time being maintained and perfected pursuant to law.

§ 295.3 *Agricultural entries of withdrawn coal lands.* The act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), is for the protection of surface rights of nonmineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the act of June 22, 1910 (36 Stat. 583; 30

U. S. C. 83–85), provides for the allowance of certain nonmineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain nonmineral entries, and the act of June 25, 1910, was not intended to repeal said acts. Therefore, where applications are presented to make final proof on nonmineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the act of March 3, 1909, and as to such lands certain nonmineral entries may be allowed, as provided for by the act of June 22, 1910, notwithstanding their withdrawal under act of June 25, 1910.

CROSS REFERENCE: For agricultural entries on mineral lands, see Part 102 of this chapter.

EFFECT OF WITHDRAWALS MADE SUBSEQUENT TO COMPLETION OF STATE AND OTHER SELECTIONS

§ 295.5 *Governing rules.* (a) The Supreme Court of the United States in Payne v. Central Pacific Railway Company (255 U. S. 228, 65 L. ed. 598), on February 28, 1921, decided that the railroad indemnity selection there involved should be disposed of "on its merits unaffected by the withdrawal" of the land made after perfection of the selection for a water-power site under the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143). On March 7, 1921, in the case of Payne v. New Mexico (225 U. S. 367, 65 L. ed. 680), the court concluded that the "Land Department" should dispose of the State's school-land indemnity selection "in regular course unaffected by the elimination of the base tract from the reservation" for forestry purposes after the completion of the selection. In the case of Payne v. United States ex rel. Newton (255 U. S. 438, 65 L. ed. 720), on March 14, 1921, the court referred to the departmental instructions issued April 25, 1914 (43 L. D. 294), and said:

> The Secretary stated that the lapse of two years after the issue of the receiver's receipt will bar a contest or protest based upon any charge whatsoever, save where the proceeding is sustained by some special statutory provision.

(b) In Wyoming v. United States (255 U. S. 489, 65 L. ed. 742), decided on March 28, 1921, the court held that the conditions obtaining at the date of the completed school-land indemnity selection, with respect to the character of the land, whether known or believed to be mineral, were controlling and that the "Land Department" was without authority to cancel the selection on the ground that the selected land was subsequently included in a petroleum withdrawal and proven to be mineral land.

(c) The adjudication of cases controlled by the decisions mentioned will be in harmony with the principles announced in those decisions.

(R. S. 2478; 43 U. S. C. 1201)

WITHDRAWALS FOR STOCK DRIVEWAYS AND WATER HOLES

§ 295.6 *Withdrawal of lands for stock driveways.* The reservation of driveways for stock provided for in section 10 of the act of December 29, 1916 (39 Stat. 865; 43 U. S. C. 300) will be considered on application of parties interested on recommendation of other departments of the Government, or on the reports of agents of this Department. Lands withdrawn for driveways for stock or in connection with water holes can not thereafter be entered.

(Sec. 11, 39 Stat. 865; 43 U. S. C. 301)

§ 295.7 *Application for stock-driveway withdrawal; lease and exchange applications to be received under certain conditions.* (a) Upon the receipt in the proper land office of a duly executed application, in duplicate, for the withdrawal of public lands for a stock driveway by responsible parties in interest, the lands described therein shall be segregated from disposition temporarily, pending final action thereon by the Bureau of Land Management.

(b) Pending and during such temporary segregation, applications to enter or select any affected lands may be received and suspended.

(c) Lands withdrawn for driveways for stock or in connection with water holes are not subject to entry or disposition, and applications for the acquisition of lands so withdrawn will be rejected by the manager. Applications for the exchange of such lands, which show that they are filed pursuant to a program for the improvement of stock driveways, and applications to lease or use such lands under any appropriate public land law, until such time as they may be needed for the purposes of the withdrawal, and where the proposed use will not interfere with such purpose, will receive consideration.

