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Part I

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Civil Aeronautics Board
Civil Service Commission
Commerce Department
Consumer and Marketing Service
Customs Bureau
Engineers Corps
Federal Aviation Administration
Federal Reserve System
Fiscal Service
Foreign Direct Investments Office
General Services Administration
Hazardous Materials Regulations Board
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Interagency Textile Administrative Committee
Interstate Commerce Commission
Land Management Bureau
National Highway Safety Bureau
Pipeline Safety Office
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Public Health Service
Social Security Administration

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1934

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(Revised as of January 1, 1970)

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PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to show that one position of Private Secretary to the Assistant Secretary of Defense (Health and Environment) is expected under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (35) is added to paragraph (a) of § 213.3306 as set out below.

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *

(35) One Private Secretary to the Assistant Secretary (Health and Environment).

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7380; Filed, June 12, 1970; 8:45 a.m.]

PART 213—EXCEPTED SERVICE

Office of Emergency Preparedness

Section 213.3326 is amended to show that one position of Secretary to the Special Assistant to the Director (for oil and related energy problems) is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (5) is added to paragraph (a) of § 213.3326 as set out below.

§ 213.3326 Office of Emergency Preparedness.

(a) *Office of the Director.* * * *

(5) One Secretary to the Special Assistant to the Director (for oil and related energy problems).

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7382; Filed, June 12, 1970; 8:45 a.m.]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to show that one position of Special Assistant to the Deputy Assistant Secretary for Equal Opportunity is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER subparagraph (4) is added to paragraph (f) of § 213.3384 as set out below.

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(f) *Office of the Assistant Secretary for Equal Opportunity.* * * *

(4) One Special Assistant to the Deputy Assistant Secretary.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7381; Filed, June 12, 1970; 8:45 a.m.]

Title 7—AGRICULTURE

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

PART 26—GRAIN STANDARDS

Subpart A—Regulations

MISCELLANEOUS AMENDMENTS

Because of nomenclature changes, the Part 26 regulations (7 CFR 26.1 et seq.) under the U.S. Grain Standards Act (7 U.S.C. 71 et seq.), are hereby amended by changing the word "district" to "region" and the term "district office" to "regional office" in all sections where such wording is used.

(Sec. 16, 82 Stat. 768, 7 U.S.C. 87(e), 29 F.R. 16210, as amended, 33 F.R. 10750)

This amendment shall become effective upon publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 10th day of June, 1970.

G. R. GRANGE,
Deputy Administrator, Marketing Services.

[F.R. Doc. 70-7415; Filed, June 12, 1970; 8:48 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 431]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.731 Lemon Regulation 431.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such

lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on June 9, 1970.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period June 14, 1970, through June 20, 1970, are hereby fixed as follows:

(i) District 1: Unlimited;

(ii) District 2: 325,500 cartons;

(iii) District 3: Unlimited.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 10, 1970.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-7413; Filed, June 12, 1970; 8:48 a.m.]

[Avocado Reg. 12]

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in south Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the Avocado Administrative Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of avocados, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation of the Avocado Administrative Committee reflects its appraisal of the avocado crop and current and prospective market conditions. Shipments of avocados are expected to begin on or about June 15, 1970, the committee has considered, and recommended, the sizes, quality, and maturity standards, including shipping periods, for the various varieties of avocados, so as to prevent the handling of immature or other undesirable fruit and to provide consumers with good quality fruit and maximizing returns to growers pursuant to the declared policy of the act.

(3) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that, as hereinafter set forth, the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than June 15, 1970. A reasonable determination as to the supply of, and the demand for, such avocados must await the development of the crop thereof, and adequate information thereon was not available to the Avocado Administrative Committee until May 13, 1970, on which date an open meeting was held, after giving due notice thereof, to consider the need for, and the extent of, regulation of shipments of such avocados. Interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; shipments of the current crop of avocados are expected to begin on or about the effective date hereof; this regulation establishes grade and maturity requirements designed to prevent the shipment of avocados which are immature or otherwise of poor quality; it is necessary that such requirements be made effective at the time and for the periods specified herein in order to effectuate the declared policy of the act; it should be applicable to all such shipments in order to effectuate the declared policy of the act; the provisions of this regulation are identical with the aforesaid recommendation of the committee; information concerning such provisions and effective time has been disseminated among handlers of such avocados; and compliance with the provisions of this regulation will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

§ 915.312 Avocado Regulation 12.

(a) *Order.* (1) During the period June 15, 1970, through April 30, 1971, no handler shall handle any avocados unless such avocados grade at least U.S. No. 3 grade;

(2) After the effective time of this regulation, except as otherwise provided in subparagraphs (9) and (10) of this paragraph, no avocados of the varieties listed in Column 1 of the following Table I shall be handled prior to the date listed for the respective variety in Column 2 of such table, except that avocados of the Arue variety which weigh at least 17 ounces or are at least 3 9/16 inches in diameter may be handled prior to the effective date of this regulation, and thereafter each such variety shall be handled only in conformance with subparagraphs (3), (4), (5), and (6) of this paragraph.

TABLE I

Variety	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Arue		17 oz. 3 9/16 in.	6-15-70	14 oz. 3 9/16 in.	7-20-70		
Fuchs	6-22-70	14 oz. 3 3/16 in.	7- 6-70	12 oz. 3 9/16 in.	7-27-70	10 oz. 2 15/16 in.	8- 3-70
K-5	6-29-70	16 oz. 3 5/16 in.	7-13-70	14 oz. 3 5/16 in.	7-27-70		
Dr. DuPuis	6-22-70	16 oz. 3 5/16 in.	7- 6-70	14 oz. 3 7/16 in.	7-20-70		
No. 2. Hardee	7- 6-70	14 oz. 3 5/16 in.	7-13-70	12 oz. 2 14/16 in.	8- 3-70		
Pollock	7- 6-70	18 oz. 3 13/16 in.	7-13-70	16 oz. 3 5/16 in.	7-27-70		
Simmonds	7- 6-70	16 oz. 3 9/16 in.	7-13-70	14 oz. 3 7/16 in.	7-27-70		
Nadir	7- 6-70	14 oz. 3 5/16 in.	7-13-70	12 oz. 3 1/16 in.	7-20-70	10 oz. 2 14/16 in.	8- 3-70
Katherine	7- 6-70	16 oz.	7-20-70	14 oz.	8- 3-70		
Dawn	7-20-70	12 oz. 3 1/16 in.	8- 3-70	10 oz. 3 9/16 in.	8-17-70		
Peterson	7-27-70	14 oz. 3 5/16 in.	8-10-70	10 oz. 3 5/16 in.	8-24-70	8 oz. 2 15/16 in.	9- 7-70
Trapp	8-10-70	14 oz. 3 9/16 in.	8-24-70	12 oz. 3 7/16 in.	9- 7-70		
Waldin	8-17-70	16 oz. 3 5/16 in.	8-31-70	14 oz. 3 7/16 in.	9-14-70	12 oz. 3 1/16 in.	9-28-70
Ruehle	8- 3-70	16 oz. 3 5/16 in.	8-17-70	14 oz. 3 7/16 in.	8-31-70		
Pinelli	8- 3-70	18 oz. 3 13/16 in.	8-17-70	16 oz. 3 9/16 in.	8-31-70		
Nesbitt	8-17-70	18 oz.	8-24-70	16 oz.	9-14-70		
Tonnage	8-31-70	14 oz. 3 5/16 in.	9- 7-70	12 oz. 3 9/16 in.	9-14-70	10 oz. 2 13/16 in.	9-21-70
Booth 8	9-14-70	16 oz. 3 5/16 in.	9-28-70	15 oz. 3 7/16 in.	10-14-70	13 oz. 3 5/16 in.	
Fairchild	8-31-70	16 oz. 3 9/16 in.	9-14-70	14 oz. 3 7/16 in.	9-28-70	12 oz. 3 5/16 in.	10- 5-70
Nirody	8-31-70	18 oz. 3 13/16 in.	9-14-70	16 oz. 3 13/16 in.	9-28-70		
Black Prince	9-14-70	23 oz.	9-28-70	16 oz.	10-19-70		
Catalina	9-14-70	24 oz.	9-21-70	22 oz.	10- 5-70		
Blair	9-28-70	14 oz. 3 5/16 in.	10-19-70				
Collinson	9-28-70	16 oz. 3 9/16 in.	10-26-70				

TABLE I—Continued

Variety	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Chica	9-28-70	12 oz. 3⅝ in.	10-12-70	10 oz. 3⅝ in.	10-26-70		
Rue	9-28-70	30 oz. 4⅜ in.	10- 5-70	24 oz. 3⅛ in.	10-19-70	18 oz. 3⅜ in.	11- 2-70
Booth 5	10- 5-70	16 oz. 3⅛ in.	10-26-70				
Hickson	10- 5-70	15 oz. 3⅝ in.	10-19-70	12 oz. 3⅛ in.	10-26-70		
Simpson	10- 5-70	16 oz. 3⅜ in.	10-26-70				
Vaca	10- 5-70	16 oz. 3⅜ in.	10-26-70				
Sherman	10- 5-70	16 oz.	10-19-70	14 oz.	11- 2-70	10 oz.	11-23-70
Marcus	10- 5-70	32 oz.	11-16-70				
Booth 10	10-12-70	16 oz. 3⅜ in.	11- 9-70				
Booth 7	10-12-70	16 oz. 3⅜ in.	10-26-70	14 oz. 3⅝ in.	11- 9-70		
Avon	10-12-70	15 oz. 3⅛ in.	11- 2-70				
Booth 11	10-12-70	16 oz. 3⅛ in.	11- 2-70				
Leona	10-12-70	14 oz. 3⅜ in.	10-26-70				
Winslowson	10-12-70	18 oz. 3⅛ in.	11- 2-70				
Nelson	10-12-70	14 oz. 3⅝ in.	10-26-70	12 oz. 3⅛ in.	11- 9-70	10 oz. 3⅛ in.	11-30-70
Hall	10-12-70	26 oz. 3⅛ in.	10-26-70	20 oz. 3⅜ in.	11- 9-70		
Lula	10-19-70	18 oz. 3⅛ in.	11- 2-70	14 oz. 3⅝ in.	11-16-70		
Choquette	10-19-70	24 oz. 4⅛ in.	11- 2-70	20 oz. 3⅝ in.	11-23-70		
Monroe	10-19-70	24 oz. 4⅛ in.	11- 2-70	20 oz. 3⅝ in.	11-23-70		
Herman	10-19-70	16 oz. 3⅝ in.	11- 2-70	14 oz. 3⅝ in.	11-16-70		
Murphy	10-19-70	16 oz.	11- 2-70	14 oz.	11-16-70	11 oz.	12- 7-70
Ajax (B7-B)	10-26-70	18 oz. 3⅛ in.	11-16-70				
Booth 1	10-26-70	16 oz. 3⅛ in.	11-16-70				
Booth 3	10-26-70	16 oz. 3⅛ in.	11-16-70				
Taylor	10-26-70	14 oz. 3⅝ in.	11- 9-70	12 oz. 3⅜ in.	11-23-70		
Dunedin	11- 9-70	16 oz. 3⅛ in.	11-23-70	14 oz. 3⅝ in.	12- 7-70	10 oz. 3⅛ in.	12-28-70
Byars	11-16-70	16 oz. 3⅛ in.	12- 7-70				
Linda	11-16-70	18 oz. 3⅛ in.	12- 7-70				
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(3) From the date listed for the respective variety in Column 2 of Table I to the date listed for the respective variety in Column 4 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 3 of such table or is of at least the diameter specified for such variety in said Column 3;

(4) From the date listed for the respective variety in Column 4 of Table I to the date listed for the respective variety in Column 6 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 5 of such table or is of at least the diameter specified for such variety in said Column 5;

(5) From the date listed for the respective variety in Column 6 of Table I to the date listed for the respective variety in Column 8 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 7 of such table or is of at least the diameter specified for such variety in said Column 7;

(6) From October 26, 1970, through November 9, 1970, no handler shall handle any avocados of the Booth 8 variety unless the individual fruit in each lot of such avocados weighs at least 10 ounces or is at least 3 1/16 inches in diameter, and from November 10, 1970, through November 16, 1970, no handler shall handle any avocados of the Booth 8 variety unless the individual fruit in each lot of such avocados weighs at least 8 ounces or is at least 2 13/16 inches in diameter;

(7) Except as otherwise provided in subparagraphs (9) and (10) of this paragraph, varieties of the West Indian type of avocados not listed in Table I shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to July 6, 1970.

(ii) From July 6, 1970, through July 12, 1970, the individual fruit in each lot of such avocados shall weigh at least 18 ounces.

(iii) From July 13, 1970, through August 2, 1970, the individual fruit in each lot of such avocados shall weigh at least 16 ounces.

(iv) From August 3, 1970, through August 30, 1970, the individual fruit in each lot of such avocados shall weigh at least 14 ounces.

(v) From August 31, 1970, through September 20, 1970, the individual fruit in each lot of such avocados shall weigh at least 12 ounces.

(8) Except as otherwise provided in subparagraphs (9) and (10) of this paragraph, varieties of avocados not covered by subparagraphs (2) through (7) of this paragraph shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to September 21, 1970.

(ii) From September 21, 1970, through October 18, 1970, the individual fruit in each lot of such avocados shall weigh at least 15 ounces.

(iii) From October 19, 1970, through December 20, 1970, the individual fruit in each lot of such avocados shall weigh at least 13 ounces.

(9) Notwithstanding the provisions of subparagraphs (2) through (8) of this paragraph regarding the minimum weight or diameter for individual fruit, up to 10 percent, by count, of the individual fruit contained in each lot may weigh less than the minimum specified weight and be less than the minimum specified diameter: *Provided*, That such avocados weigh not more than 2 ounces less than the applicable specified weight for the particular variety as prescribed in Columns 3, 5, or 7 of Table I or in subparagraphs (6), (7), and (8) of this paragraph. Such tolerances shall be on a lot basis, but not to exceed double such tolerances shall be permitted for an individual container in a lot.

(10) The provisions of subparagraphs (2) through (9) of this paragraph shall not apply to any variety, except the Linda variety, of avocados which, when mature, normally change color to any shade of red or purple and any portion of the skin of the individual fruit has changed to the color for that fruit when mature.

(c) Terms used in the amended marketing agreement and order, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; the term "diameter" shall mean the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit; and the term "U.S. No. 3" shall have the same meaning as set forth in the U.S. Standards for Florida Avocados (§§ 51.3050–51.3069 of this title).

(d) The provisions of this regulation shall become effective June 15, 1970.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 10, 1970.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-7417; Filed, June 12, 1970; 8:48 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 100—STATEMENT OF ORGANIZATION

PART 223—REENTRY PERMITS

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Miscellaneous Amendments

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

District 33 of paragraph (b) and subparagraph (4) of paragraph (c) of § 100.4 are amended to read as follows:

§ 100.4 Field service.

* * * * *

(b) *District offices.* * * *

33. *Hong Kong, B.C.C.* The district office in Hong Kong has jurisdiction over the British Crown Colony, and adjacent islands, Formosa, the Philippines, Australia, New Zealand, all of continental Asia lying to the east of the western borders of Afghanistan and Pakistan, Japan, Korea, Okinawa and all other countries in the Pacific Area.

* * * * *

(c) *Suboffices.* * * *

(4) *Immigration offices in foreign countries.*

Athens, Greece.
Frankfurt, Germany.
Guadalajara, Mexico.
Hamilton, Bermuda.
Hong Kong, B.C.C.
Manila, Philippine Islands.
Mexico City, Mexico.
Monterrey, Mexico.
Montreal, Quebec, Canada.
Naples, Italy.
Nassau, Bahamas.
Ottawa, Ontario, Canada.
Palermo, Italy.
Rome, Italy.
Tijuana, Mexico.
Tokyo, Japan.
Toronto, Ontario, Canada.
Vancouver, British Columbia, Canada.
Victoria, British Columbia, Canada.
Vienna, Austria.
Winnipeg, Manitoba, Canada.

The first sentence of § 232.2 *Extensions* is amended to read as follows: "An application for extension of a reentry permit shall be submitted on Form I-143 prior to the expiration of the reentry permit's validity to the office having jurisdiction over the applicant's place of residence in the United States, or to the immigration officer stationed outside the United States having jurisdiction over the place where the applicant is temporarily sojourning, or to an American consular officer in South America (except Venezuela), in those areas of Asia lying to the east of the western borders of Afghanistan and Pakistan (but not including Hong Kong and adjacent islands, Taiwan, Japan, Okinawa, Korea, and the Philippines), in Australia, New Zealand, Bulgaria, Czechoslovakia, Hungary, Iceland, Poland, Rumania, the Union of Soviet Socialist Republics, Yugoslavia, Iran, Iraq, Jordan, Saudi Arabia, Syrian Arab Republic, Yemen, Aden, Kuwait, and in Africa (including the United Arab Republic) when the applicant is temporarily sojourning in one of the aforementioned places."

The listing of transportation lines of paragraph (b) *Signatory lines* of § 238.3 *Aliens in immediate and continuous transit* is amended by adding the following transportation lines in alphabetical sequence: "Ceskoslovenske Aerolinie (Czechoslovak Airlines)" and "Chandris America Lines Inc., as general agents for: Okeania S.A. (Australis), Chandris America Lines S.A. (Amerikanis), Australian Line S.A. (Ellinis), and Themistocles Nav. S.A. (Queen Frederica)."

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall be effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 553 of title 5 of the United States Code (80 Stat. 383), as to notice of proposed rule making and delayed effective date, is unnecessary in this instance because the amendment to § 100.4 relates to agency management; the amendment to § 223.2 confers benefits upon persons affected thereby; and the amendment to § 238.3(b) adds transportation lines to the listing.

Dated: June 9, 1970.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 70-7401; Filed, June 12, 1970; 8:47 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111-113, 114g, 115, 117, 120, 121, 123-126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, in paragraph (e)(16) relating to the State of Texas, subdivision (i) relating to Dallas County is deleted and subdivision (viii) relating to Montgomery County is amended to read:

(e) * * *

(16) *Texas.*

* * * * *

(viii) The adjacent portions of Montgomery and San Jacinto Counties bounded by a line beginning at the junction of State Highway 105 and the Montgomery-Liberty County line; thence, following the Montgomery-Liberty County line in a southeasterly direction to the Montgomery-Harris County line; thence, following the Montgomery-Harris County line in a generally southwesterly direction to Interstate Highway 45; thence, following Interstate Highway 45 in a northerly direction to State Highway 105; thence, following State Highway 105 in a generally northeasterly direction to its junction with the Montgomery-Liberty County line.

* * * * *

2. In § 76.2, in paragraph (e)(17) relating to the State of Virginia, subdivision (v) relating to Nansemond County and subdivision (x) relating to Rockingham County are deleted.

3. In § 76.2, the introductory portion of paragraph (e) is amended by deleting therefrom the name of the State of New Jersey, and paragraph (e)(10) relating to the State of New Jersey is deleted.

4. In § 76.2, in paragraph (e)(9) relating to the State of Missouri, subdivision (ii) relating to Stoddard County is deleted.

(Secs. 4-7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, secs. 1-4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123-126, 134b, 134f, 29 F.R. 16210, as amended)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments quarantine portions of Montgomery and San Jacinto Counties in Texas because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to such county.

The amendments also exclude portions of Nansemond and Rockingham Counties in Virginia; Dallas County, Tex.; a portion of Gloucester County, N.J.; and a portion of Stoddard County, Mo., from the areas heretofore quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2. Further, the restrictions pertaining to the interstate movement from nonquarantined areas contained in said Part 76 will apply to the areas excluded from quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made

effective promptly in order to be of maximum benefit to affected persons.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of June 1970.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[F.R. Doc. 70-7397; Filed, June 12, 1970; 8:46 a.m.]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, in paragraph (e) (17) relating to the State of Virginia, subdivision (ii) relating to Goochland and Powhatan Counties and subdivision (viii) relating to Richmond County are deleted, and a new subdivision (xiv) relating to Nansemond and Isle of Wight Counties is added to read:

(e) * * *

(17) *Virginia.* * * *

(xiv) The adjacent portions of Nansemond and Isle of Wight Counties bounded by a line beginning at the junction of U.S. Highway 17 and the west bank of the Nansemond River; thence, following the west bank of the Nansemond River in a southwesterly direction to the north bank of Western Branch; thence, following the north bank of Western Branch in a northwesterly direction to Secondary Highway 603; thence, following Secondary Highway 603 in a northeasterly direction to Secondary Highway 602; thence, following Secondary Highway 602 in a northeasterly direction to Secondary Highway 600; thence, following Secondary Highway 600 in a southeasterly direction to Primary Highway 32, 10; thence, following Primary Highway 32, 10 in a southerly direction to Nansemond-Isle of Wight County line; thence, following the Nansemond-Isle of Wight County line in a northeasterly direction to U.S. Highway 17; thence, following U.S. Highway 17 in a southeasterly direction to its junction with the west bank of the Nansemond River.

* * * * *

2. In § 76.2, in paragraph (e) (8) relating to the State of Mississippi, a new subdivision (viii) relating to Lauderdale County is added to read:

(e) * * *

(8) *Mississippi.* * * *

(viii) That portion of Lauderdale County bounded by a line beginning at the junction of U.S. Highway 80, 11 and the Mississippi-Alabama State line; thence, following U.S. Highway 80, 11 in a southwesterly direction to State Highway 19; thence, following State Highway 19 in a northwesterly direction to U.S. Highway 45; thence, following U.S. Highway 45 in a northeasterly direction to State Highway 39; thence, following State Highway 39 in a northerly direction to the Lauderdale-Kemper County line; thence, following the Lauderdale-Kemper County line in an easterly direction to the Mississippi-Alabama State line; thence, following the Mississippi-Alabama State line in a southwesterly direction to its junction with U.S. Highway 80, 11.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments quarantine a portion of Lauderdale County, Miss., and portions of Nansemond and Isle of Wight Counties in Virginia because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to such counties.

The amendments also excluded portions of Goochland, Powhatan, and Richmond Counties in Virginia from the areas heretofore quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2. Further, the restrictions pertaining to the interstate movement from nonquarantined areas contained in said Part 76 will apply to the areas excluded from quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made effective promptly in order to be of maximum benefit to affected persons.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 10th day of June 1970.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[F.R. Doc. 70-7418; Filed, June 12, 1970; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 70-WE-13]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

On April 3, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 5558) stating that the Federal Aviation Administration was considering an amendment to Part 73 of the Federal Aviation Regulations that would alter Restricted Area R–6412 at Camp Williams, Utah.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., August 20, 1970, as hereinafter set forth.

In § 73.64 (35 F.R. 2350) the boundaries of R–6412 Camp Williams, Utah, are amended to read as follows:

Beginning at lat. 40°27'30" N., long. 111° 56'24" W.; thence southerly along Redwood Road (Utah Highway 68) to lat. 40°23'30" N., long. 111°54'58" W.; to lat. 40°23'30" N., long. 112°06'00" W.; to lat. 40°27'30" N., long. 112°06'00" W.; to point of beginning.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348 and sec. 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on June 4, 1970.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 70-7394; Filed, June 12, 1970; 8:46 a.m.]

[Airspace Docket No. 70-CE-3]

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration of Jet Route Segment

On March 12, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 4413) stating that

the Federal Aviation Administration was considering an amendment to Part 75 of the Federal Aviation Regulations that would realign J-35 between Memphis, Tenn., and St. Louis, Mo.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., August 20, 1970, as hereinafter set forth.

Section 75.100 (35 F.R. 2359) is amended as follows:

In Jet Route No. 35 the phrase "Memphis, Tenn.; St. Louis, Mo.;" is deleted and the phrase "Memphis, Tenn.; Farmington, Mo.; St. Louis, Mo.;" is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348 and sec. 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on June 4, 1970.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 70-7393; Filed, June 12, 1970; 8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter X—Office of Foreign Direct Investments, Department of Commerce

PART 1000—FOREIGN DIRECT INVESTMENT REGULATIONS

Miscellaneous Amendments

EDITORIAL NOTE: The Foreign Direct Investment Regulations (the "regulations") appear in Title 15, Chapter X, Part 1000 of the Code of Federal Regulations ("CFR"). Thus, all sections of the regulations contained in CFR are preceded by the designation "1000" (e.g., § 1000.201). The "1000" prefix has, for convenience, been eliminated from the section references contained in this notice. The term "part" when used in the regulations means Part 1000 of CFR. The abbreviations "DI" and "AFN" are used in this notice to refer to "direct investor" and "affiliated foreign national."

Notice is hereby given that the Office of Foreign Direct Investments (the "Office") has made certain miscellaneous amendments to §§ 324 and 1002 of the Foreign Direct Investment Regulations (the "regulations"). Except for technical changes of a clarifying nature, these amendments are the same as those contained in the notice of proposed rule making published in the FEDERAL REGISTER on May 7, 1970 (35 F.R. 7183).

The amendments hereby adopted apply to borrowings made on or after May 1, 1970. These amendments also affect the refinancing on or after May 1, 1970 of preexisting long-term foreign borrowing.

The definition of long-term foreign borrowing contained in § 324 has been amended to provide DIs with greater flexibility in making borrowings qualifying as long-term foreign borrowing which may be offset against direct investment. The new definition of long-term foreign borrowing applies to borrowings made by a DI on or after May 1, 1970. Under former § 324(a), a borrowing could not qualify as long-term foreign borrowing unless there was a stated maturity of at least 12 months in the debt instrument or there existed express provisions for renewal, extension or continuance of the borrowing for at least 12 months and the DI reasonably expected that there would be no repayment within 12 months. This "original maturity" test has been eliminated. Long-term foreign borrowing now means any borrowing by a DI satisfying the conditions of new § 324(a)(1) (which includes the requirements of former § 324(e)) if the borrowing, including refinancing, is in fact outstanding for an uninterrupted period of not less than 12 months. Accordingly, DIs will now be able to obtain qualified long-term foreign borrowing by means of different short-term borrowings from various lenders. Also, a short-term borrowing that is renewed, extended or continued for a total period of at least 12 months will qualify as long-term foreign borrowing despite the absence of express provisions for renewal, extension or continuance. However, a borrowing that is not in fact continuously outstanding for 12 months will not qualify as a long-term foreign borrowing, notwithstanding a stated maturity of at least 12 months and notwithstanding provision for renewal, extension or continuance and the DI's expectation not to repay within 12 months.

In addition, with respect to borrowings that would be subject to the Interest Equalization Tax, the 3-year original maturity requirement imposed by former § 324(e)(3) has been abolished. See new § 324(a)(1)(iii). As a result, DIs that borrow long-term through issuance of debentures by an international finance subsidiary (see § 323) or an overseas finance subsidiary (see Subpart N) will be able to provide for sinking fund payments to redeem debentures within 3 years after the date of issuance.

The amendments are described in greater detail as follows:

1. *Long-term foreign borrowing as defined in § 324(a).* New § 324(a)(2) provides that a foreign borrowing (defined in § 324(a)(1)) by a DI will qualify as long-term foreign borrowing if the foreign borrowing (including refinancing thereof as described in § 324(b)(1)) is not repaid within 12 months after its original date. The definition of foreign borrowing contained in § 324(a)(1) incorporates the requirements formerly set forth in § 324(e), which is revoked. (As stated above, the 3-year original maturity requirement formerly contained in § 324(e)(3) has been eliminated for borrowings made on or after May 1, 1970.)

Borrowings made prior to May 1, 1970 will continue to be governed by the provisions of former § 324 (a) and (e) as in effect on April 30, 1970. See new § 324 (a)(3).

A DI may qualify a short-term foreign borrowing made on or after May 1, 1970 as long-term foreign borrowing by making another foreign borrowing simultaneously with or prior to repayment of the immediately preceding borowing so long as the borrowing as refinanced remains continuously outstanding for at least 12 months. The individual foreign borrowings constituting qualified long-term foreign borrowing may differ as to lender, amount and maturity.

DI may take a deduction under § 306 (e) or § 313(d)(1) for allocation or expenditure of proceeds of foreign borrowing before the required 12-month period has elapsed. A DI that does so, however, should be certain of its ability to keep the borrowing outstanding for the prescribed 12 months, because deductions with respect to borrowings that subsequently fail to satisfy § 324(a)(2) are retroactively disqualified. On the other hand, failure to qualify the full principal amount of a borrowing as long-term foreign borrowing will not result in disqualification of the entire borrowing; DI will have qualified proceeds of long-term foreign borrowing in any principal amount of the borrowing ultimately satisfying the requirements of § 324(a)(2).

Example 1. On May 1, 1970, DI borrows $1 million from a foreign bank (X) on a 3-month note with no provision for renewal or extension. The borrowing is a foreign borrowing under § 324(a)(1)(i). On August 1, 1970, DI repays the note and borrows $1 million from another foreign bank (Y) on a 6-month note. On February 1, 1971, DI repays the loan from Y and borrows $1 million from foreign bank (Z), which DI repays on May 1, 1971. As of May 1, 1970, DI has available proceeds of long-term foreign borrowing of $1 million, which DI could expend or allocate in accordance with § 313(d)(1) or § 306(e), if reported in accordance with § 324 (c). Under amended § 324, the initial 3-month foreign borrowing qualifies as long-term foreign borrowing because such borrowing, as refinanced by successive foreign borrowings, was continuously outstanding for 12 months.

Example 2. On May 1, 1970, DI borrows $200,000 from a foreign bank (X on a 6-month note. On November 1, 1970, DI repays X and purchases all of the stock of a French corporation from an unaffiliated foreign national (Y) for $300,000, consisting of $100,000 in cash at the closing and DI's 6-month promissory note for the balance as to which Y provides the agreement specified in § 324(a)(1)(iv). On May 1, 1971, DI makes payment on its promissory note. Under § 324, the $200,000 borrowed on May 1, 1970, constituted proceeds of long-term foreign borrowing. The initial borrowing from the bank was not deemed repaid within 12 months because such borrowing, refinanced by the borrowing from Y, was continuously outstanding for 12 months.

Example 3. On May 1, 1970, DI makes a public offering to non-Canadian foreign nationals through its international finance

subsidiary of $10 million principal amount of debentures maturing in 1980. Acquisition of the debentures by U.S. residents or nationals will be subject to the Interest Equalization Tax. The financing documents provide for sinking fund payments of $1 million each on November 1, 1970 and November 1, 1971, to be used by a New York trustee to purchase an equivalent amount of the debentures for redemption. The borrowing constitutes a foreign borrowing under § 324(a)(1)(iii). To qualify the entire $10 million as long-term foreign borrowing under § 324(a)(2), DI must refinance the November 1, 1970, sinking fund payment for an additional 6 months in accordance with § 324(b)(1), as described below in section 2 of this notice. If DI does not refinance, it will still have $9 million of available proceeds of long-term foreign borrowing. The remaining $1 million of proceeds is not available proceeds and, if held in the form of liquid foreign balances, is subject to § 203(c). The sinking fund payment on November 1, 1971, will not affect qualification of the portion of the borrowing that was outstanding for 12 months as of such date. Compare the former rule illustrated in 1969 General Bulletin § B324–5, Example 14.

Repayment through conversion of convertible debt instruments or accelerated repayment upon default occurring within the first 12 months of a borrowing will not prevent its qualification as long-term foreign borrowing. A conversion or accelerated repayment is deemed to occur as of the maturity specified in the debt instrument involved. See proviso in new § 324(a)(2). Transfers of capital, repayment charges under § 1003, and reductions of proceeds, on the other hand, are determined in accordance with the rules otherwise applicable to repayment of long-term foreign borrowing. See 1969 General Bulletin § B324–11.

Example 4. On July 1, 1970, DI issues $5 million principal amount of 5-year convertible debentures through its international finance subsidiary. The entire amount of the issue is converted between February 1 and July 1, 1971. Solely for purposes of determining qualification as long-term foreign borrowing under § 324(a)(2), the conversions are deemed not to have occurred until July 1, 1975, the stated maturity of the debentures. However, transfers of capital are recognized in accordance with the usual rules for repayment upon conversion. Accordingly, DI would have a charge to its allowables under § 1003 in 1972 for the conversions that took place in 1971. See § 1002(a)(3).

Example 5. On February 1, 1971, DI makes a public offering of $10 million principal amount of convertible debentures maturing in 1980. Sinking fund payments in the amount of $1 million are due January 15, 1972 and January 15, 1973. In March 1971, DI expends $6 million of the proceeds of the offering in making a transfer of capital, for which a deduction is taken under § 313(d)(1). In December 1971, the entire amount of the offering is converted. Under § 324, $9 million is qualified as long-term foreign borrowing. One million dollars of the borrowing is deemed repaid for purposes of § 324(a)(2) on the due date of the first sinking fund payment (Jan. 15, 1972) and does not qualify under § 324 because such payment is within 12 months. Assuming no other relevant transactions, the conversion will result in a transfer of capital of $6 million, which will constitute a repayment charge under § 1003 in 1972, and a reduction of available proceeds ($3 million) to zero in 1971.

2. *Refinancing under § 324(b)(1).* Under certain circumstances, satisfaction of a foreign borrowing will not be deemed a repayment if such borrowing is refinanced in the manner provided in § 324(b)(1). The refinancing borrowing must be made either prior to or simultaneously with the repayment of the initial borrowing. A borrowing drawn down on any day shall be deemed made simultaneously with a repayment occurring on the same day. On the other hand, for example, if DI repaid a foreign borrowing on July 1, 1970, and made a new foreign borrowing in the same amount from the same lender on July 2, 1970, the second borrowing would not constitute a refinancing of the first borrowing regardless of any underlying arrangement relating to the two borrowings.

DI is required to identify borrowings being refinanced and the corresponding refinancing borrowings on its books and records kept under § 203(b). If DI repays more than one initial borrowing and makes more than one refinancing borrowing on the same day, DI must determine (by appropriate entries on its books and records) the extent to which each new borrowing refinances each of the initial borrowings.

If a refinancing borrowing is for a lesser amount than the initial borrowing, the amount of proceeds of long-term foreign borrowing as of the date of the initial borrowing may not exceed the amount so refinanced. The amount of proceeds of an initial borrowing failing to qualify as proceeds of long-term foreign borrowing is not exempt from § 203(c), and any deductions taken for expenditure or allocation of such proceeds are disallowed. If a DI treats proceeds of a foreign borrowing as proceeds of long-term foreign borrowing on its Annual Report Form FDI–102F for any year, and the borrowing does not thereafter meet the requirements of § 324(a)(2) by reason of a repayment within 12 months DI must file an amended Form FDI–102F within 30 days after such repayment showing revised direct investment and liquid foreign balance entries.

If the refinancing borrowing is for a greater amount than the initial borrowing, DI may treat the excess as an additional foreign borrowing which may qualify as separate long-term foreign borrowing; however, if the excess does not qualify as separate long-term foreign borrowing, the additional proceeds may not be treated as available proceeds.

DI may refinance a foreign borrowing by making another foreign borrowing prior to and in anticipation of refinancing the initial borrowing and at a time reasonably proximate to the date of repayment of the initial borrowing. The proceeds of the refinancing borrowing in such case may not be treated as available proceeds of long-term foreign borrowing until the refinancing occurs, but the proceeds of the refinancing borrowing are, nevertheless, exempt from the liquid foreign balance restrictions of § 203(c) if the initial borrowing as refinanced qualifies as long-term foreign borrowing under § 324(a)(2).

DIs should request advice of the Office with respect to the effect of any currency revaluation or devaluation on refinancings made on or after May 1, 1970, of foreign borrowings or long-term foreign borrowings denominated in foreign currencies that have been subject to such revaluation or devaluation.

Example 6. On May 1, 1970, DI borrows $2 million from a foreign bank for 6 months. On November 1, 1970, DI repays the borrowing in full and borrows a total of $1,500,000 from three other foreign banks for 6 months. Under § 324, DI has made long-term foreign borrowing in the amount of $1,500,000 as of May 1, 1970. If the unrefinanced portion ($500,000) of the May 1 borrowing was held in the form of liquid foreign balances, DI will be required to report such amount as liquid foreign balances for purposes of § 203(c).

If DI had borrowed $2,500,000 on November 1, 1970 for 6 months, DI would have made long-term foreign borrowing of $2 million as of May 1, 1970. The additional $500,000 constitutes a new foreign borrowing, which will qualify as long-term foreign borrowing if it is not repaid for 12 months, i.e., until November 1, 1971.

Example 7. On May 1, 1970, DI borrows $1 million from foreign bank (W) for 3 months and expends the proceeds in making transfers of capital to Schedule A, for which a deduction is taken under § 313(d)(1). On August 1, 1970, DI repays the borrowing from W and borrows $1 million from foreign bank (X) and $1 million from foreign bank (Y) for 9 months. DI records the borrowing from X as a refinancing of the borrowing from W and the borrowing from Y as a new borrowing the proceeds of which DI expends in Schedule C, for which a deduction is taken under § 313(d)(1). On May 1, 1971, DI repays the borrowings from X and Y and borrows $1 million from foreign bank (Z) for 3 months. DI records the borrowing from Z as a refinancing of the borrowing from Y, which is necessary to qualify the borrowing from Y under § 324(a)(2). DI also records a transfer of capital to Schedule A under § 312(a)(7) resulting from the repayment of the borrowing from X which was a refinancing of the borrowing from W. On August 1, 1971, DI repays the borrowing from Z and correctly records a transfer of capital to Schedule C under § 312(a)(7).

Example 8. On May 1, 1970, DI borrows $1 million from a foreign national (X), who provides the agreement specified in § 324(a)(1)(iv). DI expends the proceeds in Schedule B, for which a deduction is taken under § 313(d)(1). On August 1, 1970, DI repays the borrowing from X and borrows $2 million from foreign national (Y), who provides the agreement specified in § 324(a)(1)(iv). DI records $1 million of the borrowing from Y as a refinancing of the borrowing from X and $1 million as a new borrowing which DI expends in Schedule C. On August 1, 1971, DI repays $1 million of the borrowing from Y. In this case, DI must elect whether such repayment is attributable to the part of the Y borrowing used to refinance the X borrowing (chargeable to Schedule B) or to the part constituting new borrowing (chargeable to Schedule C).

Example 9. On May 1, 1970, DI borrows $1 million from foreign bank (X) on a 3-month note. On July 1, 1970, DI borrows $1 million from foreign bank (Y) for 10 months in anticipation of using the proceeds to refinance the borrowing from X, which must be repaid on August 1, 1970. In this case, DI may not treat the proceeds of the borrowing from Y as available proceeds until used to repay the X borrowing; however, the proceeds

of the borrowing from Y are not subject to the limitation of § 203(c). On August 1, 1970, DI repays the borrowing from X and indicates on its books and records that the borrowing from Y is to refinance the borrowing from X as of that date. On May 1, 1971, DI repays the borrowing from Y. Accordingly, the borrowing from X is qualified as long-term foreign borrowing.

Example 10. On September 1, 1970, DI borrows $1 million on a 13-month note from a foreign bank and allocates the proceeds under § 306(e) to Schedule C positive direct investment for 1970 and so reports on its Annual Report Form FDI–102F for such year. DI repatriates the proceeds as of December 31, 1970, and thereafter holds them in accordance with § 306(e)(2). On August 1, 1971, DI repays the borrowing and does not refinance. Since the borrowing was not outstanding for 12 months, DI's deduction under § 306(e) for 1970 is disqualified, and DI must file an amended Form FDI–102F for 1970. Such amended report will show a decrease of $1 million in outstanding long-term foreign borrowing and in deductions for expenditure and allocation of available proceeds. If the proceeds were held in the form of liquid foreign balances, the amended report must also show a corresponding increase in such balances. If the amended Form FDI–102F for 1970 shows positive direct investment or liquid foreign balances in excess of DI's allowables, DI will be in noncompliance for 1970.

3. *Related provisions.* Section 1002(e)(2) has been amended to conform to the change in § 324(b)(1). Refinancing as described in § 324(b)(1) is pertinent both for determining whether a foreign borrowing qualifies under § 324(a)(2) and whether certification may be made under § 1002(b)(1). In Item 8.A of the standard certificate Form FDI–106 (i.e., in the statements that there will be refinancing of the borrowing for a period of 7 years after the date thereof) the term "refinancing" has the same meaning with respect to DI borrowings as provided in amended § 324(b)(1).