(Sec. 11, 39 Stat. 865; 43 U. S. C. 301)

SIMULTANEOUS APPLICATIONS

§ 295.8 *Processing of simultaneous applications.* All applications, which term includes offers to lease, filed pursuant to the regulations in any part of this chapter will be regarded as having been filed simultaneously within the meaning of this section where by reason of an order of restoration or opening, or a notice of the filing of a plat of survey or resurvey, they are filed in the manner and within the period of time for the filing of simultaneous applications provided for in such order or notice. When no order of restoration or notice of opening is involved, the applications will be treated as having been filed simultaneously if they are received by a land office (or, if there is no such office for the State, by the Washington Office of the Bureau of Land Management), over the counter at the same time, or are received in the same mail. Unless otherwise provided in a particular order, or regulation, applications which are filed simultaneously will be processed in accordance with the following rules:

(a) All such applications received will be examined and appropriate action will be taken on those which do not conflict in whole or in part.

(b) All such applications which conflict in whole or in part will be included in a drawing which, except as provided in paragraph (c) of this section will fix the order in which the applications will be processed.

(c) All applications included in the drawing will be subject to any priority to which any particular applicant may be entitled on account of a preference right conferred by law or regulations.

(R. S. 2478; 43 U. S. C. 1201)

WITHDRAWAL OR RESERVATION OF LANDS FOR THE USE OF FEDERAL OR STATE AGENCIES

AUTHORITY: §§ 295.9 to 295.11 issued under R. S. 161, 2478; 5 U. S. C. 22, 43 U. S. C. 1201. Interpret or apply E. O. 10355, May 26, 1952, 17 F. R. 4831.

§ 295.9 *Application by Federal or State agency.* (a) Except where the matter is classified for national security reasons, the head of any Federal or State agency (or an officer designated by him) desiring lands owned or controlled by the United States to be withdrawn or reserved under the authority of Executive Order 10355, May 26, 1952 (17 F. R. 4831, 3 CFR, 1952 Supp.), for the use of the agency shall file an application for such withdrawal or reservation with the manager of the land office for the area in which the lands are situated, or, if there is no land office for the area, with the Bureau of Land Management, Department of the Interior, Washington 25, D. C.

(b) A classified application for the withdrawal or reservation of lands pursuant to Executive Order 10355 shall be submitted to the Secretary of the Interior, Washington 25, D. C.

(c) An application for the withdrawal or reservation of lands pursuant to Executive Order 10355 for the use of a Federal or State agency shall contain the following information:

(1) Name of the agency for which the withdrawal or reservation is desired.

(2) Description and acreage of the lands desired, describing the lands in terms of the public land surveys or, if unsurveyed, by metes and bounds, with the approximate area. A metes and bounds description should be connected by course and distance with some corner of the public land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, or other prominent topographical points or natural objects or monuments.

(3) Purpose of the requested withdrawal or reservation (if the purpose is classified for security reasons, so state).

(4) A statement showing the agency's need for all the land requested.

(5) A statement indicating whether the withdrawal or reservation should preclude the following activities on the affected lands: (i) Grazing, (ii) mineral leases, and (iii) mining locations.

(6) Citation of statutory authority under which the withdrawal or reservation may be made.

§ 295.10 *Segregative effect of application by Federal or State agency.* (a) The recording in the serial register and the noting on the official plats and in the tract books maintained by the land office for the area, or by the Washington office of the Bureau of Land Management if there is no land office for the area, of information indicating that an appli-

cation for the withdrawal or reservation of lands has been received from a Federal or State agency shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. To that extent, action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken. Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands.

(b) An application may be amended at any time by the applicant agency so as to eliminate therefrom lands no longer desired for withdrawal or reservation. The noting upon the proper public records of information regarding such amendment shall relieve the lands so eliminated of the segregative effect of the agency's application; and any suspended applications from other persons for the eliminated lands may be processed without regard to the agency's application.

(c) An amendment of an agency's application so as to include additional lands shall have as to such lands the segregative effect provided for in paragraph (a) of this section from the date of the entry of information regarding the receipt of such request on the records mentioned in paragraph (a) of this section. Such an amendment will be processed either as a part of that application or separately, as the facts may warrant.

§ 295.11 *Action on application by Federal or State agency.* (a) The Secretary of the Interior (or his delegate) may, in his discretion and if the public interest seems to require it, afford members of the public an opportunity to object to an application by a Federal or State agency for the withdrawal or reservation of lands. Notice of such opportunity (Form 4–1193)[1] shall be published in the FEDERAL REGISTER and shall fix the time and place for the filing of written objections or for an oral hearing, as may be determined by the Secretary (or his delegate).

(b) If the Secretary of the Interior (or his delegate) denies an agency's application in whole or in part, a Notice of Determination on Form 4–1194[1] will be issued. Upon publication of the Notice of Determination in the FEDERAL REGISTER, the affected lands will no longer be subject to the segregative effect of the agency's application.

(c) If the Secretary (or his delegate) determines that the withdrawal or reservation requested by a Federal or State agency should be made, in whole or in part, he will issue a public land order to that effect, for publication in the FEDERAL REGISTER.

[1] Filed with the Federal Register Division as part of the original document.

PART 296—CLASSIFICATIONS

CLASSIFICATIONS OF PUBLIC LAND UNDER SECTION 7 OF THE TAYLOR GRAZING ACT OR UNDER THE SMALL-TRACT ACT

Sec.
296.1 Statutory authority.
296.2 Classification of public lands.
296.3 Notice of proposed classification and opening to be given to grazing permittee; classification and opening of land in a grazing lease.
296.4 Classifications of irrigable land for homestead entry.
296.5 When applicant may occupy and improve the land.
296.6 Preference right of applicant; order of opening to be issued where preference-right application is rejected.
296.7 Requirements to earn title.
296.8 Cases of conflict with applications for mineral prospecting permits or leases.
296.9 Appeal.

AUTHORITY: §§ 296.1 to 296.9 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

§ 296.1 *Statutory authority.* (a) Section 7 of the act of June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto, or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than the use provided for under said act, or proper for acquisition in satisfaction of any outstanding lien, exchange, or scrip rights or land grant, and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable land laws. Executive Order 6910, Executive Order 6964, and section 7 of the Taylor Grazing Act, do not apply to public lands in the Territory of Alaska.

(b) The Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended, authorizes the classification for small-tract purposes, as set forth in Part 257 of this chapter, of any vacant, unreserved, surveyed public land, or surveyed public land withdrawn or reserved by the Secretary of the Interior for any purpose, or surveyed lands withdrawn by Executive Orders Nos. 6910 of November 26, 1934, and 6964 of February 5, 1935. The act, as amended, applies to the Territory of Alaska.

§ 296.2 *Classification of public lands.* (a) Classification may be made of the lands without an application having been filed for such lands.

(b) Where classification is required under section 7 of the Taylor Grazing Act, an application to enter, select, or lease the land will be considered as a petition for its classification. Where, however, the land or any part thereof, is withdrawn or classified or is valuable for deposits of coal, oil, gas, potash, phosphate, sodium, oil shale, or (in Louisiana and New Mexico) sulphur, the applicant must show:

(1) Whether the purpose for which the title is sought is necessary and not contrary to the interest of the public;

(2) Whether the applicant lawfully could devote the land to the proposed use without obtaining title; and

(3) Whether the applicant reasonably could obtain other land, either public or privately owned, which could serve the purpose desired substantially as well as the land applied for.

§ 296.3 *Notice of proposed classification and opening to be given to grazing permittee; classification and opening of land in a grazing lease.* In the case of public lands in a grazing district, reasonable notice of a classification or a proposed classification and opening of the lands will be given to any permittees entitled to participate in the grazing use of the land. Lands embraced in a grazing lease are subject to classification and other lease or disposal under the conditions set forth in § 160.12 of this chapter.