Example 11. On May 1, 1970, DI's international finance subsidiary issues to non-Canadian foreign nationals debentures in the principal amount of $10 million, maturing on November 1, 1976. DI intends to refinance the borrowing on November 1, 1976 by making a 6-month borrowing from a foreign bank. DI may certify under § 1002(b)(1) by checking the box opposite Statement A of Item 8 on Form FDI–106 and the third reason therefor, because DI believes that the borrowing can be refinanced for a total period of 7 years.

Until the Office has issued a revised version of the standard certificate Form FDI–106, DIs filing such certificate with respect to borrowings made on or after May 1, 1970, should make the following changes: (i) In the first, second and fourth categories of Item 6, substitute the phrase "that will not be repaid within 12 months after the original date thereof" for the phrase "with an original maturity of at least 12 months or with provision for renewal, extension or continuance for a total term of at least 12 months;" and (ii) in the third category of Item 6, substitute the phrase "that will not be repaid within 12 months after the original date thereof" for the phrase "with an original maturity of at least 3 years".

4. *Effect on long-term foreign borrowing made prior to May 1, 1970.* A long-term foreign borrowing made prior to May 1, 1970, that satisfied the requirements of § 324 as then in effect, refinanced on or after May 1, 1970 with a foreign borrowing as defined in § 324(a)(1) shall not be deemed to have been repaid. See amended § 324(b)(1). Similarly, a certificate filed with respect to a pre-May 1, 1970 long-term foreign borrowing, as to which category 2 or 3 of Item 8.A on Form FDI–106 was checked, will be deemed a certification that DI will refinance such borrowing as provided in amended § 324(b)(1).

Example 12. On July 1, 1969, DI made a $1 million borrowing for 2 years from foreign bank (X), which qualified as a long-term foreign borrowing under § 324 as then in effect. On July 1, 1970, DI prepays the borrowing in full and on the same day makes a $1 million borrowing for 3 months from foreign bank (Y), which constitutes a foreign borrowing under new § 324(a)(1). Under § 324(b)(1), the long-term foreign borrowing from X is deemed not to have been repaid for purposes of the regulations because it was refinanced by a foreign borrowing.

5. *Effect on 1969 General Bulletin.* The 1969 General Bulletin published in the FEDERAL REGISTER on November 5, 1969 (34 F.R. 17806–68) interprets the regulations as in effect for 1969, and will continue to do so for 1970 to the extent not affected by these amendments. Material in the Bulletin relating to long-term foreign borrowing should be used carefully in view of these amendments.

The text of the amendments, effective with respect to transactions occurring on or after May 1, 1970, is as follows:

1. Paragraph (e) of § 1000.324 is revoked, and paragraphs (a) and (b)(1) of that section are revised, to read as follows:

§ 1000.324 Long-term foreign borrowing.

(a) (1) "Foreign borrowing" means a borrowing made by a direct investor on or after May 1, 1970 from any foreign national (other than an affiliated foreign national and except as provided in § 1000.1106), including, but not by way of limitation, an extension of credit by any such foreign national to the direct investor in connection with the purchase of property (including securities) by the direct investor from such foreign national: *Provided,* That (i) the borrowing is from a foreign bank; or (ii) the borrowing is from or is guaranteed by a foreign country or any agency thereof; or (iii) at the time of the borrowing, the debt obligations resulting therefrom would, if purchased by nationals or residents of the United States, be subject to the Interest Equalization Tax (Internal Revenue Code, Chapter 41, sections 4911–4931); or (iv) the lender agrees in writing that, for a period of 3 years from the original date of the borrowing or until final maturity, whichever first occurs, it will not sell or otherwise transfer the debt obligation resulting from the borrowing to a resident or national of the United States (other than a foreign bank described in § 1000.317(b)(2)) or a Canadian person (as defined in § 1000.1101(d)) or to any person who the lender has reason to believe will sell or otherwise transfer the debt obligation to any such U.S. resident or national or Canadian person.

(2) In the case of borrowings made on or after May 1, 1970, "long-term foreign borrowing" means a foreign borrowing (as defined in subparagraph (1) of this paragraph) to the extent that such foreign borrowing is not repaid within 12 months after the original date of the borrowing: *Provided,* That solely for purposes of this subparagraph, a borrowing that is repaid in whole or in part pursuant to provisions in a debt instrument for acceleration upon default or that is repaid by reason of the conversion of convertible debt instruments shall be deemed to have been repaid in accordance with the maturities otherwise provided in such instruments.

(3) In the case of borrowings made prior to May 1, 1970, "long-term foreign borrowing" shall be as defined by paragraphs (a) and (e) of this section as in effect on April 30, 1970.

(b) (1) The refinancing in whole or in part of a foreign borrowing or a long-term foreign borrowing (by renewal, extension, or continuance of such borrowing or by making a foreign borrowing from the same or another lender) shall not, to that extent, be deemed a repayment of the borrowing or the making of a new borrowing.

* * * * *

(e) [Revoked]

2. Section 1000.1002(e)(2) is amended to read as follows:

§ 1000.1002 Transfers of capital in connection with repayment of borrowings.

* * * * *

(e) * * *

(2) The refinancing by a direct investor of a foreign borrowing or a long-term foreign borrowing in accordance with the provisions of § 1000.324(b)(1), or the refinancing of a borrowing by an affiliated foreign national (by renewal, extension or continuance of such borrowing or by making a subsequent borrowing from the same or another lender), shall not be deemed a repayment of the original borrowing or the making of a new borrowing.

* * * * *

3. The amendments hereby adopted shall be effective as of the date of publication in the FEDERAL REGISTER and shall apply to all affected transactions occurring on or after May 1, 1970.

(Sec. 5, Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47)

RICHARD P. URFER,
Director, Office of Foreign Direct Investments.

JUNE 10, 1970.

[F.R. Doc. 70-7400; Filed, June 12, 1970; 8:47 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs

[T.D. 70-134]

MISCELLANEOUS AMENDMENTS TO CHAPTER

In the course of the general revision of the Customs Regulations now in progress, a complete rearrangement of material and parts is contemplated. In order to facilitate this undertaking, part numbers 101 through 199 have been assigned for use in the revision. In accordance with this plan, it has been decided to redesignate those parts of the Customs Regulations which have been revised or were published originally in the format of the revision.

Accordingly, Chapter I of Title 19 of the Code of Federal Regulations is amended by redesignating Parts 26, 30, 31, 32, 33, and 53 as follows:

PART 26—AVAILABILITY OF INFORMATION

1. Part 26 is redesignated as Part 103.

PART 30—FOREIGN TRADE ZONES

2. Part 30 is redesignated as Part 146.

PART 31—CUSTOMHOUSE BROKERS

3. Part 31 is redesignated as Part 111.

PART 32—TRADE FAIRS

4. Part 32 is redesignated as Part 147.

PART 33—CARNETS

5. Part 33 is redesignated as Part 114.

PART 53—ANTIDUMPING

6. Part 53 is redesignated as Part 153.

The text of the redesignated parts is set forth below. Since this amendment merely redesignates existing regulatory material, notice and public procedure thereon are unnecessary, and good cause exists for making it effective on publication.

Effective date. This amendment shall be effective upon the date of publication in the FEDERAL REGISTER.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: May 28, 1970.

WILLIAM L. DICKEY,
Acting Assistant Secretary of the Treasury.

PART 103—AVAILABILITY OF INFORMATION

Sec.

103.1 Scope.
103.2 Availability of Customs documents.
103.3 Other Customs records.
103.4 Application for inspection, copying, or otherwise obtaining copy of Customs documents.
103.5 Deletion of identifying details from documents.
103.6 Public facilities for inspection and copying—Customs Reading Rooms.
103.7 Classes of Customs documents exempt from disclosure.
103.8 Information for the press and associations.
103.9 Sanction for improper disclosure by Customs officer or employee.
103.10 Statements for publication.
103.11 Testimony or the production of documents in court.

AUTHORITY: The provisions of this Part 103 issued under 5 U.S.C. 301, 552 as amended.

§ 103.1 Scope.

This part contains the regulations governing the inspection, copying, or otherwise obtaining copies of Customs opinions, orders made in the adjudication of cases, rulings, and records. It also contains the general rules covering the release of certain information to the press and the giving of testimony or the production of Customs documents in court.

§ 103.2 Availability of Customs documents.

(a) *Administrative manuals and instructions to staff.* Except as exempted by § 103.7, all administrative staff manuals and instructions to staff that affect any member of the public and indices thereto, are available for public inspection and copying in the Bureau of Customs Reading Rooms (§ 103.6). The following are some of the administrative manuals or instructions to staff which will be available:

Catalogue of Customs Forms.
Customs Laboratory Methods.
Marking Digest.
Monthly Checklists of Bureau of Customs Circular Letters.

(b) *Opinions, orders, rulings of precedential significance, statements of policy, and interpretations.* An index to the Bureau of Customs opinions, orders made in the adjudication of cases, rulings which are relied upon, used, or cited as precedents, statements of policy and interpretations not published in the FEDERAL REGISTER, if any (except opinions, orders, rulings, statements of policy and interpretations which are exempted from the requirement for disclosure under § 103.7), is available for public reference in the Bureau of Customs Reading Rooms (§ 103.6). For the most part such opinions, orders, rulings, and interpretations are in the form of letters addressed to regional commissioners or district directors of Customs or to parties in interest, ruling upon questions arising under Customs and navigation laws, and other related laws. Abstracts of such opinions, orders, or rulings are published in the Customs Bulletin. Copies of the abstracted documents are available for public inspection and copying in the Bureau of Customs Reading Room at Washington, D.C. (§ 103.6). Copies of such opinions, orders, or rulings addressed to Customs field officers or promulgated by Customs field officers and relied upon, used, or cited as precedents also are available in the Reading Rooms serving the respective Customs offices to which they relate (§ 103.6).

(c) *Fee for copies.* A fee for copies furnished under paragraphs (a) and (b) of this section will be charged in accordance with § 24.12 of this chapter.

§ 103.3 Other Customs records.

(a) *General.* In general, all other documents issued by the Secretary of the Treasury, the Commission of Customs, or other officials of the Treasury Department or the Bureau of Customs in matters administered by the Bureau of Customs, if sufficiently identified, and unless exempted from disclosure under § 103.7, are available for inspection. Copies thereof may be obtained by request in person, or by correspondence. (§§ 103.4 and 103.6.) However, documents contained in files on pending matters may be withheld from inspection or copying in the interest of effective operation.

(b) *Classes of records available for inspection and copying.* The following classes of records of the Bureau of Customs may be inspected and copied, upon request. Individual documents in certain records may be exempt from disclosure under § 103.7, or may be made available with identifying details deleted. The list does not purport to be exhaustive:

(1) Records relating to—

(i) Comments submitted by private parties in response to a published notice of proposed rule making and of proposed changes in tariff classification, unless the submitter states clearly that the information is privileged or confidential, giving reasons therefor, and the Commissioner of Customs agrees that the information contained therein is entitled to exemption from disclosure under § 103.7.

(ii) Advisory committees on Customs matters.

(iii) Rosters of licensed customhouse brokers.

(iv) Names of individual licensed customhouse brokers.

(v) Names and titles of all Customs personnel.

(vi) Performance awards.

(vii) Suggestion awards.

(viii) Proceedings under the countervailing duty provision of the Tariff Act of 1930, after publication of notice or order to countervail.

(ix) The administration of and decisions concerning import quotas.

(x) Proceedings under the Antidumping Act, 1921 (19 U.S.C. 160, et seq.), as provided for in § 153.23 of this chapter.

(2) Records relating to decisions concerning—

(i) Matters arising under the Tariff Schedules of the United States.

(ii) Whether or not specific items, articles, or merchandise quality for entry under the Trade Fair Act of 1959 (19 U.S.C. 1751 et seq.), and decisions concerning disposition of articles previously entered under the Trade Fair Act; Customs participation and assistance at Trade Fairs.

(iii) The dutiable status of gifts pursuant to section 321, Tariff Act of 1930 (19 U.S.C. 1321).

(iv) The eligibility of vehicles used in international traffic pursuant to section 322(a), Tariff Act of 1930 (19 U.S.C. 1322 (a)) and other instruments of international traffic generally for duty-free entry.

(v) Prohibition from entry of merchandise produced by convict, forced, or indentured labor.

(vi) The entry or valuation of merchandise.

(vii) Liens in cases arising under section 564, Tariff Act of 1930 (19 U.S.C. 1564).

(viii) Bills of lading, carriers' certificates, or rights in respect of merchandise, cases arising under section 483 or 484 (c), (h), or (i), Tariff Act of 1930 (19 U.S.C. 1483, 1484).

(ix) Trademarks, trade names, copyrights, patents, and related matters.

(x) Country of origin marking requirements of section 304, Tariff Act of 1930 (19 U.S.C. 1304), as amended.

(xi) Psittacine or other birds, bird feathers, bird skins, monkeys, dogs, cats, and other animals and pets prohibited entry or subject to restrictions and controls on entry.

(xii) Entry of articles admitted temporarily free of duty under bond as provided in Schedule 8, Part 5C, Tariff Schedules of the United States.

(xiii) Tonnage taxes (regular, special, and discriminatory) and light money.

(xiv) The entry, clearance, and use of vessels and permits for them to proceed coastwise.

(xv) The regulation of vessels in the foreign, coastal, fishing, and other trades of the United States.

(xvi) The limitation of the use of foreign vessels in waters under the jurisdiction of the United States.

(xvii) Salvage operations by vessels within the territorial waters of the United States.

(xviii) The assessment and collection of duties on equipment or repairs of vessels or aircraft under section 466, Tariff Act of 1930 (19 U.S.C. 257, 258) and decisions regarding the remission or refund of such duties.

(xix) Requirements for entry, clearance, and use of aircraft.

(xx) The arrival or departure and the use of motor vehicles, railway trains, or other vehicles.

(xxi) Adequacy of premises at Customs bonded warehouses and control of the merchandise stored therein.

(xxii) Use of protective Customs seals and labels.

§ 103.4 Application for inspection, copying, or otherwise obtaining copy of Customs documents.

(a) *Where to apply.* Permission to inspect or to obtain copies of Customs documents which are not exempted from disclosure under § 103.7 may be obtained by application in person or by correspondence. Application in person may be made at the Bureau of Customs Reading Rooms (§ 103.6); application in writing should be addressed to:

Assistant Commissioner of Customs, Office of Regulations and Rulings, Bureau of Customs, 2100 K Street NW., Washington, D.C. 20226.

or if a record desired to be inspected is in a Customs regional or district office the application shall be addressed to the Regional Commissioner or District Director of Customs.

(b) *Description of document requested.* An application to inspect or copy a document must provide such a reasonably specific description of the particular document sought as will reasonably enable the record clerk to locate it. The burden of identification is that of the applicant.

(c) *Processing of application.* Upon receipt of a request to inspect, copy, or purchase a copy of any Customs document, the applicant will be advised whether the information, or any part thereof, may be released to the applicant, with or without the deletion of identifying details. If it is concluded that the document or any part thereof may be released to the applicant he will be advised of the cost of securing the information or a copy of the document and the manner of making payment. Upon receipt of this amount, or of a guarantee of payment, the information or copy will be made available.

(d) *Grant of request.* If the document may be inspected, copied, or otherwise released the applicant shall be so advised. If it is decided that the document may be released, but that certain identifying details should be deleted to prevent the disclosure of information exempted from disclosure under § 103.7, the applicant shall be advised and the reason for the deletion shall be stated (§ 103.5). In either case the applicant will be advised of the fee charged for securing the files and cost of copying the material (§ 24.12 of this chapter).

(e) *Denial of request.* Any decision that a document should not be inspected, copied, or otherwise released, shall be reviewed by the Commissioner of Customs, except cases clearly covered by a previous decision made by the Commissioner. The Commissioner of Customs will promptly advise the applicant of the result of his review. If the Commissioner finds that the request should be denied such denial will state the reason therefor.

§ 103.5 Deletion of identifying details from documents.

(a) *General.* Where an opinion, order, ruling, or other Customs document contains information of the type described in paragraph (b) of this section but the actual opinion, order, ruling, or substance of the document can be separated from the exempted matter, partial copies containing only such parts as can properly be disclosed will be furnished insofar as practicable.

(b) *Reasons for deletion.* Ordinarily, information will be deleted which:

(1) Relates to details of business transactions of private parties the disclosure of which may be detrimental to the interests of the parties involved.

(EXAMPLE: The name of the importer or exporter, or other member of the public directly concerned, generally will be deleted from any document if its inclusion in the document would disclose trade secrets, the operations of his business or other commercial or financial information.)

(2) Was submitted in reliance upon a long-established assurance that such information will be kept in confidence and used only for official purposes, or

(3) Is prohibited from disclosure by law.

(c) *Decision to delete.* Any document from which identifying details have been deleted must be accompanied by a statement in writing expressing the reason for the deletion.

§ 103.6 Public facilities for inspection and copying—Customs Reading Rooms.

Facilities for locating, inspecting, and copying Bureau of Customs indexed rulings will be located in the Bureau of Customs Reading Rooms. The Reading Room in the Bureau of Customs at Washington, D.C., is located at:

2100 K Street NW., Washington, D.C. 20226.

The Reading Rooms outside the Washington area are located at the headquarters offices for each Customs region:

Region I—Boston, 24th Floor, John F. Kennedy Building, Government Center, Boston, Mass. 02203.
Region II—New York, 220 Customhouse, Bowling Green, New York, N.Y. 10004.
Region III—Baltimore, 40 South Gay Street, U.S. Customhouse, Baltimore, Md. 21202.
Region IV—Miami, 51 Southwest First Avenue, Room 1604, Miami, Fla. 33130.
Region V—New Orleans, Room 13036, Federal Building, 701 Loyola Avenue, New Orleans, La. 70113.
Region VI—Houston, Room 7208, New Federal Building, 515 Rusk Avenue, Post Office Box 61149, Houston, Tex. 77061.
Region VII—Los Angeles, New Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.
Region VIII—San Francisco, New Federal Building, 450 Golden Gate Avenue, Box 36117, San Francisco Calif. 94102.
Region IX—Chicago, 623 South Wabash Avenue, Chicago, Ill. 60605.

The Reading Rooms are open to the public from 9 a.m. to 4:30 p.m. unless other hours are posted, Monday through Friday of each week, exclusive of national holidays. A fee for copies of requested material will be charged. (§ 24.12 of this chapter.)

§ 103.7 Classes of Customs documents exempt from disclosure.

Bureau of Customs opinions, orders, rulings, statements of policy, interpretations, and records generally may be inspected, copied or otherwise obtained unless they relate to the following:

(a) Matters specifically required by Executive order to be kept secret in the interest of national defense or foreign policy. This includes:

(1) Special category export shipments the disclosure of which might endanger the security of the United States. Such restriction upon disclosure is in effect during any period covered by a finding by the President under section 1 of the Act of August 9, 1950, as amended (50 U.S.C. 191). Such a finding was made by Executive Order No. 10173, October 18, 1950

(3 CFR 1949–1953 Comp. p. 356; 15 F.R. 7005).

(2) Material classified as "Top Secret," "Secret," or "Confidential" under Executive Order No. 10501, of November 5, 1953, 18 F.R. 7049, as amended.

(b) Information relating solely to the internal personnel rules and practices. This includes guidelines, operational rules, and procedural manuals for the guidance of Customs officers and employees which relate to such functions as investigation, inspection, auditing, and other functions of a like nature. Examples of this type of information are:

Audit Manual.
Audit Standards and Techniques Manual.
Customs Accounting Manual.
Emergency Planning Manual.
Enforcement and Technical Investigation Manuals.
Inspectors' Manual.
Sampling Guide.

(c) Information specifically exempted from disclosure by statute. This includes information pertaining to trade secrets, business operations, and commercial or financial information of importers, exporters, and other persons who transact Customs business (18 U.S.C. 1905).

(d) Trade secrets and commercial or financial information obtained from any person and privileged or confidential. The information contained in invoices, entries, vessels' manifests, export declarations, official reports of investigating officers, records pertaining to the licensing of and the revocation or suspension of a license of a customhouse broker, and other papers or documents filed with Customs officers for any official purpose which contain trade secrets, or commercial or financial information, is exempt from disclosure, except for the purpose for which such documents are required to be filed. However, information contained in vessels' manifests and summary statistical reports of importations and exportations are available for inspection and copying by certain representatives of the press to the extent permitted by § 103.8. Further, importers and exporters or their duly authorized brokers, attorneys, or agents, may be permitted to examine manifiests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest. Information obtained in connection with investigations under the Antidumping Act, 1921 (19 U.S.C. 160 et seq.), is available for disclosure under the provisions of § 153.23 of this chapter.

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation. This information includes, but is not limited to, memoranda expressing, the views of subordinates, comments endorsing or dissenting from conclusions reached in official rulings, work papers, and other informal expressions of view, certain documents addressed to other Government agencies (unless such documents are released for disclosure by the recipient).

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. These include, but are not limited to, leave records of individual employees, personnel investigative records, personnel security records, personnel financial statements submitted in connection with conflicts of interest and other records which relate to the private, personal, financial, or business affairs of an individual employee or members of his family, unless the person concerned or his duly authorized agent authorizes disclosure, or unless otherwise made available in this part.

(g) Investigatory files compiled for law enforcement purposes except to the extent that they are available by law to a private party. Some examples of records included in this category are investigative reports relating to: The value and classification for tariff purposes of imported merchandise; suspected violations of section 592 of the Tariff Act of 1930 (19 U.S.C. 1952); allegations of the importation of merchandise into the United States in contravention of the countervailing duty provision (19 U.S.C. 1303); the importation of certain books, pictures, or other articles in contravention of the so-called "obscenity statute" (19 U.S.C. 1305). This listing is intended to be illustrative only, and is not intended to be, and is not, an exhaustive listing.

§ 103.8 Information for the press and associations.

(a) *Disclosure to members of the press.* Although the following classes of information are exempt from the requirement of disclosure under the provision of § 103.7, accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications may be permitted to examine vessels' manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data not of a confidential nature, subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the general character, destination, and quantity (or value) of the commodity, name of vessel, and country of destination may be copied and published. Where the manifests show both quantity and value, either may be copied and published, but not both in any instance.

(2) Commercial or financial information, such as the names of the shippers and consignees, marks and numbers, and both quantities and values of commodities shall not be copied from outward manifests or any other papers.

(3) Of the information shown on inward manifests, only the name of the consignee, the general character of the commodity, the quantity (or value), name of vessel, and the country of dispatch shall be copied and published. When an inward manifest shows both quantity and value of the commodity, either may be copied and published, but not both in any instance.

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to members of associations.* Accredited representatives of regularly established associations, whether incorporated or not, shall be permitted to obtain information from, but not examine, vessels' manifests for the purpose of securing data relative to merchandise of the kind or class in the importation of which the association is interested, subject to the foregoing rules, but this authority does not extend to attorneys, agents, or customhouse brokers acting on behalf of individual importers.

(d) *Suspension of disclosure.* (1) Except as provided in § 103.11, upon written application of a consignee or importer access to the name of such consignee or importer on a manifest will thereafter be refused.

(2) If any individual shall abuse the privilege granted him of examining inward and outward manifest or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

§ 103.9 Sanction for improper disclosure by Customs officer or employee.

The disclosure of the confidential information contained in Customs documents or the disclosure to one importer or exporter of information relative to the business of another importer or exporter acquired by any Customs officer or employee by reason of his official employment shall constitute grounds for dismissal from the Service, suspension, or other disciplinary action, and if done for a valuable consideration will subject such person to criminal prosecution.

§ 103.10 Statements for publication.

District directors of Customs and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until Customs action is completed. The district director of Customs or other authorized Customs officer, may make public information concerning any case involving an offense against the Customs and navigation laws after completion of the investigation and the case has been closed by final Customs action, such as settlement of a civil liability or reference of a case to the U.S. attorney for handling. Field officers shall exercise proper restraint and judgment in disclosing local transactions.

§ 103.11 Testimony or the production of documents in court.

(a) *General.* In answer to a legal process or demand from a court issued in behalf of the United States or an officer thereof, Customs officers or employees shall produce in court in Customs custody, and may testify with respect to,

any official Customs papers or documents demanded. When any such process or demand is issued in behalf of a party other than the United States, it shall be complied with only to the extent that the party in whose behalf the paper or documents are demanded is permitted under these regulations to inspect or copy such papers or documents. Exceptions to this rule shall be made only on the written order of the Commissioner of Customs. When requested, copies may be authenticated pursuant to the provisions of section 1733, title 28, United State Code.

(b) *Request of Customs Court.* Except as stated in § 103.7, nothing in this part shall preclude Customs officers or employees from producing in the U.S. Customs Court in Customs custody any Customs papers or documents or from testifying or otherwise rendering all proper assistance to the court in proceedings before it when request therefor is made by the court; nor from furnishing to counsel for the United States information in, and permitting him to inspect, Customs papers and documents requested by him, nor from testifying on behalf of the United States or otherwise assisting him in the performance of his official duties.

(c) *Subpoena or Subpoena duces tecum.* Upon being served with a subpoena or subpoena duces tecum from a court or officer thereof calling for testimony or the production of papers or documents in cases not covered by paragraphs (a) or (b) of this section, or in cases where the testimony or documents desired would disclose matters the disclosure of which would be contrary to these regulations, the matter shall be referred to the Bureau for instructions, with a report which shall specifically describe the testimony or documents desired; shall set forth the view of the submitting officer whether the giving of the testimony or the furnishing of the documents would disclose informaton not permitted to be disclosed under these regulations; and shall state in what particulars, if any, the disclosure of the information and work incidental thereto would interfere with the orderly conduct of Customs business. If instructions are not received prior to the date set for appearance or production of documents, or if the Bureau declines to permit their production or the disclosure of the information contained therein or otherwise within the knowledge of the Customs officer or employee whose testimony is requested, the Customs officer or employee shall appear in court or before the officer concerned in answer to the subpoena and respectfully decline to produce the documents called for or to testify, except to the extent specifically authorized elsewhere in this section, citing this regulation as authority for his refusal. If the matter has not already been referred to the Bureau for instructions, the Customs officer or employee shall advise the court or officer that it will be so referred.

PART 111—CUSTOMHOUSE BROKERS

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§ 111.0 Scope.

This part sets forth regulations providing for the licensing of persons desiring to transact business as customhouse brokers, the qualifications required of applicants, and the procedure for applying for licenses. This part also prescribes the duties and responsibilities of customhouse brokers, the grounds for revocation or suspension of licenses, and the procedures for such revocation or suspension.

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms shall have the meanings indicated:

(a) *Person.* "Person" includes individuals, partnerships, associations, and corporations.

(b) *Customhouse broker.* "Customhouse broker" means a person who is licensed under this part to transact Customs business on behalf of others.

(c) *Broker.* "Broker" means "customhouse broker."

(d) *Treasury Department or any representative thereof.* "Treasury Department or any representative thereof" includes any office, officer, or employee of the Treasury Department, wherever located.

(e) *Books and papers.* "Books and papers" includes all books, accounts, records, papers, documents, data processing materials (other than cards, magnetic tapes and discs, and incidental intermediate forms temporary in nature), and correspondence of a broker relating to his Customs business.

(f) *Freight forwarder.* "Freight forwarder" means a person engaged in the business of dispatching shipments on behalf of other persons for a consideration in foreign commerce between the United States, its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments.

(g) *Officer of an association or corporation.* "Officer of an association or corporation" means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute, the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

§ 111.2 License required.

A person shall obtain the license provided for in this part in order to transact the business of a broker. A separate license is required for each Customs district.

§ 111.3 Transactions for which license is not required.

A license is not required to engage in the following transactions with the Treasury Department or any representative thereof:

(a) *For one's own account.* An importer or exporter transacting Customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(b) *As employee of brokers.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(1) *Authorized to sign Customs documents.* The broker has authorized the employee to sign Customs documents on his behalf, and has filed a power of attorney for that purpose with the district director and at each port within the district where the broker wishes the employee to sign Customs documents. Only employees who are residents of the United States may be authorized to sign Customs documents. Or,

(2) *Authorized to transact other business.* The broker has filed with the district director a statement identifying the employee as authorized to transact business on his behalf. Such statement shall also be filed at each port within the district where the broker wishes the employee to act for him.

Where the employee is given authority under either (1) or (2) of this paragraph, the broker must promptly give notice of the withdrawal of authority of any such employee and must exercise such supervision of his employees as will insure proper conduct on the part of the employees in the transaction of Customs business. Each broker will be held strictly responsible for the acts or omissions of his employees within the scope of their employment, and for acts or omissions of such employees which, in the exercise of reasonable care and diligence, the broker should have foreseen.

(c) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(d) *Transportation in bond by common carrier.* A common carrier transporting merchandise for another may make entry for such merchandise for transportation in bond without being licensed as a broker.

§ 111.4 Representation before Government agencies.

(a) *Agencies within the Treasury Department.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative thereof on any matter concerning such merchandise except that he shall not represent the client before Customs officers in a Customs district in which he is not licensed.

(b) *Agencies not within the Treasury Department.* In order to represent a client before any agency not within the Treasury Department, a broker shall comply with any regulations of such agency governing the appearance of representatives before it.

§ 111.5 Prior licenses.

Licenses issued prior to the effective date of the regulations in this part shall continue in force and effect, subject to cancellation, suspension or revocation as provided in Subpart D of this part.

Subpart B—Procedure to Obtain License

§ 111.11 Basic requirements.

(a) *Individual.* An individual must:

(1) Be a citizen of the United States, but not an officer or employee of the United States;

(2) Be at least 21 years of age;

(3) Be of good moral character; and

(4) Establish through an examination that he has sufficient knowledge of Customs and related laws, regulations, and procedures to render valuable service to importers and exporters. Satisfactory knowledge is established in part by attaining a grade of at least 75 percent on the examination.

(b) *Partnership.* A partnership must:

(1) Have two members of the partnership who are licensed brokers, and

(2) Establish that it will have an office in which its Customs transactions will be performed by a licensed member of the partnership, or a qualified employee under the responsible supervision and control of the licensed members.

(c) *Association or corporation.* An association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customhouse brokerage business;

(2) Have at least two officers who are licensed brokers; and

(3) Establish that it will have an office in which its Customs transactions will be performed by a licensed officer or a qualified employee under the responsible supervision and control of the licensed officers.

§ 111.12 Application for license.

(a) *Submission of application.* An application for a broker's license shall be submitted in duplicate to the district director of the district in which the applicant intends to do business. The application shall be under oath and executed on Customs Form 3123 (individual) or Customs Form 3125 (partnership, association, or corporation). The application shall be accompanied by the fee of $150 prescribed in § 24.12 of this chapter and one copy of the attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States within the district, evidence of the applicant's authority to use the name in each such State must accompany the application. An application for an individual license must be submitted not later than 30 days before the scheduled examination which the applicant wishes to take.

(b) *Posting notice of application.* Upon receipt of the application the district director shall post a notice that the application has been filed. The notice shall be posted conspicuously for at least 2 weeks in the customhouse at the headquarters port and at the subports where the applicant proposes to maintain an office. The notice shall give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, the names of the members or officers thereof who are licensed as brokers. The notice shall invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* If the applicant advises before the date of an examination that he wishes to withdraw his application, the application shall be treated as withdrawn and the district director shall refund the application fee to the applicant.

§ 111.13 Examination of applicant for individual license.

(a) *Examination.* The written examination shall be designed to determine the applicant's knowledge of Customs and related laws, regulations, and procedures and his fitness to render valuable service to importers and exporters. The examination will be prepared and graded in the Bureau headquarters.

(b) *Date and place of examination.* Examinations will be given at each district office on the first Monday in February, June, and October. The district director shall give the applicant notice of the exact time and place where the examination will be given.

(c) *Special examination.* The Commissioner may authorize a special examination for an applicant when a partnership, association, or corporation has less than two licensed members or officers. He may also authorize a special examination for one who will be authorized to continue the business of an individual broker. Application and a statement of the reasons for the necessity of a special examination shall be filed with the district director in accordance with § 111.12(a).

(d) *Failure to appear for examination.* If the applicant fails to appear for a scheduled examination without notification in advance or explanation of the circumstances which made it impossible or impracticable to give such notification, the district director shall notify him that the application is denied because of failure to appear for examination to establish his qualifications for a license. The district director shall refund to the applicant one-half of the application fee.

(e) *Failure to pass examination.* If the applicant does not obtain a grade of at least 75 percent, the Commissioner will notify him and the district director that the application for a license is denied because of failure to pass the examination. The district director shall refund to the applicant one-half of the application fee.

(f) *Passing grade on examination.* If the applicant obtains a passing grade, the Commissioner will return the application to the district director for further processing of the application.

§ 111.14 Investigation of the applicant.

(a) *Individual license—(1) Applicant passing examination.* If the applicant passes the examination, the district director shall refer the application to the special agent in charge for an investigation and report.

(2) *Applicant licensed in one district.* If the applicant has a license in one district, the district director shall immediately refer the application to the special agent in charge for an investigation and report.

(b) *Partnership, association, or corporation license.* The district director shall immediately refer an application for a partnership, association, or corporation license to the special agent in charge for investigation and report.

(c) *Scope of investigation.* The investigation shall ascertain facts relevant to the question whether the applicant is qualified and shall cover, but need not be limited to:

(1) The accuracy of the statements made in the application;

(2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(d) *Report and return of the application.* The special agent in charge shall return the application with his report and recommendation to the district director who requested the investigation. The district director shall forward the originals of the application and the agent's report to the Commissioner. The district director shall also submit his recommendation for action on the application.

(e) *Additional investigation or examination.* The Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Commissioner may also require the applicant (or, in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person before him or before one or more representatives of the Commissioner for the purpose of undergoing additional written or oral examination into the applicant's qualifications for a license.

§ 111.15 Issuance of license.

If the Commissioner finds that the applicant is qualified, he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license shall be forwarded to the district director, who shall deliver it to the licensee. The district director shall maintain an alphabetical list of brokers licensed in his district which list shall be available to the public.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Commissioner determines that the application for a license should be denied for any reason, notice of denial shall be given by him to the applicant and to the director of the district in which the application was filed. The notice of denial shall state the reasons why the license was not issued.

(b) *Grounds for denial.* The causes sufficient to justify denial of an application for a license shall include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;

(2) The failure to meet any requirement set forth in § 111.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards;

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

§ 111.17 Review of the denial of a license.

(a) *By the Commissioner.* At the written request of the applicant, the Commissioner may allow a further opportunity to the applicant to present information or arguments in support of his application by personal appearance or in writing, or both.

(b) *By the Secretary.* A decision of the Commissioner denying a license, upon the written request of the applicant, will be submitted to the Secretary of the Treasury for such review as the Secretary shall deem appropriate.

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of § 111.12 of this part.

§ 111.19 Licenses for additional districts.

A license authorizes the transaction of Customs business only in the district for which issued. Licenses for additional districts may be obtained by:

(a) Filing with the district director of the district for which a license is desired the application prescribed in § 111.12(a). Upon receipt of the application, the district director shall follow the procedure set forth in §§ 111.12(b) and 111.14;

(b) Submitting the fee of $150 with the application; and

(c) Establishing upon investigation that the applicant is prepared and qualified to render efficient service in the additional district. This includes a showing that the licensed members of a partnership or the licensed officers of an association or corporation will exercise responsible supervision and control of the proposed office. The licensed members of a partnership and the licensed officers of an association or corporation are not required to be licensed as individuals in the district for which the partnership, association or corporation is applying for an additional license. An individual licensed as a broker in one district may or may not, at the discretion of the Commissioner, be required to take another examination when applying for an additional license.

Subpart C—Duties and Responsibilities of Customhouse Brokers

§ 111.21 Record of Transactions.

Each broker shall keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He shall keep and maintain on file a copy of each entry made by him with all supporting papers, except those documents he is required to file with Customs, and copies of all his correspondence and other papers relating to his Customs business.

§ 111.22 Additional record of transactions.

(a) *Additional requirement.* In addition to the regular records of account required by § 111.21 of this part, each broker shall keep current a record of all of his Customs transactions on Customs Form 3079 (Record of Transactions of Licensed Customhouse Broker) in accordance with the instructions printed on the form unless an exemption has been granted under the authority of paragraph (b) of this section. If a transaction has been handled only in part by the broker, he shall fill in only the appropriate parts of the form.

(b) *Exemption.* If the information required on Customs Form 3079 is disclosed in other books and records regularly kept and maintained by a broker and if such information is in a systematic, convenient, and readily available form so that Customs field auditors can make an effective and complete inspection thereof, the district director with the concurrence of the director, field audit, may in writing exempt the broker from the requirements of paragraph (a) of this section. A written request for the exemption shall be addressed to the district director and shall include:

(1) A statement of facts as to the records kept; and

(2) An agreement that, if the exemption is granted, no change in the system of books and records or the manner of keeping and maintaining them will be made without prior written approval of the district director and concurrence in the change by the director, field audit.

(c) *Withdrawal of exemption.* Whenever an audit by a Customs field auditor indicates that a broker to whom an exemption has been granted as provided for in paragraph (b) of this section is not

keeping and maintaining records in conformity with the requirements of paragraph (b) of this section, the exemption of such broker shall be withdrawn by notice in writing from the district director, and such broker shall thereafter keep and maintain records on Customs Form 3079 as required by paragraph (a) of this section.

§ 111.23 Retention of books and papers.

(a) *Period and place of retention.* The books and papers as defined in § 111.1(e) and required by §§ 111.21 and 111.22 to be kept by a broker shall be retained within the Customs district to which they relate for at least 6 years after the date of entry. When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 6 years from the date of withdrawal.

(b) *Microfilming of books and papers.* A customhouse broker may, with the approval of the district director of Customs of the district in which he is licensed, record on microfilm any books and papers, other than books of account, required to be retained under the provisions of paragraph (a) of this section which are not less than 3 years old. A request for approval of the district director shall be accompanied by a description of the system of filing and indexing the spools of microfilm. Retention and availability of the microfilm during the remainder of the period of retention shall satisfy the requirements of paragraph (a) of this section.

§ 111.24 Books and papers confidential.

The books and papers referred to in this part and pertaining to the business of the clients serviced by the broker shall be considered confidential, and the broker shall not disclose their contents or any information connected therewith to any persons other than such clients and the director, field audit, the special agent in charge, or other duly accredited agent of the United States except on subpena by a court of competent jurisdiction.

§ 111.25 Books and papers shall be available.

During the period of retention, the broker shall maintain his books and papers in such manner that they may readily be examined, and they shall be made available for inspection, copying, reproduction or other official use by Customs field auditors or special agents on demand within the period of retention or within any longer period of time during which they remain in the possession of the broker.

§ 111.26 Interference with examination of books and papers.

A broker shall not refuse access to, conceal, remove, or destroy the whole or any part of any book or paper relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative thereof, nor shall he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in such book or paper.

§ 111.27 Audit or inspection of books and papers.

The director, field audit, shall make such audit or inspection of the books and papers required by this subpart to be kept and maintained by a broker as may be necessary to enable the district director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part. Furthermore, the director, field audit, and/or the special agent in charge, may inspect such books and papers to obtain information regarding specific Customs transactions for the purpose of protecting importers or the revenue of the United States. The director, field audit, and the special agent in charge conducting an audit or inspection under this section shall submit a report of the findings to the Commissioner and the district director.

§ 111.28 Responsible supervision.

Every licensed member of a partnership and every licensed officer of an association or corporation, which is licensed as a broker, shall exercise responsible supervision and control over the transaction of the customhouse business of such partnership, association or corporation.

§ 111.29 Diligence in correspondence and paying monies.

Each broker shall exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of documents relating to any matter handled by him as a broker. Funds received by a broker from a client for payment of duty, tax, or other debt or obligation owing to the Government shall be paid to the Government within 30 days from date of receipt or date due, whichever is later. Each broker shall within 60 days account to clients for funds received for them from the Government, or received from a client in excess of the governmental or other charges properly payable in response to the client's business. He shall account to all other persons within 30 days of receipt for all funds advanced by a client for payment of any charges, debts, or obligations due such other persons.

§ 111.30 Change of business address, organization, or name.

(a) *Business address.* When a broker changes his business address, he shall immediately give written notice of his new address to the Commissioner and the district director for the district in which the change of address occurs.

(b) *Organization.* A partnership, association, or corporation shall immediately notify the Commissioner and the district director of the districts where licensed of:

(1) The date on which a licensed member or officer who was one of the qualifying members or officers ceases to be a member or officer and the name of the broker who will succeed him as a qualifying member or officer; or

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation.