§ 296.4 *Classifications of irrigable land for homestead entry.* Public lands which are desert in character within the meaning of sections 2 and 3 of the desert-land law (act of March 3, 1877, 19 Stat. 377, 43 U. S. C. 322) and are subject to classification under section 7 of the Taylor Grazing Act may, on the filing of an application under the general homestead laws, be classified for entry under those laws, provided the applicant makes a satisfactory showing that the land is susceptible of successful cultivation by irrigation and that the cultivation requirements of the homestead laws will be met. The applicant in such a case will be required to furnish satisfactory evidence of a water right and plans of irrigation. The available water supply, and the plan of irrigation, however, need be sufficient only to enable the applicant to meet the cultivation requirements of the homestead laws.

§ 296.5 *When applicant may occupy and improve the land.* The filing of an application which cannot be allowed unless the land is first classified does not give the applicant the right to occupy or settle upon the land. The applicant shall be entitled to the possession and use of the land only after his entry, selection, or location has been allowed, or a lease has been issued. Settlement on the land prior to that time constitutes a trespass.

§ 296.6 *Preference right of applicant; order of opening to be issued where preference-right application is rejected.* Where public land is classified under section 7 of the Taylor Grazing Act pursuant to an application, the applicant is entitled to a preference right of entry. If, however, after classification of the land and prior to the allowance of the application, it should be necessary for any reason to reject the application, the land will not become subject to application by persons other than the preference-right applicant until an appropriate order of opening has been issued.

CROSS REFERENCE: For preference right of applicant under the Small Tract Act, see § 257.9 of this chapter.

§ 296.7 *Requirements to earn title.* Upon allowance of an application to make entry, location, or selection of public land classified as provided in §§ 296.1–296.9, all the laws and regulations governing the particular kind of entry, location, or selection applied for must be complied with in order to earn title to the land.

§ 296.8 *Cases of conflict with applications for mineral prospecting permits or leases.* In all cases of applications to make nonmineral entries or selections of public lands, which conflict with applications for mineral prospecting permits or leases, the instructions in §§ 102.34 to 102.38 of this chapter must be observed.

§ 296.9 *Appeal.* An appeal from a decision of the manager to the Director, or from a decision of the Director to the Secretary of the Interior may allege errors of law, or the applicant may make a showing as to the facts, accompanied by evidence tending to disprove the adverse conclusions reached.

PART 297—EXECUTIVE ORDERS AND RELATED PUBLIC LAND ORDERS REFERRED TO IN CHAPTER I

Sec.

297.3 Alaska Railroad town site regulations.
297.4 Amendment of Alaska Railroad town site regulations.
297.5 Withdrawal of lands containing springs or water holes; Public Water Reserve No. 107.
297.6 Modification of order withdrawing lands containing springs or water holes; Public Water Reserve No. 107.
297.7 Amendment of Alaska Railroad town site regulations.
297.8 Withdrawal of oil shale deposits and lands containing same.
297.9 Withdrawal of lands containing hot or medicinal springs, exclusive of Alaska.
297.10 Modification of order withdrawing oil shale deposits and lands containing same.
297.11 First general order of withdrawal.
297.12 Second general order of withdrawal.
297.13 Modification of order withdrawing oil shale deposits and lands containing same.
297.14 Amendment of first general order of withdrawal.
297.15 Amendment of first general order of withdrawal.
297.16 Amendment of first general order of withdrawal.
297.17 Amendment of second general order of withdrawal.
297.18 Amendment of first and second general orders of withdrawal.
297.19 Withdrawal of lands containing hot or medicinal springs, including public lands in Alaska.

AUTHORITY: §§ 297.3 to 297.19 issued under sec. 24, 26 Stat. 1103, as amended, sec. 1, 36 Stat. 847, sec. 1, 38 Stat. 305, sec. 11, 39 Stat. 865; 16 U. S. C. 471, 43 U. S. C. 141, 48 U. S. C. 307, 43 U. S. C. 301.