(c) *Name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he is licensed and is authorized by State law to do so, shall submit evidence of his authority to use such name. The name shall not be used until the approval of the Commissioner has been received. In the case of a trade or fictitious name, the broker shall affix his own name in conjunction with each signature of the trade or fictitious name when signing Customs documents.

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker who was formerly an officer or employee in the Government service shall not represent a client before the Treasury Department or any representative thereof in any matter to which the broker gave personal consideration or gained knowledge of the facts while in the Government service, except as provided in 18 U.S.C. 207.

(b) *Assisting former officer or employee of U.S. Government.* A broker shall not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before the Treasury Department or any representative thereof to which matter such person gave personal consideration or gained personal knowledge of the facts or issues thereof while in the Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself shall not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client has full knowledge of the facts. The same restriction shall apply if a broker's employee is an importer.

§ 111.32 False information.

A broker shall not file or procure or assist in the filing of any claim, or of any document, affidavit, or other paper, known by such broker to be false; nor shall he knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Treasury Department or any representative thereof.

§ 111.33 Government records.

A broker shall not procure or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

§ 111.34 Undue influence upon Government employees.

A broker shall not influence or attempt to influence the conduct of any representative of the Treasury Department in any

matter pending before the Treasury Department or any representative thereof by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to merchandise imported after March 15, 1962, a broker shall not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 111.36 Relations with unlicensed persons.

(a) *Service to others not to benefit unlicensed person.* A broker shall not enter into any agreement with an unlicensed person to transact Customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person except as provided in paragraph (b) of this section. When a broker is employed for the transaction of Customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual importer a copy of his bill for services rendered, unless the merchandise was purchased for delivery on an all-free basis (duty and brokerage charges paid by the unlicensed person).

(b) *Employment by a freight forwarder.* A broker may compensate a freight forwarder for services rendered in obtaining brokerage business, providing:

(1) The importer is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant thereto, shall forbid or prevent direct communication between the importer and the broker; and

(4) In making the agreement and in all actions taken pursuant thereto, the broker shall be subject to all other provisions of these regulations.

§ 111.37 Misuse of license.

A broker shall not permit his license or his name to be used by or for any unlicensed person, other than his own employees authorized to act for him, or by or for any broker whose license is under suspension in the solicitation, promotion or performance of any Customs business or transaction.

§ 111.38 False representation to procure employment.

A broker shall not knowingly use false or misleading representations to procure employment in any Customs matter, nor shall he represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative thereof.

§ 111.39 Advice to client.

(a) *Withholding or false information.* A broker shall not withhold information relative to any Customs business from a client who is entitled to the information. He shall exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he shall not knowingly impart to a client false information relative to any Customs business.

(b) *Error or omission by client.* A broker who knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires such client to execute, shall advise his client promptly of the fact of such noncompliance, error, or omission.

(c) *Illegal plans.* A broker shall not suggest to a client or a prospective client a plan known to be illegal for evading payment of any duty, tax, or other debt or obligation owing to the Government.

§ 111.40 Appeals to reappraisement and protests.

A broker shall not act in behalf of any person, or attempt to represent any person, in respect of any appeal for reappraisement or protest, unless he shall previously have been specifically or generally authorized to do so by such person.

§ 111.41 Endorsement of checks.

A broker shall not endorse or accept without authority of his client any Government draft, check, or warrant drawn to the order of such client.

§ 111.42 Relations with person who is notoriously disreputable or whose license has been suspended, canceled "with prejudice," or revoked.

A broker shall not knowingly and directly or indirectly:

(a) Accept employment to effect a Customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose license as broker shall have been revoked for any cause, or whose license is under suspension, or who has had his license canceled "with prejudice;"

(b) Assist the furtherance of any Customs business or transactions of such person;

(c) Employ, or accept such assistance from, any such person, without the approval of the Commissioner (see § 111.79);

(d) Share fees with any such person, or

(e) Permit any such person directly or indirectly to participate, whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker. Nothing herein shall be deemed to prohibit any broker from acting as a broker for any bona fide importer or exporter, notwithstanding such importer or exporter may have had his license as a customhouse broker revoked or suspended, or may be notoriously disreputable.

§ 111.43 Display of license.

Each broker shall display his license in the principal office within the district so that it may be seen by anyone transacting business in the office. Photocopies of the license shall likewise be posted in each branch office within the district.

Subpart D—Cancellation, Suspension, or Revocation of License

§ 111.51 Cancellation of license.

(a) *Without prejudice.* The Commissioner may cancel a broker's license "without prejudice" upon written application by the broker if the Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license. If he determines that the application for cancellation was made in order to avoid such proceedings, the Commissioner may cancel the license "without prejudice" if authorized by the Secretary of the Treasury.

(b) *With prejudice.* The Commissioner may cancel a broker's license "with prejudice" when specifically requested to do so by the broker. The effect of a cancellation "with prejudice" is in all respects the same as if the license had been revoked for cause by the Secretary.

§ 111.52 Revocation by operation of law.

A license granted to a partnership, association, or corporation shall be deemed revoked by operation of law, in accordance with the provisions of section 641(a), Tariff Act of 1930, as amended (19 U.S.C. 1641(a)), if for any continuous period of more than 60 days there are not at least two members of such partnership or two officers of such association or corporation who are licensed to transact business as a customhouse broker. When a license is revoked by operation of law, the Commissioner will notify the partnership, association, or corporation of the revocation. A copy of such notice will be sent to the district director.

§ 111.53 Grounds for suspension or revocation.

Failure or refusal to comply with the duties, responsibilities, or requirements specified in Subpart C or elsewhere in this part relating to brokers may be deemed grounds for suspension or revocation of the license of a broker. Such duties, responsibilities, or requirements are not to be considered as exclusive. Conduct not within the purview of any specification of this part may be deemed to be conduct warranting the suspension

or revocation of a license under the authority of section 641(b), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)).

§ 111.54 Chief officer of the Customs.

The district director shall be the chief officer of the Customs within the scope of section 641(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)). In the case of sickness or absence of the district director, the assistant district director designated by the district director shall be the chief officer of the Customs. If the office of district director is vacant or the district director is unable to designate an assistant district director as chief officer of the Customs, the Commissioner shall designate one of the assistant district directors to be the chief officer of the Customs.

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action shall be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge shall submit a report on the investigation to the director of the appropriate district and send a copy of it to the Commissioner.

§ 111.56 Review of report on investigation.

The district director shall review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He shall then submit his recommendation with supporting reasons to the Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 111.57 Determination by Commissioner.

(a) *Determination not to prefer charges.* If the Commissioner determines that charges will not be preferred, he shall notify the district director of his decision.

(b) *Determination to prefer charges.* If the Commissioner determines that charges will be preferred, he may also determine that the complaint or charge, supported by the agent's report of investigation, is of so serious a nature that formal proceedings for suspension or revocation of the license shall be instituted immediately without following the preliminary proceedings prescribed in § 111.59. The Commissioner shall notify the district director of his determinations and instruct him to prepare a proposed statement of charges for review by the Commissioner if not previously submitted.

§ 111.58 Content of statement of charges.

The statement of charges shall give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license. A statement of charges which fairly informs the accused of the charges against him so that he is able to prepare his defense shall be deemed sufficient. Different means by which a purpose might have been accomplished or different intents with which acts might have been done so as to constitute grounds for suspension or revocation of license may be alleged in the statement of charges in a single count in the alternative. If the Commissioner has determined that the preliminary proceedings prescribed in § 111.59 shall not be followed, the statement of charges shall recite the Commissioner's determination.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* Unless the Commissioner, under § 111.57, has determined that the preliminary proceedings shall not be followed, the district director shall advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license.

(b) *Notice of preliminary proceedings.* The district director shall serve upon the broker, as set forth in § 111.63, a notice in writing that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs him that 5 U.S.C. 554 and 558 will be applicable if formal proceedings are necessary;

(3) Invites him to show cause, if he so desires, why the formal proceedings should not be instituted;

(4) Informs him that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(5) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(6) Advises him of his right to be represented by counsel; and

(7) Specifies the place where and a reasonable time within which the broker may respond in writing and/or orally.

§ 111.60 Request for additional information.

If, in order to prepare his defense, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request such information in writing. He shall set forth in his request in what respect the proposed statement of charges leaves him in doubt and describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the district director such information is reasonably necessary to enable the broker to prepare his defense, he shall furnish the broker with such information.

§ 111.61 Decision on preliminary proceedings.

The district director shall prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Commissioner together with a copy of each paper filed by the broker. The district director shall also give to the Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Commissioner determines that the broker has satisfactorily responded to the proposed charges, and that further proceedings are not warranted he shall so inform the district director who shall notify the broker. If the Commissioner determines that the broker has not satisfactorily responded to the proposed charges, he shall so advise the district director and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker, the Commissioner shall instruct the district director to omit those charges from the statement of charges.

§ 111.62 Contents of notice of charges.

The notice of charges shall inform the broker that:

(a) Sections 554 and 558, title 5, United States Code, are applicable to the formal proceedings;

(b) He may be represented by counsel;

(c) He will have the right to cross-examine witnesses;

(d) He will be notified within 10 days after service of this notice of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, he may file, in duplicate with the district director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual licensee.* The district director shall serve the notice of charges and the statement of charges against an individual licensee as follows:

(1) By delivery to the broker personally;

(2) By certified mail, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the district director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the district director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The district director shall serve the notice of charges and the statement of charges against a partnership, association, or corporation as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any such member or officer with demand for a return card signed by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the district director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the district director may serve the notice

and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service is by certified mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* Within 10 days after service of the notice and statement of charges, the district director shall serve upon the broker or his attorney, by one of the methods enumerated in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing shall be scheduled to take place within 5 days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by ordinary mail or by one of the methods set forth in § 111.63 or upon the broker's attorney.

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing on the ground that additional time is necessary to prepare a defense, the district director may reschedule the hearing, notifying the broker or his attorney in writing of the extension and the new time for which the hearing has been scheduled.

§ 111.66 Failure to appear.

When an accused broker or his attorney fails to appear for a scheduled hearing, the district director shall proceed with the hearing as scheduled, and shall hear evidence submitted on behalf of the Government. The regulations of this part shall apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension or revocation if he finds it to be in order.

§ 111.67 Hearing.

(a) *Government representatives.* The hearing shall be before the district director who shall provide a competent reporter to make the record of the hearing. The Commissioner shall designate one or more persons to represent the Government at the hearing. The district director may designate one or more persons to assist in the proceedings.

(b) *Rights of the accused.* The broker or his attorney shall have the right to examine all exhibits offered at the hearing and shall have the right to cross-examine witnesses and to present witnesses who shall be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the district director may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in Customs matters. The other party to the hearing shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the hearing record.

(d) *Transcript of record.* When the record of the hearing has been transcribed by the reporter, the district director shall deliver a copy to the broker and the Government's representative without charge.

§ 111.68 Proposed findings and conclusions.

The district director shall allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons therefor as contemplated by 5 U.S.C. 557(c).

§ 111.69 Recommended decision by district director.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68 of this part, the district director shall make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The district director's recommended decision shall conform with the requirements of 5 U.S.C. 557.

§ 111.70 Additional submittals.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make such additional submittals as required by 5 U.S.C. 557(c) and by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or the ownership of any property, any other immaterial mistake in the statement of charges or a failure to prove immaterial allegations in the description of the accused's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the district director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedure set forth in this subpart.

§ 111.73 Partial proof of charges.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base his decision on any remaining charges if the facts alleged in the charges are established by the evidence.

§ 111.74 Decision and notice of suspension or revocation.

If the Secretary of the Treasury in the exercise of his discretion issues an order of suspension or revocation of the license of a broker, the Commissioner of Customs will notify the broker and publish a notice of suspension or revocation in the FEDERAL REGISTER and in the Customs Bulletin.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license may be taken in accordance with the provisions of section 641(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)). The commencement of such proceedings shall, unless specifically ordered by the court, operate as a stay of the Secretary's order of suspension or revocation.

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Any person whose license has been suspended or revoked may make written application in duplicate to the district director to have the order of suspension or revocation set aside or modified upon the ground of newly discovered evidence or that important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth specifically the precise character of the evidence to be relied upon and shall state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The district director shall forward the application with his recommendation to the Secretary of the Treasury. The Secretary may grant or deny the application for reopening of the case and may order the taking of additional testimony before the district director. The district director shall notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the district director shall set a time and place for such hearing and give due notice thereof to the applicant. The procedure governing the additional hearing and recommended decision of the district director shall be the same as that governing the original proceeding.

§ 111.77 Notice of reinstatement.

If the Secretary of the Treasury issues an order vacating or modifying the prior order of suspension or revocation, the Commissioner will notify the broker and publish a notice of the new order in the FEDERAL REGISTER and the Customs Bulletin.

§ 111.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but such failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings the Commissioner or the district director, with the approval of the Commissioner, may serve the broker with a written reprimand. Such reprimand and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted.

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation "with prejudice" of a license,

the ex-broker may petition the Commissioner for authorization to accept employment with or to assist a licensed broker. Such petition shall not be approved unless the Commissioner is satisfied that the petitioner has refrained from all activities in any way violative of the provisions of § 111.42 and that petitioner's conduct has been exemplary during the period of disability. The Commissioner shall also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which such misconduct leads to pecuniary loss to the Government or to any person, the Commissioner shall also take into account whether the petitioner has made reimbursement for the losses incurred.

§ 111.80 Saving provision.

Any proceeding for revocation or suspension of a license instituted prior to December 31, 1968, shall be governed by the provisions of 19 CFR Part 31 in force at the time the proceeding was instituted.

PART 114—CARNETS

114.0 Scope.

Subpart A—General Provisions

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114.2 Customs Conventions.
114.3 Carnets.

Subpart B—Issuing and Guaranteeing Associations

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114.12 Termination of approval.

Subpart C—Processing of Carnets

114.21 Acceptance.
114.22 Coverage of carnets.
114.23 Maximum period.
114.24 Additions.
114.25 Replacement of carnets.
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Subpart D—Miscellaneous

114.31 Mail importations.
114.32 Samples for taking orders.
114.33 Action against carnet user.

AUTHORITY: The provisions of this Part 114 issued under R.S. 251, 77A Stat. 14, secs. 623, 624, 46 Stat. 759, as amended; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1623, 1624.

§ 114.0 Scope.

This part is concerned with the use of international Customs documents known as carnets. It also contains provisions concerning the approval of associations to issue carnets in the United States covering merchandise to be exported and to guarantee carnets issued abroad covering merchandise to be imported. The carnet serves simultaneously as a Customs entry document and as a Customs bond.

Subpart A—General Provisions

§ 114.1 Definitions.

The following are general definitions for the purpose of Part 114:

(a) *Commissioner.* "Commissioner" means the Commissioner of Customs.

(b) *Issuing association.* "Issuing association" means an association approved by the Commissioner for the issue of carnets in the Customs territory of the United States under a Customs Convention to which the United States has acceded.

(c) *Guaranteeing association.* "Guaranteeing association" means an association approved by the Commissioner to guarantee the payment of obligations under carnets covering merchandise entering the Customs territory of the United States under a Customs Convention to which the United States has acceded.

(d) *A.T.A. carnet.* "A.T.A. carnet" (Admission Temporaire — Temporary Admission) means the document reproduced as the Annex to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods.

(e) *E.C.S. carnet.* "E.C.S. carnet" (Echantillons Commerciaux—Commercial Samples) means the document reproduced as the Annex to the Customs Convention on the E.C.S. Carnets for Commercial Samples.

§ 114.2 Customs Conventions.

The regulations in this part relate to carnets provided for in the following Customs Conventions:

(a) Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (hereinafter referred to as A.T.A. Convention).

(b) Customs Convention on the E.C.S. Carnets for Commercial Samples (hereinafter referred to as E.C.S. Convention).

§ 114.3 Carnets.

A carnet issued in conformity with the provisions of a Convention identified in § 114.2 and of the regulations in this part shall serve as an entry document within the scope contemplated by the applicable Convention and as a bond for the performance of acts in compliance with the provisions of such Convention and the Customs statutes and regulations which are involved. Such carnet shall:

(a) Show the period for which it is valid,

(b) Be fully completed in accordance with the provisions of the Convention which provides for its issuance, and

(c) Include an English translation whenever the goods covered by a carnet are described in another language.

Subpart B—Issuing and Guaranteeing Associations

§ 114.11 Approval.

(a) *Document to be furnished.* Before an association may be approved to serve as issuing association or guaranteeing association in the United States with respect to carnets authorized under a Customs Convention to which the United States has acceded, such association shall furnish the Commissioner a written undertaking, in a form satisfactory to the Commissioner, to perform the functions and fulfill the obligations specified in the Convention under which carnets are to be issued or guaranteed.

(b) *Publication of notice of approval.* Notice of the approval of an issuing association or a guaranteeing association with respect to a Customs Convention to which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

§ 114.12 Termination of approval.

(a) *For cause.* The Commissioner may suspend or revoke the approval previously given to any issuing association or guaranteeing association for failure or refusal to comply with the duties, obligations, or requirements set forth in its written undertaking on which the approval was based; in the applicable Customs Convention; or in the Customs Regulations. Before such suspension or revocation, the Commissioner shall give the association a reasonable opportunity to refute the alleged failure of compliance.

(b) *Withdrawal.* To be relieved by future obligations, an approved guaranteeing association must notify the Commissioner, in writing, not less than 6 months in advance of a specified termination date that it will not guarantee the payment of obligations under carnets accepted by district directors of Customs after the specified date. The receipt of such notice by the Commissioner will in no way affect the responsibility of the guaranteeing association for payment of claims on carnets accepted by district directors before the designated termination date.

(c) *Notice.* Notice of the suspension or revocation of the approval of an issuing association or a guaranteeing association with respect to a Customs Convention to which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

Subpart C—Processing of Carnets

§ 114.21 Acceptance.

A carnet executed in accordance with § 114.3 shall be accepted provided that when the carnet is presented an association for the guaranteeing of such carnets has been approved in accordance with § 114.11 and such approval has not been terminated as provided for in §114.12.

§ 114.22 Coverage of carnets.

(a) *A.T.A. carnet.* The A.T.A. carnet is acceptable for goods to be temporarily entered under:

(1) The Customs Convention on the Temporary Importation of Professional Equipment, or

(2) The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material.

(b) *E.C.S. carnet.* The E.C.S. carnet is acceptable for:

(1) Commercial samples, or

(2) Motion-picture advertising films not exceeding 16 mm. consisting essentially of photographs (with or without sound track) showing the nature or operation of products or equipment whose qualities cannot be adequately demonstrated by samples or cataloges, provided that the films:

(i) Relate to products or equipment offered for sale or for hire by a person established in the territory of another contracting party;

(ii) Are of a kind suitable for exhibition to prospective customers but not for general exhibition to the public; and

(iii) Are imported in a packet which contains not more than one copy of each film and which does not form part of a larger consignment of films.

There shall be presented with each E.C.S. carnet covering motion-picture advertising films a statement showing how each of the foregoing requirements is met.

§ 114.23 Maximum period.

No A.T.A. or E.C.S. carnet with a period of validity exceeding 1 year from date of issue shall be accepted.

§ 114.24 Additions.

When an A.T.A. or E.C.S. carnet has been issued, no extra item shall be added to the list of goods enumerated on the reverse of the cover of the carnet or on any continuation sheet annexed thereto.

§ 114.25 Replacement of carnets.

In the case of destruction, loss, or theft of an A.T.A. or E.C.S. carnet while the goods which it covers are in the Customs territory of the United States, the district director of Customs at the port where such goods were imported may, upon request of the association which issued the carnet abroad, accept a replacement document, the validity of which expires on the same date as that of the carnet which it replaces, provided the district director determines that the description of merchandise in the replacement document fully corresponds to the description set forth in the importation voucher from the carnet to be replaced.

§ 114.26 Discharge of carnets.

When a district director of Customs has unconditionally discharged a carnet by completion of the appropriate certificate, no claim may be brought against the guaranteeing association for payment under the carnet, unless it can be established that the discharge was obtained improperly or fraudulently, or that there had been a breach of the conditions of temporary importation.

Subpart D—Miscellaneous

§ 114.31 Mail importations.

Carnets shall not be accepted for importations by mail.

§ 114.32 Samples for taking orders.

E.C.S. carnets may be accepted for unaccompanied samples and samples imported by a natural person resident in the Customs territory of the United States, as well as for samples imported by a natural person resident in the territory of another contracting party to the E.C.S. Convention.

§ 114.33 Action against carnet user.

In the event of fraud, violation, or abuse of the privileges of a Convention, action may be taken against the users of carnets for applicable duties and charges or liquidated damages, as the case may be. Penalties to which such persons have thereby rendered themselves liable may also be imposed.

PART 146—FOREIGN-TRADE ZONES

Sec.

146.0 Scope.

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146.47 Transfer of zone-restricted merchandise into Customs territory.
146.48 Treatment of merchandise not elsewhere provided for in this subpart.

AUTHORITY: The provisions of this Part 146 issued under R.S. 251, secs. 1–21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnote 11), 1624.

§ 146.0 Scope.

Foreign-trade zones are established under the Foreign-Trade Zones Act and the general regulations and rules of procedure of the Foreign-Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign-trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

Subpart A—General Provisions

§ 146.1 Definitions.

The following are general definitions for the purposes of this part:

(a) *Act.* "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a–81u).

(b) *Board.* "Board" is the Foreign-Trade Zones Board established by the Foreign-Trade Zones Act to carry out the provisions of the Act.

(c) *Customs territory.* "Customs territory" is the territory of the United States in which the general tariff laws of the United States apply but which is not included in any zone. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (Gen Hdnote 2, Tariff Schedules of the United States.)

(d) *Grantee.* "Grantee" is a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board.

(e) *Merchandise.* "Merchandise" includes goods, wares, and chattels of every description, except prohibited articles.

(f) *Domestic merchandise.* "Domestic merchandise" is that which has been (i) produced in the United States and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

(g) *Foreign merchandise.* "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(h) *Zone.* "Zone" is a foreign-trade zone established under the Foreign-Trade Zones Act.

§ 146.2 Designation of District Director as Board Representative.

The district director in whose district the zone is located shall be in local charge of the zone as the resident representative of the Board.

§ 146.3 Assignment of Customs Officers.

The district director in whose district the zone is located shall assign the necessary Customs officers and guards to maintain appropriate Customs control over merchandise in the zone and to protect the revenue.

§ 146.4 Reimbursement of Customs expenses.

The cost of providing the additional Customs services required under the Act or the regulations in this part shall be reimbursed to the Government by the grantee, payment to be made monthly to the district director.

§ 146.5 Permission of grantee required.

(a) *Written concurrence necessary.* Applications for permission to transfer merchandise into a zone, to do anything involving merchandise in a zone, or to remove merchandise from a zone shall show the written concurrence of the grantee, except where the regulations in this part provide for the making of applications by the grantee itself or permit the grantee to file a separate specific or blanket approval.

(b) *Questioning grantee's concurrence.* Government officers acting in their official capacities may question the grantee's concurrence if in their opinion it was improperly given.

§ 146.6 Authority to examine merchandise.

The district director may cause any merchandise in a zone to be examined at the time of admission, or at any time thereafter, if the examination is deemed necessary to facilitate the proper administration of any law, regulation, or instruction which the Customs Service is authorized to enforce.

§ 146.7 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be brought directly to a zone from any place outside Customs territory.

(b) *Through Customs territory; foreign merchandise.* Foreign merchandise destined to a zone and transported in bond through Customs territory shall be subject to the laws and regulations applicable to other merchandise transported in bond between two places in Customs territory.

(c) *From Customs territory; domestic merchandise.* Domestic merchandise may be brought to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

§ 146.8 Use of zone by carriers.

(a) *Primary use; lading and unlading.* The water area, docking facilities, and any loading and unloading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by the Secretary of the Treasury if found to endanger the revenue or by the Board if found to impede the primary uses of the zone.

(b) *Carriers in zone not exempt from law or regulation.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other pertinent law or regulation.

Subpart B—Admission of Merchandise to a Zone

§ 146.11 Merchandise permitted in a zone.

Merchandise of every description, including over-quota merchandise, may be brought into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* Prohibited merchandise is merchandise which is prohibited by law on the grounds of policy or morals, such as books or pictures urging treason or insurrection against the United States, obscene books or pictures and lottery matter. District directors are required to exclude this class of articles and shall not permit them to be transferred to a zone if aware of their prohibited status. If there is a question as to whether the merchandise is prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone shall be disposed of in the manner provided for in the laws and regulations applicable to such merchandise.

(b) *Conditionally admissible merchandise.* Conditionally admissible merchandise is merchandise which may be imported under certain conditions, for example, articles which are subject to permits or licenses or which may be reconditioned to bring them into compliance with the laws administered by various Federal agencies. The admission of articles of this class into a zone is subject to any requirements of the Federal agency concerned.

§ 146.12 Application and permit for admission of merchandise.

(a) *Application on zone Form D and permit.* Except in the case of entered merchandise brought into a zone for manipulation (§ 146.13) and merchandise transiting a zone (§ 146.14), merchandise may be admitted into a zone only upon application on zone Form D, Application to Admit Merchandise into Foreign-Trade Zone, and the issuance of a permit by the district director.

(b) *Documents in support of application—(1) Merchandise transported through Customs territory.* For foreign merchandise arriving at a zone after transportation through Customs territory the application shall be supported by:

(i) *Release order.* A release order on the application or another document executed by the carrier which brought the goods to the port where the zone is located authorizing the transfer of the merchandise to the zone; and

(ii) *Evidence of right to make entry.* A document or documents like those which would be required of the applicant as evidence of his right to make entry for merchandise in Customs territory (see section 8.6 of this chapter).

(2) *Merchandise unladen directly from the importing carrier.* For merchandise unladen in the zone directly from the importing carrier the application on zone Form D shall be supported by an application to unlade on Customs Form 3171 (§ 146.14(a)).

(c) *Conditions for issuance of a permit.* Merchandise for which an application to admit merchandise to a zone is made shall be admitted when:

(1) The application is properly executed and includes an indication of the desired zone status of the merchandise (i.e., privileged foreign, privileged domestic, nonprivileged foreign, nonprivileged domestic, or zone-restricted merchandise as provided for in Subpart C of this part);

(2) The grantee's approval appears either on the application or in a separate specific or blanket approval (§ 146.5); and

(3) The permit is granted by the district director as the representative of the Board.

§ 146.13 Temporary admission for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be admitted temporarily to a zone for manipulation and return to Customs territory under Customs supervision pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562) and § 19.11 of this chapter. Such merchandise shall not be considered within the purview of the Act but shall be treated as though remaining in Customs territory. No zone form or procedure shall be considered applicable, but the merchandise shall remain subject in the zone to such requirements as are necessary for the enforcement of section 562 and other pertinent Customs laws.

§ 146.14 Merchandise transiting a zone.

The following procedures are applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade shall be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or made the subject of an application for zone statute on zone Form D in accordance with § 146.12.

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade or unlade, the merchandise shall not be considered within the purview of the Act but shall be treated as though the lading or unlading were in Customs territory.

(d) *Failure to lade merchandise without delay.* Merchandise brought into a zone for lading on a carrier but not laden without a delay which will endanger the revenue must be made the subject of an application for zone status on zone Form D in accordance with § 146.12 or be removed from the zone.

§ 146.15 Certificate of arrival of merchandise.

Whenever a certificate as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the certificate, properly describing and identifying the merchandise involved.

Subpart C—Status of Merchandise in a Zone

§ 146.21 Privileged foreign merchandise.

(a) *Merchandise subject to the provisions of this section.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification shall be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status shall be made on zone Form B at the time of filing the application on zone Form D (see § 146.12) for admission of the merchandise into a zone or

at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Zone Customs entry.* Each applicant for such status shall file a zone Customs entry on Customs Form 7502 with his application.

(1) *Evidence of right to make entry.* The original of a properly approved application on zone Form B is acceptable as the equivalent of a bill of lading or carrier's certificate to identify the applicant on such Form B as the consignee of the merchandise and its owner for Customs purposes, except that such person may transfer the right to withdraw such merchandise from the zone to Customs territory in accordance with Subpart E of this part.

(2) *Preparation, filing, and processing of the entry.* The procedure in connection with the preparation, filing, and processing of the entry, including the making of notations on invoices, the preparation of Customs Form 6417, the designation of examination packages or quantities, and the examination and appraisement of the merchandise shall be the same as that prescribed in the case of an entry for warehouse made in Customs territory (see Part 8 of this chapter), except that no bond shall be required.

(3) *Procedure upon acceptance of the entry.* Upon acceptance of the entry the district director shall have the merchandise appraised, classified, taxes determined, and duties liquidated promptly.

(i) *Appraisement and tariff classification.* The merchandise shall be subject to appraisement and tariff classification according to its condition and quantity, and to the rates of duty and tax in force, on the date of filing, in complete and proper form, the request for privileged foreign status on zone Form B and the zone Customs entry which is required to accompany it.

(ii) *Basis of valuation.* The value of the merchandise shall be determined in accordance with sections 402, 402a, and 503 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402, 1503), and related provisions of law. For all Customs purposes, the date of exportation of the merchandise from the country whence it was exported to the United States is the date of its final departure from that country, in accordance with § 14.3(b) of this chapter.

(iii) *Amendment of value.* The value declared in any zone Customs entry for merchandise may be amended in accordance with the provisions of section 487, Tariff Act of 1930 (19 U.S.C. 1487), and the regulations thereunder (see § 8.16 of this chapter).

(iv) *Merchandise subject to tariff-rate import quotas.* Entries for merchandise subject to tariff-rate import quotas shall be liquidated only at the higher or nonquota rate.

(v) *Determination of taxes.* The taxes to be determined are those of the same nature as are indicated in the liquidation of entries of imported merchandise in Customs territory.

(d) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise and the consequent determination of taxes and liquidation of duties cannot be abandoned. The taxes and duties remain applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.48), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of the determined taxes and liquidated duties, in accordance with §§ 146.41, 146.42, and 146.45(d).

(e) *Appeals and protests.* The requirements, privileges, and procedures of notices of appraisement, appeals to reappraisement, posting of liquidations, and protests against decisions of the district director are the same as those prescribed in the case of merchandise covered by an entry for warehouse in Customs territory.

(f) *Permission to manipulate, manufacture, or exhibit.* Application may be made pursuant to § 146.32 for permission to manipulate, manufacture, or exhibit the merchandise before taxes have been determined and duties liquidated thereon, but in such case the examination for purposes of appraisement must be completed, or the packages or samples required for such examination must be segregated, before the district director approves the application.

§ 146.22 Privileged domestic merchandise.

(a) *Merchandise subject to the provisions of this section.* Privileged domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the United States on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and/or tax has been paid; or

(3) Previously admitted free of duty and tax.

(b) *Application.* Application for privileged domestic status shall be included in the application on zone Form D (§ 146.12) to transfer the merchandise into the zone, but the documents in support of the application described in § 146.12(b) are not required.

(c) *Domestic packing and repair materials.* If the district director is satisfied that the revenue will be protected, and the rights of importers will not be prejudiced, he may permit the transfer to a zone of domestic packing and repair materials and related articles without requiring an application on zone Form D.

(d) *Return of merchandise to Customs territory.* Upon compliance with this section and § 146.44, any of the foregoing merchandise may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.23 Nonprivileged foreign merchandise.

All of the following shall have the status of nonprivileged foreign merchandise:

(a) Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) Domestic merchandise in a zone which by reason of noncompliance with these regulations has lost its identity as domestic merchandise and will be treated as foreign merchandise if transferred to Customs territory. Any domestic merchandise shall be deemed to have lost its identity if the district director determines that it cannot be identified positively by Customs officers as domestic merchandise on the basis of their examination of the articles and their consideration of any proof that may be submitted promptly by a party in interest.

§ 146.24 Nonprivileged domestic merchandise.

All merchandise which could have obtained the status of privileged domestic merchandise but for which no application for such status has been approved (not including any merchandise within the purview of § 146.23(c) shall have the status of nonprivileged domestic merchandise.

§ 146.25 Zone-restricted merchandise.

(a) *Merchandise subject to the provisions of this section.* Articles taken into a zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be given zone-restricted status on proper application. Such articles may not be returned to Customs territory for domestic consumption except where the Board deems such return to be in the public interest (see § 146.47).

(b) *Application.* Application for zone-restricted status shall be included in the application on zone Form D to transfer the merchandise into the zone as provided for in § 146.12.

(c) *Merchandise considered exported*—(1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to actual exportations shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the United States. Any declaration or form required for actual exportation shall be modified to show that the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved zone Form D may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before he approves the application on zone Form D.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.13, shall have the status of zone-restricted merchandise when admitted into the zone. The application on zone Form D shall state that zone-restricted status is desired for the merchandise.

Subpart D—Handling of Merchandise in a Zone

§ 146.31 Customs control of merchandise in a zone.

(a) No merchandise shall be removed from a zone in any manner or for any purpose except as provided for in the regulations in this part.

(b) If the district director deems it necessary for the protection of the revenue, he may require segregation of any merchandise he determines to be subject to special risks to the revenue.

(c) The grantee shall keep the district director currently informed as to the location of any merchandise in the zone which is not within the purview of paragraph (b) of this section, and shall notify the district director promptly of any loss or damage that may occur to any merchandise in the zone.

§ 146.32 Manipulation, manufacture, or exhibition in a zone.

(a) *Application.* Permission for manipulation, manufacture, or exhibition of merchandise in a zone may be obtained by filing with the district director an application on zone Form E. No such operation shall be carried on until the district director has approved the application. The application shall include:

(1) A full description of the proposed operation;

(2) A designation of the exact place in the zone where the operation is to be performed;

(3) The identification of the involved merchandise by lot number, marks and numbers of the packages, description, quantity, and zone status; and

(4) In the case of manipulation or manufacture, a statement as to whether articles with one zone status are to be packed, commingled, or combined with articles having a different zone status.

(b) *Approval of application.* The district director shall approve the application unless the proposed operation would be in violation of the fourth or fifth proviso to section 3 of the Foreign-Trade Zones Act, as amended, 19 U.S.C. 81c, or the place designated for its performance is not suitable for preventing confusion as to the identity or status of the merchandise and for safeguarding the revenue.

(1) *Fourth proviso.* The proviso reads as follows:

> That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—
>
> (a) The draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930 as amended, and the regulations thereunder; and
>
> (b) The statutes and bonds exacted for the payment of draw-back, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.
>
> Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable.
>
> Such articles may not be returned to Customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: * * *.

(2) *Fifth proviso.* The proviso reads as follows:

> That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807 of Title 26 and chapter 15–17, 21, 23–26, or 32 of Title 26, if performed in Customs territory, or involving the manufacture of any article provided for in paragraphs 367 and 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: * * *.

(For current reference to title 19 and 26 of the United States Code, see notes following text of 19 U.S.C. 81c)

(c) *Appeal of adverse ruling.* If the application is denied by the district director for any reason, the applicant or the grantee may appeal the adverse ruling to the Board. If any revenue protection considerations are involved in such an application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

(d) *Records to be maintained*—(1) *Privileged merchandise.* When any privileged merchandise is to be manipulated in any way or manufactured, the person performing the operation shall maintain records containing the following information:

(i) A full identification, as specified in paragraph (a) of this section, of each lot of privileged merchandise used in the operation;

(ii) The unit and total values of each such lot, the values in the case of privileged foreign merchandise to be those declared in the zone Customs entry (§ 146.21(c)), including any amendment thereof;

(iii) The commercial name or description of the product resulting from the operation, or of each such product if there are more than one;

(iv) The quantity of such product or of each such product, as the case may be;

(v) The commercial name or description and quantity of each kind of waste recovered from the operation; and

(vi) The description (i.e., evaporation, leakage, spillage, dust, etc.) and quantity of each kind of loss resulting from the operation.

(2) *Nonprivileged merchandise.* If any nonprivileged merchandise is to be used in the operation, records shall be maintained containing a full identification, as specified in paragraph (a) of this section, and the unit and total values of each lot of the merchandise used in the operation.

§ 146.33 Destruction of merchandise in a zone.

(a) *Application.* Each application to destroy merchandise in a zone shall be filed with the district director on zone Form E. The application shall include:

(1) A description of the proposed method of destruction;

(2) A designation of the place where the destruction is to be accomplished; and

(3) The identification of the involved merchandise by lot number, marks and numbers of the packages, description, quantity, and zone status.

(b) *Approval of application and procedure for destruction of merchandise.* The destruction of distilled spirits, wines, and fermented malt liquors having a zone-restricted status may not be authorized in view of the exception in the fourth proviso to section 3 of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81c). In any other case, if the district director is satisfied that the destruction will be effective and that the revenue will be adequately protected, he shall approve the application. If proper destruction cannot be effectively accomplished within the zone, the district director may permit it to be done elsewhere, in whole or in part, under such conditions as he shall specify for protecting the revenue. Any residue of destruction which is entirely worthless may be removed to Customs territory for disposal.

Subpart E—Removal of Merchandise From a Zone

§ 146.41 Direct exportation from a zone.

Regardless of its zone status, any merchandise in a zone may be exported directly therefrom upon compliance with the procedure prescribed in § 146.44 for the transfer of privileged domestic merchandise to Customs territory.

§ 146.42 Supplies, equipment, and repair material for vessels or aircraft.

(a) *Applicability.* Any article which may be withdrawn duty and tax free in Customs territory under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317) and §§ 10.59 through 10.65 of this chapter may similarly be withdrawn from a zone, regardless of its zone status, under said statutes and regulations. Privileged domestic merchandise is not subject to the provisions of this section and may be withdrawn from a zone in accordance with the provisions of § 146.44.

(b) *Articles for delivery within zone where withdrawn.* The withdrawal of articles provided for in paragraph (a) of this section for delivery within the zone where withdrawn to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, shall be on

Customs Form 7512 (see § 10.60 of this chapter).

(1) *Who may make the withdrawal.* The withdrawal of articles composed in whole or in part of privileged foreign merchandise shall be made by the person identified on zone Form B as the consignee (see § 146.21(c)(1)). The withdrawal of all other articles under this section shall be made by the person designated as the consignee by the written authorization of the grantee.

(2) *Supporting documents*—(i) *Description.* The withdrawal shall be supported by a description of the articles similar to that provided for in § 146.44(a).

(ii) *Bond.* A bond on Customs Form 7557, 7559, or 7595 shall be required with the withdrawal.

(3) *Release of articles.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery to the qualified vessel or aircraft in the zone.

(c) *Articles for delivery outside zone where withdrawn.* The withdrawal of articles provided for in paragraph (a) of this section for delivery at a place outside the zone to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, shall be on Customs Form 7512. (See § 10.60 of this chapter.)

(1) *Who may make the withdrawal.* The withdrawal of privileged foreign merchandise which has not been mixed, combined, or repacked in the zone or of a product of a manipulation or manufacture in a zone composed of or derived from privileged merchandise only, whether all foreign, or partly foreign and partly domestic, shall be made by the person named on zone Form B as the consignee or by a transferee designated on the withdrawal and approved by the grantee. (See § 146.45(b)(2). The withdrawal of other articles under this section shall be made by the person designated by the grantee on zone Form C as the consignee. Except for articles described in the first sentence of this paragraph the provisions of § 146.47 (b) through (f) and § 146.48(b) relating to constructive transfer are applicable, whether or not the merchandise is zone restricted.

(2) *Bond.* The withdrawal shall be suported by a bond on Customs Form 7557, 7559, or 7595.

(3) *Acceptance of withdrawal and release of merchandise.* Upon acceptance of the withdrawal the district director shall note thereon the status of the merchandise and shall release the merchandise to the grantee for delivery to the bonded cartman, lighterman, or carrier.

§ 146.43 Transfer of merchandise from one zone to another.

(a) *Privileged domestic merchandise.* The transfer of privileged domestic merchandise from one zone to another is not subject to Customs control except that the removal of the merchandise from the first zone and its admission into the zone of destination shall be in accordance with §§ 146.44 and 146.12.

(b) *Other merchandise*—(1) *Procedure.* The transfer of merchandise, other than privileged domestic merchandise, from a zone at one port of entry to a zone at another port shall be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry for immediate transportation shall bear a notation that the merchandise is being taken from the first zone for the purpose of transfer to the second zone. Privileged foreign merchandise which has not been mixed, combined, or repacked in the zone and products of a manipulation or manufacture in a zone composed of or derived from privileged merchandise, whether all foreign, or partly foreign and partly domestic, shall be transferred from the zone in accordance with § 146.45(c) (1)–(4) and admitted to the second zone in accordance with § 146.12. The transfer of other merchandise from the first zone into Customs territory and its admission into the zone of destination shall be in accordance with §§ 146.48(b) and 146.12.

(2) *Forwarding of history of the merchandise.* Upon removal of merchandise as specified in paragraph (b)(1) of this section from the first zone, the district director of the port where such zone is located shall immediately forward to the district director of the port where the zone of destination is located a history of the merchandise as shown by the records of the first zone.

§ 146.44 Transfer of privileged domestic merchandise into Customs territory.

(a) *Submission of description of transaction.* When privileged domestic merchandise which has not been mixed, combined or repacked in a zone with merchandise having a different zone status is to be transferred from the zone to Customs territory, the grantee shall submit to the district director, in triplicate, a description of the proposed transaction signed by him which shall include:

(1) The proposed date of transfer;

(2) The identification of the carrier;

(3) The destination of the shipment;

(4) Identification of the merchandise by zone storage location, lot number, marks and numbers of packages, description, quantity, and zone status; and

(5) A notation as to any shortage or damage.

If a form of tally prepared by the grantee for its own purposes contains the necessary information, it may be accepted in lieu of the required description.

(b) *Permit of delivery.* If the transfer is approved by the district director, the original of the description shall be so stamped to serve as a permit of delivery. The original and one copy shall be returned to the grantee. No document other than the permit of delivery shall be required to release the merchandise to the grantee and authorize its transfer into Customs territory.

§ 146.45 Transfer of privileged foreign merchandise into Customs territory.

(a) *Merchandise subject to the provisions of this section.* The provisions of this section are applicable to privileged foreign merchandise which has not been mixed, combined, or repacked in a zone.

(b) *Withdrawal for consumption at port where zone is located*—(1) *Application for transfer.* When merchandise subject to the provisions of this section is to be transferred to Customs territory for consumption, a zone withdrawal shall be made on Customs Form 7505 as an application for the transfer.

(2) *Who may make the withdrawal.* The withdrawal shall be made by the person identified on zone Form B as the consignee (see § 146.21(c)(1)) or by a transferee designated by an endorsement on Customs Form 7505 and approved by the grantee.

(3) *Bond.* The zone withdrawal shall be supported by a bond on Customs Form 7551, 7553, or other appropriate form. A bond shall not be required when all the merchandise to be transferred to Customs territory has been inspected, examined, and appraised, has been found to comply with all laws and regulations governing its admission into the commerce of the United States, and there have been produced all documents for the production of which a bond is required by law or regulations if not filed at the time of entry.

(4) *Payment of duties and taxes.* The applicant shall pay the liquidated duties and determined taxes, as assessed in the liquidation of the zone Customs entry (§ 146.21(c)), on the quantity of merchandise to be transferred. If the pertinent zone Customs entry has not been liquidated, estimated duties and taxes shall be deposited.

(5) *Release of merchandise.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery.

(c) *Withdrawal for transportation to another port for withdrawal for consumption*—(1) *Application for transfer.* When merchandise subject to the provisions of this section is to be transferred to Customs territory for transportation to another port for withdrawal for consumption, a zone withdrawal for transportation clearly indicating the status of the merchandise shall be made on Customs Form 7512 as an application for the transfer.

(2) *Who may make the withdrawal for transportation.* The withdrawal shall be made by the person identified on zone Form B as the consignee (see § 146.21(c)(1)) or by transferee designated by an endorsement on Customs Form 7512 and approved by the grantee.

(3) *Certification by district director at zone port.* The district director at the zone port shall issue a certificate, in triplicate, describing the merchandise in its present condition and certifying the amount of duties and taxes applicable to the shipment. The duplicate copy of such certificate shall be given to the withdrawer.

(4) *Release of merchandise for transportation.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery to the bonded carrier.

(5) *Withdrawal for consumption at port of destination.* A withdrawal for consumption shall be made at the port of destination on Customs Form 7519 by the person identified on zone Form B as the consignee (see § 146.21(c)(1)) or by a transferee designated on the withdrawal and approved by the grantee. The withdrawal for consumption shall be supported by the duplicate copy of the certificate described in paragraph (c)(3) of this section and also by a bond on Customs Form 7551, 7553, or other appropriate form, when required, pursuant to paragraph (b)(3).

(6) *Payment of duties and taxes.* The applicant shall pay the liquidated duties and determined taxes, as assessed in the liquidation of the zone Customs entry (§ 146.21(c)), on the quantity of merchandise being withdrawn. If the zone Customs entry has not been liquidated, estimated duties and taxes shall be deposited.

(d) *Withdrawal for transfer into Customs territory for exportation.* When merchandise subject to the provisions of this section is to be transferred to Customs territory for exportation, a withdrawal for exportation, or for transportation and exportation, shall be made on Customs Form 7512 by the person identified on zone Form B as the consignee (see § 146.21(c)(1)) or by a transferee designated by an endorsement on Customs Form 7512 and approved by the grantee. Upon acceptance of the withdrawal the district director shall note the status of the merchandise on the document, and release the merchandise to the grantee for delivery to the carrier.

§ 146.46 Transfer of products of manipulation or manufacture of privileged merchandise into Customs territory.

(a) *Merchandise subject to the provisions of this section.* The provisions of this section are applicable to products of manipulation or manufacture in a zone composed of or derived from privileged merchandise only, whether all foreign, or partly foreign and partly domestic.

(b) *Withdrawal for consumption at port where zone is located.* When products subject to the provisions of this section are to be transferred to Customs territory for consumption, a zone withdrawal shall be made on Customs Form 7505 as an application for the transfer, and the requirements of this paragraph and of § 146.45(b) shall be applicable.

(1) *Documents required in support of the withdrawal—(i) Statement.* A statement in the form of an invoice containing the information required by § 146.32 (d)(1) shall be filed with the withdrawal.

(ii) *Certificate of identification.* When necessary to support the withdrawal, application may be made to the district director for a certificate on zone Form F covering identification, as shown by Customs records, of the privileged merchandise used in the manipulation or manufacture.

(2) *Conditions for acceptance of withdrawal.* The district director shall not accept zone withdrawals for products of manipulation or manufacture of privileged foreign merchandise until he has definitely established that the merchandise actually exists in the zone in its final form as described in the withdrawal and that all other documents required to be submitted with the withdrawal have been received.

(c) *Withdrawal for transportation to another port for withdrawal for consumption.* When products subject to the provisions of this section are to be transferred to Customs territory for transportation to another port for withdrawal for consumption, a zone withdrawal for transportation clearly indicating the status of the merchandise shall be made on Customs Form 7512 as an application for the transfer. The provisions of paragraph (b) (1) and (2) of this section and the procedure prescribed in § 146.45(c) (2) through (6) shall be applicable.

(d) *Withdrawal for transfer into Customs territory for exportation.* When products subject to the provisions of this section are to be transferred to Customs territory for exportation, the procedure prescribed in § 146.45(d) shall be applicable.

(e) *Articles produced or manufactured in a zone returned to Customs territory after exportation.* Articles produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation shall, on their return to Customs territory, be subject to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that they were produced or manufactured exclusively with the use of privileged domestic merchandise, the identity of which was maintained in accordance with the pertinent provisions of these foreign-trade zone regulations, in which case they shall be subject to the pertinent provisions of schedule 8, part 1 of the Tariff Schedules of the United States.

§ 146.47 Transfer of zone-restricted merchandise into Customs territory.

(a) *Types of entry.* Zone-restricted merchandise may be returned to Customs territory only for entry for exportation, for entry for transportation and exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317 of the Tariff Act of 1930, as amended, unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. If the return of zone-restricted merchandise to Customs territory for domestic consumption has been ruled by the Board to be in the public interest, it may be entered for consumption, for warehousing, or for immediate transportation without appraisement, unless the Board has specified which of these forms of entry shall be made.

(b) *Application for constructive transfer to Customs territory.* When zone-restricted merchandise is to be transferred to Customs territory, the grantee shall file an application with the district director on zone Form C naming the person who will be deemed the consignee of the merchandise with the right to make entry or withdrawal therefor upon its transfer to Customs territory. The application shall include a complete identification of the merchandise as it entered the zone, including lot numbers, marks and numbers of the packages, status of each lot, description, and quantities. If any change in respect of any of these items of identification occurred while the merchandise was in the zone, the current information with respect to each such item shall also be stated. The district director shall not accept a term application on Form C.

(c) *Constructive transfer.* Upon the approval by the district director of an application on zone Form C, the merchandise shall be deemed to have been transferred to Customs territory but without physical removal from the zone. For all Customs purposes the merchandise shall be considered to have been imported into Customs territory at the time of this constructive transfer. The district director shall note on the application the date of constructive transfer and the zone status of the merchandise. The constructively transferred merchandise shall be marked or labeled with the initials "C.T."

(d) *Restoration to zone status.* The merchandise may be restored to zone status after it has been constructively transferred to Customs territory and before the expiration of the time within which entry or withdrawal must be made (see paragraph (e)(2) of this section), if:

(1) A new zone Form D is filed and the same procedure followed as if the merchandise had then first arrived in the zone from or through Customs territory (see § 146.12). The zone grantee shall be deemed the carrier which brought the merchandise into the port; or

(2) The applicant arranges for the redelivery to the district director, prior to the filing of a Customs entry or withdrawal, of the grantee's copy of the zone Form C with a request that it be canceled.

(e) *Customs entry or withdrawal and time limitation.* (1) The original of zone Form C, when approved by the district director and endorsed by him with the date of constructive transfer and the zone status of the merchandise, shall be accepted as the equivalent of a bill of lading or carrier's certificate to identify the person named in such Form C as the consignee of the merchandise and its owner for Customs purposes with the right to make entry or withdrawal.

(2) A Customs entry or withdrawal shall be filed in proper form before 5 p.m. of the second working day after the date of constructive transfer of the merchandise. The time may be extended for such longer period as may be specified in a lay-order issued by the district director upon the filing of a written application on Customs Form 3189 by the

grantee, or by the named consignee if approved by the grantee. If a Customs entry or withdrawal in proper form is not filed within the time limit, the merchandise shall be considered as having been returned from constructive Customs territory to the zone.

(3) If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of schedule 8, part 1 of the Tariff Schedules of the United States. Upon acceptance of an entry or withdrawal for any other zone-restricted merchandise, the entry shall be endorsed by a Customs officer to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, and the withdrawal endorsed to require delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317 of the Tariff Act of 1930, as amended. (See § 146.42.)

(f) *Release of merchandise.* When a consumption entry is accepted for zone-restricted merchandise the district director shall release the merchandise to the grantee for delivery to the consignee. When any other entry or withdrawal is accepted for such merchandise, the release of the merchandise by the district director for physical removal to the designated destination in Customs territory or for direct exportation shall be in accordance with the Customs Regulations as to merchandise imported into Customs territory, the zone grantee to be considered as the importing carrier.

§ 146.48 Treatment of merchandise not elsewhere provided for in this subpart.

(a) *Merchandise not elsewhere provided for in this subpart includes.* Merchandise not elsewhere provided for in this subpart includes the following:

(1) Articles composed entirely of, or derived entirely from, nonprivileged merchandise, foreign or domestic.

(2) Articles composed in part of, or derived in part from, nonprivileged merchandise, domestic or foreign, and in part of or from privileged merchandise, domestic or foreign.

(3) Recoverable waste resulting from the manipulation or manufacture in a zone of privileged foreign merchandise.

(b) *Constructive transfer.* When articles subject to the provisions of this section are to be transferred from a zone to Customs territory, the procedure provided for in § 146.47 (b) through (f) shall be followed, except that if the entry has not been filed in proper form before the expiration of the time allowed for entry in § 146.47(e)(2), the merchandise shall be deposited in general order storage in Customs territory.

(c) *Entry for consumption or warehousing.* Articles subject to the provisions of this section may be transferred from a zone for entry for consumption or, except in the case of articles composed of or derived in part from privileged foreign merchandise, for entry for warehousing subject to the treatment specified in paragraph (e) of this section.

(d) *Supporting statement and certificate.* There shall be filed with each entry for articles described in paragraph (a)(2) of this section a statement in the form of an invoice containing the information specified in § 146.32(d)(1). When necessary to support the entry, application may be made for a certificate on zone Form F covering identification as shown by the Customs records of any privileged domestic or privileged foreign merchandise in the articles.

(e) *Appraisement and tariff classification.* Merchandise subject to the provisions of this section, upon transfer from a zone and entry for consumption or for warehousing, either immediately or after transportation in bond, shall be subject to appraisement and tariff classification in accordance with its character and condition at the time of its constructive transfer to Customs territory and, except for any different rates applicable to any privileged foreign merchandise therein, to the rate or rates of duty and tax in force at the time entry for consumption or withdrawal from warehouse for consumption is made (see § 8.4 (d) and (g) of this chapter). The value of such products shall be determined in accordance with sections 402, 402a, and 500 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402, 1500), and the related provisions of law.

(f) *Liquidation.* The consumption or warehouse entry covering a product provided for in paragraph (a) of this section shall be liquidated in accordance with part 16 of this chapter, except that in the case of articles described in paragraph (a)(2) of this section adjustment shall be made for that part of the product which consists of or has been derived from privileged merchandise.

PART 147—TRADE FAIRS

Sec.

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AUTHORITY: The provisions of this Part 147 issued under R.S. 251, secs. 623, 624, 46 Stat. 759, as amended, secs. 2–7, 73 Stat. 18, 19; 19 U.S.C. 66, 1623, 1624, 1751–1756.

§ 147.0 Scope.

This part governs the entry of merchandise intended for exhibition or for use in constructing, installing or maintaining foreign exhibits at trade fairs which have been so designated by the Secretary of Commerce. It also contains provisions concerning Customs supervision of the merchandise, and the disposition of the merchandise after the fair has closed. The entry of articles which may be admitted free of duty under other provisions of this chapter may be governed by those provisions rather than the regulations in this part.

Subpart A—General Provisions

§ 147.1 Definitions.

The following are general definitions for the purposes of Part 147:

(a) *The Act.* "The Act" means the Trade Fair Act of 1959. (Secs. 2–7, 73 Stat. 18, 19; 19 U.S.C. 1751–1756.)

(b) *Fair.* "Fair" means a fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to the Trade Fair Act. (For regulations governing designation as a trade fair, see 15 CFR Part 364.)

(c) *Fair operator.* "Fair operator" means the party named by the Secretary of Commerce as the operator of the fair.

(d) *Port.* "Port" means the port at which the fair is to be held, or if the fair is not to be held within the limits of a port, the port nearest to the location of the fair which is in the same Customs district as the fair.

(e) *Closing date.* "Closing date" means the date designated by the Secretary of Commerce as the date when the fair will close, including any extension granted by the Secretary of Commerce, or, if the fair closes earlier, the date on which the fair actually closes.

(f) *Articles for a fair.* "Articles for a fair" includes, but is not limited to:

(1) Actual exhibit items;

(2) Pamphlets, brochures, and explanatory material in reasonable quantities relating to foreign exhibits at a fair;

(3) Material for use in constructing, installing, or maintaining foreign exhibits at a fair.

§ 147.2 Articles which may be entered for a fair.

(a) *General.* Any article imported or brought into the United States may be

entered under bond under the regulations of this part for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair, if no duty or internal revenue tax has been paid, and the article is:

(1) In a foreign-trade zone; or

(2) Covered by a Customs exhibition bond provided for in Schedule 8, Part 5B, Tariff Schedules of the United States; or

(3) In continuous Customs custody, including but not limited to articles:

(i) Imported or brought into the United States for the purpose of direct entry at a particular fair;

(ii) In Customs bonded warehouses;

(iii) Unentered under the Customs laws and held in general order pending entry or exportation;

(iv) On exhibition at another fair designated by the Secretary of Commerce.

(b) *Exception.* Articles which have been entered under Schedule 8, Part 5C, Tariff Schedules of the United States, may not be entered under the regulations of this part.

§ 147.3 Bond required.

The fair operator shall furnish for the approval of the district director a bond in an amount to be determined by the district director. No other bond shall be required at the time of making entry for a fair. The bond shall be in the following form:

TRADE FAIR BOND

Know All Men by These Presents, That ----------, of ----------, as principal, and ----------, of ----------, and ----------, of ----------, as sureties, are held and firmly bound unto the United States of America in the sum of ------ dollars ($------), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this ------ day of ----------, 19--.

Whereas, pursuant to the provisions of the Trade Fair Act of 1959, 73 Stat. 18; 19 U.S.C. 1751–1756, the Secretary of Commerce has approved an application by the principal hereon for the operation of a fair to be known as ----------

(Insert exact name of fair)

at ----------; and

(City and State)

Whereas, pursuant to the foregoing Act, imported articles may be imported or brought into the United States without the payment of duties, taxes, fees, charges, or exactions, for purposes of exhibition at the designated fair, or for use in constructing, installing, or maintaining foreign exhibits at such fair, under such regulations as the Secretary of the Treasury shall prescribe;

Now, therefore, the condition of this obligation is such, That—

(1) If the above-bounden principal shall comply in all respects with the provisions of the foregoing Act and the regulations issued by the Secretary relating to the exhibition or use of any article imported or brought into the United States for the designated fair; and shall receive for exhibition or use at such fair only such articles as may be permitted by law and regulations to be deposited therein; and shall safely keep or use the same therein all in accordance with the purposes authorized by law, and shall not remove, nor suffer to be removed, any article from the fair premises without lawful permit and without the presence of the Customs officer in charge;

(2) And if the above-bounden principal shall pay to the district director of Customs, when demanded by him, all unpaid duties, taxes, fees, charges, or exactions found legally due in connection with all articles entered or brought into the United States for the fair under the provisions of the designated Act and charged against this bond; and if in respect of any of the articles released from Customs custody shall redeliver or cause to be redelivered to the order of the district director of Customs, upon proper demand made at any time, any and all articles found not to comply with the law and regulations governing their admission into the commerce of the United States, and shall, after proper notice, mark, label, clean, fumigate, destroy, export, and do any and all other things in relation to said articles that may be required to secure the protection of the revenue and compliance with the Trade Fair Act referred to in the recital clause of this obligation and with all applicable Customs and related laws; it being expressly understood and agreed that the liability under this bond shall extend to all cases where any of the articles entered for exhibition or use are lost or stolen, whether or not the said loss or theft shall result from the fault of said principal;

(3) And if the above-bounden principal shall pay on demand to the district director of Customs, the actual and necessary Customs charges for labor, services, and other expenses in connection with the entry, examination, appraisement, release, or custody of the imported articles, together with the compensation of the Customs officers and employees on duty at or assigned to the fair premises in connection with the accounting for, custody of, and supervision over, the articles entered pursuant to the designated Act, including overtime compensation of Customs officers and employees assigned to duty at night or on Sunday or a holiday;

(4) And if the above-bounden principal, when an article is entered from the Fair for exportation, shall cause the said article to be actually exported from the United States and not relanded therein, and if proof of exportation from the United States be furnished to the said district director in the form and within the time required by law or regulations, or within any lawful extension of such time; or in lieu of exportation, if the said article shall be destroyed or abandoned within the period fixed by law, or, in default thereof, if the obligors shall pay to the district director the full amount of duties, taxes, fees, charges, and exactions which may be found legally due on the said articles;

(5) And if the said principal shall deliver to the district director of Customs all the documents and evidence as may be required in connection with the entry of the articles at the designated fair, and in the form and within the time required by law or regulations, or any lawful extensions thereof, and shall comply with all other requirements of law and regulations;

Then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

---------- ----------
(Name) (Address)
---------- ----------
(Name) (Address)
---------- [SEAL]
(Principal)
---------- ----------
(Name) (Address)
---------- ----------
(Name) (Address)
---------- [SEAL]
(Surety)
---------- ----------
(Name) (Address)
---------- ----------
(Name) (Address)
---------- [SEAL]
(Surety)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ----------, certify that I am the ----------(*) ---------- of the corporation named as principal in the within bond; that ----------, who signed the said bond on behalf of the principal, was then ---------- of the said corporation; that I know his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

---------- [SEAL]

*(May be executed by the secretary, assistant secretary, or other corporate officer.)

Subpart B—Procedure for Importation

§ 147.11 Entry.

(a) *Made in name of fair operator.* All entries of articles for a fair shall be made at the port in the name of the fair operator which shall be deemed for Customs purposes the sole consignee of the merchandise entered under the Act and responsible to the Government for all duties and charges due the United States on account of such entries.

(b) *Merchandise arriving at port other than port of the fair.* Articles to be entered under this subpart which arrive at ports other than the port of the fair shall be entered for immediate transportation without appraisement to the latter port in the manner prescribed in Part 18 of this chapter.

(c) *Form of entry.* Articles shall be entered upon arrival at the port of the fair on a special form of entry to read substantially as follows:

ENTRY FOR EXHIBITION

Entry No. ------

Entry at the port of ---------- of articles consigned or transferred to ---------- under ---------- I.T. No. ---------- ex S.S. ---------- from ---------- on the ------ day of ---------- 19--, for exhibition purposes under the Trade Fair Act of 1959.
(Fair operator)

Mark	*Number*	*Package and contents*	*Quantity*	*Invoice value*
----------	----------	----------	----------	----------
----------	----------	----------	----------	----------
----------	----------	----------	----------	----------
----------	----------	----------	----------	----------

---------- (Fair operator)

By ----------

(d) *Supersedes previous entry.* When entry for a fair is made under this part, such entry shall supersede any previous entry.

§ 147.12 Invoices.

Articles intended for a fair under the provisions of the Act and valued at over $500 are subject to the special Customs invoice requirements if of a class for which such invoices are required under the Tariff Act of 1930, as amended, and the regulations in this chapter (see Part 8). The invoice shall be on Customs Form 5515 and shall contain the information prescribed under section 481 of the Tariff Act of 1930. In all other cases the ordinary invoicing requirements apply.

§ 147.13 Transfer to fair building.

(a) *Immediate delivery.* The provisions governing immediate delivery in § 8.59 of this chapter are applicable to articles for a fair.

(b) *After entry.* Upon the entry being made, a permit may be issued by the district director for the transfer of the articles covered thereby to the buildings in which they are to be exhibited or used, or, in his discretion, to the public stores for examination and subsequent delivery to the buildings in which they are to be exhibited or used.

§ 147.14 Articles not to be immediately entered and delivered to a fair.

(a) *Placed in bonded warehouses.* If for any reason articles imported for a fair are not to be entered and delivered to a fair upon their arrival, the fair operator should request the district director, in writing, to cause such articles to be placed in a bonded warehouse under a "general order permit" at the risk and expense of the fair operator. If no request is made and the articles remain unentered after 5 days from the date of arrival, they will be placed in general order.

(b) *Entry within 1 year.* At any time within 1 year from the date such articles are imported or brought in, they may be entered under this part for a fair or entered under the general tariff law, or for exportation.

(c) *Abandonment.* If not entered within such period, they will be regarded as abandoned to the Government.

§ 147.15 Tentative appraisement.

All articles entered for a fair shall be tentatively appraised prior to exhibition or use.

Subpart C—Requirements of Other Laws

§ 147.21 Marking under the Tariff Act of 1930.

The marking requirements of the Tariff Act of 1930, as amended, and the regulations thereunder will not apply to articles for a fair, except when such articles are entered for consumption. When entered for consumption, such articles shall be released from Customs custody only upon a full compliance with these marking requirements.

§ 147.22 Compliance with the internal revenue laws and Federal Alcohol Administration Act.

The packaging, marking, and labeling requirements of the internal-revenue laws, and of the Federal Alcohol Administration Act (27 U.S.C. 201 to 212), will not apply to articles entered under this part, but any article failing to comply with such requirements shall be conspicuously marked prior to exhibition "Not labeled or packaged as required by law—not for sale". When any such article is withdrawn for consumption, it shall be released from Customs custody only upon a full compliance with such packaging, marking, and labeling requirements.

§ 147.23 Compliance with Plant Quarantine Act and Federal Food, Drug, and Cosmetic Act.

(a) *Plant Quarantine Act.* The entry of plant material subject to restriction under the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151–164a, 167), shall not be permitted except under permits issued by the Plant Quarantine Division of the Agricultural Research Service, Department of Agriculture, and in accordance with the plant quarantine regulations.

(b) *Federal Food, Drug, and Cosmetic Act.* The entry of food products shall conform to the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.), and the regulations issued thereunder.

§ 147.24 Merchandise subject to licensing.

Merchandise, the importation of which is subject to the licensing regulations of any agency of the U.S. Government, may be entered for a fair only upon the presentation of the required license, or a waiver of such license.

Subpart D—Customs Supervision

§ 147.31 Articles to be kept separate.

Articles for exhibit at a fair shall be segregated from domestic articles and from imported articles entered under the provisions of the general Customs laws and released from Customs custody.

§ 147.32 Detail of officers to protect the revenue.

The district director shall detail an officer to act as his representative at the fair and shall station inside the buildings as many additional Customs officers and employees as may be necessary to properly protect the revenue.

§ 147.33 Reimbursement by fair operator.

All actual and necessary charges for labor, services, and other expenses in connection with the entry, examination, appraisement, custody, abandonment, destruction, or release of articles entered under the regulations of this part, together with the necessary charges for salaries of Customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed by the fair operator to the Government, payment to be made on demand to the district director for deposit to the appropriation from which paid.

Subpart E—Disposition of Articles Entered for Fairs

§ 147.41 Removal or disposition pursuant to regulation.

Articles for a fair entered under this part shall not be removed from the fair premises, or otherwise disposed of, except in accordance with this subpart.

§ 147.42 Disposition generally.

(a) *Kinds of disposition.* Any article entered for a fair under this part may be entered for consumption, for warehouse, or under any other provision of the Customs laws, or for another fair, or may be transferred to other Customs custody status or to a foreign-trade zone, or abandoned to the Government, or destroyed under Customs supervision, or exported, at any time before, or within 3 months after, the closing date of the fair.

(b) *Appraisement.* Upon entry under any provision of the Customs laws, or at the expiration of 3 months after the closing date of the fair in the case of articles not previously entered or transferred, articles entered for fairs shall be appraised. Such appraisement shall be final in the absence of an appeal to reappraisement, as provided in section 501 of the Tariff Act of 1930, as amended.

(c) *Period for performance of certain acts.* In the case of any article entered under a provision of the Customs laws, or for another fair, or transferred to other Customs custody status, or to a foreign-trade zone, the period prescribed for the performance of any act required by the provision governing the status under which the article is entered, or to which it is transferred, shall be computed from the date of such entry or transfer.

§ 147.43 Entry under the Customs laws.

(a) *Payment of duties and taxes.* Any applicable duties and internal revenue taxes on any article entered under any provision of the Customs laws must be paid on such article in its condition and quantity, and at the rate in effect, at the time of such entry.

(b) *Person to make entry.* Entry of merchandise under the Customs laws from a fair may be made in the name of any person duly authorized in writing by the fair operator to make such entry.

§ 147.44 Entry for another fair.

Articles entered for a fair which are to be entered for another fair under the provisions of this part shall be retained in continuous Customs custody.

§ 147.45 Merchandise from a foreign-trade zone.

Articles entered for a fair from a foreign-trade zone status of "zone restricted merchandise" and afterwards entered for consumption from a fair are subject to the provisions of item 804.00, Tariff Schedules of the United States.

§ 147.46 Voluntary abandonment or destruction.

At any time before or within 3 months after the closing date of the fair any article entered for a fair may be abandoned to the Government or destroyed under Customs supervision, upon compliance with § 15.4 of this chapter.

§ 147.47 Mandatory abandonment.

Any article entered for a fair, and not disposed of under the provisions of this subpart prior to the expiration of 3 months after the close of the fair shall be regarded as abandoned to the Government, and subject to sale or destruction. Proceeds of sale shall be disposed of in the manner provided in sections 491, 492, and 493, Tariff Act of 1930, as amended, and the regulations thereunder. Any duties or internal revenue taxes on such article shall be computed on the basis of its condition and quantity at the time it becomes subject to sale.

PART 153—ANTIDUMPING

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153.64 Antidumping appeals and protests procedure.

AUTHORITY: The provisions of this Part 153 issued under secs. 201–212, 407, 42 Stat. 11 et seq., as amended, sec. 5, 72 Stat. 585, secs. 406, 407, 42 Stat. 18; 5 U.S.C. 301, 19 U.S.C. 160–173. Other authorities are cited to text in parentheses.

§ 153.1 Scope.

This part sets forth procedures and rules applicable to proceedings under the Antidumping Act, 1921, as amended, the assessment of the special dumping duty, appeals for reappraisement, applications for review of reappraisements, and protests relating to matters under the Antidumping Act, 1921, as amended.

Subpart A—Fair Value

§ 153.2 Fair value; definition.

For the purposes of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the fair value of the imported merchandise shall be determined in accordance with §§ 153.3 to 153.5 of this chapter.

§ 153.3 Fair value based on price in country of exportation; the usual test.

(a) *General.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be sold, at less than fair value if the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)) is sold for consumption in the country of exportation on or about the date of purchase or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Restricted sales.* When home market sales form the appropriate basis of comparison, they will be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the home market price will be made.

§ 153.4 Fair value based on sales for exportation to countries other than the United States.

(a) *General.* If it is demonstrated that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States will ordinarily be deemed to have been sold, or to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170(a)(3))) is sold for exportation to countries other than the United States on or about the date of purchase or of agreement to purchase the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Twenty-five percent rule.* Generally, the quantity of such or similar merchandise sold for consumption in the country of exportation will be considered to be an inadequate basis for comparison if it is less than 25 percent of the quantity sold other than for exportation to the United States.

(c) *Restricted sales.* When third country sales form the appropriate basis of comparison, they will be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the third country price will be made.

§ 153.5 Fair value based on constructed value.

(a) *General.* If the information available is deemed by the Secretary insufficient or inadequate for a determination under § 153.3 or § 153.4 he will determine fair value on the basis of the constructed value as defined in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165).

(b) *Merchandise from controlled economy country.* Ordinarily, if the information available indicates that the economy of the country from which the merchandise is exported is controlled to an extent that sales or offers of sales of

such or similar merchandise in that country or to countries other than the United States do not permit a determination of fair value under § 153.3 or § 153.4, the Secretary will determine fair value on the basis of the constructed value of the merchandise determined on the normal costs, expenses, and profits as reflected by the prices at which such or similar merchandise is sold by a non-State-controlled-economy country either (1) for consumption in its own market; or (2) to other countries, including the United States.

§ 153.6 Calculation of fair value.

In calculating fair value under section 201(a), Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the criteria in §§ 153.7 through 153.16 shall apply.

§ 153.7 Fair value; differences in quantities.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with such applicable criteria as sales or offers, on which a determination of fair value is to be based, reasonable allowances will be made for differences in quantities if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade.

(b) *Criteria for allowances.* Allowances for price discounts based on sales in large quantities ordinarily will not be made unless:

(1) *Six-month rule.* The exporter during the 6 months prior to the date when the question of dumping was raised or presented (or during such other period as investigation shows is more representative) had been granting quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise which he sold in the home market (or in third country markets when sales to third countries are the basis for comparison) and that such discounts had been freely available to all purchasers, or

(2) *Cost justification.* The exporter can demonstrate that the discounts are warranted on the basis of savings specifically attributable to the quantities involved.

(c) *Price lists.* In determining whether a discount has been given, the presence or absence of a published price list reflecting such a discount is not controlling. In certain lines of trade, price lists are not commonly published and in others although commonly published they are not commonly adhered to.

§ 153.8 Fair value; circumstances of sale.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a reasonably direct relationship to the sales which are under consideration.

(b) *Examples.* Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less.

(c) *Relation to market value.* In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, where appropriate, may also consider the cost of such differences to the seller, as contributing to an estimate of market value.

§ 153.9 Fair value; similar merchandise.

In comparing the purchase price or exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States, in the case of similar merchandise described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)), due allowance shall be made for differences in the merchandise. In this regard the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, when appropriate, he may also consider differences in cost of manufacture if it is established that the amount of any price differential is wholly or partly due to such differences.

§ 153.10 Fair value; offering price.

In the determination of fair value, offers will be considered in the absence of sales, but an offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer.

§ 153.11 Fair value; sales agency.

If such or similar merchandise is sold or, in the absence of sales, offered by sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Antidumping Act, 1921 (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

§ 153.12 Fair value; fictitious sales.

In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

§ 153.13 Fair value; sales at varying prices.

Where the prices in the sales which are being examined for a determination of fair value vary (after allowances provided for in §§ 153.7, 153.8, and 153.9), determination of fair value will take into account the prices of a preponderance of the merchandise thus sold or weighted averages of the prices of the merchandise thus sold. Unless there is a clear preponderance of merchandise sold at the same price, weighted averages of the prices of the merchandise sold normally will be used.

§ 153.14 Fair value; quantities involved and differences in price.

Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price or exporter's sales price, as the case may be, and the fair value, is more than insignificant.

§ 153.15 Fair value; revision of prices or other changed circumstances.

(a) *Discontinuance of investigation.* Whenever the Secretary of the Treasury is satisfied during the course of an antidumping investigation that either

(1) Price revisions have been made which eliminate the likelihood of sales at less than fair value and that there is no likelihood of resumption of the prices which prevailed before such revision; or

(2) Sales to the United States of the merchandise have terminated and will not be resumed;

or whenever the Secretary concludes that there are other changed circumstances on the basis of which it may no

longer be appropriate to continue an antidumping investigation, the Secretary may publish a notice to this effect in the FEDERAL REGISTER.

(b) *Notice.* The notice shall state the facts relied on by the Secretary in publishing the notice and that those facts are considered to be evidence that there are not and are not likely to be sales at less than fair value. The notice shall also state that unless persuasive evidence or argument to the contrary is presented within 30 days the Secretary will determine that there are not and are not likely to be sales at less than fair value. The acceptance of assurances to revise prices or the termination of sales at less than fair value will not prevent the Secretary from making a determination of sales at less than fair value in any case where he considers such action appropriate or if the exporters have requested such action.

§ 153.16 Fair value; shipments from intermediate country.

If the merchandise is not imported directly from the country of origin, but is shipped to the United States from another country, the price at which such or similar merchandise is sold in the country of origin will be used in the determination of fair value if the merchandise was merely transshipped through the country of shipment.

Subpart B—Availability of Information

NOTE: For Bureau of Customs general provisions relating to availability of information see Part 103 of this chapter.

§ 153.23 Availability of information in antidumping proceedings.

(a) *Information generally available.* In general, all information but not necessarily all documents, obtained by the Treasury Department, including the Bureau of Customs, in connection with any antidumping proceeding will be available for inspection or copying by any person. With respect to documents prepared by an officer or employee of the United States, factual material, as distinguished from recommendations and evaluations, contained in any such document will be made available by summary or otherwise on the same basis as information contained in other documents. Attention is directed to § 24.12 of this chapter relating to fees charged for providing copies of documents.

(b) *Requests for confidential treatment of information.* Any person who submits information in connection with an antidumping proceeding may request that such information, or any specified part thereof, be held confidential. Information covered by such a request shall be set forth on separate pages from other information; and all such pages shall be clearly marked "Confidential Treatment Requested." The Commissioner of Customs or the Secretary of the Treasury or the delegate of either will determine, pursuant to paragraph (c) of this section, whether such information, or any part thereof, shall be treated as confidential. If it is so determined, the information covered by the determination will not be made available for inspection or copying by any person other than an officer or employee of the U.S. Government or a person who has been specifically authorized to receive it by the person requesting confidential treatment. If it is determined that information submitted with such a request, or any part thereof, should not be treated as confidential, or that summarized or approximated presentations thereof should be made available for disclosure, the person who has requested confidential treatment thereof shall be promptly so advised, and, unless he thereafter agrees that the information, or any specified part or summary or approximated presentations thereof, may be disclosed to all interested parties, the information will not be made available for disclosure, but to the extent that it is self-serving it will be disregarded for the purpose of the determination as to sales at less than fair value and no reliance shall be placed thereon in this connection, unless it can be demonstrated from other sources that the information is correct.

(c) *Standards for determining whether information will be regarded as confidential*—(1) *General.* Information will ordinarily be considered to be confidential only if its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. Further, if disclosure of information in specific terms or with identifying details would be inappropriate under this standard, the information will ordinarily be considered appropriate for disclosure in generalized, summary or approximated form, without identifying details, unless the Commissioner of Customs or the Secretary of the Treasury or the delegate of either determines that even in such generalized, summary or approximated form, such disclosure would still be of significant competitive advantage to a competitor or would still have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. As indicated in paragraph (b) of this section, however, the decision that information is not entitled to protection from disclosure in its original or in another form will not lead to its disclosure unless the person supplying it consents to such disclosure.

(2) *Information ordinarily regarded as appropriate for disclosure.* Information will ordinarily be regarded as appropriate for disclosure if it—

(i) Relates to price information;

(ii) Relates to claimed freely available price allowances for quantity purchases; or

(iii) Relates to claimed differences in circumstances of sale.

(3) *Information ordinarily regarded as confidential.* Information will ordinarily be regarded as confidential if its disclosure would—

(i) Disclose business or trade secrets;

(ii) Disclose production costs;

(iii) Disclose distribution costs, except to the extent that such costs are accepted as justifying allowances for quantity or differences in circumstances of sale;

(iv) Disclose the names of particular customers or the price or prices at which particular sales were made. (5 U.S.C. 552)

Subpart C—Procedure Under Antidumping Act, 1921

§ 153.25 Suspected dumping; information from Customs officers.

If any district director of Customs has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the foreign market value (or, in the absence of such value, than the constructed value), as contemplated by section 201(b) Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), or at less than its "fair value" as that term is defined in § 153.2 he shall communicate his belief or suspicion promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in § 153.27, if the district director has such information or if it is readily available to him.

§ 153.26 Suspected dumping; information from persons outside Customs Service.

Any person outside the Customs Service who has information that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act, 1921, as amended, may, on behalf of an industry in the United States, communicate such information in writing to the Commissioner of Customs.

§ 153.27 Suspected dumping; nature of information to be made available.

Communications to the Commissioner pursuant to § 153.26, regarding suspected dumping should, to the extent feasible, contain or be accompanied by the following:

(a) A detailed description or sample of the merchandise; if no sample is furnished, the Bureau of Customs may call upon the person who furnished the information to furnish samples of the imported and competitive domestic articles, or either;

(b) The name of the country from which it is being, or is likely to be, imported;

(c) The name of the exporter or exporters and producer or producers, if known;

(d) The ports or probable ports of importation into the United States;

(e) Information indicating that an industry in the United States is being injured, or is likely to be injured, or prevented from being established;

(f) Such detailed data as are available with respect to values and prices indicating that such merchandise is being, or is likely to be, sold in the United States at less than its fair value, within the meaning of the Antidumping Act, 1921, as amended, including information as to any differences between the foreign market value or constructed value and the purchase price or exporter's sales price which may be accounted for by any difference in taxes, discounts, incidental costs such as those for packing or freight, or other items.

(g) Such material as is available indicating the market price for similar merchandise in the country of exportation and in any third countries in which merchandise of the producer complained of is known to be sold.

(h) Such information as is available as to sales made for consumption in the country of exportation or for exportation otherwise than to the United States over a significant period of time prior to the date upon which the information is furnished.

(i) Such suggestions as the person furnishing the information may have as to specific avenues of investigation to be pursued or questions to be asked in seeking pertinent information.

§ 153.28 Adequacy of information.

If any information filed pursuant to § 153.26 in the opinion of the Commissioner does not conform substantially with the requirements of § 153.27, the Commissioner shall return the communication to the person who submitted it with detailed written advice as to the respects in which it does not conform.

§ 153.29 Initiation of antidumping proceeding; summary investigation.

Upon receipt of information pursuant to § 153.25 or § 153.26 in a form acceptable to the Commissioner, the Commissioner shall conduct a summary investigation. If he determines that the information is patently in error, or that merchandise of the class or kind is not being and is not likely to be imported in more than insignificant quantities, or for other reasons determines that further investigation is not warranted, he shall so advise the person who submitted the information and the case shall be closed.

§ 153.30 Antidumping Proceeding Notice.

If the case has not closed under § 153.29, the Commissioner shall publish a notice in the FEDERAL REGISTER that information in an acceptable form has been received pursuant to § 153.25 or § 153.26. This notice, which may be referred to as the "Antidumping Proceeding Notice," will specify—

(a) Whether the information relates to all shipments of the merchandise in question from an exporting country, or only to shipments by certain persons or firms; in the latter case, the names of such persons and firms will be specified.