§ 297.3 *Alaska Railroad town site regulations.*[1] It is hereby ordered that the administration of that portion of the act of March 12, 1914 (38 Stat. 305; 48 U. S. C. 301, 302, 303–308) relating to the withdrawal, location and disposition of town sites shall be in accordance with the following regulations and provisions, to wit:

(a) *Reservations.* The Alaskan Engineering Commission will file with the Secretary of the Interior, when deemed necessary, its recommendations for the reservation of such areas as in its opinion may be needed for town site purposes. The Secretary of the Interior will thereupon transmit such recommendations to the President with his objections thereto or concurrence therewith. If approved by the President, the reservation will be made by Executive order.

(b) *Survey.* When in the opinion of the Secretary of the Interior the public interests require a survey of any such reservation, he shall cause to be set aside such portions thereof for railroad purposes as may be selected by the Alaskan Engineering Commission, and cause the remainder, or any part thereof, to be surveyed into urban or suburban blocks and lots of suitable size, and into reservations for parks, schools, and other public purposes and for Government use. Highways should be laid out, where practicable, along all shore lines, and sufficient land for docks and wharf purposes along such shore lines should be reserved in such places as there is any apparent necessity therefor. The survey will be made under the supervision of the Commissioner of the General Land Office and the plats will be approved by him and by the chairman of the Alaskan Engineering Commission.

(c *Preference right.* Any person residing in a reserved town site at the time of the subdivisional survey thereof in the field and owning and having valuable and permanent improvements thereon, may, in the discretion of the Secretary of the Interior, be granted a preference right of entry, of not exceeding two lots on which he may have such improvements by paying the appraised price fixed by the superintendent of sale, under such regulations as the Secretary of the Interior may prescribe. Preference right proof and entry, when granted, must be made prior to the date of the public sale.

(d) *Public sale.* The unreserved and unsold lots will be offered at public outcry to the highest bidder at such time and place, and after such publication of notice, if any, as the Secretary of the Interior may direct, and he may appoint or detail some suitable person as superintendent of sale to supervise the same and may fix his compensation and require him to give sufficient bond.

(e) *Superintendent's authority.* Under the supervision of the Secretary of the Interior, the superintendent of the sale will be, and he is hereby, authorized to make all appraisements of lots and at any time to reappraise any lot which in his judgment is not appraised at the proper amount, or to fix a minimum price for any lot below which it may not be sold, and he may adjourn, or postpone the sale of any lots to such time and place as he may deem proper.

(f) *Manner and terms of public sale.* (1) The Secretary of the Interior shall by regulations prescribe the manner of conducting the public sale, the terms thereof and forms therefor and he may prescribe what failures in payment will subject the bidder or purchaser to a forfeiture of his bid or right to the lot claimed and money paid thereon. The superintendent of sale will at the completion of the public sale deposit with the receiver of the proper local land office the money received and file with its officers the papers deposited with him by said bidder, together with his certificate as to successful bidder.

(2) If it be deemed advisable, the Commissioner of the General Land Office may direct the receiver of public moneys of the proper district to attend sales herein provided for in which event the cash payment required shall be paid to the said receiver.

(g) *Anchorage, Matanuska, and Nenana town sites.* (1) Unsold and forfeited lands in the town sites of Anchorage, Matanuska, and Nenana, upon which assessments for the improvements of streets, sidewalks, alleys, and for promotion of sanitation and fire protection have been levied by the Alaskan Engineering Commission and the assessments or any portion thereof remain unpaid shall be subject to such unpaid assessments and the purchaser shall pay the same in the manner the Secretary of the Interior may by regulations provide, and the proceeds of such assessments will be deposited with the Alaskan Engineering Commission, as a reimbursement to the operating expense fund as provided in section 3 of the act of March 12, 1914 (38 Stat. 307; 48 U. S. C. 306). See 22 Comp. Dec. 604. Hereafter no such assessments by said Commission will be levied.

(2) In cases where one of a number of joint purchasers of a lot has made or may hereafter make all payments of his pro rata share of the purchase price and assessments on the lot, such lot may, in the event of forfeiture being declared, and in the discretion of the Secretary of the Interior, be re-subdivided and a preference right of purchase given to the person who has made all payments on his portion thereof, such preference right to be confined to the portion of the original lot held and claimed by such person. This privilege may be extended to a transferee of an original purchase.