(b) The date on which information in an acceptable form was received and that date shall be the date on which the question of dumping was raised or presented for purposes of § 201(b) and § 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b) and 161 (a)).

(c) The fact that there is some evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

(d) A summary of the information received. If a person outside the Customs Service raised or presented the question of dumping, his name may be included in the notice unless a determination under § 153.23 requires that his name not be disclosed.

§ 153.31 Full scale investigation.

(a) *Initiation of investigation.* Upon publication of an Antidumping Proceeding Notice the Commissioner shall proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 153.32. In order to verify the information presented, or to obtain further details, investigations will, where appropriate, be conducted by Customs Representatives in foreign countries, unless the country concerned objects to the investigation. If an adequate investigation is not permitted, or if any necessary information is withheld, the Secretary will reach a determination on the basis of such facts as are available to him.

(b) *Termination of investigation.* If at any time during an investigation the Commissioner determines that further investigation is not warranted by the facts of the case, he may recommend to the Secretary that the case be closed by a determination of no sales at less than fair value.

§ 153.32 Determination as to fact or likelihood of sales at less than fair value.

(a) *Fair value determination.* Upon receipt from the Commissioner of Customs of the information referred to in § 153.31, the Secretary of the Treasury will proceed as promptly as possible to determine whether or not the merchandise in question is in fact being, or is likely to be, sold in the United States or elsewhere at less than its fair value.

(b) *Submission of views.* During the course of an antidumping proceeding interested persons may make such written submissions as they desire. Appropriate consideration will be given to any new or additional information submitted. The Secretary or his delegate also may at any time invite any person or persons to supply him orally with information or argument.

§ 153.33 Negative determination.

(a) *Notice of Tentative Negative Determination.* If it appears to the Secretary that on the basis of information before him a determination of sales at not less than fair value may be required, he will publish in the FEDERAL REGISTER a "Notice of Tentative Negative Determination," which will include a statement of the reasons upon which the tentative determination is based.

(b) *Opportunity to present views—*(1) *Written.* Interested persons may make such written submissions as they desire, within a period which will be specified in the notice, with respect to the contemplated action. Appropriate consideration will be given to any new or additional information or argument submitted.

(2) *Oral.* If any person believes that any information obtained by the Bureau of Customs in the course of the antidumping proceeding is inaccurate or that for any other reason the tentative determination is in error, he may request in writing that the Secretary of the Treasury afford him an opportunity to present his views in this regard. Upon receipt of such a request, the Secretary will notify the person who supplied any information, the accuracy of which is questioned and such other person or persons, if any, as he in his discretion may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all such persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view and to supply such further information or argument as may be of assistance in leading to a conclusion as to the accuracy of the information in question. The Secretary or his delegate may at any time invite any person or persons to supply him orally with information or argument.

(c) *Final determination.* As soon as possible thereafter, the Secretary will make a final determination and publish his determination in the FEDERAL REGISTER.

(d) *Negative determination after issuance of a withholding of appraisement notice.* The procedure specified in paragraphs (a), (b), and (c) of this section will not apply if the decision to issue a negative determination is made by the Secretary after a withholding of appraisement notice has been issued and thereafter he has afforded interested parties an opportunity to be heard pursuant to the provisions of § 153.37. In lieu thereof a final negative determination will be published setting forth the statement of reasons.

§ 153.34 Withholding of appraisement.

(a) *Three-month period.* If the Commissioner determines during the course of his investigations that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) under the

Antidumping Act, and if there is evidence on record concerning injury or likelihood of injury to or prevention of establishment of an industry of the United States, he shall publish notice of these facts in the FEDERAL REGISTER in a "Withholding of Appraisement Notice," indicating:

(1) That the belief or suspicion relates only to certain shippers or producers, if this is the case and that the investigation is limited to the transactions of such shippers or producers.

(2) The expiration date of the notice (which shall be no more than 3 months from the date of publication of the notice in the FEDERAL REGISTER, unless a longer period of withholding of appraisement has been requested by the importer and the exporter pursuant to paragraph (b) of this section and has been approved by the Commissioner).

This withholding of appraisement notice will be issued concurrently with the Secretary's determination pursuant to § 153.35, unless appraisement is being withheld pursuant to paragraph (b) of this section.

(b) *Six-month period.* At any time prior to the issuance of the withholding of appraisement notice referred to in paragraph (a) of this section, importers and exporters concerned may request that the period of withholding of appraisement extend for a period longer than 3 months, but in no case longer than 6 months. Upon the receipt of such a request from importers and exporters concerned the Commissioner will decide whether appraisement should be withheld for a period longer than 3 months. If the Commissioner decides that a period of withholding of appraisement longer than 3 months is justified, he will publish a withholding of appraisement notice upon the same basis and containing information of the same type as is required by paragraph (a) of this section, except that the expiration date of the notice may be 6 months from the date of publication of the notice in the FEDERAL REGISTER.

(c) *Advice to District Directors of Customs.* The Commissioner shall advise all district directors of Customs of his action. Upon receipt of such advice the district director of Customs shall proceed to withhold appraisement in accordance with the pertinent provisions of § 153.48.

(d) *Notice issued before July 1, 1968.* The time limitations of this section do not apply to withholding of appraisement notices issued before July 1, 1968.

§ 153.35 Affirmative determination; general.

If it appears to the Secretary on the basis of the information before him that a determination of sales at less than fair value is required, unless the withholding of appraisement notice was issued pursuant to § 153.34(b), he will publish in the FEDERAL REGISTER his Determination of Sales at Less Than Fair Value. This determination will include:

(a) An adequate description of the merchandise;

(b) The name of each country of exportation;

(c) The name of the supplier or suppliers, if practicable;

(d) The date of the receipt of the information in an acceptable form;

(e) Whether the appropriate basis of comparison is purchase price or exporter's sales price; and

(f) A statement of reasons upon which the determination is based.

§ 153.36 Affirmative determination; appraisement withheld pursuant to § 153.34(b).

If it appears to the Secretary on the basis of the information before him that a determination of sales at less than fair value is required, and if a withholding of appraisement notice has been issued pursuant to § 153.34(b), he will publish in the FEDERAL REGISTER his Determination of Sales at Less Than Fair Value within 3 months from the date of publication of such withholding of appraisement notice. This determination will contain information of the same type as required in § 153.35 (a) through (f).

§ 153.37 Affirmative determination; opportunity to present views.

As soon as possible after the publication of the withholding of appraisement notice if any person believes that for any reason the withholding action is in error, he may request that the Secretary of the Treasury afford him an opportunity to present his views in this regard. Upon receipt of such a request the Secretary will notify each person who supplied any information, relied upon in connection with the withholding action, and such other person or persons, if any, as he may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all interested persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view and to supply such further information or argument as may be of assistance in a consideration of the matter. Unless for unusual reasons it is clearly impracticable, such meeting will be held within 3 weeks of the date of the publication of the notice of withholding, unless such notice was issued pursuant to § 153.34(b), when it shall be held within 5 weeks of such publication. Reasonable notice of the meeting will be given.

§ 153.38 Referral to U.S. Tariff Commission.

Whenever the Secretary makes a determination of sales at less than fair value he shall so advise the U.S. Tariff Commission.

§ 153.39 Revocation of determination of sales at less than fair value; determination of sales at not less than fair value.

If the Secretary is persuaded from information submitted or arguments received that his determination of sales at less than fair value was in error, and if the Tariff Commission has not yet issued a determination relating to injury, he will publish a notice of "Revocation of Determination of Sales at Less Than Fair Value; Determination of Sales at Not Less Than Fair Value," or, if appropriate, a notice of "Modification of Determination of Sales at Less Than Fair Value," which notice will state the reasons upon which it was based. He shall notify the Tariff Commission of his action.

§ 153.40 Dumping finding.

If the Tariff Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary of the Treasury will make the finding contemplated by section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to the involved merchandise.

§ 153.41 Modification or revocation of finding.

(a) *Application to modify or revoke.* An application for the modification or revocation of any finding made as provided for in § 153.40 may be submitted in writing to the Commissioner of Customs, together with detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists with respect to all or any part of the merchandise covered thereby.

(b) *Modification or revocation by Secretary.* The Secretary of the Treasury may on his own initiative modify or revoke a finding of dumping.

(c) *Notice of modification or revocation of finding.* Notice of intent to modify or revoke a finding will be published by the Secretary in the FEDERAL REGISTER. Comments from interested parties will be given consideration if they are received within the period of time stated in the notice.

§ 153.42 Publication of determinations and findings.

Each determination made in accordance with §§ 153.33, 153.34, 153.35, and 153.36, whether such determination is in the affirmative or in the negative, and each finding made in accordance with § 153.40, will be published in the FEDERAL REGISTER, together with a statement of the reasons therefor.

§ 153.43 List of current findings.

The following findings of dumping are currently in effect:

FINDINGS OF DUMPING

Merchandise	Country	T.D.	Modified by
Portland cement, other than white, nonstaining portland cement.	Sweden	55369	
	Belgium	55428	
Portland gray cement	Portugal	55501	
Portland cement, other than white, nonstaining portland cement.	Dominican Republic	55883	
Chromic acid	Australia	56130	
Steel reinforcing bars	Canada	56150	
Carbon steel bars and structural shapes	do	56264	
Steel jacks	do	66-191	
Cast iron soil pipe	Poland	67-252	
Titanium sponge	U.S.S.R.	68-212	
Pig iron	U.S.S.R.	68-261	
Do	Czechoslovakia	68-262	
Do	East Germany	68-263	
Do	Romania	68-264	
Potassium chloride, otherwise known as muriate of potash	France	69-263	
Do	West Germany	69-264	
Potassium chloride, otherwise known as muriate of potash, except shipments by U.S. Borax & Chemical Co., Kalium, Saskatchewan, Canada.	Canada	69-265	
Aminoacetic acid (glycine)	France	70-71	
Steel bars, reinforcing bars, and shapes manufactured by the Broken Hill Proprietary Co., Ltd., Melbourne, Australia.	Australia	70-81	

Subpart D—Action by District Director of Customs

§ 153.48 Action by the district director of Customs.

(a) *Appraisement withheld; notice to importer.* Upon receipt of advice from the Commissioner of Customs pursuant to § 153.34, the district director of Customs shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, after the date of publication of the "Withholding of Appraisement Notice," unless the Commissioner's Withholding of Appraisement Notice specifies a different effective date. Each district director of Customs shall notify the importer, consignee, or agent immediately of each lot of merchandise with respect to which appraisement is so withheld. Such notice shall indicate (1) the rate of duty of the merchandise under the applicable item of the Tariff Schedules of the United States if known, and (2) the estimated margin of the special dumping duty that could be assessed. Upon advice of a finding made in accordance with § 153.40, the district director of Customs shall give immediate notice thereof to the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of appraisement of such shipment.

(b) *Request to proceed with appraisement.* If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the district director of Customs is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than foreign market value (or, in the absence of such value, than the constructed value), he shall so advise the Commissioner and request authorization to proceed with his appraisement of that shipment in the usual manner.

§ 153.49 Certificate of importer.

If a finding of dumping has been made, the district director of Customs shall require the importer or his agent to file a certificate of the importer on the appropriate one of the following forms. A separate certificate shall be required for each shipment.

Form 1:

NONEXPORTER'S CERTIFICATE

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__.

Re: Entry No. _____, dated _____, 19__.
Import carrier _____
Arrived _____, 19__.

I certify that I am not the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry. I further certify that the merchandise was purchased for importation by _____ on _____, 19__, and that the purchase price is _____.

(Signed) _____

Form 2:

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS KNOWN

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__.

Re: Entry No. _____, dated _____, 19__.
Import carrier _____
Arrived _____, 19__.

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the price stated in the attached statement; and that, if any of such merchandise is actually sold at any price different from the price stated therefor in the attached statement, I will immediately notify the district director of Customs of all the circumstances.

The merchandise was acquired by me in the following manner: _____

_____

and has been sold or agreed to be sold to _____

(Name and address)

at _____
(Price)

(Signed) _____

Form 3:

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS NOT KNOWN

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__.

Re: Entry No. _____, dated _____, 19__.
Import carrier _____
Arrived _____, 19__.

I certify that I am the importer as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that I have no knowledge as to any price at which such merchandise will be sold in the United States. I hereby agree that I will keep a record of the sales and will furnish the district director of Customs within 30 days after the sale of any of such merchandise a statement of each selling price. I further agree that, if any of the merchandise has not been sold before the expiration of 6 months from the date of entry, I will so report to the district director of Customs upon such expiration date.

The merchandise was acquired by me in the following manner: _____

_____

(Signed) _____

Form 4:

EXPORTER'S CERTIFICATE WHEN MERCHANDISE IS NOT, AND WILL NOT BE, SOLD

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__.

Re: Entry No. _____, dated _____, 19__.
Import carrier _____
Arrived _____, 19__.

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry and that such merchandise has not been, and will not be, sold in the United States for the following reason: _____

(Signed) _____

(Sec. 486, 46 Stat. 725, as amended; 19 U.S.C. 1486)

§ 153.50 Appraisement of merchandise covered by Form 4.

If an unqualified certificate on Form 4 is filed and the district director of Customs is satisfied that no evidence can be obtained to contradict it, the shipment will be appraised without regard to the Antidumping Act.

§ 153.51 Appraisement when required certificate not filed.

If the importer fails to file an appropriate certificate within 30 days following notification by the district director of Customs that a certificate is required under § 153.49, appraisement shall proceed upon the basis of the best information available.

§ 153.52 Reimbursement of dumping duties.

(a) *General.* In calculating purchase price or exporter's sales price as the case may be, there shall be deducted the amount of any special dumping duties which are, or will be paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of dumping duties entered into before the initiation of the investigation, will not be regarded as affecting purchase price or exporter's sales price if it was granted to an importer with respect to merchandise which was

(1) Purchased, or agreed to be purchased, before publication of a Withholding of Appraisement Notice with respect to such merchandise, and

(2) Exported before a determination of sales at less than fair value is made.

(b) *Statement concerning reimbursement.* Before proceeding with appraisement of any merchandise with respect to which dumping duties are found to be due the district director of Customs shall require the importer to file a written statement in the following form:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller or exporter of all or any part of the special dumping duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of withholding in FEDERAL REGISTER) or purchased before (same date) but exported on or after (date of determination of sales at less than fair value).

A certificate will be required for all merchandise that is unappraised on the date that the finding of dumping is issued. Thereafter, a separate certificate will be required for each additional shipment.

§ 153.53 Release of merchandise; bond.

When the district director of Customs in accordance with § 153.34(c) has received a notice of withheld appraisement or when he has been advised of a finding provided for in § 153.40, and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his custody or is thereafter imported, unless an appropriate bond is filed or is on file, as specified hereafter in § 153.54, or unless the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act, 1921, as amended.

§ 153.54 Type of bond required.

(a) *General.* If the merchandise is of a class or kind covered by a notice of withheld appraisement provided for in § 153.48(a) or by a finding provided for in § 153.40, a single consumption entry bond covering the shipment, in addition to any other required bond, shall be furnished by the person making the entry or withdrawal, unless

(1) A bond is required under paragraph (b) of this section, or

(2) In cases in which there is no such requirement the district director of Customs is satisfied that the bond under which the entry was filed is sufficient.

The face amount of any additional bond required under this paragraph shall be sufficient to assure payment of any special duty that may accrue by reason of the Antidumping Act, but in no case shall be for less than $100.

(b) *Bond on Customs Form 7591.* If the merchandise is of a class or kind covered by a finding provided for in § 153.40 and the importer or his agent has filed a certificate on Form 3 (§ 153.49), the bond required by section 208 of the Antidumping Act, 1921 (19 U.S.C. 167), shall be on Customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The record of sales required under the conditions of the bond of Customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The face amount of such bond shall be equal to the estimated value of the merchandise covered by the finding.

§ 153.55 Conversion of currencies.

In determining the existence and amount of any difference between the purchase price or exporter's sales price and the foreign market value (or, in the absence of such value, the constructed value) for the purposes of §§ 153.2 through 153.5 of these regulations, or of section 201(b) or 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in U.S. currency shall be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended (31 U.S.C. 372) and § 16.4 of this chapter, (a) as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison, or (b) as of the date of exportation, if the exporter's sales price is an element of the comparison.

§ 153.56 Dumping duty.

(a) *Rule for assessment.* Special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, as to which the Secretary of the Treasury has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary or his delegate, provided the particular importation has not been appraised prior to the publication of such finding, and the district director of Customs has determined that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be.

(b) *Entered value not controlling.* The fact that the importer has added on entry the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the district director of Customs has approved the resulting entered value shall not prevent the assessment of the special dumping duty.

§ 153.57 Notice to importer.

Before dumping duty is assessed, the district director of Customs shall notify the importer, his consignee, or agent of the appraisement of the merchandise, as in the case of an advance in value. If the importer files an appeal for reappraisement, liquidation shall be suspended until the appeal for reappraisement is finally decided.

§ 153.58 Dumping duty; samples.

If the necessary conditions are present, the special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

§ 153.59 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207, Antidumping Act, 1921 (19 U.S.C. 166), the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or, if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into U.S. money as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of such section 207, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into U.S. money as of the date of exportation.

Subpart E—Antidumping Appeals and Protests

§ 153.64 Antidumping appeals and protests procedure.

Appeals for reappraisement, applications for reviews of reappraisements, and protests relating to the Antidumping Act, 1921, as amended, shall be made in the same manner as appeals, applications for review, and protests relating to ordinary Customs duties.

[F.R. Doc. 70-7330; Filed, June 12, 1970; 8:45 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart M—Coverage of Employees of State and Local Governments

REFUND OF CONTRIBUTIONS

Regulations No. 4 of the Social Security Administration, as amended (20 CFR 404.1 et seq.), are further amended as follows:

Paragraph (b) of § 404.1262 is revised to read as follows:

§ 404.1262 Adjustment of overpayment of contributions.

* * * * *

(b) *Overpayment due to overreporting of wages*—(1) *In general.* If the overpayment is due to an overreporting of the amount of wages paid to one or more employees during one or more calendar quarters, and such overpayment is not adjusted in accordance with paragraph (a) of this section, a report on form

OAR–S4 showing the amount or amounts of wages previously reported for the quarter or quarters and the correct amount or amounts of wages, if any, paid to such employee in such calendar quarter or quarters, shall be filed upon ascertainment of the error by the State, together with a copy of the form OAR–S1 prepared in accordance with the instructions contained thereon. Such report shall include, or be accompanied by, a statement of the reason why the original reporting of wages was incorrect.

(2) *Refund or credit of overpayment: section 218(e)(2) not applicable.* If the State has collected or caused to be collected contributions from employees in amounts which exceed the amount of taxes which would have been imposed by section 3101 of the Internal Revenue Code of 1954, and has paid to the Secretary of the Treasury such contributions plus an equal amount equivalent to the excess over the taxes which would have been imposed by section 3111 of the code, if the services covered under the agreement constituted employment as defined in section 3121 of such code, the State shall adjust the overpayment by a report on form OAR–S4 in accordance with subparagraph (1) of this paragraph. The State's claim for refund or credit of this overpayment shall include, or be accompanied by, a statement or certification in or on a prescribed form that the employees who are listed on form OAR–S4 and from whom excess contributions have been collected have not received and will not apply for a refund of excess contributions under the provisions of section 6413(c) of the Internal Revenue Code of 1954. (See § 404.1266(b).) If the State's claim for refund or credit for the overpayment is not accompanied by such statement or certification, refund or credit shall be limited to one-half of the amount overpaid.

(Secs. 205, 218, 1102, 53 Stat. 1368, as amended, 64 Stat. 514, as amended, 49 Stat. 647, as amended; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 418, and 1302)

Effective date. The foregoing regulations shall become effective upon publication in the FEDERAL REGISTER.

Dated: May 6, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: June 10, 1970.

JOHN G. VENEMAN,
Acting Secretary of Health, Education, and Welfare.

[F.R. Doc. 70-7424; Filed, June 12, 1970; 8:48 a.m.]

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–__)

PART 422—ORGANIZATION AND PROCEDURES

Supervision by Child-Placement Agency

Regulations No. 4 and Regulations No. 22 of the Social Security Administration (20 CFR 404.1 et seq. and 20 CFR 422.1 et seq.) are amended as follows:

Subpart D—Old-Age, Disability, Dependents', and Survivors' Insurance Benefits; Period of Disability

1. Subparagraph (c)(3) of § 404.323 is revised to read as follows:

§ 404.323 Child's insurance benefits; time at which child must be dependent upon parent.

* * * * *

(c) *Adoption under the supervision of a public or private child-placement agency.* * * *

(3) *Supervision by a child-placement agency.* For purposes of paragraph (a)(5)(iii) of this section, the term "supervision of a public or private child-placement agency" means that such agency, as defined in subparagraphs (1) and (2) of this paragraph, prior to the final decree of adoption, was significantly involved in the adoption by making an investigation to determine the suitability of the adopting parent and the eligibility of the child for adoption, or by issuing a report of such suitability and eligibility, or by making recommendations based on such suitability and eligibility, to the court having jurisdiction of the adoption proceedings. This requirement is not met if such investigation, report, or recommendation by such an agency was not made, whether because it was waived, or because it is not required under applicable State law, or for any other reason.

* * * * *

Subpart E—Availability of Information and Records to the Public

2. Section 422.408 is revised to read as follows:

§ 422.408 Statements of policy and interpretations not published in the "Federal Register."

Precedent final opinions and orders and statements of policy and interpretations that have been adopted by the Administration and that are not published in the FEDERAL REGISTER will be made available by publication in the Social Security Rulings (see § 422.410(d)). Social Security Rulings are published under the authority of the Commissioner of Social Security and are binding on all components of the Administration.

(Secs. 205, 206, 1102, 1871, and 1872, 53 Stat. 1368, as amended, 53 Stat. 1372, as amended, 49 Stat. 647, as amended, 79 Stat. 331, 332; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 406, 1302, and 1395 (hh) and (ii); 5 U.S.C. 552, as amended by Public Law 90–23)

3. *Effective date.* These amendments shall be effective upon publication in the FEDERAL REGISTER.

Dated: May 6, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: June 10, 1970.

JOHN G. VENEMAN,
Acting Secretary of Health, Education, and Welfare.

[F.R. Doc. 70-7423; Filed, June 12, 1970; 8:48 a.m.]

[Reg. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965–__)

Subpart A—Hospital Insurance Benefits

NURSING SERVICES AND OTHER RELATED SERVICES

Subpart A of Regulations No. 5 is amended as set forth below.

1. Section 405.116 is amended by revising paragraph (c) to read as follows:

§ 405.116 Inpatient hospital services; defined.

* * * * *

(c) *Nursing services and other related medical services; medical social services; use of hospital facilities; exclusion of private-duty nursing and related services.* Nursing services and other related services, use of hospital facilities, and medical social services are considered as inpatient hospital services only if ordinarily furnished by the hospital for the care and treatment of inpatients. The services of a private-duty nurse or other private-duty attendant are excluded from the definition of inpatient hospital services for which reasonable cost reimbursement can be made. Such persons are generally engaged or paid by an individual patient or by someone acting on his behalf, including a hospital that initially incurs the cost and looks to the patient for reimbursement for such noncovered services. Ordinarily, they are not employees of the hospital. A nurse or other attendant is not considered as a private-duty nurse or other private-duty attendant if, during the time the services are rendered, such individual is an employee of the hospital. The services of such employees are within the definition of inpatient hospital services for which reimbursement can be made. Where, however, the hospital acts on behalf of a patient or patients in engaging a private-duty nurse or other private-duty attendant and initially pays such person for his services pursuant to arrangement with the patient or patients that the hospital will be reimbursed for the payment, and the person so engaged renders services to one or more such patients, the services of the private-duty nurse or other attendant under such an arrangement are not inpatient hospital services regardless of the control which the hospital may exercise with respect to the services rendered by such private-duty nurse or attendant.

(Secs. 1102, 1861(b), and 1871, 49 Stat. 647, as amended, 79 Stat. 314, 331; 42 U.S.C. 1302, 1395 et seq.)

2. *Effective date.* The foregoing amendments shall become effective upon publication in the FEDERAL REGISTER.

Dated: May 6, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: June 10, 1970.

JOHN G. VENEMAN,
Acting Secretary of Health, Education, and Welfare.

[F.R. Doc. 70-7425; Filed, June 12, 1970; 8:48 a.m.]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER F—PERSONNEL

PART 578—DECORATIONS, MEDALS, RIBBONS, AND SIMILAR DEVICES

Medal of Honor

Section 578.4(c) is revised to read as follows:

§ 578.4 **Medal of Honor.**

* * * * *

(c) *Medal of Honor Roll.* The Medal of Honor Roll was established by act of Congress, April 27, 1916, as amended, 38 U.S.C. 560. It provides that each Medal of Honor awardee may have his name entered on the Medal of Honor Roll. Each person whose name is placed on the Roll is certified to the Veterans' Administration as being entitled to receive a special pension of $100 per month for life, payable monthly by that agency. The payment of this special pension is in addition to, and does not deprive the pensioner of any other pension, benefit, right, or privilege to which he is or may thereafter be entitled. A written application must be made by the awardee to have his name placed on the Medal of Honor Roll and to receive the special pension. For Army personnel, proper blanks and instructions shall be furnished without charge upon request to The Adjutant General, Department of the Army, Washington, D.C. 20314, Attention: AGPB-AC. The application must bear the full personal signature of the applicant.

* * * * *

[Change 19 to AR 672-5-1, May 3, 1961] (Sec. 3741, 70A Stat. 215; 10 U.S.C. 3741)

For the Adjutant General.

RICHARD B. BELNAP,
Special Advisor to TAG.

[F.R. Doc. 70-7383; Filed, June 12, 1970; 8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 204—DANGER ZONE REGULATIONS

San Pablo Bay, Calif.

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 204.216 establishing and governing the use and navigation of a danger zone in San Pablo Bay, Calif., is hereby amended with respect to "Note" at the end of paragraph (a) to extend the period of use as follows:

§ 204.216 **San Pablo Bay, Calif.; gunnery range, Naval Inshore Operations Training Center, Mare Island, Vallejo.**

(a) * * *

NOTE: The danger zone shall be used until June 2, 1971, after which it shall be subject to review to determine the further need thereof.

* * * * *

[Regs., May 21, 1970, ENGCW-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

For the Adjutant General.

RICHARD B. BELNAP,
Special Advisor to TAG.

[F.R. Doc. 70-7384; Filed, June 12, 1970; 8:45 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 126—SECOND-CLASS BULK MAILINGS

Packages and Sacks

When § 126.3(b)(6) was last amended (34 F.R. 13869), a portion of the text of the section was inadvertently omitted. Accordingly, the complete text of § 126.3(b)(6) is being republished to correct the omission.

§ 126.3 **Mailing.**

* * * * *

(b) *Preparation by the mailer of copies in packages and sacks.* * * *

(6) *Packages and sacks.* When there are six or more individually addressed copies to the destinations described in subdivisions (i) through (v) of this subparagraph, they must be securely wrapped or tied together as a package by the mailer (the mailer may package less than six copies in the same manner). Packages must be sacked by the mailer when there are enough for the same destination to fill approximately one-third of a sack. Some publishers may be equipped to prepare the required separations without using mail sacks. For example, the publisher might prepare banded bundles, place the copies on pallets, or place the copies in various kinds of containers. If arrangements mutually beneficial to the publishers and the postal service can be made for handling copies outside of mail sacks, a detailed explanation of the arrangements must be submitted by the postmaster of the post office of original second-class entry to his Regional Director, who will send the explanation with his recommendations to the Director, Office of Mail Classification, Bureau of Operations. The decision of the Department will be furnished the Regional Director by the Director, Office of Mail Classification.

(i) *Five-digit ZIP Code delivery unit packages and sacks.* A five-digit ZIP Code delivery unit is a post office having one ZIP Code or a station or branch of the multi-ZIP Coded post offices listed in subparagraph (7) of this paragraph.

(*a*) *Packages.* The mailer must prepare packages of copies addressed to the same five-digit ZIP Code delivery unit. The copies in the packages must be faced in the same direction. It is recommended that packages be prepared for the five-digit ZIP Code delivery units of the other multi-ZIP Coded post offices which are not listed in subparagraph (7) of this paragraph.

(*b*) *Sacks.* Sacks containing five-digit ZIP Code delivery unit packages must be labeled in the following manner:

Philadelphia PA 19118
ORD P
News Boston MA

(ii) *Mixed city packages and sacks—*(*a*) *Packages.* Copies remaining for a multi-ZIP Coded post office after the five-digit ZIP Code delivery unit packages required by subdivision (i)(*a*) of this subparagraph have been prepared must be made up as a Mixed City package. The packages must be labeled "Mixed City." The label may be omitted when the packages are placed in a city sack and the top copy in the package is turned or covered so that the individual address on the copy does not show, thereby indicating that the package is to be opened for distribution.

(*b*) *Sacks.* Sacks containing mixed city packages plus any packages for five-digit ZIP Code delivery units not sacked as provided for by subdivision (i)(*b*) of this subparagraph, must be labeled in the following manner:

Philadelphia PA. 191
ORD P
News Boston MA

(iii) *Sectional center facility (SCF) packages and sacks—*(*a*) *Packages.* Copies remaining for the post offices in a sectional center after the packages required by subdivisions (i)(*a*) and (ii)(*a*) of this subparagraph have been prepared must be combined into an SCF package and labeled "Mixed SCF." The label may be omitted when the packages are placed in an SCF sack and the top copy in the package is turned or covered so that the individual address on the copy does not show, thereby indicating that the package is to be opened for distribution.

(*b*) *Sacks.* Sacks containing SCF packages, plus any packages for five-digit ZIP Code delivery units and mixed city packages not sacked as provided for by subdivisions (i)(*b*) and (ii)(*b*) of this subparagraph must be labeled in the following manner:

SCF Philadelphia PA. 190
ORD P
Post Boston MA

(iv) *State packages and sacks—*(*a*) *Packages.* Copies remaining for a State after the packages required by subdivisions (i)(*a*), (ii)(*a*), and (iii)(*a*) of this subparagraph have been prepared must be combined in a State package and labeled with the name of the State. The label may be omitted when the packages are placed in a State sack and the top copy in the package is turned or covered so that the individual address on the copy does not show, thereby indicating that the package is to be opened for distribution.

(*b*) *Sacks.* Sacks containing State packages plus any packages for five-digit ZIP Code delivery units, mixed city

packages, and SCF packages not sacked as provided for by subdivisions (i)(b), (ii)(b), and (iii)(b) of this subparagraph must be labeled in the following manner:

Kansas City MO DIS 640
ORD P MO
Star San Francisco CA

(v) *Mixed States packages and sacks*—(a) *Packages.* All copies remaining after the packages required by subdivisions (i)(a), (ii)(a), (iii)(a), and (iv)(a) of this subparagraph have been prepared must be combined in a Mixed States package and labeled "Mixed States."

(b) *Sacks.* Sacks containing Mixed States packages must be labeled in the following manner:

Chicago IL DIS 606
ORD P Mixed States
Record Chicago IL

NOTE: The corresponding Postal Manual section is 126.326.

(5 U.S.C. 301, 39 U.S.C. 501, 4351–4370)

DAVID A. NELSON,
General Counsel.

[F.R. Doc. 70-7390; Filed, June 12, 1970; 8:46 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations

SUBCHAPTER H—UTILIZATION AND DISPOSAL

DRUGS, BIOLOGICALS, AND REAGENTS

Part 101–43 is amended by adding new § 101–43.313–8 to provide instructions for the utilization of excess drugs, biologicals, and reagents, other than narcotic drugs, in the Federal Supply Classification Class 6505. Part 101–44 is amended by adding new § 101–44.321 to provide instructions for the donation of surplus drugs, biologicals, and reagents, other than narcotic drugs, and by deleting Subpart 101–44.7 to discontinue the donation of narcotic drugs. Part 101–45 is amended by revising § 101–45.309–6 to correct obsolete references and to provide additional instructions for the sale of surplus narcotics; by adding new § 101–45.309–7, previously reserved, to provide policy and procedures for the sale of surplus drugs, biologicals, and reagents, other than narcotic drugs; and by revising § 101–45.505 to include procedures for the destruction of surplus drugs, biologicals, and reagents, other than narcotic drugs.

The table of contents for Subchapter H is amended to provide new and revised entries as follows:

Sec.
101–43.313–8 Drugs, biologicals, and reagents, other than narcotics.
101–44.321 Drugs, biologicals, and reagents, other than narcotics.
Subpart 101–44.7 [Reserved]
101–45.309–7 Drugs, biologicals, and reagents, other than narcotics.
101–45.505 Destruction of surplus drugs, biologicals, and reagents.

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

Subpart 101–43.3—Utilization of Excess

Subpart 101–43.3 is amended by adding new § 101–43.313–8 as follows:

§ 101–43.313–8 Drugs, biologicals, and reagents, other than narcotics.

Drugs, biologicals, and reagents, which are in Federal Supply Classification Class 6505, excluding narcotic drugs which will be handled as provided in §§ 101–43.309 and 101–43.313–1, and which are from time to time determined to be excess and fit for human use, shall be handled as provided in § 101–43.306. Such items may be separately packaged or may be components of a drug kit. The holding agency shall destroy, as provided in § 101–45.505, those separately packaged items which have been determined by the holding agency to be unfit for human use. When reporting the availability of any usable items which are in kits with other items which are unfit for human use, the unfit items shall be clearly indicated on the reporting document.

PART 101–44—DONATION OF PERSONAL PROPERTY

Subpart 101–44.3—Donation for Educational, Public Health, and Civil Defense, Including Research or Public Airport Purposes

1. Subpart 101–44.3 is amended by adding new § 101–44.321 as follows:

§ 101–44.321 Drugs, biologicals, and reagents, other than narcotics.

(a) Surplus drugs, biologicals, and reagents, which are in Federal Supply Classification Class 6505, and which are not required to be destroyed as provided in § 101–45.505, may be donated for educational, public health, and civil defense purposes. If the report of excess or other communication from the holding activity listing the drugs, biologicals, and reagents indicates any items which are unfit for human use, GSA will not offer such items for donation. Narcotic drugs shall not be donated for any purpose.

(b) Whenever drugs, biologicals, and reagents are considered for donation, a letter of clearance shall be obtained from the Food and Drug Administration (FDA) indicating which items may be safely donated. The Department of Health, Education, and Welfare, Office of Surplus Property Utilization (DHEW–OSPU), shall obtain the letter of clearance and insure that such letter shall accompany Standard Form 123, Application for Donation of Surplus Personal Property (see § 101–44.4901). Items which do not fall within the purview of FDA, or which FDA indicates are unsuitable, will not be considered by GSA for donation.

(c) For purposes of obtaining the letter of clearance from FDA, DHEW–OSPU shall be responsible for obtaining and providing samples of any item when required. Any payment of costs for laboratory examinations for quality assurance of such samples shall be arranged by DHEW–OSPU. Before laboratory examinations are undertaken by FDA, an estimate of the expected cost of the quality assurance shall be furnished by FDA to DHEW–OSPU.

(d) In addition, the application shall also contain a statement from DHEW–OSPU that (1) for any quantity of those items approved for donation which are to be stored in a State agency warehouse prior to distribution, DHEW–OSPU shall obtain from the appropriate State agency a certification that adequate facilities are available to effect full accountability and proper storage of the items in accordance with Federal, State, and local statutes governing the acquisition, storage, and accountability of the items requested; (2) the facilities will be used for the protection of the items including protection against theft and pilferage; (3) the items will be distributed only to institutions licensed and authorized to administer and dispense such items or to civil defense organizations authorized to store such items; and (4) in addition to the normal certifications required to be executed by responsible officials of donee institutions or organizations when property is acquired by donation, the State agency shall obtain a certification from the donee indicating that (i) the items transferred to the donee institution or organization will be safeguarded, dispensed, and administered under competent supervision; (ii) adequate facilities are available to effect full accountability and proper storage of the property in accordance with Federal, State, and local statutes governing the acquisition, storage, and accountability; and (iii) the administration or use of the property requested will comply with the provisions of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301–392).

Subpart 101–44.7 [Reserved]

2. Part 101–44 is further amended by deleting the contents of Subpart 101–44.7 and reserving the subpart as set forth above.

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 101–45.3—Sale of Personal Property

1. Subpart 101–45.3 is amended by revising § 101–45.309–6 as follows:

§ 101–45.309–6 Narcotics.

Surplus narcotic drugs which are not required to be destroyed as provided in

§ 101–45.505, may be offered for sale by sealed bid in accordance with the provisions of this Subpart 101–45.3: *Provided*, That the following safeguards and instructions are observed:

(a) The invitation for bids shall:

(1) Consist only of surplus narcotic drugs;

(2) Require the normal bid deposit prescribed in § 101–45.304–10;

(3) Be distributed only to bidders who are registered with the District Director, Internal Revenue, Department of the Treasury, as manufacturers or wholesalers of narcotic drugs; and

(4) Contain the following special condition of sale:

The Bidder shall complete, sign, and return with his bid the certificate as contained in this invitation. No award will be made or sale consummated until after this agency has obtained from the Bureau of Narcotics and Dangerous Drugs, Department of Justice, verification that the Bidder is a registered manufacturer or wholesaler of narcotic drugs.

(b) The following certification shall be made a part of the invitation for bids (and contract), to be completed and signed by the bidder, and returned with the bid:

The bidder certifies that he is registered with the District Director, Internal Revenue, Department of the Treasury, as a manufacturer or wholesaler of narcotic drugs, and that the registration number is _____.

_____
Name of bidder (Print or type)

_____
Signature of bidder

_____
Address of bidder (Print or type)

_____
City State Zip Code

(c) As a condition precedent to making an award for surplus narcotic drugs, the following shall be submitted to the Department of Justice, Bureau of Narcotics and Dangerous Drugs, Washington, D.C. 20537:

(1) The name and address of the bidder(s) to whom an award is proposed to be made and the bidder(s) registration number(s);

(2) The name and address of both the holding activity and the selling activity;

(3) A description of the narcotic drugs, how such drugs are packaged, and the quantity of such drugs proposed to be sold to the bidder;

(4) The identification of the invitation for bids by its number and time within which such bid(s) remains valid; and

(5) A request for advice as to whether the bidder is a registered manufacturer or wholesaler.

2. Subpart 101–45.3 is amended by adding new § 101–45.309–7 as follows:

§ 101–45.309–7 Drugs, biologicals, and reagents, other than narcotics.

Surplus drugs, biologicals, and reagents, other than narcotic drugs, which are not required to be destroyed as provided in § 101–45.505, may be offered for sale by sealed bid in accordance with the provisions of this Subpart 101–45.3: *Provided*, That the following safeguards and instructions are observed to insure stability, potency, and suitability of the product and its labeling for use in civilian channels:

(a) Prior to reporting the surplus drugs, biologicals, and reagents to the selling agency pursuant to the provisions of § 101–45.303, holding agencies shall request that an examination be made by the Field Scientific Coordination Staff, ACFA–CF–30, located in the appropriate Food and Drug District Office, of surplus unexpired drugs and reagents, having an acquisition cost of $500 or more per manufacturers' lot/batch number.

(1) When requesting such an examination, FDA requires the submission of a list and one sample of each of the drugs to be examined.

(2) Additional samples may be requested if necessary for laboratory examination. Reimbursement for examination of the surplus drugs or reagents may be required by FDA. Before laboratory examinations are undertaken, FDA will give the inquiring agency an estimate of the expected costs. If, in accordance with Subpart 101–45.5, the cost of the quality assurance is not justified by the value of the material involved, the lot or lots may be destroyed.

(3) The reporting document prescribed in § 101–45.303(b) shall have attached thereto a copy of the letter received by the reporting agency from FDA stating that the articles offered have been reviewed and may appropriately be distributed or sold, subject when necessary to specified limitations.

(b) Surplus drugs, biologicals, and reagents normally shall not be physically transferred to the selling agency but should remain at the holding agency for precautionary and safety measures.

(c) Surplus drugs, biologicals, and reagents shall be sold only to those persons who are legally qualified to engage in the sale or distribution of such items.

(d) Sales of surplus drugs, biologicals, and reagents, other than narcotic drugs, shall be processed as follows:

(1) The invitation for bids shall:

(i) Consist only of surplus drugs, biologicals, and reagents;

(ii) Contain the expiration date of material being offered for sale;

(iii) Describe the composition of the material being offered for sale;

(iv) Require the normal bid deposit prescribed in § 101–45.304–10; and

(v) Contain the following special condition of sale:

The Bidder shall complete, sign, and return with his bid the certification as contained in this invitation. No award will be made or sale consummated until after this agency has determined that the Bidder is legally licensed to engage in the manufacture, sale, or distribution of drugs.

(2) The following certification shall be made a part of the invitation for bids (and contract), to be completed and signed by the bidder, and returned with the bid:

The Bidder certifies that he is legally licensed to engage in the manufacture, sale, or distribution of drugs, and proof of his license to deal in such materials is furnished with this bid.

_____
Name of bidder (Print or type)

_____
Signature of bidder

_____
Address of bidder (Print or type)

_____
City State Zip Code

Subpart 101–45.5—Abandonment or Destruction of Surplus Property

Subpart 101–45.5 is amended by revising § 101–45.505 as follows:

§ 101–45.505 Destruction of surplus drugs, biologicals, and reagents.

(a) Surplus drugs, biologicals, and reagents shall not be abandoned and the following shall be destroyed by the holding agency in accordance with the provisions of this § 101–45.505:

(1) *Narcotics.* (i) Narcotics in a deteriorated condition or otherwise unusable.

(ii) Quantities of narcotic drugs determined to be surplus at one time and one place having an acquisition cost of less than $500.

(iii) Narcotics which have been offered for sale in accordance with the provisions of § 101–45.309–6, but for which no satisfactory or acceptable bid or bids have been received.

(2) *Drugs, biologicals, and reagents.* (i) Surplus drugs, biologicals, and reagents, other than narcotics, (*a*) determined by the holding agency to be unsafe because of deterioration or overage condition, (*b*) in open or broken containers, or (*c*) recommended for destruction by the Food and Drug Administration.

(ii) Surplus drugs, biologicals, and reagents, other than narcotics, with an acquisition cost of less than $500 per manufacturers' lot/batch number.

(iii) Surplus drugs, biologicals, and reagents, other than narcotics, which have been offered for sale in accordance with the provisions of § 101–45.309–7, but for which no satisfactory or acceptable bid or bids have been received.

(b) When surplus drugs, biologicals, and reagents, including narcotics, are required to be destroyed by the holding agency, they shall be destroyed in such a manner as to insure total destruction of the substance to preclude the utilization of any portion thereof. The destruction shall be in accordance with Federal, State, and local air and water pollution control standards. When major amounts are to be destroyed, the action shall be coordinated with local air and water pollution control authorities.

(c) Destruction of surplus drugs, biologicals, and reagents, including narcotics, shall be performed by an employee of the holding agency in the presence of two additional employees of the agency as witnesses to such destruction.

(d) When surplus drugs, biologicals, and reagents, including narcotics, have been destroyed, the fact, manner, and date of such destruction and the type and quantity so destroyed shall be certified to by the agency employee charged with the responsibility for such destruction. The two agency employees who witnessed the destruction shall sign the following statement, which shall appear on the certification below the signature of the certifying employee:

I have witnessed the destruction of the (narcotic drugs) (drugs, biologicals, and reagents, other than narcotics) described in the foregoing certification in the manner and on the date stated herein:

---------- witness ---------- date

---------- witness ---------- date

(e) Items mentioned parenthetically in the statement contained in paragraph (d) of this section which are not applicable at the time of destruction shall be deleted from the statement. The signed certification and statement of destruction shall be made a matter of record and shall be retained in the case files of the holding agency.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER.

Dated: June 5, 1970.

ROBERT L. KUNZIG,
Administrator of General Services.

[F.R. Doc. 70-7386; Filed, June 12, 1970; 8:45 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

PART 79—REGISTRATION OF FUEL ADDITIVES

Procedures and Requirements

On July 30, 1969, notice of proposed rule-making was published in the FEDERAL REGISTER (34 F.R. 12447) to amend Title 42 of the Code of Federal Regulations by adding a new Part 79 applicable to the registration of fuel additives pursuant to authority contained in section 210 of the Clean Air Act (42 U.S.C. 1857f-6c).

Interested persons were given the opportunity to participate in the rule-making through the submission of comments. Numerous comments were received in response to the notice, and due consideration has been given to all relevant material presented. In addition, the Department has carefully considered the comments and suggestions of the National Fuel Additives Advisory Committee which have been received since publication of the notice.

A number of changes have been made in the regulations. A requirement that fuel manufacturers or processors and additive manufacturers conduct research on the emissions resulting from the use of an additive in a designated fuel has been deleted; information on the characteristics and effects of additives which has been developed by or for any manufacturer will be included in his notification and updated annually. The definition of "range of concentration" has been revised to simplify reports on additive use. A provision has been added to the subpart on withdrawal of registration enabling the Commissioner to allow fuel manufacturers or processors time to use their stocks of an additive for which registration has been withdrawn because of an error or omission on the part of an additive manufacturer. Numerous other minor changes have been made in an attempt to clarify provisions and to reduce paperwork for all parties concerned.

Accordingly, a new Part 79, as set forth below is hereby adopted, effective upon publication in the FEDERAL REGISTER:

Subpart A—General Provisions

Sec.
79.1 Applicability.
79.2 Definitions.
79.3 Confidentiality of information.
79.4 Requirement of registration.
79.5 Reports of additive usage.

Subpart B—Registration Procedures

79.10 Notification by fuel manufacturer or processor.
79.11 Information and assurances to be provided by the fuel manufacturer or processor.
79.12 Action by the Commissioner.
79.13 Notification by the additive manufacturer.
79.14 Information and assurances to be provided by the additive manufacturer.
79.15 Determination of noncompliance.
79.16 Registration.

Subpart C—Withdrawal of Registration

79.20 Withdrawal of registration: fuel manufacturer or processor.
79.21 Withdrawal of registration: additive manufacturer.

Subpart D—Designation of Fuels

79.30 Scope.
79.31 Motor gasolines.

AUTHORITY: The provisions of this Part 79 issued under Sec. 210, 81 Stat. 502; 42 U.S.C. 1857f-6c.

Subpart A—General Provisions

§ 79.1 Applicability.

The regulations of this part apply to the registration of fuel additives contained in fuels designated by the Secretary, pursuant to section 210 of the Clean Air Act, as amended (42 U.S.C. 1857f-6c).

§ 79.2 Definitions.

As used in this part:

(a) "Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(b) "Secretary" means the Secretary of Health, Education, and Welfare.

(c) "Commissioner" means the Commissioner of the National Air Pollution Control Administration.

(d) "Fuel" means any material which is capable of releasing energy or power by combustion or other chemical or physical reaction.

(e) "Fuel manufacturer or processor" means any person who causes or directs the alteration of the chemical composition or the mixture of chemical compounds in a fuel designated in this part by adding to it an additive.

(f) "Additive" means any substance added to a fuel designated in Subpart D, which is not exempted in the designation of the fuel.

(g) "Additive manufacturer" means any person who produces, formulates, or sells an additive under his own name.

(h) "Range of concentration" means the highest concentration, the lowest concentration and the average concentration used by the fuel manufacturer or processor.

(i) "Chemical composition" means the name and percentage by weight of any compound in an additive containing an element other than carbon or hydrogen and the name and percentage by weight of each element in the additive including carbon and hydrogen.

(j) "Chemical structure" means the molecular structure of any compound in an additive containing an element other than carbon or hydrogen.

§ 79.3 Confidentiality of information.

All information reported to or otherwise obtained by the Secretary or his representatives pursuant to this part, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of such section 1905, except that such information may be disclosed to other officers or employees of the United States concerned with carrying out this Act or when relevant in any proceeding under title II of the Act. Nothing in this part shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress. Any such confidential information forwarded to a committee of the Congress will be identified as confidential information.

§ 79.4 Requirement of registration.

No manufacturer or processor of any fuel designated under this part may, after the date prescribed for such fuel in this part, deliver such fuel for introduction into interstate commerce or to another person who, it can reasonably be expected, will deliver such fuel for such introduction unless:

(a) For any additive contained in the fuel which does not appear on the list of registered additives maintained by the Commissioner pursuant to § 79.16, such fuel manufacturer or processor has provided the information and assurances required under § 79.11 and has received notice of the registration of such additive; and

(b) For any additive contained in the fuel which appears on the list of registered additives maintained by the Commissioner pursuant to § 79.16, such fuel manufacturer or processor, prior to or promptly upon initial use of such additive, provides the Commissioner with an

assurance that he will submit the information and assurances required under § 79.11 within 30 days of such initial use.

§ 79.5 Reports of additive usage.

Each fuel manufacturer or processor shall, on April 1 and October 1 of each year, submit to the Commissioner a report of additive usage for each of the two quarterly periods comprising the 6-month period ending 1 month prior to the submission of such report. Each report shall show the range of concentration for any additive used during that quarter. Reports shall be submitted on forms which shall be supplied by the Commissioner upon request of the fuel manufacturer or processor.

Subpart B—Registration Procedures

§ 79.10 Notification by fuel manufacturer or processor.

Any manufacturer or processor of a designated fuel who wishes to have an additive registered for use in such fuel shall, at least 120 days prior to the date prescribed by the Secretary in Subpart D or, if the additive is not in use by such fuel manufacturer or processor prior to such date of designation, 60 days prior to the date on which such fuel manufacturer or processor proposes to begin introducing a fuel containing such additive for delivery into interstate commerce or to another person who, it can reasonably be expected, will deliver such fuel for such introduction, notify the Commissioner in accordance with § 79.11. Each notification shall be signed by the fuel manufacturer or processor or his agent, and shall be submitted on such forms as the Commissioner shall supply upon request.

§ 79.11 Information and assurances to be provided by the fuel manufacturer or processor.

Each notification submitted by the fuel manufacturer or processor shall include the following:

(a) The commercial identifying name of any additive to be used in a designated fuel subsequent to the date prescribed for such fuel in Subpart D and any other name used by the fuel manufacturer or processor to identify such additive;

(b) The name and address of the additive manufacturer of any additive named;

(c) The range of concentration of any additive named, as follows:

(1) In the case of an additive used in a designated fuel at any time during the period beginning with the date of designation of such fuel and ending with the date of submission of a notification under this subpart, the range of concentration for any two successive weeks within the period of beginning with such date of designation and ending with such date of notification, and

(2) For any other additive, the expected range of concentration;

(d) The purpose in the use of any additive named, including:

(1) The function the additive is designed to perform, and

(2) Summaries of any information developed by or for the manufacturer concerning the mechanisms of action of the additive, reactions between the additive and the designated fuel, the identification and measurement of the emission products of the additive when used in the designated fuel, the effects of the additive on all emissions, and the toxicity or other effects of the emissions resulting from the use of the additive, together with assurances that additional information of this type which is developed by or for the manufacturer will be provided to the Commissioner on April 1 of each year. Such submissions shall be accompanied by a description of the test procedures used in obtaining the information;

(e) Assurances that changes in information submitted pursuant to paragraphs (a), (b), and (d)(1) of this section will be provided to the Commissioner, within 30 days of learning of such change. Forms for reporting changes will be provided by the Commissioner at the fuel manufacturer or processor's request;

(f) Assurances that the reports of additive usage required by § 79.5 will be provided to the Commissioner; and

(g) Assurances that the fuel manufacturer or processor will not represent, directly or indirectly, in any notice, circular, letter, or other written communication, or any written, oral, or pictorial notice or other announcement in any publication or by radio or television, that registration of an additive contained in a fuel constitutes endorsement, certification, or approval of the fuel or additive by any agency of the United States.

§ 79.12 Action by the Commissioner.

Following receipt of a notification submitted by a fuel manufacturer or processor pursuant to § 79.11, the Commissioner shall, in writing, advise the manufacturer of any unregistered additive named in such notification to provide the information and assurances required by § 79.14. The Commissioner shall provide notification forms for the additive manufacturer's use.

§ 79.13 Notification by the additive manufacturer.

(a) Any additive manufacturer who has been advised by the Commissioner pursuant to § 79.12, shall within 30 days file with the Commissioner a notification in accordance with § 79.14. A separate notification shall be submitted for each additive. Each notification shall be signed by the additive manufacturer or his agent; and

(b) Any manufacturer of an additive designed for use in a fuel designated by the Secretary under Subpart D may file with the Commissioner a notification in accordance with § 79.14. A separate notification, signed by the additive manufacturer or his agent, shall be submitted for each such additive. If such additive manufacturer has complied with the provisions of this part requiring the submission of information and the giving of assurances for any such additive, the Commissioner shall provide such additive manufacturer with a letter acknowledging that compliance, and stating that registration of such additive may be accomplished at such time as any fuel manufacturer or processor complies with the notification requirements of § 79.10.

§ 79.14 Information and assurances to be provided by the additive manufacturer.

Each notification submitted by the additive manufacturer shall include the following:

(a) The recommended range of concentration of the additive;

(b) The recommended purpose in the use of the additive, including:

(1) The function such additive is designed to perform, and

(2) Summaries of any information developed by or for the manufacturer concerning the mechanisms of action of the additive, reactions between the additive and the designated fuel, the identification and measurement of the emission products of the additive when used in the designated fuel, the effects of the additive on all emissions, and the toxicity or other effects of the emissions resulting from the use of the additive, together with assurances that additional information of this type which is developed by or for the manufacturer will be provided to the Commissioner on April 1 of each year. Such submissions shall be accompanied by a description of the test procedures used in obtaining the information;

(c) The chemical composition of the additive;

(d) The chemical structure of such additive to the extent such information is available;

(e) Assurances that any change in information submitted pursuant to paragraphs (a), (b)(1), (c), and (d) of this § 79.14 will be provided to the Commissioner within 30 days of such change. Forms for reporting changes will be provided by the Commissioner at the additive manufacturer's request; and

(f) Assurances that the additive manufacturer will not represent directly or indirectly, in any notice, circular, letter or other written communication or any written, oral, or pictorial notice or other announcement in any publication or by radio or television that registration of any additive produced or formulated by him constitutes endorsement, certification, or approval by any agency of the United States.

§ 79.15 Determination of noncompliance.

Whenever the Commissioner determines that there are deficiencies in a notification which constitute failure to comply with the regulations of this part, he shall inform the noncomplying fuel manufacturer or processor or noncomplying additive manufacturer of the reasons for such determination.

§ 79.16 Registration.

(a) If the provisions of this part requiring the submission of information and the giving of assurances have been complied with for a particular additive, the Commissioner shall register that additive and notify the additive manufacturer and each fuel manufacturer or processor concerned of such registration; and

(b) The Commissioner shall maintain a list of registered additives which he

shall publish in the Code of Federal Regulations and keep current by publication in the FEDERAL REGISTER.

Subpart C—Withdrawal of Registration

§ 79.20 Withdrawal of registration: fuel manufacturer or processor.

If the Commissioner determines that a fuel manufacturer or processor is not in compliance with the regulations of this part with respect to a registered additive, he may, after informing such noncomplying fuel manufacturer or processor of the reasons for such determination, and providing such noncomplying fuel manufacturer or processor a reasonable time in which to comply and/or to present his views concerning such determination, withdraw the registration of such additive for use in any designated fuel of such noncomplying fuel manufacturer or processor.

§ 79.21 Withdrawal of registration: additive manufacturer.

If the Commissioner determines that an additive manufacturer is not in compliance with the regulations of this part with respect to a registered additive, or the additive manufacturer requests withdrawal in writing, the Commissioner may withdraw the registration of such additive and remove it from the list of registered additives maintained pursuant to § 79.16. The Commissioner shall notify affected fuel manufacturers of such withdrawal by publication in the FEDERAL REGISTER, and may allow a period of 120 days during which a fuel manufacturer or processor may use any such additive he has on hand on the date of such withdrawal. Prior to withdrawing registration the Commissioner shall:

(a) Inform such noncomplying additive manufacturer of the reasons for such determination; and

(b) Provide such noncomplying additive manufacturer a reasonable time in which to comply and/or to present his views concerning such determination.

Subpart D—Designation of Fuels

§ 79.30 Scope.

Fuels designated and dates prescribed by the Secretary for the registration of fuel additives, pursuant to section 210 of the Act, are listed in this subpart. Additional fuels may be designated and additional dates prescribed as the Secretary deems advisable.

§ 79.31 Motor gasolines.

All fuels commonly or commercially known or sold as motor gasoline, with the exception of aviation gasoline, are hereby designated. All additives contained in such fuels must be registered by_____ (210 days following final publication of this notice). For the purpose of § 79.2(f) exemptions are made for:

(a) A catalyst used in manufacturing the fuel, but removed from the fuel before it is sold;

(b) Another fuel designated in this section which contains only registered additives and is blended with the fuel; and

(c) A substance which contains only one or more of the following elements: Carbon, hydrogen, and/or oxygen.

Dated: June 10, 1970.

JOHN G. VENEMAN,
Acting Secretary.

[F.R. Doc. 70-7419; Filed, June 12, 1970; 8:48 a.m.]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM-53; Amendment No. 177-12]

PART 177—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

Application to Private Carriers by Motor Vehicle

Effective September 3, 1969, the Hazardous Materials Regulations of the Department of Transportation were amended to make it clear that private carriers of hazardous materials by motor vehicle are subject to those regulations (34 F.R. 7162, May 1, 1969). Although §§ 177.800 and 177.801 were amended to add private carriers to the carriers within the purpose and scope of the regulations, the note at the beginning of the part (pertaining to the applicability of the part to private carriers) which would no longer be needed because of the specific amendments to the part, was inadvertently left in the part, and the words "private carrier" were not added to § 177.802(a). In addition, a comma after the word "private" in §§ 177.800 and 177.801 was omitted in the printing of Title 49 of the 1970 edition of the Code of Federal Regulations, although it did appear in the FEDERAL REGISTER printing of the amendment.

In consideration of the foregoing, Part 177 of Title 49, CFR, is amended as follows:

(1) By canceling the last note at the beginning of the part (beginning with the words "Private carriers").

(2) By inserting a comma after the word "private" in §§ 177.800 and 177.801.

(3) By inserting the word "private" and a comma before the word "common" in § 177.802(a).

Since this amendment clarifies existing rules on which notice and public procedure have been had, notice and public procedure hereon are unnecessary, and the amendment is effective on the date of its publication in the FEDERAL REGISTER.

(Secs. 831-835, Title 18, U.S.C.; sec. 9, Department of Transportation Act, 49 U.S.C. 1657)

Issued in Washington, D.C., on June 9, 1970.

F. C. TURNER,
Administrator,
Federal Highway Administration.

[F.R. Doc. 70-7402; Filed, June 12, 1970; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 52]

STANDARDS FOR GRADES OF FROZEN CONCENTRATED GRAPEFRUIT JUICE

Revised Standards

Notice is hereby given that the U.S. Department of Agriculture is considering a revision to the U.S. Standards for Grades of Frozen Concentrated Grapefruit Juice (7 CFR 52.1221–52.1232).

This revision, if made effective, will be the third issue by the Department of grade standards for this product. These grade standards are issued under authority of the Agricultural Marketing Act of 1946 (sec. 202–208, 60 Stat. 1087 as amended; 7 U.S.C. 1621–1627) which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use of producers, buyers, and consumers. Official grading services are also provided under this Act upon request of the applicant and upon payment of a fee to cover the cost of such services.

NOTE: Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable state laws and regulations.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposal should file the same in duplicate, not later than July 12, 1970, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250. All written submittals made pursuant to this notice will be available for public review at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of Consideration leading to the Proposed Revision. The U.S. Standards for Grades of Frozen Concentrated Grapefruit Juice currently in effect are limited to the use of grapefruit of the white fleshed varieties only. Since the standards were originally promulgated in 1951 large plantings of pink and red fleshed grapefruit have come into bearing and the juice from these fruits is used in the manufacture of grapefruit juice products.

On December 7, 1968 provision was made in the U.S. standards for grades of all single strength grapefruit juices to use the juice of both the white and colored grapefruit varieties in these products.

The Department has received informal requests from various interests to include the juice of the colored varieties in frozen concentrated grapefruit juice. On April 7, 1970 The Florida Canners Association formally requested the Department to amend the U.S. Standards to include the use of juice from red and pink grapefruit on a comparable basis as is permitted in the Grapefruit Juice Standards (single strength).

These suggestions and requests are deemed to be reasonable and proper and in the interest of producers, processors, and consumers; and are therefore included in the proposed amendment.

Other changes, mostly editorial, for improved presentation or to conform to established policy are also proposed.

These changes include:

(1) The range of score points available for each grade is reduced from 15 to 10 to conform to Department policy of uniformity between standards and for ease of comparison with other standards.

(2) The method of expressing recoverable oil would be given as "Percent by Volume" of reconstituted juice instead of milliliters per 100 grams of concentrate.

(3) Other minor changes in format or presentation.

The proposed revision is as follows:

PRODUCT DESCRIPTION, STYLES, AND GRADES

Sec.
52.1221 Product description.
52.1222 Styles.
52.1223 Grades.

FILL OF CONTAINER

52.1224 Recommended fill of container.

FACTORS OF QUALITY

52.1225 Ascertaining the grade.
52.1226 Ascertaining the rating for the factors which are scored.
52.1227 Color.
52.1228 Defects.
52.1229 Flavor.

EXPLANATIONS AND METHODS OF ANALYSIS

52.1230 Explanations and methods of analysis.

LOT COMPLIANCE

52.1231 Ascertaining the grade of a lot.

SCORE SHEET

52.1232 Score sheet for frozen concentrated grapefruit juice.

AUTHORITY: Sections 52.1221 to 52.1232 issued under secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

PRODUCT DESCRIPTION, STYLES, AND GRADES

§ 52.1221 Product description.

Frozen concentrated grapefruit juice is the product obtained from the unfermented juice of sound, mature grapefruit (Citrus paradisi). The fruit is prepared by sorting and by washing to assure a clean and wholesome product. Upon extraction of such juice, it is concentrated and single-strength grapefruit juice may be admixed to the concentrate. The concentrated grapefruit juice is packed in accordance with good commercial practice and is frozen and maintained at temperatures necessary for its preservation.

§ 52.1222 Styles.

(a) *Unsweetened.* The Brix value of the finished concentrate is not less than 38 degrees nor more than 42 degrees.

(b) *Sweetened.* The Brix value of the finished, sweetened, concentrate is not less than 38 degrees nor more than 48 degrees. Frozen concentrated grapefruit juice of this style contains not less than 3.47 pounds of soluble grapefruit solids per gallon.

§ 52.1223 Grades.

(a) "U.S. Grade A" (or "U.S. Fancy") is the quality of frozen concentrated grapefruit juice which reconstitutes properly and of which the reconstituted juice possesses the appearance of fresh grapefruit juice; possesses a very good color; is practically free from defects; possesses a very good flavor; and scores not less than 90 points when scored in accordance with the scoring system outlined in this subpart.

(b) "U.S. Grade B" (or "U.S. Choice") is the quality of frozen concentrated grapefruit juice which reconstitutes properly and of which the reconstituted juice possesses a good color; is reasonably free from defects; possesses a good flavor; and scores not less than 80 points when scored in accordance with the scoring system outlined in this subpart.

(c) "Substandard" is the quality of frozen concentrated grapefruit juice that fails to meet the requirements of U.S. Grade B.

FILL OF CONTAINER

§ 52.1224 Recommended fill of container.

The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container be as full of frozen concentrated grapefruit juice as practicable without impairment of quality.

FACTORS OF QUALITY

§ 52.1225 Ascertaining the grade of a sample unit.

In addition to considering other requirements outlined in the standards the following quality factors are evaluated:

(a) *Factors not rated by score points.*
(1) Faculty of reconstituting properly.
(2) Appearance of fresh juice.

(b) *Factors rated by score points.* The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

Factors:	*Points*
Color	40
Defects	20
Flavor	40
Total score	100

§ 52.1226 Ascertaining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive. (For example, "18 to 20 points" means 18, 19, or 20 points.)

§ 52.1227 Color.

(a) *(A) Classification.* Frozen concentrated grapefruit juice of which the reconstituted juice possesses a very good color may be given a score of 36 to 40 points. "Very good color" means a color that is bright and typical of freshly extracted grapefruit juice. It may be either:

(1) Pale yellow to very slightly amber, typical of the juice of properly ripened white fleshed grapefruit, or

(2) Slightly red, typical of the juice of red or deep pink fleshed grapefruit.

(b) *(B) Classification.* If the reconstituted juice possesses a "good color" a score of 32 to 35 points may be given. Frozen concentrated grapefruit juice that falls into this classification shall not be graded above U.S. Grade B regardless of the total score for the product (this is a limiting rule). "Good color" means a color that is typical of freshly extracted grapefruit juice but which may be slightly dull, or slightly brown as caused by scorching, oxidation, or carmelization. This color may be characteristic of the juice from red or pink grapefruit of advanced maturity, or of mixtures of the juice from white and colored varieties.

(c) *(SStd) Classification.* If the reconstituted juice fails to meet the requirements of U.S. Grade B for the factor of color, a score of 0 to 31 points may be given. Frozen concentrated grapefruit juice that falls into this classification shall not be graded above Substandard regardless of the total score for the product (this is a limiting rule).

§ 52.1228 Defects.

(a) *General.* The factor of defects refers to the degree of freedom from juice cells and pulp and from seeds or portions thereof, dark specks, and other defects in the reconstituted juice.

(b) *(A) Classification.* Frozen concentrated grapefruit juice of which the reconstituted juice is practically free from defects may be given a score of 18 to 20 points. "Practically free from defects" means that there may be present:

(1) Juice cells only in such amounts as do not materially detract from the appearance or drinking quality of the juice;

(2) Not more than 10 percent free and suspended pulp;

(3) Practically no seeds or portions thereof that could not pass readily through round perforations of one-eighth inch in diameter;

(4) Only such small seeds or portions thereof that could pass through round perforations of one-eighth inch in diameter as do not materially detract from the appearance or drinking quality of the juice; and

(5) Other defects that are not more than slightly objectionable.

(c) *(B) Classification.* If the reconstituted juice is reasonably free from defects a score of 16 to 17 points may be given. Frozen concentrated grapefruit juice that falls into this classification shall not be graded above U.S. Grade B regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that there may be present:

(1) Juice cells only in such amounts as do not seriously detract from the appearance or drinking quality of the juice;

(2) Not more than 10 percent free and suspended pulp;

(3) Practically no seeds or portions thereof that could not pass readily through round perforations of one-eighth inch in diameter;

(4) Only such small seeds or portions thereof that could pass through round perforations of one-eighth inch in diameter as do not seriously detract from the appearance or drinking quality of the juice; and

(5) Other defects that are not more than slightly objectionable.

(d) *(SStd.) Classifications.* Frozen concentrated grapefruit juice that fails to meet the requirements of U.S. Grade B for the factor of defects may be given a score 0 to 15 points and shall not be graded above Substandard regardless of the total score for the product (this is a limiting rule).

§ 52.1229 Flavor.

(a) *(A) Classification.* Frozen concentrated grapefruit juice of which the reconstituted juice possesses a very good flavor may be given a score of 36 to 40 points. "Very good flavor" means that the flavor is fine, distinct, and substantially typical of freshly extracted grapefruit juice with not more than a trace of bitterness. To score in this classification frozen concentrated grapefruit juice shall meet the following analytical requirements:

ANALYTICAL REQUIREMENTS—U.S. GRADE A

Ratio—Brix Value to Acid	Unsweetened	Sweetened
Minimum	9:1	10:1
Maximum	14:1	13:1
Recoverable oil—Percent by volume		
Minimum	0.008	0.008
Maximum	0.020	0.020

(b) *(B) Classification.* If the reconstituted juice possesses a good flavor a score of 32 to 35 points may be given. Frozen concentrated grapefruit juice that falls into this classification shall not be graded above U.S. Grade B regardless of the total score for the product (this is a limiting rule). "Good Flavor" means that the flavor is fairly typical of freshly extracted grapefruit juice and is free from abnormal flavors and off flavors of any kind. To score in this classification frozen concentrated grapefruit juice shall meet the following analytical requirements:

ANALYTICAL REQUIREMENTS—U.S. GRADE B

Ratio—Brix Value to Acid	Unsweetened style	Sweetened style
Minimum	7:1	8:1
Maximum	16:1	13:1
Recoverable oil—Percent volume		
Maximum	0.020	0.020

(c) *(SStd.) Classification.* If the frozen concentrated grapefruit juice fails to meet the requirements of U.S. Grade B for the factor of flavor a score of 0 to 31 points may be given. Frozen concentrated grapefruit juice that falls into this classification shall not be graded above Substandard regardless of the total score for the product (this is a limiting rule).

EXPLANATIONS AND METHODS OF ANALYSIS

§ 52.1230 Definitions of terms as used in these standards, and methods of analysis.

(a) *Reconstituted Juice.* "Reconstituted juice" means the product obtained by mixing thoroughly 3 parts by volume of distilled water and one part by volume of frozen concentrated grapefruit juice.

(b) *Reconstitutes properly.* "Reconstitutes properly" means that the concentrate goes into solution readily; and that in approximately 250 ml. of the reconstituted juice, after standing four (4) hours at a temperature of not less than 68° Fahrenheit in a clear glass cylinder (approximately 1¼ inches in diameter), there may be a noticeable separation of suspended matter but any resulting zone of greater clarity shall be definitely turbid and not clear or transparent.

(c) *Acid.* "Acid" means the percent by weight of total acidity, calculated as anhydrous citric acid. Total acidity is determined by titration with standard sodium hydroxide solution, using phenolphthalein as indicator.

(d) *Brix value.* "Brix value" is the refractometric sucrose value determined on the thawed concentrate in accordance with the refractometric method for sugars and sugar products, outlined in the "Official Methods of Analysis of the Association of Official Analytical Chemists" and to which the applicable correction for acid is added:

TABLE I—CORRECTIONS FOR OBTAINING BRIX VALUE[1]

Citric acid, anhydrous (percent by weight):	*Correction to be added to refractometer sucrose value to obtain degree Brix value*
2.0	0.39
2.2	.43
2.4	.47
2.6	.51
2.8	.54
3.0	.58
3.2	.62
3.4	.66
3.6	.70
3.8	.74
4.0	.78
4.2	.81
4.4	.85
4.6	.89
4.8	.93
5.0	.97

[1] SOURCE: "Refractometric Determination of Soluble Solids in Citrus Juices," by J. W. Stevens and W. E. Baier, from the Analytical Edition of Industrial and Engineering Chemistry, Vol. II, p. 447, Aug. 15, 1939.

(e) *Recoverable oil.* "Recoverable Oil" is determined by the following method:

METHOD

(1) Reagents.

Standard bromide-bromate solution—prepare and standardized to 0.099N in accordance with Chapter 42, Standard Solutions in the current edition of the AOAC.[1] For use, add 1 volume of standard solution to 3 volumes of water to make 0.0247N solution. 1 ml. of 0.0247N solutions supplies bromine to react with 0.00085g., or 0.0010 ml., of d-limonene. The solutions are stable for 6 months.

2-Propanol-Regent grade ACS (American Chemical Society).

Dilute hydrochloric acid—prepared by adding 1 volume of concentrated acid to 2 volumes of water.

Methyl orange indicator—0.1 percent in water.

(2) Apparatus.

Electric heater—with recessed refractory top, 500–750 watts.

Still, all glass—500 ml. distillation flask with 24/40 standard taper neck; 200-mm. Graham condenser with 28/15 receiving socker and drip tip; connecting bulb and adaptor as in figure 1.[1]

Burette—10 ml. or 25 ml.; graduated to 0.1 ml., with easily controllable flow to permit both rapid and dropwise titration.

(3) Determination.

(i) Pipette 25 ml. of well-mixed sample (juice or reconstituted juice) into the distillation flask containing carborundum chips or glass beads, and add 25 ml. of 2-Propanol.

(ii) Distill into a 150 ml. beaker. Continue distilling until solvent ceases to reflux then remove the flask from the heater.

(iii) Add 10 ml. of dilute hydrochloric acid and 1 drop of indicator. (An alternative method would be to prepare a solution containing 5 ml. of indicator and 1,000 ml. of dilute hydrochloric acid—then add 10 ml. of this acid-indicator mix to the 150 ml. beaker.)

(iv) Titrate with the dilute bromate solution while stirring. The major portion of the titrant may be added rapidly, but the endpoint must be approached at about 1 drop per second. Disappearance of color indicates the endpoint.

(v) Determine the reagent blank by titrating three separate mixtures of 25 ml. 2-Propanol and 10 ml. of dilute hydrochloric acid with indicator—without refilling the burette. Divide the total milliliter of titrant used by 3 to obtain the average blank. Subtract the average blank thus obtained from the milliliter of titrant used to titrate the distillate.

(vi) Multiply the remainder by 0.004 to obtain the percent recoverable oil by volume in the juice sample.

(f) *Free and suspended pulp.* "Free and suspended pulp" means particles of membrane, core, peel, and other similar extraneous material that settle out on centrifuging by the following method:

(1) Skim floating fruit cells and pulp from the sample of reconstituted juice, and

(2) Fill graduated centrifuge tubes, of a capacity of 50 ml., with the skimmed reconstituted grapefruit juice and place in a suitable centrifuge. Adjust the speed according to diameter, as indicated in table II, and centrifuge for exactly 10 minutes. As used herein, "diameter" means the overall distance between the bottoms of opposing centrifuge tubes in operating position. After centrifuging, the milliliter reading at the top of the layer of pulp in the tube is multiplied by 2 to give the percentage of pulp.

TABLE II

Diameter:	*Approximate revolutions per Minute*
10 inches	1,609
10½ inches	1,570
11 inches	1,534
11½ inches	1,500
12 inches	1,468
12½ inches	1,438
13 inches	1,410
13½ inches	1,384
14 inches	1,359
14½ inches	1,336
15 inches	1,313
15½ inches	1,292
16 inches	1,271
16½ inches	1,252
17 inches	1,234
17½ inches	1,216
18 inches	1,199
18½ inches	1,182
19 inches	1,167
19½ inches	1,152
20 inches	1,137

LOT COMPLIANCE

§ 52.1231 Ascertaining the grade of a lot.

The grade of a lot of frozen concentrated grapefruit juice covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 through 52.87).

SCORE SHEET

§ 52.1232 Score sheet for frozen concentrated grapefruit juice.

Size and kind of container	
Container mark or identification	
Label	
Liquid measure (fluid ounces)	
Brix value of concentrate (corrected for acid)	
Anhydrous citric acid (percent by weight)	
Brix value to acid ratio (—:1)	
Recoverable oil (percent by volume)	
Free and suspended pulp (percent)	
Reconstitutes properly (Yes) (No)	
Appearance of fresh juice (Yes) (No)	

Factors	Score points		
Color	40	(A)	36-40
		(B)	32-35
		(SStd.)	0-31
Defects	20	(A)	18-20
		(B)	16-17
		(SStd.)	0-15
Flavor	40	(A)	36-40
		(B)	32-35
		(SStd.)	0-31
Total score	100		

Grade	

[1] Indicates limiting rule.

Dated: June 9, 1970.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 70-7398; Filed, June 12, 1970; 8:46 a.m.]

[7 CFR Part 911]

HANDLING OF LIMES GROWN IN FLORIDA

Notice of Proposed Rule Making With Respect to Approval of Expenses and Fixing of Rate of Assessment for the 1970–71 Fiscal Year

Consideration is being given to the following proposals submitted by the Florida Lime Administrative Committee, established under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(1) That expenses that are reasonable and likely to be incurred by the Florida Lime Administrative Committee, during the period from April 1, 1970, through March 31, 1971, will amount to $14,600.

(2) That there be fixed, at $0.03 per bushel of limes, the rate of assessment payable by each handler in accordance with § 911.41 of the aforesaid marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals shall

[1] Filed as part of the original document.

file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: June 10, 1970.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-7414; Filed, June 12, 1970; 8:48 a.m.]

[7 CFR Part 981]

[Docket No. AO 214-A3]

ALMONDS GROWN IN CALIFORNIA

Decision and Referendum Order With Respect to Proposed Amendment of the Marketing Agreement, and Order, as Amended

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held in Sacramento, Calif., on December 15-16, 1969, after notice thereof published in the FEDERAL REGISTER (34 F.R. 18423) on proposals to amend the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California (hereinafter collectively referred to as the "order"). The order is effective pursuant to the provisions of the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601-674) hereinafter referred to as the "act".

On the basis of the evidence adduced at the hearing, and the record thereof, a recommended decision in this proceeding was filed on May 8, 1970, with the Hearing Clerk, U.S. Department of Agriculture, and notice thereof, affording opportunity to file written exceptions thereto, was published May 13, 1970, in the FEDERAL REGISTER (F.R. Doc. 70-5888; 35 F.R. 7428).

Material issues, findings and conclusions, and general findings. The material issues, findings and conclusions, and general findings of the recommended decision set forth in the FEDERAL REGISTER (F.R. Doc. 70-5888; 35 F.R. 7428) are hereby approved and adopted as the material issues, findings and conclusions, and general findings of this decision as if set forth in full herein.

Rulings on exceptions. Exceptions to the recommended decision were filed within the prescribed time (May 25, 1970) by Boyd E. Burnison of St. Sure, Moore & Hoyt for the Almond Growers Council.

These exceptions have been considered carefully and fully in connection with the evidence in the record and the proposed findings and conclusions in the recommended decision in arriving at the findings and conclusions set forth herein. To any extent that the findings and conclusions contained herein are at variance with any of the exceptions pertaining thereto, such exceptions are denied on the basis of the findings and conclusions relating to the issues to which the exceptions refer.

The exceptions, and the rulings thereon, are as follows:

Exception was taken to the findings and conclusions in material issue (8) insofar as they relate to the need and necessity to provide for control of the timing and volume of reserve almonds exported by the method set forth under Item 13 of *"Recommended amendment of the order."* in the revised provisions of § 981.66(d) entitled, *"Time restriction on disposition."* as well as to such provisions.

Exceptor contended that no evidence of record shows the present need to regulate the marketing of almond exports differently than the present method of regulation; that the need for change in the present method of regulation has not happened yet, and that the findings and conclusions state "The heavy plantings of almonds in recent years *may* result in surpluses * * *."; that the findings and conclusions in support of the recommended revision of § 981.66(d) are in apparent contradiction with the finding and conclusion in material issue (1) that there appears to be a reasonable prospect that these existing export outlets will continue to take an increasing amount of the U.S. almond production; that a portion of the annual reserve crop would be automatically withheld from export and, if not released prior to May 15 of the crop year, would have to be disposed of in noncompetitive outlets at little or no economic benefit to the grower; that such date is too early in the crop year for forecasting the European crop and hence, a final determination by the Almond Control Board by that date as to the amount of additional reserve almonds which should be released for export could result in serious economic loss to growers; that the Board applies minimum sales prices to almonds for export and this eliminates the possibility of selling almonds at low prices in export; that no evidence was presented to substantiate, or even to indicate that "dumping" of domestic almonds in foreign markets was a problem; and that the recommended method of regulation would restrict the size of the potential export market, thereby inhibiting handler incentive to develop new products and export markets.

The record shows the California industry has successfully developed and expended export markets for almonds under the present marketing order. It is true that in the past there has not been a need to control almonds available for export by the method set forth in the recommended decision. In adopting the provisions in revised § 981.66(d), under which 100 percent of the reserve almonds, or a smaller percentage when marketing policy factors justify, could be disposed of in export, it is not necessary to show that the revised provisions have been needed in the past. Evidence showing that the revised provisions and that an export percentage of less than 100 percent may be needed in any future season is sufficient. In response to the contention that "* * * a portion of the annual reserve crop would be automatically withheld from export * * *", it is noted that the Board could recommend, and the Secretary approve, an initial export percentage of 100 percent of the reserve almonds for a crop year if the situation should so justify.

However, the acreage of almonds in California has been expanding greatly. The record shows, as preliminary estimates, 132,000 bearing acres in 1969 (8,210 more than in 1968) and 81,460 nonbearing acres in 1968 (15,730 more than in 1967). The record evidence is that future crops will be much larger, on the average, than past crops, and that, in any one year, a surplus of substantial magnitude could occur, even with the prospect that the industry will continue to expand domestic and export markets for almonds. The acreage of almonds is such that the production is likely to exceed the total of domestic consumption of at least 70 million pounds, kernel weight, and exports of at least 30 million pounds. Exports of California almonds fluctuate from year to year, depending in part on the size of the Spanish and Italian crops. In the past 10 years, exports have been as low as 8.1 million pounds, kernel weight, in 1962-63 and as high as 26.2 million pounds in 1967-68. Exports of almonds for the current season, 1969-70, will be close to a record 60 million pounds as a result of the smallest Italian and Spanish crops in recent years. However, the domestic industry cannot depend on reduced Spanish and Italian crops every year.