(3) Final certificate may issue in these town sites in all cases, when the purchase price and assessments are paid in full without regard to date of purchase.

(h) *Commission buildings on lots.* Buildings belonging to the Alaskan Engineering Commission situated on a

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[1] Amended by E. O. 3529, Aug. 9, 1921 (§ 297.4), and E. O. 5136, June 12, 1929 (§ 297.7).

The designation of the "Alaskan Engineering Commission" has been changed to "The Alaska Railroad." All matters which formerly were under the control of the chairman of said commission now are under the supervision of the general manager of the said railroad. The functions formerly exercised by the Commissioner of the General Land Office have been transferred to the Director, Bureau of Land Management.

Due to the change in organization, plats of Alaska Railroad town sites are not approved by an official of the Alaska Railroad.

The Area Administrator in Alaska has been designated as Superintendent of Sales of Alaska Railroad town sites.

lot in any town site may be appraised and sold separate and apart from the lot on which located, under regulations provided by the Secretary of the Interior for the same and for the removal of the buildings. The proceeds for the sale of such buildings shall be paid to the Alaskan Engineering Commission as a reimbursement to its operating account.

(i) *Private entry.* Lots offered at public sale and not sold and lots offered and declared forfeited in a town site may, in the discretion of the Secretary of the Interior, be sold at private entry for the appraised price.

(j) *Orders revoked.* All Executive orders heretofore issued for the disposition of town sites along the Government railroads in Alaska are hereby revoked so far as they conflict with the foregoing provisions. This order is intended to take the place of all other orders making provisions for the sale and disposal of lots in said town sites along Government railroads in Alaska under the provisions of said act.

§ 297.4 *Amendment of Alaska Railroad town site regulations.*[2] It is ordered that Executive Order No. 3489, issued June 10, 1921, be, and the same is hereby, amended to authorize and empower the Alaskan Engineering Commission to levy and collect assessments for town site expenses for the town site of Nenana, for the improvements of streets, sidewalks, alleys, and for promotion of sanitation and fire protection, for the period from July 1, 1920, to August 31, 1921.

CROSS REFERENCES: For surveys, Alaska, see Part 78 of this chapter. For town sites, Alaska, see Part 80 of this chapter.

§ 297.5 *Withdrawal of lands containing springs or water holes; Public Water Reserve No. 107.*[3] It is hereby ordered that every smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a spring or water hole, and all land within one-quarter of a mile of every spring or water hole located on unsurveyed public land be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of section 10 of the act of December 29, 1916 (39 Stat. 865; 43 U. S. C. 300), and in aid of pending legislation.

§ 297.6 *Modification of order withdrawing lands containing springs or water holes; Public Water Reserve No. 107.* Executive order of April 17, 1926, creating public water reserve No. 107, is hereby modified so as to exclude the Territory of Alaska from the operation thereof.

§ 297.7 *Amendment of Alaska Railroad Town Site Regulations.* (a) It is ordered that Executive Order No. 3489, issued June 10, 1921, containing the Alaska Railroad Town Site Regulations, is hereby amended to authorize the Secretary of the Interior to reappraise and sell the unimproved lots in Nenana Town Site, Alaska, belonging to the United States, and to readjust the assessments levied against them for the improvement of streets, sidewalks and alleys, and for the promotion of sanitation and fire protection by the Alaska Railroad prior to August 31, 1921.

(b) As to the lots within said town site which have been forfeited for failure to pay such assessments, upon which valuable improvements have been placed, the provisions of said order regarding the collection of the unpaid assessments remain effective.

(c) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

§ 297.8 *Withdrawal of oil shale deposits and lands containing same.*[4] (a) It is hereby ordered that subject to valid existing rights the deposits of oil shale, and lands containing such deposits owned by the United States, be, and the same are hereby, temporarily withdrawn from lease or other disposal and reserved for the purposes of investigation, examination, and classification.

(b) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

CROSS REFERENCE: For oil shale leases, see Part 197 of this chapter.