The evidence of record is that almond demand is relatively inelastic, particularly in the short run. The record also shows that the making available of an excessive supply of almonds for export would cause export prices to drop. It further shows there would likely be accusations of "dumping" and threats of reprisals, and the reduced export prices could cause domestic market prices to be seriously affected. If market prices for almonds dropped during a marketing season with an uncontrolled surplus overhanging the market, it could happen that the trade would buy less almonds in anticipation of further price decline. In this situation, under the present method of regulation, the effect would be to increase the quantity of almonds which the Board would have to dispose of for oil or other low-return outlets after September 1 of the following season. In comparison, the provisions of revised § 981.66(d), herein adopted, would permit orderly marketing of adequate supplies of almonds in export at stable prices, and protect the price structure for the large volume of almonds made available for domestic and export

markets against the price-depressing effects of surpluses when they occur.

As to the contention that May 15 is too early for accurate forecasting of the European crop, the record evidence indicates enough information on the oncoming domestic and foreign crops and market conditions would be available by that date for the Board to determine with reasonable accuracy the amount, if any, of additional reserve almonds which should be released for export. To permit the obtaining of later information on crop and market conditions, if deemed necessary, the provisions of revised § 981.66(d) permit this date to be extended by the Secretary to a date not later than June 30 upon recommendation of the Board or other information. To further defer the date of the Board's recommendation as to the final export percentage would create uncertainty in the trade as to the quantity of reserve almonds that would be available for sale and create the risk of losing sales while export demand exists.

In allocating the quantity of salable almonds to be made available for the domestic market, the record evidence is that the Control Board has purposely set the quantity somewhat higher than estimated consumption, thus providing incentive to handlers to increase sales and usage of almonds. Similarly, the record shows the intended policy of the Control Board, under the revised provisions of § 981.66(d), will be to make fully adequate supplies of almonds available for export. Record evidence also indicates that there would be no intent to preclude handler activity in product research, or market development. In this regard, a new section, "§ 981.41. Research and development.", herein adopted, would afford the industry additional opportunity to stimulate the demand for almonds.

In view of the foregoing and the findings and conclusions in the recommended decision, all on the basis of the record evidence, this exception is denied.

A second exception was taken to the revised provisions of § 981.66(d). The exceptor contended these provisions should not be adopted because they were not sufficiently noticed and heard at the public hearing; that the language differed from that in the notice of hearing and hence was never considered at the hearing; that confusing and contradictory testimony on the subject was given at the hearing; that adoption of such a far reaching and controversial change in the regulation of the industry would be a deprivation of due process; and that the change should not be made without first reopening the hearing. Exceptor renewed its request to reopen the hearing.

The notice of hearing complied with the requirements of § 900.4 of the rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR Part 900), as to its adequacy of content and other matters. Section 900.4 provides, in part, that the notice of hearing shall define the scope of the hearing as specifically as may be practicable; and shall contain either the terms or the substance of the proposals or a description of the subjects or issues involved. When exceptor moved during the public hearing that the hearing be continued, the Presiding Officer denied the motion, stating that the issues before this hearing were published in the FEDERAL REGISTER. Under the rules of practice, as indicated, the exact language of the amendment to be adopted need not be set forth in the notice of hearing. The May 15 cut-off date and so-called "third pool" concept were included in the notice of hearing, though not in the same form as set forth in the revised provisions of § 981.66(d) in the recommended decision. A public hearing would serve no purpose if proposals in a notice of hearing could not be changed on the basis of evidence developed at the hearing. Interested persons have been given adequate notice of hearing. They have been given adequate opportunity to present evidence on the issues at the hearing, to file briefs on basis of the hearing evidence, and to file exceptions to the recommended decision. Moreover, the provisions of revised § 981.66(d) in the recommended decision are based on the evidence of record.

Accordingly, this second exception and the motion to reopen the hearing are denied.

Amendment of the amended marketing agreement and order. Annexed hereto and made a part hereof, are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Almonds Grown in California" and "Order Amending the Order, as Amended, Regulating the Handling of Almonds Grown in California", which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Referendum order. Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby directed that a referendum be conducted among producers who, during the period July 1, 1969, through May 31, 1970 (which period is hereby determined to be a representative period for the purpose of such referendum) have been engaged, in the State of California, in the production for market of almonds to determine whether such producers favor the issuance of the said annexed order amending the order, as amended, regulating the handling of almonds grown in California.

William B. Blackburn, Gilbert P. Muck, Charles A. Rusk, and George R. Eastman of the Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, are hereby designated referendum agents of the Secretary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to the referendum shall be "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts, Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended" (7 CFR 900.400 et seq.).

The ballots used in the referendum shall contain a summary describing the terms and conditions of the proposed amendatory order.

Any producer entitled to vote in the referendum who does not receive a copy of the aforesaid annexed order, voting instructions, or a ballot or other necessary information will be able to obtain the same from William B. Blackburn, Sacramento Marketing Field Office, Fruit and Vegetale Division, Consumer and Marketing Service, 2800 Cottage Way, Room E–2713, Sacramento, Calif. 95825.

It is hereby ordered, That, all of this decision and referendum order, except the annexed marketing agreement, as amended, be published in the FEDERAL REGISTER. The regulatory provisions of the said marketing agreement, as amended, are identical with those contained in the said order, as amended, and as further amended by the annexed order which will be published with this decision.

Dated: June 9, 1970.

RICHARD E. LYNG,
Assistant Secretary.

Order[1] Amending the Order, as Amended, Regulating the Handling of Almonds Grown in California

§ 981.0 Findings and determinations.

(a) *Previous findings and determinations.* The findings and determinations hereinafter set forth are supplementary, and in addition, to the findings and determinations made in connection with the issuance of the order and the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such prior findings and determinations may be in conflict with the findings and determinations set forth herein. (For prior findings and determinations see 15 F.R. 4993; 22 F.R. 3781; 22 F.R. 8485; 23 F.R. 903.)

(b) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held in Sacramento, Calif., on December 15–16, 1969, on a proposed amendment of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. On the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all the terms and conditions thereof, will tend

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and orders have been met.

to effectuate the declared policy of the act;

(2) The said order, as amended, and as hereby further amended, regulates the handling of almonds grown in California in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) There are no differences in the production and marketing of almonds in the production area covered by the order, as amended, and as hereby further amended, which require different terms applicable to different parts of such area;

(4) The said order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act; and

(5) All handling of almonds grown in California is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of almonds grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

Recommended amendment of the order. The following further amendment of the almond order is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

§ 981.45 [Amended]

1. The word "reserve" is substituted for "surplus" wherever it occurs in the order and the heading immediately preceding § 981.45 is changed from "Surplus Control" to "Volume Regulation".

§ 981.16 [Amended]

2. Section 981.16 is revised by inserting after "means" the words "to use almonds commercially of own production or".

3. New sections 981.21a and 981.21b, reading as follows, are added immediately after § 981.21:

§ 981.21a Salable almonds.

"Salable almonds" means those almonds which are free to be handled pursuant to any salable percentage established by the Secretary pursuant to § 981.47 or § 981.48 and, in the absence of a reserve percentage being established for a crop year, all almonds received by handlers for their own accounts during that crop year.

§ 981.21b Reserve almonds.

"Reserve almonds" means those almonds which must be withheld from handling in satisfaction of a reserve obligation arising from application of a reserve percentage established by the Secretary pursuant to § 981.47 or § 981.48.

4. A new section is added to read:

§ 981.41 Research and development.

The Control Board, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of almonds. The expense of such projects shall be paid from funds collected pursuant to § 981.81.

5. The first sentence of § 981.49 is revised by inserting after "each of which" the phrase ", or any later revisions thereof," and paragraphs (b) and (c) of § 981.49 are revised, and a new paragraph (f) is added to such section to read:

§ 981.49 Board estimates and recommendations.

* * * * *

(b) The handler carryover and the reserve inventory as of July 1;

(c) The desirable handler carryover and the probable reserve inventory at the end of the crop year;

* * * * *

(f) The recommended percentage of reserve almonds that may be exported pursuant to § 981.66.

6. Section 981.50 is revised to read:

§ 981.50 Reserve obligation.

Whenever salable and reserve percentages are in effect for a crop year, each handler shall withhold from handling a quantity of almonds having a kernel weight equal to the reserve percentage of the kernel weight of all almonds such handler receives for his own account during the crop year: *Provided,* That any quantity of almonds disposed of in outlets such as poultry or animal feed or crushing into oil, in a manner permitting accountability to the Board, and which are not reserve almonds, shall not be included in such receipts. The quantity of almonds hereby required to be withheld from handling shall constitute, and may be referred to as the "reserve" or "reserve obligation" of a handler. The almonds handled as salable almonds by any handler, in accordance with the provisions of this part, shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8a(5) of the act.

7. Paragraph (b) of § 981.51 is revised to read:

§ 981.51 Requirements for reserve.

* * * * *

(b) Lots of unshelled almonds shall not have more than 20 percent of the almonds by count affected by adhering hulls (where more than 10 percent of the surface is affected), shall not contain more than 10 percent by weight of loose shells, hulls and other foreign material and shall not contain inedible kernels in excess of 40 percent of the kernel weight; and

* * * * *

8. Section 981.52 is revised to read:

§ 981.52 Holding requirement and delivery.

Each handler shall, at all times, hold in his possession or under his control, in proper storage for the account of the Board, the quantity of almonds necessary to meet his reserve obligation less: (a) Any quantity for which he has a temporary deferment pursuant to § 981.53; (b) any quantity which was disposed of by him pursuant to § 981.67; and (c) any quantity for which he is otherwise relieved by the Board of responsibility to so hold almonds. Upon demand of the Control Board reserve almonds shall be delivered to the Board f.o.b. handler's warehouse or point of storage, except that the Control Board shall not make such demand upon a handler with respect to reserve almonds for which the time for withholding has been deferred pursuant to § 981.53 or he has agreed to undertake disposition pursuant to § 981.67. Any handler who does not act as agent for the Control Board in the disposition of reserve almonds shall be subject to the applicable inspection and certification requirements prescribed by the Control Board pursuant to § 981.67.

§ 981.53 [Amended]

9. The words "either by almonds owned by the applying handler and pledged to the Control Board or" are deleted from the last sentence of paragraph (a) of § 981.53 and paragraph (b) of that section is deleted.

§ 981.58 [Deleted]

10. Section 981.58 is deleted.

§ 981.61 [Amended]

11. In § 981.61 the word "certified" is deleted wherever it appears and the final sentence of that section is revised to read: Weights used in such computations for various classifications of almonds shall be: (a) For unshelled almonds, the kernel weight computed by application of shelling ratios authorized pursuant to § 981.62; (b) for shelled almonds, the net weight; and (c) for shelled almonds used in production of almond products, the weight of such almonds.

12. Paragraph (a) of § 981.62 is revised to read:

§ 981.62 Varietal shelling ratios for unshelled almonds.

(a) The varietal shelling ratios applicable to unshelled almonds for determination of kernel weight are as follows:

Major varieties:	*Percent*
Nonpareil	60
Jordanolo	60
Ne Plus Ultra	50
IXL	50
Mission	40
Drake	40
Peerless	35
Minor varieties:	
Kaperial	60
Merced	60
Thompson	60
Bigelow	55
Harpareil	55

Minor varieties—Continued	Percent
Eureka	54
Baker	53
Trembath	53
Long IXL	50
Ballico	50
Davey	50
Ruby	50
Smith (Smith's XL)	48
Lewelling (Lewelling's Prolific)	47
Walton	41
Emerald	40
Ripon	40
Standard	38
Sultana	36
Tarragona	33
Hardshell	30
Bidwell	30

13. Paragraph (d) of § 981.66 is revised to read:

§ 981.66 Conditions governing disposition of reserve.

* * * * *

(d) *Time restriction on disposition.* The Control Board shall not dispose of in export, or authorize the disposition in export, of more than 80 percent or such other percentage as the Secretary, upon recommendation of the Control Board or other information, may establish, of the reserve almonds of the applicable crop year. However, at any time prior to May 15 (except that such date may be extended by the Secretary to a date not later than June 30 upon recommendation of the Board or other information), the Control Board shall meet and review the disposition of reserve almonds. If the Board finds that the volume of reserve almonds released to export has been sold, or committed for sale, to such an extent that additional almonds could be disposed of in export, without materially affecting adversely the disposition of the oncoming crop, it may recommend an increase in the percentage to be released in export. Upon basis of the Board's finding and recommendation, or other information, the Secretary may increase the percentage. Any export percentage in effect pursuant to the foregoing shall continue to apply to the reserve almonds of the applicable crop year unless and until such percentage is increased or until all of the reserve almonds to which it applies have been disposed of. If pursuant to § 981.48, the reserve percentage is reduced during any crop year, each handler may dispose of the quantity released into export by the reserve and export percentages in effect prior to such reduction in the reserve percentage but his credit for any authorized reserve disposition shall not exceed his new reserve obligation. The Control Board may dispose of, or authorize the disposition of, reserve almonds in excess of those needed for export, in noncompetitive outlets.

§ 981.67 [Amended]

14. The first sentence of § 981.67 is revised by inserting after the words "such reasonable terms and conditions" the words "including inspection and certification requirements" and in the first sentence and the sentence preceding the final sentence the word "contributed" is deleted and the words "withheld from handling" are substituted therefor.

§ 981.68 [Amended]

15. The section heading "§ 981.68 Disposition by the Board." is deleted, paragraph (a) of § 981.68 is deleted, and paragraphs (b) and (c) of § 981.68 are redesignated as (f) and (g), respectively, of § 981.66 and are revised to read:

* * * * *

(f) *Expenses.* Direct expenses incurred by the Board in the maintenance and disposition of reserve almonds shall be charged against the proceeds of sales of such almonds.

(g) *Distribution of proceeds.* Net proceeds from the disposition of reserve almonds by the Board shall be distributed to each handler in proportion to his relative share of such disposition in terms of creditable reserve kernel weight pursuant to § 981.51 or such other basis as the Control Board may adopt with the approval of the Secretary.

[F.R. Doc. 70-7507; Filed, June 12, 1970; 8:58 a.m.]

[7 CFR Part 1136]

[Docket No. AO-309-A15]

MILK IN THE GREAT BASIN MARKETING AREA

Notice of Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Great Basin marketing area, which was issued June 3, 1970 (35 F.R. 8572), is hereby extended to June 30, 1970.

The above notice of extension of time for filing exceptions is issued pursuant to the provisions of the Agricultural marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Signed at Washington, D.C., on June 10, 1970.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 70-7416; Filed, June 12, 1970; 8:48 a.m.]

[9 CFR Parts 301, 303]

MEAT INSPECTION

Notice of Proposed Rule Making

There appeared in the FEDERAL REGISTER (34 F.R. 13194) of August 14, 1969, proposed regulations for the implementation of the Federal Meat Inspection Act, as revised by the Wholesome Meat Act (21 U.S.C. 601 et seq.). Numerous comments were received from interested persons relating to the proposed definition of a retail store and other proposed provisions relating to exemption of certain retail operations. In light of these comments, alternative provisions as set forth below are under consideration in the Department.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. § 553, that pursuant to the Federal Meat Inspection Act, the Consumer and Marketing Service proposes to amend the Federal meat inspection regulations (9 CFR, Chapter III, Subchapter A) as follows:

In lieu of the provisions contained in §§ 301.2(ddd) and (eee) and in §§ 303.1 (c) (2) and (3) and the first sentence in § 303.1(d) in the August 14, 1969, proposal, it is proposed to:

1. Add §§ 301.2 (ddd), (eee), (fff), and (ggg) to read as follows:

§ 301.2 Definitions.

* * * * *

(ddd) *Retail Store.* Any place of business where the sales of product are made to consumers only; at least 75 percent, in terms of dollar value, of total sales of product represents sales to household consumers; only federally or State inspected and passed product is handled or used in the preparation of any product; no sale of product is made in excess of a normal retail quantity as defined in § 303.1(c)(3) of this subchapter; the preparation of products sold to household consumers is limited to traditional and usual operations as defined in § 303.1(c)(2) of this subchapter; and the preparation of products sold to other than household consumers is limited to traditional and usual operations as defined in subdivisions (i), (ii), (iv), and (v) of § 303.1(c)(2) of this subchapter. This definition includes any delicatessen or caterer's establishment that meets the conditions specified in this paragraph.

(eee) *Restaurant.* Any establishment where product is prepared only for sale or service, in meals, or as entrees, directly to individual consumers at such establishment; no sale of product is made in excess of a normal retail quantity as defined in § 303.1(c)(3); and the preparation of product is limited to traditional and usual operations as defined in § 303.1(c)(2) of this subchapter.

(fff) *Similar retail-type establishment.* Any establishment which is a combination retail store and restaurant; or other establishment as determined by the Administrator in specific cases.

(ggg) *Consumer.* Any household consumer, hotel, restaurant, or similar institution as determined by the Administrator in specific cases.

2. Add new § 303.1(c) (2) and (3) to read as follows:

§ 303.1 Exemptions.

* * * * *

(c) * * *

(2) For purposes of subparagraph (1) of this paragraph, operations of types traditionally and usually conducted at retail stores and restaurants are the following:

(i) Cutting up, slicing, and trimming carcasses, halves, quarters, or wholesale

cuts into retail cuts such as steaks, chops, and roasts, and freezing such cuts.

(ii) Grinding and freezing products made from meat.

(iii) Curing, cooking, smoking, or other preparation of products not within subdivisions (i) or (ii), except slaughtering, rendering or refining of livestock fat or the retort-processing of canned products.

(iv) Breaking bulk shipments of products.

(v) Wrapping or rewrapping products.

(3) For purposes of subparagraph (1) of this paragraph, any quantity of product purchased by a consumer from a particular retail supplier shall be deemed to be a normal retail quantity if the quantity so purchased does not in the aggregate exceed one-half carcass in any calendar month in the case of purchases by a household consumer and one-half carcass in any calendar week in the case of purchases by any other consumer.

* * * * *

3. Insert the following in lieu of the first sentence in § 303.1(d): "The adulteration and misbranding provisions of the Act and the regulations in this subchapter, other than the requirement of the official inspection legend, shall apply to articles which are exempted from inspection or not required to be inspected under this section, including but not limited to a requirement that the preparation of any product containing pork shall include compliance with any applicable requirement for the destruction of trichinae as provided in Part 318 of this subchapter."

Any interested persons who desire to present any views, arguments, or data concerning the proposed amendments of the regulations set forth above may do so by filing their comments in writing, in duplicate, with the Office of the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days after publication hereof in the FEDERAL REGISTER. All such written comments will be made available for public inspection at said office during regular office hours in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., on June 9, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70-7399; Filed, June 12, 1970; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 34]

MEDICAL EXAMINATION OF ALIENS

Dangerous Contagious Diseases

Notice is hereby given that the Administrator, Health Services and Mental Health Administration, proposes to amend § 34.2(b) of Part 34, Title 42, Code of Federal Regulations. Under the proposed amendment certain designations would be eliminated from the list of dangerous contagious diseases contained in § 34.2(b) and affliction with any of such diseases would no longer constitute a basis for issuance of a Class A certificate or notification under § 34.7 of this Title.

Inquiries may be addressed, and data, views, and arguments may be submitted in writing, in duplicate, to the Director, National Communicable Disease Center, 1600 Clifton Road NE., Atlanta, Ga. 30333. All relevant material received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered. It is proposed to make the amendment effective immediately upon publication in the FEDERAL REGISTER.

(Sec. 215, 58 Stat. 690, sec. 234, 66 Stat. 198; 42 U.S.C. 216, 8 U.S.C. 1224)

Section 34.2(b) of Title 42 would be amended to read as follows:

§ 34.2 Definitions.

* * * * *

(b) *Dangerous contagious disease.* Any of the following diseases:

(1) Chancroid.
(2) Gonorrhea.
(3) Granuloma inguinale.
(4) Leprosy, infectious.
(5) Lymphogranuloma venereum.
(6) Syphilis, infectious stage.
(7) Tuberculosis, active.

* * * * *

Dated: May 13, 1970.

[SEAL] IRVING J. LEWIS,
Acting Administrator, Health Services and Mental Health Administration.

Approved: June 10, 1970.

JOHN G. VENEMAN,
Acting Secretary.

[F.R. Doc. 70-7426; Filed, June 12, 1970; 8:49 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 70-CE-46]

FEDERAL AIRWAY

Proposed Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a VOR Federal airway from Muskegon, Mich., to Manistee, Mich.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The FAA proposes the designation of V-271 from the Muskegon, Mich., VORTAC direct to the Manistee, Mich., VOR.

The proposed airway would reduce the airway mileage between Muskegon and Manistee by approximately 9 miles.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on June 4, 1970.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 70-7391; Filed, June 12, 1970; 8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-CE-39]

FEDERAL AIRWAY SEGMENT

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter VOR Federal airway No. 430 between Minot, N. Dak., and Devils Lake, N. Dak.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

V–430 between Minot and Devils Lake is designated via the intersection of the Minot 097° and Devils Lake 273° radials. Also, the airway is reduced in width to 3 nautical miles from the centerline on the north side from the Minot VORTAC to 35 miles east.

The operational and approach procedures which required the dogleg and reduced airway width between Minot and Devils Lake are no longer in effect. Therefore, the FAA proposes to realign V–430 segment, standard width, from the Minot VORTAC direct to the Devils Lake VOR.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on June 4, 1970.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 70–7392; Filed, June 12, 1970; 8:46 a.m.]

National Highway Safety Bureau

[49 CFR Part 567]

[Docket No. 70–15]

TRAILER CERTIFICATION REQUIREMENTS

Notice of Proposed Rule Making

The Truck Trailer Manufacturers Association has petitioned on behalf of its membership for an amendment to § 567.4 (g)(1) of the Certification Regulations (49 CFR Part 567), which requires the certification label to bear the name of the actual manufacturer of the vehicle. The association asserts that this requirement upsets established marketing patterns in the truck trailer industry, in which many manufacturers conduct a major share of their business by making trailers that are sold by, and under the names of, other manufacturers. The association states that the requirement of placing the actual manufacturer's name on the label tends to prevent this "private label" manufacturing, particularly in the case of smaller manufacturers who manufacture for larger companies, because of the possibility that user-customers will look to the actual manufacturer for servicing and place new orders with him. The petition requests that the person selling the vehicle be allowed to place his name on the certification label, in place of the actual manufacturer's name.

The requirement of placing the manufacturer's name on the label was established, effective September 1, 1969 (34 F.R. 11360), for purposes of both enforcement and public information. In the case of trailers, it has been tentatively determined that these considerations may be outweighed by the economic factors described above, in light of the facts that trailers are inherently simpler and therefore easier than other vehicles to manufacture under specifications of a buyer-manufacturer, and that users of truck trailers are largely commercial fleet operators less likely than the general public to be misled by the information on the label. This notice therefore proposes an amendment that would constitute a grant of the petition.

Two safeguards are included in the proposed amendment. The first is that a party represented as the manufacturer on the label must be himself a person "engaged in the manufacture of trailers". This is to prevent the naming of "paper manufacturers" who do not possess the engineering and other facilities to provide meaningful services to consumers and carry out the manufacturer's legal responsibilities. The second is that the name of a manufacturer who is not the actual assembler of the trailer must be signalled by the prefix "Responsible Manufacturer" or "Resp Mfr". Finally, it should be noted that this amendment does not reduce the duties and liabilities of the actual manufacturer under the National Traffic and Motor Vehicle Safety Act, but adds another party who additionally assumes those responsibilities.

In light of the above, it is proposed to amend § 567.4(g)(1) of Title 49, Code of Federal Regulations, by adding a new subdivision (iii), to read as set forth below, and by substituting the words "(i), (ii), and (iii)" for the words "(i) and (ii)". The effective date would be shortly after issuance of the final rule. Interested persons are invited to submit comments, which should identify the docket number and be sent to: Docket Section, National Highway Safety Bureau, Room 4223, 400 Seventh Street SW., Washington, D.C. 20591. It is requested, but not required, that 10 copies be submitted. All comments received before the close of business on August 12, 1970, will be considered, and will be available in the docket at the above address for examination both before and after the closing date.

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *
(1) * * *

(iii) If a trailer is sold by a person who is not its manufacturer, but who is engaged in the manufacture of trailers and assumes legal responsibility for all duties and liabilities imposed by the Act with respect to that trailer, the name of that person may appear on the label as the manufacturer. In such a case the name shall be preceded by the words "Responsible Manufacturer" or "Resp Mfr".

* * * * *

This notice of proposed rulemaking is issued under the authority of sections 103, 112, 114, and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1401, 1403, 1407) and the delegation of authority from the Secretary of Transportation to the Director of the National Highway Safety Bureau, 49 CFR 1.51.

Issued on June 8, 1970.

DOUGLAS W. TOMS,
Director,
National Highway Safety Bureau.

JUNE 8, 1970.

[F.R. Doc. 70–7405; Filed, June 12, 1970; 8:47 a.m.]

Office of Pipeline Safety

[49 CFR Part 192]

[Notice 70–11; Docket No. OPS–3E]

MINIMUM FEDERAL SAFETY STANDARDS FOR GAS PIPELINES

Odorization of Gas; Request for Additional Comments

In a notice of proposed rule making published on April 2, 1970 (35 F.R. 5482), the Department of Transportation proposed to require the odorization of all gas transported by pipeline that would be subject to the Department's jurisdiction, except for the following:

(1) Gas transported in gathering lines in Class 1 locations.

(2) Gas that is en route to storage fields.

(3) Gas that is being delivered for further processing.

The proposed requirement (see proposed section 192.623) would require the odorization of all gas transported in high pressure transmission lines, and was based on existing requirements in the States of California, New York, New Jersey, Massachusetts, Vermont, and Wisconsin, and the proposed code prepared by the National Association of Regulatory Utility Commissioners. The comments received on this proposal were almost unanimously opposed to the requirement for the odorization of gas in high pressure transmission lines. The following list briefly summarizes the objections of the commenters:

(1) Odorization of gas in transmission lines is of questionable value in locating leaks. High pressure leaks are detected by other means.

(2) Difficulties would be introduced in handling odorized gas through compressor stations and high pressure metering and regulating stations. Operation of dehydration units would be adversely affected.

(3) Odorants would be detrimental to the systems of some industrial customers and could add to air pollution.

(4) Liquids required to be removed from the gas would be lost because they would be poisoned by the odorant.

(5) The equipment costs would be significant with little if any increase in safety.

(6) Odorization is appropriate only for distribution mains and service lines.

Since the proposal to require odorization of gas in transmission lines was based on existing requirements in certain States, but did not contain specific

information on experience in actual operations in those States, the Department believes that it is necessary to solicit further comments on the desirability of this proposal. In particular, advice and information from the States presently requiring the odorization of gas in transmission lines is desired. In addition, while the Department would appreciate any information on this subject, comments directed specifically to the list of objections stated above would be of particular interest.

Since the Department is attempting to issue the first comprehensive Federal gas pipeline safety regulations by the target date of August 12, 1970, contained in the Natural Gas Pipeline Safety Act of 1968, it is important that additional comments on this subject be received as soon as possible. Interested persons are invited to submit written data, views, or arguments. Comments should identify the regulatory docket number (OPS–3E) and notice number (Notice 70–11) and be submitted in duplicate to the Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590, before July 13, 1970. All comments will be available for examination by interested persons at the Office of Pipeline Safety before and after the closing date for comments. The proposals contained in this notice may be changed in light of comment received.

This notice is issued under the authority of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. section 1671 et seq.), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16468).

Issued in Washington, D.C., on June 10, 1970.

W. C. JENNINGS,
Acting Director,
Office of Pipeline Safety.

[F.R. Doc. 70–7430; Filed, June 12, 1970; 8:49 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1969 Rev., Supp. No. 22]

GENERAL SECURITY ASSURANCE CORPORATION OF NEW YORK

Termination of Authority To Qualify as an Acceptable Reinsuring Company on Federal Bonds

Notice is hereby given that the Certificate of Authority issued by the Secretary of the Treasury to General Security Assurance Corporation of New York, New York, N.Y., to qualify as an acceptable reinsuring company only on Federal bonds pursuant to Treasury Department Circular No. 297, revised January 2, 1970, 31 CFR Part 223, will expire on June 30, 1970, and will not be renewed.

Bond-approving officers of the Government should, in instances where such action is necessary, secure new reinsurance with acceptable sureties in lieu of the reinsurance on Federal bonds assumed by General Security Assurance Corporation of New York, pursuant to the Certificate of Authority issued by the Secretary of the Treasury.

Dated: June 9, 1970.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[F.R. Doc. 70-7410; Filed, June 12, 1970; 8:47 a.m.]

[Dept. Circ. 570, 1969 Rev., Supp. No. 21]

IOWA SURETY COMPANY

Change of Name to Midwestern Casualty & Surety Company

Iowa Surety Company, Des Moines, Iowa, an Iowa corporation, has formally changed its name to Midwestern Casualty & Surety Company, effective January 1, 1970. Documents evidencing the change of name are on file in the Treasury.

A new Certificate of Authority as an acceptable surety on Federal bonds, dated January 1, 1970, has been issued by the Secretary of the Treasury to the Midwestern Casualty & Surety Company, Des Moines, Iowa, under Sections 6 to 13 of Title 6 of the United States Code, to replace the Certificate issued July 1, 1969 to the Company under its former name, Iowa Surety Company.

The change in name of Iowa Surety Company does not affect its status or liability with respect to any obligation in favor of the United States or in which the United States has an interest, which it may have undertaken pursuant to the Certificate of Authority issued by the Secretary of the Treasury.

Certificates of Authority expire on June 30 each year, unless sooner revoked and new Certificates are issued on July 1, so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact fidelity and surety business and other information. Copies of the Circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Audit Staff, Washington, D.C. 20226.

Dated: June 9, 1970.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[F.R. Doc. 70-7409; Filed, June 12, 1970; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

[Department Organization Order 30-2B, Amdt. 2]

NATIONAL BUREAU OF STANDARDS [1]

Organization and Function

This material amends the material appearing at 33 F.R. 19255 of December 25, 1968; and 34 F.R. 5611 of March 25, 1969.

Department Organization Order 30-2B, dated December 11, 1968, is hereby further amended as follows:

1. SEC. 6. *Office of the Associate Director for Administration.* a. Paragraph .03 is revised to read:

.03 The Administrative Services Division has responsibility for security, safety, emergency planning, and civil defense activities; provides mail, messenger, communications, duplicating, and related office services; manages use of auditorium and conference rooms; conducts records and forms management programs; operates an NBS records holding area; manages the NBS motor vehicle fleet; and provides janitorial services.

b. Paragraph .05 is revised to read:

.05 The Management and Organization Division provides consultive services to line management in organization, procedures, and management practices; develops administrative information systems; maintains the directives system; and performs reports management functions.

2. SEC. 10. *Institute for Basic Standards.* a. The listing which opens paragraph .04 is revised to read:

.04 The other organization units of the Institute for Basic Standards are as follows:

Located at Bureau Headquarters

Applied Mathematics Division.
Electricity Division.
Heat Division.
Mechanics Division.
Optical Physics Division.

Located at Boulder, Colorado

Cryogenics Division.
Radio Standards Engineering Division.
Laboratory Astrophysics Division.
Radio Standards Physics Division.
Time and Frequency Division.

Effective date: May 28, 1970.

LARRY A. JOBE,
Assistant Secretary for Administration.

[F.R. Doc. 70-7404; Filed, June 12, 1970; 8:47 a.m.]

[1] Organization chart filed as part of the original document.

[Department Organization Order 35-2B]

BUREAU OF THE CENSUS

Organization and Function

Correction

In F.R. Doc. 70-6971 appearing at page 8753 in the issue for Friday, June 5, 1970, the following additions should be made:

1. In the center column of page 8753, the following text should be inserted just above the entry for SEC. 7:

d. Plan and coordinate central administrative and publications services, including procurement and property management, printing, publications, library and public reference facility, communications and other administrative services;

e. Plan and coordinate the Bureau's emergency planning program and provide specialized staff services; and

f. Plan and coordinate, through a Field Division, a nationwide field data collection program administered by a field organization of fluctuating size made up of 12 Regional Offices (as detailed in SEC. 11) and temporary subordinate offices organized for a specific census or special survey.

SEC. 5. *Office of Associate Director for Data Systems.* The Associate Director is the principal assistant to the Director on statistical processing operations, and advises him as to large-scale data processing techniques and concepts for statistical programs of the Bureau. Through his staff and organizational units reporting to him, he shall:

a. Plan and coordinate the development of processing techniques and process statistical data collected in special and current surveys, censuses, or compilations undertaken by the Bureau;

b. Plan and coordinate electronic digital computer and mechanical tabulating systems services of the Bureau;

c. Plan and coordinate mechanical and electronic engineering services in the development, maintenance, and manufacture of special purpose equipment used in data processing by the Bureau;

d. Plan and coordinate, through the Jeffersonville Census Operations Division, Jeffersonville, Ind., noncomputer statistical processing operations for assigned current and special surveys and all periodic censuses; and

e. Provide, through the Personal Census Service Branch (located in Pittsburg, Kans.), a specialized service designed to furnish individuals, or their authorized representatives, information about themselves as reflected by census records.

SEC. 6. *Office of Associate Director for Demographic Fields.* The Associate Director is the principal assistant to the Director on demographic programs, and advises him as to necessary and feasible statistical programs in these fields. Through his staff and organizational units reporting to him, he shall:

a. Formulate and develop overall plans and programs for the collection, processing and dissemination of statistical data from special and current surveys, censuses, of compilations relating to agriculture, agriculture activities and products, irrigation and drainage enterprises and cotton-ginning, general housing characteristics, and the distribution and characteristics of the population;

b. Conduct research on the nature and extent of needs for statistical data in the demographic fields and on survey design and methodology;

c. Using highly specialized techniques, prepare estimates and projections of population, manpower and related characteristics; and

d. Prepare special analytical and interpretive reports, monographs, and special studies.

2. In the third column of page 8753, the following text should be inserted following SEC. 8b:

c. Design and provide technical guidance over tests to measure relevant significant factors of programs during their developmental stages and evaluate the results therefrom;

d. Conduct research into and develop geographic techniques and guides for use in assembling, defining, and presenting and analyzing the statistical phenomena occurring within geographic aggregates; and

e. Devise, test, and apply techniques of improving access to the census data base and extend uses of census data; and research new techniques for incorporation into regular Bureau operations and procedures to improve all services to data users.

SEC. 9. *Office of Assistant Director for International Statistical Programs.* The Assistant Director for International Statistical Programs shall plan and conduct the Bureau's foreign consultation and training programs; coordinate research on international statistical problems of methodology and content; and represent the Bureau in international statistical activities.

SEC. 10. *Office of Assistant Director for Program Development.* The Assistant Director for Program Development shall coordinate program planning; develop, prepare, and publish general and comprehensive statistical reports, guides, histories, and special reports and articles on the statistical and technological work of the Bureau; and issue reports presenting economic and social indicators.

SEC. 11. *Regional Offices.* .10 The principal field structure of the Bureau of the Census shall consist of 12 Regional Offices, each headed by a Regional Director and serving a regional area as shown below.

Regional Office	Region No.	Area served
Boston, Mass...	I	Vermont, Maine, New Hampshire, Rhode Island, Massachusetts, and the States of New York and Connecticut, excluding those counties assigned to Region II.
New York, N.Y.	II	New York City and adjacent counties in New York, Connecticut, and New Jersey.
Philadelphia, Pa.	III	Pennsylvania, Maryland, Delaware, District of Columbia, and the State of New Jersey, exlcuding those counties assigned to Region II.
Detroit, Mich..	IV	Michigan and Ohio.
Chicago, Ill.....	V	Illinois, Indiana, southeastern Missouri, and western Kentucky.
St. Paul, Minn.	VI	North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, Nebraska, Kansas, and Missouri, except for southeastern part.

CIVIL AERONAUTICS BOARD

[Docket No. 22233]

GRAVENHURST AVIATION LTD.

Notice of Prehearing Conference and Hearing

Application for a foreign air carrier permit, issued pursuant to section 402 of the Federal Aviation Act of 1958, as amended, to perform operations of a casual, occasional or infrequent nature, in common carriage, into the United States.

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on June 23, 1970, at 10 a.m. (e.d.s.t.), in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless at or prior to the conference a person objects or shows reason for further postponement.

Dated at Washington, D.C., June 9, 1970.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 70-7407; Filed, June 12, 1970; 8:47 a.m.]

CIVIL SERVICE COMMISSION

DEPARTMENT OF DEFENSE

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67-13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from "Deputy Assistant Secretary (Civil Rights and Industrial Relations)" to "Deputy Assistant Secretary of Defense (Civil Rights)."

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7379; Filed, June 12, 1970; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Deputy Director, Mineral Resources and Environmental Development, Bureau of Mines.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7374; Filed, June 12, 1970; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Deputy Director, Bureau of Mines.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7375; Filed, June 12, 1970; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Assistant Director, Mineral Resource Development, Bureau of Mines.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7376; Filed, June 12, 1970; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under the authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Assistant Director, Minerals Research, Bureau of Mines.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7377; Filed, June 12, 1970; 8:45 a.m.]

POST OFFICE DEPARTMENT

Notice of Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Post Office Department to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Postmaster General for Marketing, Bureau of Planning and Marketing.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-7378; Filed, June 12, 1970; 8:45 a.m.]

FEDERAL RESERVE SYSTEM

FEDERAL OPEN MARKET COMMITTEE

Authorization for System Foreign Currency Operations

In accordance with § 271.5 of its Rules Regarding Availability of Information, there is set forth below paragraph 2 of the Committee's Authorization for System Foreign Currency Operations, as amended at its meeting on March 10, 1970.

2. The Federal Open Market Committee directs the Federal Reserve Bank of New York to maintain reciprocal currency arrangements ("swap" arrangements) for System Open Market Account for periods up to a maximum of 12 months with the following foreign banks, which are among those designated by the Board of Governors of the Federal Reserve System under § 214.5 of Regulation N, Relations with Foreign Banks and Bankers, and with the approval of the Committee to renew such arrangements on maturity:

Foreign bank	Amount of arrangement (millions of dollars equivalent)
Austrian National Bank	200
National Bank of Belgium	500
Bank of Canada	1,000
National Bank of Denmark	200
Bank of England	2,000
Bank of France	1,000
German Federal Bank	1,000
Bank of Italy	1,250
Bank of Japan	1,000
Bank of Mexico	130
Netherlands Bank	300
Bank of Norway	200
Bank of Sweden	250
Swiss National Bank	600
Bank for International Settlements:	
Dollars against Swiss francs	600
Dollars against authorized European currencies other than Swiss francs	1,000

NOTE: For paragraph 1 of the authorization, see 34 F.R. 9044; for paragraph 3, see 33 F.R. 8470; and for paragraphs 4 through 10, see 32 F.R. 9583.

By order of the Federal Open Market Committee, June 4, 1970.

ARTHUR L. BROIDA,
Deputy Secretary.

[F.R. Doc. 70-7387; Filed, June 12, 1970; 8:46 a.m.]

FEDERAL OPEN MARKET COMMITTEE

Continuing Authority Directive With Respect to Domestic Open Market Operations

In accordance with § 271.5 of its Rules Regarding Availability of Information, there is set forth below paragraph 2 of the Committee's Continuing Authority Directive with respect to Domestic Open Market Operations, as amended at its meeting on March 10, 1970.

2. The Federal Open Market Committee authorizes and directs the Federal Reserve Bank of New York, or, if the New York Reserve Bank is closed, any other Federal Reserve Bank, to purchase directly from the Treasury for its own account (with discretion, in cases where it seems desirable, to issue participations to one or more Federal Reserve Banks) such amounts of special short-term certificates of indebtedness as may be necessary from time to time for the temporary accommodation of the Treasury: *Provided*, That the rate charged on such certificates shall be a rate one-fourth of 1 percent below the discount rate of the Federal Reserve Bank of New York at the time of such purchases, and provided further that the total amount of such certificates held at any one time by the Federal Reserve Banks shall not exceed $1 billion.