§ 297.9 *Withdrawal of lands containing hot or medicinal springs, exclusive of Alaska.* (a) It is hereby ordered that every smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a hot spring, or a spring the waters of which possess curative properties; and all land within one-quarter of a mile of every such spring located on unsurveyed public land, exclusive of Alaska,[5] be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for lease under the provisions of the act of March 3, 1925 (43 Stat. 1133; 43 U. S. C. 971), subject to valid existing rights.

(b) This order shall remain in full force and effect unless and until revoked by the President or by act of Congress.

CROSS REFERENCE: For waters, in general, see Part 292 of this chapter.

§ 297.10 *Modification of order withdrawing oil shale deposits and lands containing same.* Upon recommendation of the Secretary of the Interior, Executive Order No. 5327 of April 15, 1930, withdrawing certain lands for purposes of investigation, examination, and classification, is hereby modified to the extent of authorizing him to issue oil and gas permits and leases under the General Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), for any of the lands withdrawn by said order.

CROSS REFERENCE: For oil and gas permits and leases, see Part 192 of this chapter.

§ 297.11 *First general order of withdrawal.*[6] (a) Subject to the conditions expressed in the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497; 43 U. S. C. 141–143, 16 U. S. C. 471), it is ordered that all of the vacant, unreserved and unappropriated public land in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Wyoming be, and it hereby is, temporarily withdrawn from settlement, location, sale, or entry and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of the act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315–315n, 1171), and for conservation and development of natural resources.

(b) The withdrawal hereby effected is subject to existing valid rights.

(c) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

§ 297.12 *Second general order of withdrawal.*[7] (a) Subject to the conditions expressed in the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497; 43 U. S. C. 141–143, 16 U. S. C. 471) and subject to valid existing rights, it is ordered that all the public lands in the States of Alabama, Arkansas, Florida, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, Oklahoma, Washington, and Wisconsin be, and they are hereby, temporarily withdrawn from settlement, location, sale or entry, and reserved for classification and pending determination of the most useful purposes to which said lands may be put in furtherance of said Land Program, and for the conservation and development of natural resources.

(b) Public lands within any of the States herein enumerated which are on the date of this order under an existing reservation for a public purpose are exempted from the force and effect of the provisions of this order so long as such existing reservation remains in force and effect.

(c) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

§ 297.13 *Modification of order withdrawing oil shale deposits and lands containing same.* Executive Order No.

[2] Amended by E. O. 3529, Aug. 9, 1921 (§ 297.4), and E. O. 5136, June 12, 1929 (§ 297.7).

The designation of the "Alaskan Engineering Commission" has been changed to "The Alaska Railroad." All matters which formerly were under the control of the chairman of said commission now are under the supervision of the general manager of the said railroad. The functions formerly exercised by the Commissioner of the General Land Office have been transferred to the Director, Bureau of Land Management.

Due to the change in organization, plats of Alaska Railroad town sites are not approved by an official of the Alaska Railroad.

The Area Administrator in Alaska has been designated as Superintendent of Sales of Alaska Railroad town sites.

[3] Modified by E. O. 5106, May 4, 1929 (§ 297.6).

[4] Modified by E. O. 6016, Feb. 6, 1933 (§ 297.10) and E. O. 7038, May 13, 1935 (§ 297.13).

[5] Amended so as to apply to Alaska by P. L. O. 399, August 20, 1947. See § 297.19.

[6] Amended by E. O. 7048, May 20, 1935 (§ 297.14), E. O. 7235, Nov. 26, 1935 (§ 297.15), E. O. 7274, Jan. 14, 1936 (§ 297.16), and E. O. 7599, Apr. 1, 1937 (§ 297.18). For effect of the orders, see footnote to Part 295 of this chapter.

[7] Amended by E. O. 7363, May 6, 1936 (§ 297.17), and E. O. 7599, Apr. 1, 1937 (§ 297.18). For effect of the orders, see footnote to Part 295 of this chapter.

5327, of April 15, 1930, withdrawing oil-shale deposits and lands containing such deposits for purposes of investigation, examination, and classification, is hereby modified so as to authorize the Secretary of the Interior to issue sodium permits and leases under the General Leasing Act of February 25, 1920 (41 Stat. 437), as amended by the act of December 11, 1928 (45 Stat. 1019; 30 U. S. C. 261, 262), for and of any of the lands withdrawn by said order.

CROSS REFERENCE: For sodium permits and leases, see Part 195 of this chapter.

§ 297.14 *Amendment of first general order of withdrawal.* Executive Order No. 6910, of November 26, 1934, is hereby amended so as (a) to make it applicable to all lands within the States mentioned therein upon the cancellation or release of prior entries, selections, or claims, or upon the revocation of prior withdrawals unless expressly otherwise provided in the order of revocation; and (b) to authorize the Secretary of the Interior, in his discretion and in harmony with the purposes of the act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315–315n, 1171), to accept title to base lands in exchange for other lands subject to such exchange under the terms of the said act.

§ 297.15 *Amendment of first general order of withdrawal.* Executive Order No. 6910, of November 26, 1934, as amended, withdrawing public lands in certain States, is hereby further amended so as to permit the sale under section 14, and the leasing under section 15, of the act of June 28, 1934 (48 Stat. 1274, 1275; 43 U. S. C. 1171, 315m) of any lands covered by the said order which the Secretary of the Interior shall determine to be properly subject to such sale or lease and not needed for any public purpose; and it is further ordered that the said withdrawal shall not debar recognition or allowance of bona fide non-metalliferous mining claims.

§ 297.16 *Amendment of first general order of withdrawal.* Executive Order No. 6910, of November 26, 1934, as amended, withdrawing public land in certain States, is hereby further amended by excluding from the operation thereof all lands which are now, or may hereafter be, included within grazing districts duly established pursuant to the provisions of the act of June 28, 1934, so long as such lands remain a part of any such grazing district.

§ 297.17 *Amendment of second general order of withdrawal.* It is ordered that Executive Order No. 6964 of February 5, 1935, withdrawing all public land in certain States, be, and it is hereby, amended so as to permit, subject to valid existing rights, the exchange under section 8, the sale under section 14, and the leasing under section 15 of the act of June 28, 1934 (48 Stat. 1272; 43 U. S. C. 315g, 1171, 315m) of any lands covered by the said order which the Secretary of the Interior shall determine to be properly subject to such exchange, sale, or lease and not needed for any public purpose.

§ 297.18 *Amendment of first and second general orders of withdrawal.* It is ordered that Executive Orders No. 6910 of November 26, 1934, as amended, and No. 6964 of February 5, 1935, as amended, withdrawing public lands in certain States, be, and they are hereby, further amended by excluding from their operation all lands which are identified by survey made after the respective dates of the orders, and which upon the date of the acceptance of the survey thereof by the Commissioner of the General Land Office[*] would otherwise become a part of the school-land grant of designated sections to any of the States mentioned in the said orders.

§ 297.19 *Withdrawal of lands containing hot or medicinal springs, including public lands in Alaska.* Executive Order No. 1324½ of March 28, 1911, withdrawing certain public lands in the Territory of Alaska containing hot or medicinal springs, as amended by Executive Order No. 1883 of January 24, 1914, is hereby revoked; and Executive Order No. 5389 of July 7, 1930, withdrawing certain public lands containing hot or medicinal springs, exclusive of such lands in Alaska, is amended by deleting therefrom the words "exclusive of Alaska," so that the said order shall apply to lands containing hot or medicinal springs in both Alaska and the United States. Executive Order No. 5389, as hereby amended, shall not affect lands in national forests, nor shall lands now outside of or hereafter eliminated from national forests be subject to the provisions of such order by reason of their proximity to any such springs in a national forest.

CROSS REFERENCE: For Presidential documents referred to in this chapter and not contained in this part, see App. B, *infra*.

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[*] The functions formerly exercised by the Commissioner of the General Land Office have been transferred to the Director, Bureau of Land Management.

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