NOTE: For paragraph 3 of the directive, see 35 F.R. 447, and for the remainder, see 32 F.R. 9584.

By order of the Federal Open Market Committee, June 4, 1970.

ARTHUR L. BROIDA,
Deputy Secretary.

[F.R. Doc. 70-7388; Filed, June 12, 1970; 8:46 a.m.]

FEDERAL OPEN MARKET COMMITTEE

Current Economic Policy Directive of March 10, 1970

In accordance with § 271.5 of its Rules Regarding Availability of Information, there is set forth below the Committee's Current Economic Policy Directive issued at its meeting held on March 10, 1970.[1]

The information reviewed at this meeting suggests that real economic activity, which leveled off in the fourth quarter of 1969, is weakening further in early 1970. Prices and costs, however, are continuing to rise at a rapid pace. Market interest rates have declined considerably in recent weeks, partly as a result of changing investor attitudes regarding the outlook for economic activity and monetary policy. Both bank credit and the money supply declined on average in February, but both were tending upward in the latter part of the month. Outflows of time and savings funds at banks and nonbank thrift institutions, which had been sizable in January, apparently ceased in February, reflecting advances in rates offered on such funds following the recent increases in regulatory ceilings, together with declines in short-term market interest rates. The U.S. foreign trade surplus narrowed in January and the overall balance of payments deficit has remained large in recent weeks. In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions conducive to orderly reduction in the rate of inflation, while encouraging the resumption of sustainable economic growth and the attainment of reasonable equilibrium in the country's balance of payments.

To implement this policy, the Committee desires to see moderate growth in money and bank credit over the months ahead. System open market operations until the next meeting of the Committee shall be conducted with a view to maintaining money market conditions consistent with that objective.

By order of the Federal Open Market Committee, June 4, 1970.

ARTHUR L. BROIDA,
Deputy Secretary.

[F.R. Doc. 70-7389; Filed, June 12, 1970; 8:46 a.m.]

[1] The Record of Policy Actions of the Committee for the meeting of Mar. 10, 1970, is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN BRAZIL

Entry or Withdrawal From Warehouse for Consumption

JUNE 10, 1970.

On May 20, 1970, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles, done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, informed the Government of Brazil that it was renewing for an additional 12-month period beginning June 9, 1970, and extending through June 8, 1971, the restraint on imports into the United States of cotton textiles in Category 26 (duck only) produced or manufactured in Brazil. Pursuant to Annex B, paragraph 3, of the Long-Term Arrangement the level of restraint for this 12-month period is 5 percent greater than the level of restraint applicable to this category for the preceding 12-month period.

There is published below a letter of June 5, 1970, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amount of cotton textiles in Category 26 (duck only), produced or manufactured in Brazil, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning June 9, 1970, be limited to the designated level.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

JUNE 5, 1970.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective June 9, 1970, and for the 12-month period extending through June 8, 1971, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textiles in Category 26 (duck only)[1] produced or manufactured in Brazil, in excess of a level of restraint of 1,823,260 square yards.

This directive also amends the directive of June 9, 1969, establishing levels of restraint for the entry into the United States for consumption and the withdrawal from warehouse for consumption of cotton textiles in Category 26 (duck only) produced or manufactured in Brazil for the 12-month period beginning June 9, 1969 and extending through June 8, 1970. Under the authorities referred to in the aforementioned directive of June 9, 1969, and under the terms of that directive you are directed to permit, effective as soon as possible, and for the period extending through June 8, 1970, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles in Category 26 (duck only) in excess of the level of restraint established by the directive of June 9, 1969, for the period extending from June 9, 1969 through June 8, 1970.[2] Cotton textiles entered for consumption or withdrawn from warehouse for consumption under the authority of this paragraph shall be charged against the level of restraint established by this directive for the period beginning June 9, 1970, and extending through June 8, 1971.

A detailed description of Category 26 (duck only) in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 17, 1968 (33 F.R. 582), and amendments thereto on March 15, 1968 (33 F.R. 4600).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Brazil and with respect to imports of cotton textiles and cotton textile products from Brazil have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. IV, 1965-68). This letter will be published in the FEDERAL REGISTER.

Sincerely,

MAURICE H. STANS,
Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[F.R. Doc. 70-7403; Filed, June 12, 1970; 8:47 a.m.]

[1] Only T.S.U.S.A. Nos.:
320...01 through 04, 06, 08
321...01 through 04, 06, 08
322...01 through 04, 06, 08
326...01 through 04, 06, 08
327...01 through 04, 06, 08
328...01 through 04, 06, 08

[2] As of May 1, 1970, that level of restraint had been exhaused by entries.

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 10, 1970.

Protest to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41974—*Motor fuel antiknock compound to Baton Rouge, La.* Filed by Southwestern Freight Bureau, agent (No. B-161), for interested rail carriers. Rates on motor fuel antiknock compound, in tank carloads, as described in the application, from Bayport, East Baytown, and Houston, Tex., to Baton Rouge, La.

Grounds for relief—Rate relationship.

Tariff—Supplement 22 to Southwestern Freight Bureau, agent, tariff ICC 4877.

AGGREGATE-OF-INTERMEDIATES

FSA No. 41975—*Motor fuel antiknock compound to Baton Rouge, La.* Filed by Southwestern Freight Bureau, agent (No. B-162), for interested rail carriers. Rates on motor fuel antiknock compound, in tank carloads, as described in the application, from Bayport, East Baytown, and Houston, Tex., to Baton Rouge, La.

Grounds for relief—Maintenance of depressed rates without use of such rates as factors in constructing combination rates.

Tariff—Supplement 22 to Southwestern Freight Bureau, agent, tariff ICC 4877.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 70-7412; Filed, June 12, 1970; 8:47 a.m.]

[Notice 547]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 10, 1970.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-71543. By order of May 26, 1970, the Motor Carrier Board approved the transfer to Arizona-Western Express, Inc., Los Angeles, Calif., of the operating rights in certificates Nos. MC-115538 and MC-115538 (Sub-No. 3) issued November 1, 1955, and February 13, 1961, respectively, to Rose Hearsh and Irwin L. Hearsh, a partnership, doing business as Hearsh Bros., Los Angeles, Calif., authorizing the transportation of seed, from points in Arizona within 25 miles of Yuma, Ariz., including Yuma, to Los Angeles, Arlington, Berkeley, Downey, Norwalk, Blythe, and Los Angeles Harbor, Calif.; fertilizer, bagging and ties for baling cotton, feed, and waxed paper, from Los Angeles and Los Angeles Harbor, Calif., to points in Arizona within 25 miles of Yuma, Ariz., including Yuma; hay and alfalfa straw, from points in Arizona within 25 miles of Yuma, Ariz.,

including Yuma, to points in Los Angeles County, Calif.; farm machinery, agricultural commodities, bagging and ties for baling cotton, and empty containers for farm produce, between points in Arizona within 25 miles of Yuma, on the one hand, and, on the other, points in California within 25 miles of Brawley, Calif., including Brawley; insecticides, fertilizer, lumber, and uncrated furniture, from Los Angeles, Calif., to Yuma, Ariz., and points in Arizona within 50 miles of Yuma; and bananas, from points in the Los Angeles, Calif., commercial zone and the Los Angeles Harbor, Calif., commercial zone to Phoenix and Tucson, Ariz. Ernest D. Salm, 3846 Evans Street, Los Angeles, Calif. 90027, registered practitioner for applicants.

No. MC–FC–72002. By order of May 26, 1970, the Motor Carrier Board approved the transfer to Piedmont Movers, Inc., 422 Spring Street, Burlington, N.C. 27215, of the operating rights in certificates Nos. MC–105854, MC–105854 (Sub-No. 2), and MC–105854 (Sub-No. 3) issued July 18, 1968, August 13, 1968, and May 14, 1969, respectively, to Leonard L. Carpenter, doing business as Carpenter Van Lines, 6301 East 120th Street, Grandview, Mo. 64030, and that portion of the operating rights in No. MC–128838 acquired by Leonard L. Carpenter, doing business as Carpenter Van Lines in No. MC–FC–71108 authorizing the transportation of household goods between points and areas in Colorado, Connecticut, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin.

No. MC–FC–72156. By order of May 26, 1970, the Motor Carrier Board approved the transfer to D. C. Cotner, Salem, Mass., of the operating rights in certificate No. MC–95510 issued August 21, 1964, to Charles R. Walker, authorizing the transportation of livestock, live chickens, and fertilizer and feed from and to specified points in Illinois and Missouri. J. Max Price, 103 Center Street, Salem, Mo. 65560, attorney for applicants.

No. MC–FC–72157. By order of May 26, 1970, the Motor Carrier Board approved the transfer to Henry Murcer and Harry Meeker, a partnership, doing business as Kingsland Paper Haulage, Lyndhurst, N.J., of the operating rights in permits Nos. MC–127925 (Sub-No. 1) and MC–127925 (Sub-No. 2) issued November 30, 1967, and November 22, 1967, respectively to Kingsland Paper Haulage, Inc., Lyndhurst, N.J., authorizing the transportation of scrap or waste paper between specified points in New York, New Jersey, and Pennsylvania. George A. Olsen, Registered Practitioner, 69 Tonnele Avenue, Jersey City, N.J. 07306, representative for applicants.

No. MC–FC–72164. By order of May 26, 1970, the Motor Carrier Board approved the transfer to Nosal Brothers Express, Inc., 37 Hebron Avenue, Glastonbury, Conn. 06033, of certificate of registration No. MC–97671 (Sub-No. 1) issued December 31, 1963, to Carl J. Nosal and William J. Nosal, doing business as Nosal Brothers Express, Glastonbury, Conn., evidencing a right to engage in transportation in interstate commerce as described in certificate C–399 dated August 9, 1961, issued by the Public Utilities Commission of Connecticut.

No. MC–FC–72168. By order of May 26, 1970, the Motor Carrier Board approved the transfer to Interstate Industries, Inc., Oklahoma City, Okla., of the operating rights in certificate No. MC–82733 (Sub-No. 3) issued November 19, 1958, to Virgil Waugh, doing business as Virgil Waugh Truck Service, Fairview, Okla., authorizing the transportation of machinery, equipment, materials, and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, and their products and byproducts; and machinery, materials, equipment, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing and picking up of main or trunk pipelines, between points in Kansas and Oklahoma. Rufus H. Lawson, 106 Bixler Building, Post Office Box 75124, Oklahoma City, Okla. 73107, attorney for applicants.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 70–7411; Filed, June 12, 1970; 8:47 a.m.]

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FEDERAL REGISTER

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Saturday, June 13, 1970 • Washington, D.C.

PART II

DEPARTMENT OF THE INTERIOR

•

BUREAU OF LAND MANAGEMENT

Reorganization and Revision of Chapter

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

Title 43—PUBLIC LANDS: INTERIOR

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

REORGANIZATION AND REVISION OF CHAPTER

In the interest of greater efficiency and improved public service, the regulations of the Department of the Interior relating to lands administered by the Bureau of Land Management contained in Chapter II of Title 43 of the Code of Federal Regulations are being rearranged and renumbered to the extent indicated to agree with the arrangement and common numbering system used in the Bureau's internal directives, record files and other controls. The regulations as reorganized have been:

a. Rearranged and retitled to conform to a revised subject function outline.

b. Renumbered under an integrated paperwork management numbering system: A single system employed for the codification of regulations, internal directives, correspondence, record files, forms, and reports.

c. Modernized to eliminate some obsolete and repetitious material.

d. Indexed alphabetically.[1]

A redesignation table for the redesignated portions of chapter II is set forth below. This table lists the old part and section numbers and the newly redesignated numbers.

The reorganization and redesignation are effective upon publication in the FEDERAL REGISTER. It is the Department's intent in this revision to make no substantive changes in the regulations. The complete text is set forth below.

WALTER J. HICKEL,
Secretary of the Interior.

MAY 12, 1970.

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[1] Index available from Bureau of Land Management, Department of the Interior, Washington, D.C. 20240.

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2234.1–4(a) (1), (2), (3)	2802.2–1 (a), (b), (c)
2234.1–4(b)(1)	2802.2–2
2234.1–4(b)(2)	2802.2–3
2234.1–5(a)	2802.3–1
2234.1–5(b) (1), (2)	2802.3–2 (a), (b)
2234.1–5(c)(1)	2802.4–1
2234.1–5(c)(2)	2802.4–2
2234.1–5(d)	2802.5
2234.1–6	2802.1–7
2234.2–1(a)(1)	2841.0–3(a); 2841.1(a)
2234.2–1(a) (2), (3)	2841.1 (b), (c)
2234.2–1(b)(1)(i) (a) to (h).	2841.2–1(a)(1) (i) to (viii)
2234.2–1(b)(1)(ii)	2841.2–1(a)(2)
2234.2–1(b)(2)	2841.2–1(b)
2234.2–1(c) (1), (2)	2841.2–1 (c), (d)
2234.2–1(d) (1) to (11)	2841.2–2 (a) to (k)
2234.2–1(e)(1)	2841.3–1
2234.2–1(e)(2)	2841.3–2
2234.2–1(f)(1)	2841.4–1
2234.2–1(f)(2)	2841.4–2
2234.2–2(a)	2842.0–3
2234.2–2(b)	2842.1(a)
2234.2–2(c), (1), (2)	2842.2–1(a) (1), (2)
2234.2–2(c)(3)	2841.1(b)
2234.2–2(d)	2842.2–1(b)
2234.2–2(e)	2842.2–1(c)
2234.2–2(f)	2842.2–2
2234.2–3(a)(1)(i)(ii)	2811.0–3 (a), (b)
2234.2–3(a)(2)(i)	2811.0–5
2234.2–3(a)(2)(ii)	2811.1
2234.2–3(b)(1) (i), (ii)	2812.0–3 (a), (b)
2234.2–3(b)(2) (i) to (ix).	2812.0–6 (a) to (i)
2234.2–3(b)(3) (i) to (xii).	2812.0–5 (a) to (l)
2234.2–3(b)(4)(i)	2812.2–1
2234.2–3(b)(4)(ii)	2812.2–2
2234.2–3(b)(5)	2812.2–3
2234.2–3(b)(6)(i)	2812.1–1
2234.2–3(b)(6)(ii)	2812.1–2
2234.2–3(b)(6)(iii)	2812.1–3
2234.2–3(b)(7)(i)	2812.3–1
2234.2–3(b)(7)(ii)	2812.3–2
2234.2–3(b)(7)(iii)	2812.3–4
2234.2–3(b)(7)(iv)	2812.3–3
2234.2–3(b)(8)	2812.3–5
2234.2–3(b)(9)	2812.3–6
2234.2–3(b)(10)(i)	2812.3–7(a)
2234.2–3(b)(10)(ii)	2812.3–7(b)
2234.2–3(b)(11) (i) to (iv).	2812.4–1 (a) to (d)
2234.2–3(b)(12)	2812.4–2
2234.2–3(b)(13) (i) to (iii).	2812.4–3 (a) to (c)
2234.2–3(b)(14) (i) to (iv).	2812.4–4 (a) to (d)
2234.2–3(b)(15)	2812.5–1
2234.2–3(b)(16) (i) to (iii).	2812.5–2 (a) to (c)
2234.2–3(b)(17)	2812.5–3
2234.2–3(b)(18) (i), (ii)	2812.6–1 (a), (b)
2234.2–4(c)(2)	2821.6–2
2234.2–5(a)	2822.0–3
2234.2–5(b)(1)	2822.2–1; 2822.2–2; 2822.1–1
2234.2–5(b)(2)	2822.2–2(b)
2234.2–5(c) (1), (2), (3)	2822.1–2 (a), (b), (c)
2234.3–1(a) (1) to (4)	2871.0–3 (a) to (d)

Old	New
2234.3–1(b) (1), (2)	2871.1(a) (1), (2)
2234.3–1(b) (3)	2871.1(b)
2234.3–1(c)	2871.1(c)
2234.3–1(d) (1), (2)	2871.0–8 (a), (b)
2234.3–2(a) (1), (2)	2872.0–3 (a), (b)
2234.3–2(b) (1)	2872.1(a)
2234.3–2(b) (2) (i) to (vi).	2872.1(b) (1) to (6)
2234.3–2(c)	2872.2
2234.3–2(d)	2872.3
2234.3–2(e) (1), (2)	2872.4 (a), (b)
2234.3–2(f) (1), (2), (3)	2872.5 (a), (b), (c)
2234.3–2(g)	2872.6
2234.4–1(a) (1)	2850.0–3(a); 2862.0–3(a); 2873.0–3(a)
2234.4–1(a) (2)	2850.0–3(b); 2861.0–3; 2862.0–3(b)
2234.4–1(a) (3)	2850.0–3(c); 2873.0–3(b)
2234.4–1(a) (4)	2850.0–5(a); 2861.0–5(a); 2873.0–5(a)
2234.4–1(b) (1) (i)	2851.2–1(b) (1); 2861.1(a); 2862.1(a); 2873.1(a)
2234.4–1(b) (1) (ii)	2851.2–1(b) (2); 2861.1(b); 2862.1(b)
2234.4–1(b) (2) (i), (ii)	2873.1(b) (1), (2)
2234.4–1(b) (2) (iii)	(deleted)
2234.4–1(b) (2) (iv)	2851.2–1(c) (5); 2861.1(c); 2862.1(c)
2234.4–1(b) (3)	2861.1(d); 2873.1(c)
2234.4–1(b) (4) (i) to (iv).	2851.2–1(c) (1) to (4)
2234.4–1(c) (1) to (5)	2851.1–1(a) (1) to (5)
2234.4–1(c) (6)	2851.2–1(a)
2234.4–1(c) (7)	2850.0–6
2234.4–1(c) (8)	2851.1–1(b)
2234.4–2	2851.3
2234.5–1(a) (1), (2)	2881.0–3 (a), (b)
2234.5–1(a) (3)	2881.0–8
2234.5–1(b)	2881.1(a)
2234.5–1(c)	2881.1(b)
2234.5–1(d)	2881.2
2234.5–1(e)	2881.3
2234.5–2(a) (1) (i), (ii), (iii)	2882.0–3 (a), (b), (c)
2234.5–3(a)	2883.0–3
2234.5–3(b) (1), (2), (3)	2800.0–5 (a), (b), and (d)
2234.5–3(b) (4)	2883.0–5
2234.5–3(c) (1) (i)	2883.2–1(a)
2234.5–3(c) (1) (ii) (a) to (e)	2883.2–1(b) (1) to (5)
2234.5–3(c) (2), (i), (ii), (iii)	2883.2–1(c) (1), (2), (3)
2234.5–3(c) (3)	2883.2–1(d)
2234.5–3(c) (4) (i) to (vi)	2883.1(a) (1) to (6)
2234.5–3(d)	2883.2–2
2234.5–3(e)	2883.1(c)
2234.5–3(f) (1), (2)	2883.2–3 (a), (b)
2234.5–3(g)	2883.2–4
2234.5–3(h)	2883.1(b)
2234.6–1	2891.0–3
2234.6–2	2891.1–1
2234.6–3	2891.1–2
2234.6–4	2891.1–3
2234.7–1	2892.0–3
2234.7–2	2892.0–5
2234.7–3(a)	2892.0–8
2234.7–3(b)	2892.0–6
2234.7–3(c)	2892.1
2234.7–4	2892.2
2234.8–1	2893.0–3
2234.8–2	2893.1
2235.1–1(a)	2911.0–3
2235.1–1(b)	2911.0–8
2235.1–1(c)	2911.1–1
2235.1–1(d) (1) to (4)	2911.2–1 (a) to (d)
2235.1–1(e)	2911.2–2
2235.1–1(f)	2911.1–2(a)
2235.1–1(g)	2911.1–2(b)
2235.1–1(h)	2911.1–2(c)
2235.1–1(i)	2911.1–2(d)
2235.1–1(j)	2911.1–2(e)
2235.1–1(k)	2911.1–2(f)
2235.1–1(l)	2911.1–2(g)
2235.1–1(m)	2911.1–3
2235.1–1(n)	2911.2–3
2235.1–2(a) (1), (2)	2640.0–3 (a), (b)
2235.1–2(b) (1) to (7)	2640.0–5 (a) to (g)
2235.1–2(c)	2641.1
2235.1–2(d)	2641.2
2235.1–2(e)	2641.3
2235.1–2(f)	2641.4
2235.2–1	2916.0–3
2235.2–2	2916.0–6
2235.2–3	2916.0–8
2235.2–4	2916.2–1
2235.2–5	2916.2–2
2235.2–6	2916.2–3
2235.2–7	2916.1–1
2235.2–8	2916.1–2
2235.2–9	2916.2–4
2236.0–2	2920.0–2
2236.0–3	2920.0–3
2236.0–5	2920.0–5
2236.1–1	2920.1
2236.1–2	2920.2
2236.1–3	2920.3
2236.1–4	2920.4
2236.1–5	2920.5
2236.1–6	2920.6
2236.2–1(a)	2921.0–7
2236.2–1(b)	2921.1
2236.2–1(c)	2921.2
2236.2–1(c) (1) to (4)	2921.2 (a) to (d)
2236.2–2(a)	2922.0–7
2236.2–2(b) (1) to (4)	2922.1 (a) to (d)
2236.2–3(a)	2923.1
2236.2–3(b)	2923.2
2236.2–3(c)	2923.3
2236.2–3(d) (1)	2923.4–1
2236.2–3(d) (2)	2923.4–2
2236.2–4(a)	2924.1
2236.2–4(b)	2924.2
2236.2–4(b) (1)	2924.2(a)
2236.2–4(b) (2)	2924.2(b)
2236.2–4(b) (3)	2924.2(c)
2236.2–4(c) (1)	2924.3(a)
2236.2–4(c) (2)	2924.3(b)
2236.2–4(c) (2) (i)	2924.3(b) (1)
2236.2–4(c) (2) (ii)	2924.3(b) (2)
2236.2–4(c) (2) (iii)	2924.3(b) (3)
2236.2–4(c) (3)	2924.3(c)
2242.0–3	2760.0–3
2242.0–6	2760.0–6
2242.1–1	2761.1
2242.1–2	2761.2
2242.2–1	2762.1
2242.2–2	2762.2
2242.2–3	2762.3
2242.2–4	2762.4
2242.2–5	2762.5
2242.2–6	2762.6
2242.2–7	2762.7
2242.2–8	2762.8
2242.2–9	2762.9
2242.3–1(a) (1)	2763.0–3
2242.3–1 (a) (2), (b)	2763.0–8 (a), (b)
2242.3–2	2763.1
2242.3–3	2763.2
2242.3–4	2763.3
2242.3–5	2763.4
2242.3–6	2763.5
2242.3–7	2763.6
2242.3–8	2763.7
2242.3–9	2763.8
2242.4–2	2764.1
2242.4–3	2764.2
2242.4–4	2764.3
2242.4–5	2764.4
2242.5–1	2765.1
2242.6–1	2766.1
2242.8–1	2761.3
2242.9–1(a)	2565.0–7
2242.9–1(b)	2565.0–3
2242.9–2(a), (b), (c)	2565.1 (a), (b), (c)
2242.9–2(d) (1)	2565.2(a)
2242.9–2(d) (2)	2565.2(b)
2242.9–2(e)	2565.2(c)
2242.9–2(f)	2565.2(d)
2242.9–2(g)	2565.3(a)
2242.9–2(h)	2565.3(b)
2242.9–2(i)	2565.3(c)
2242.9–2(j)	2565.4(a)
2242.9–2(k)	2565.4(b)
2242.9–2(l)	2565.5(a)
2242.9–2(m)	2565.5(b)
2242.9–2(n) (1), (2), (3)	2565.6 (a), (b), (c)
2242.9–2(o)	2565.7
2242.9–2(p)	2565.8
2242.9–2(q)	2565.9
2242.9–3(a)	2564.0–3
2242.9–3(b)	2564.0–4(a)
2242.9–3(c)	2564.1
2242.9–3(d)	2564.0–4(b)
2242.9–3(e)	2564.2
2242.9–3(f)	2564.3
2242.9–3(g)	2564.4
2242.9–3(h)	2564.5
2242.9–3(i)	2564.6
2242.9–3(j) (1), (2), (3)	2564.7 (a), (b), (c)
2242.9–4	2566.0–7
2242.9–5	2566.0–3
2242.9–5(a)	2566.1(a)
2242.9–5(b)	2566.1(b)
2242.9–5(c)	2566.1(c)
2242.9–5(d)	2566.2(a)
2242.9–5(e)	2566.2(b)
2242.9–5(f)	2566.2(c)
2242.9–5(j)	2566.0–3(a)
2242.9–5(k) (1) (i)	2566.0–3(b) (1)
2242.9–5(k) (1) (ii)	2566.0–3(b) (2)
2242.9–5(k) (1) (iii)	2566.0–3(b) (3)
2242.9–5(k) (1) (iv)	2566.0–3(b) (4)
2242.9–5(k) (2)	2566.0–3(c)
2242.5(k) (3) (i) to (iii)	2566.0–3(d) (1) to (3)
2243.0–1(a)	2710.0–1
2243.0–1(b)	2720.0–1
2243.0–2	2710.0–2
2243.0–3	2710.0–3
2243.0–5	2710.0–5
2243.0–7	2710.0–8
2243.1–1 (a), (b)	2711.1 (a), (b)
2243.1–2	2711.2
2243.1–3	2711.3
2243.1–4	2711.4
2243.1–5(a)	2711.5
2243.1–5(b), (1), (2), (3)	2711.6 (a), (b), (c)
2243.1–5(c)	2711.7
2243.1–5(d)	2711.8
2243.1–6	2711.1(c)
2243.2–1(a)	2720.0–3
2243.2–1(b) (1) to (4)	2720.0–2 (a) to (d)
2243.2–1(c) (1) to (6)	2720.0–5 (a) to (f)
2243.2–2	2720.0–8
2243.2–3(a)	2721.2(a)
2243.2–3(b)	2721.1(a)
2243.2–3(c)	2721.1(e)
2243.2–3(d)	2721.1(b)
2243.2–4	2721.3
2243.2–5	2721.4
2243.2–6(a)	2721.2(a)
2243.2–6(b)	2721.2(b)
2243.2–6(c)	2721.2(c)
2243.2–6(d)	2721.2(d)
2243.2–6(e)	2721.5
2243.2–7	2721.6
2244.0–1	2200.0–1
2244.0–2	2200.0–2
2244.0–5	2200.0–5
2244.1	2200.0–8
2244.1–1	2203.2
2244.1–2(a)	2201.2
2244.1–2(b) (1)	2202.1
2244.1–2(b) (2)	2202.2
2244.1–2(b) (3)	2202.3
2244.1–2(c)	2201.1

Old	New
2244.1-2(d)	2202.4
2244.1-2(e)(1)	2203.4-1
2244.1-2(e)(2)	2203.4-2
2244.1-2(e)(4)	2203.4-3
2244.1-2(f)	2203.5
2244.1-2(g)(1)	2203.3-1
2244.1-2(g)(2)	2203.3-2
2244.1-2(h)	2202.5
2244.1-3	2203.6
2244.1-4(a)(1)	2203.1
2244.1-4(a)(2)	2204.1
2244.1-4(b)(1)	2204.2-1
2244.1-4(b)(1)(i)	2204.2-1(a)
2244.1-4(b)(1)(ii)	2204.2-1(b)
2244.1-4(b)(2)	2204.2-2
2244.1-4(b)(3)	2204.2-3
2244.1-5(a)	2204.4
2244.1-5(b)	2204.5
2244.1-6	2201.3
2244.1-6(a)	2201.3-1
2244.1-6(b)	2201.3-2
2244.1-6(c)	2201.3-3
2244.1-6(d)	2202.6
2244.2-1(a)	2211.0-3(a)
2244.2-1(b)	2211.0-8(a)
2244.2-1(c)	2211.0-8(b)
2244.2-1(d)	2211.0-8(c)
2244.2-1(e)	2211.1-1
2244.2-1(f)	2211.2
2244.2-1(g)	2211.1-2
2244.2-1(h)	2211.1-3
2244.2-2	2211.0-6
2244.2-3 (a), (b)	2211.0-3(b) (1), (2)
2244.3-1	2230.0-3
2244.3-2	2230.1
2244.4-1(a)	2260.0-3
2244.4-1(b)(1), (2)(i)	2260.0-6 (a), (b)
2244.4-1(b)(2)(ii)	2260.0-2
2244.4-2(a)	2220.0-3
2244.4-3 (a), (b), (c)	2271.0-3 (a), (b), (c)
2244.4-3(d)	2271.1
2244.4-4(a)	2240.1
2244.4-4(b)	2240.0-3(a)
2244.4-4(c)	2240.0-3(b)
2244.4-4(d)	2240.0-3(c)
2244.4-4(e)	2240.0-3(d)
2244.4-4(f)	2240.0-3(e)
2244.4-4(g)	2240.0-3(f)
2244.4-4(h)	2240.0-3(g)
2244.4-4(j)	2240.0-3(h)
2244.4-4(j)	2240.0-3(i)
2244.4-5(a)	2250.0-3(a)
2244.4-5(b)	2250.0-3(b)
2244.4-5(c)	2250.0-3(c)
2244.4-6	2212.1
2244.4-7	2273.0-3
2244.5-1	2272.1
2251.0-3	2781.0-3
2251.1	2781.1
2251.1-1	2781.1-1
2251.1-2	2781.1-2
2251.1-3	2781.1-3
2251.1-5	2781.2
2251.2	2781.3
2251.3	2781.4
2251.4	2781.5
2251.5	2781.6
2253.0-3	2783.0-3
2253.1	2783.1
2253.2	2783.2
2253.3	2783.3
2253.4	2783.4
2253.5	2783.5
2253.6	2783.6
2253.7	2783.7
2253.8	2783.8
2253.9	2783.9
2254.0-3	2784.0-3
2254.0-6	2784.1
2254.0-7	2784.0-8(a)
2254.1-1	2784.2-1
2254.1-2	2784.2-2
2254.1-3	2784.2-3
2254.1-4	2784.2-4
2254.1-5	2784.2-5
2254.1-6	2784.2-6
2254.2	2784.3
2254.3	2784.4
2254.4	2784.5
2254.5	2784.6
2254.6	2784.7
2254.7	2784.8
2254.8	2784.0-8(b)
2254.9	2784.9
2311.0-3(a)	2300.0-3(a)(1)
2311.0-3(b)	2300.0-3(a)(2)
2311.0-3(c)	2300.0-3(a)(3)
2311.0-3(d)	2300.0-3(b)
2311.0-5	2300.0-5
2311.0-6	2351.1
2311.1-1 (a), (b)	2351.2 (a), (b)
2311.1-1(c)	2351.2-1
2311.1-2(a)	2351.3(a)
2311.1-3	2351.4
2311.1-4(a)	2351.5(a)
2311.1-4(b)	2351.5(b)
2311.1-4(c)	2353.1(a)
2311.1-4(d)	2353.1(b)
2311.2	2351.6
2312.0-1	2370.0-1
2312.0-3	2370.0-3
2312.1-1 (a), (b)	2372.1 (a), (b)
2312.1-1(c)	2372.2
2312.1-2(a)	2373.3
2312.1-2(b) (1) to (5)	2374.2 (a) to (e)
2312.1-3	2374.1
2315.1	2357.1
2321.1-1 (a), (b)	2311.0-3(a) (1), (2)
2321.1-1(c) (1), (2)	2311.0-8(a) (1), (2)
2321.1-1(d)(1)	2311.1(a)
2321.1-1(d)(2)	2311.1(b)
2321.1-1(d)(3)	2311.0-8(a)(3)
2321.1-1(e) (1) to (3)	2311.1(d) (1) to (3)
2321.1-1(e)(4)	2311.1(c)
2321.1-2(a)(1)	2311.0-3(b)(1)
2321.1-2(b)	2311.0-3(b)(2)
2321.1-2(c)	2311.2(a)
2321.1-2(d)	2311.2(b)
2321.1-3(a)	2311.3(a)
2321.1-3(b)	2311.3(e)
2321.1-3(c)	2311.3(b)
2321.1-3(d)	2311.3(c)
2321.1-3(e)	2311.3(d)
2321.1-3(f)	2311.3(f)
2321.1-3(g)	2311.3(g)
2321.1-4(a)	2311.4(a)
2321.1-4(b)	2311.4(b)
2321.1-4(c)	2311.4(c)
2321.1-4(d)	2311.4(e)
2321.1-4(f)	2311.4(d)
2321.3-1	2313.0-3
2321.3-2	2313.1
2321.6-1(a) (1), (2)	2317.0-3 (a), (b)
2321.6-2(a)	2317.1(a)
2321.6-2(b)	2317.0-7
2321.6-2(c)	2317.1(b)
2323.0-3	2322.0-3
2323.0-5	2322.0-5
2323.1	2322.1
2323.2	2322.2
2323.4	2322.3
2325.1	2325.1
2410.0-2	2400.0-2
2410.0-3	2400.0-3
2410.0-4	2400.0-4(a)
2410.0-5	2400.0-5
2410.1-1(a)	2410.1
2410.1-1(a) (1) to (4)	2410.1 (a) to (d)
2410.1-1(b)	2410.2
2410.1-2	2420.1, 2420.2
2410.1-2 (a), (b), (c)	2420.2 (a), (b), (c)
2410.1-3	2430.1
2410.1-3(a) (1), (2)	2430.2 (a), (b)
2410.1-3(b) (1) to (4)	2430.3 (a) to (d)
2410.1-3(c) (1) to (4)	2430.4 (a) to (d)
2410.1-3(d) (1) to (7)	2430.5 (a) to (g)
2410.1-3(e)	2430.6
2410.1-4	2440.1
2410.1-4(a)	2440.2
2410.1-4(b)(1)(i) to (iv).	2440.3(a) (1) to (4)
2410.1-4(b)(2)	2440.3(b)
2410.1-4(c)	2440.4
2411.0-3	2400.0-4(b)
2411.1-1(a)	2450.1
2411.1-1(b)	2450.2
2411.1-1(c)(1)	2450.3(a)
2411.1-1(c)(2)(i) to (iii).	2450.3(b) (1) to (3)
2411.1-1(d) (1), (2), (3)	2450.4 (a), (b), (c)
2411.1-1(e) (1) to (4)	2450.5 (a) to (d)
2411.1-1(f) (1), (2)	2450.6 (a), (b)
2411.1-2(a)	2462.0-3
2411.1-2(b)	2462.1
2411.1-2(c)	2462.2
2411.1-2(d)	2462.3
2411.1-2(e)(1)	2462.3(b) (1) to (4)
2411.1-2(e)(2) (i) to (iv)	2462.4(a)
2411.1-2(e)(3) (i) to (v)	2462.4(c) (1) to (5)
2411.1-3	2450.7
2411.1-4	2450.8
2411.1-5	2470.1
2411.1-6	2470.2
2411.2	2461.0-1
2411.2(a)	2461.1
2411.2(b)	2461.2
2411.2(c)	2461.3
2411.2(d)	2461.4
2411.2(e)	2461.5
2411.2(e)(1)	2461.5(a)
2411.2(e)(2) (i) to (iv)	2461.5(b) (1) to (4)
2411.2(e)(3) (i) to (iv)	2461.5(c) (1) to (4)
3001.0-5 (a)-(e)	3000.0-5 (a) to (e)
3001.0-5(f)	3500.0-5(f)
3001.0-6	3000.5; 3506.2-1
3001.0-7	3000.2
3001.0-8	3000.4
3100.0-2	3100.0-3; 3500.0-3(a); 3500.1-1
3100.0-5	3100.0-5; 3500.0-5(e)
3100.1	3101.1-1(a); 3501.1-5
3100.2	3101.1-3(b); 3501.1-2
3100.3	3100.4; 3500.2
3101.1	3102.1-1; 3502.1-1
3101.2	3102.1-1(a); 3502.1-1
3101.3	3101.1-5(c)(6)
3102.1	3103.2-1(a); 3503.2
3102.2 (a), (b)	3103.1-2 (a), (b); 3503.1-2 (a), (b)
3102.3	3103.3-7; 3503.3-2(d)
3102.4 (a) to (f)	3103.3-8; 3503.3-2(e)
3102.5	3101.1-6
3103.1	3109.4-1; 3501.3-2(b)
3103.2	3109.4-2; 3501.3-2(c)
3104.1 (a), (b)	3000.6; 3511.1-6(b)
3104.2 (a), (b)	3102.1-2 (a) to (e); 3502.1-2 (a) to (e)
3104.3	3100.09
3106.1	3104.3; 3504.3
3107.0-1	3045.0-1
3107.0-5	3045.0-5
3107.1-1	3045.1-1
3107.1-2	3104.9-1
3107.1-3	3045.2
3107.1-4	3104.9-5
3120.1-1	3100.0-3(a)(2)
3120.1-2(a)	3101.1-5 (a), (b), (c)
3120.1-2(a)(1)	3101.1-5(a)(1)(i)
3120.1-2(a)(2)	3101.1-5(b)

Old	New
3120.1-2(a)(3)	3101.1-5(c)(1)
3120.1-2(b)	3101.1-5(d)
3120.1-2(c)	3101.1-5(e)(1)
3120.1-2(d)	3101.1-5(e)(2)
3120.1-2(e)(1)	3101.1-5(c)(2)
3120.1-2(e)(2)	3101.1-5(c)(3)
3120.1-2(e)(3)	3101.1-5(c)(4)
3120.1-2(e)(4)	3101.1-5(c)(5)
3120.1-3 (a) to (f)	3100.5
3120.2-1	3101.1-1(a)(6)
3120.2-2	3100.7
3120.3-1	3100.3-1
3120.3-2(a)	3100.3-2
3120.3-2(b)	3107.9-1
3120.3-3(a)(1)	3101.3-3(a)
3120.3-3(a) (2), (4)	3101.3-3(b)
3120.3-3(a)(3)	3101.3-3(c)
3120.3-3(b)(1)	3101.3-3(a)(1)
3120.3-3(b)(2)	3101.3-1
3120.3-3(b) (3), (4)	3101.3-3(b)(1)
3120.3-3(c)	3101.3-2 (a), (b)
3120.3-3(d)	3101.3-2(c)(1)
3120.3-3(e)	3101.3-2(c)(2)
3120.3-3(e) (note)	3101.3-2(d)
3120.4	3102.2-2
3120.5	3101.1-2
3120.6	3101.1-3(a)
3121.1	3105.1-2; 3105.1-3; 3105.1-4; 3105.1-5
3121.2	3105.0-7; 3105.1-1
3121.3(a)	3105.2-2
3121.3(b)	3105.2-1
3121.3(c)	3105.2-3
3121.4 (a), (b)	3105.3
3121.5	3105.4
3121.6 (a), (b)	3105.5
3122.1(a)	3101.1-1
3122.1(b)	3110.1-1, 3120.1-1
3122.1(c)	3130.1
3122.1(d)	3130.2
3122.2	3110.1-2; 3120.1-2; 3520.2-2(b)
3122.3 (a), (b)	3100.6
3122.4-1	3107.7-1
3122.4-2 (a), (b)	3107.8-1; 3107.8-2
3122.4-3	3107.8-3
3122.4-4	3107.8-4
3123.1 (a), (b)	3111.1-1(a)(1)
3123.1(c)	3110.1-7(a)
3123.1(d)	3110.1-3(a); 3111.1-1(a)(1)
3123.2(a)	3103.1-3
3123.2(b)	3103.3-1
3123.2(c)(1)	3102.6-1(a)(1)
3123.2(c)(2)	3102.1; 3102.2-1
3123.2(c)(3)	3102.7
3123.2(d)(1)	3102.6-1(a)(2)
3123.2(d)(2)	3102.6-1(a)(3)
3123.2(e)	3102.5-1
3123.2(e)(1)	3102.5-2; 3502.3-2; 3502.5-2
3123.2(f)(1)	3102.3-1; 3502.3-1 (b)(1)
3123.2(f)(2)	3102.3-1(a); 3502.3-1(b)(1)
3123.2(g)	3102.4
3123.2(h)	3130.3-1(a)
3123.3(a)	3112.5-2
3123.3(b)	3111.1-(a)(4)
3123.3(c)	3110.1-8
3123.4	3111.1-1(a)(4)(i)
3123.5(a)	3110.1-4(a)
3123.5(b)	311.1-1(a)(3)
3123.5(c)	3110.1-5
3123.5(d)	3106.3-4
3123.6	3102.8
3123.7	3110.1-6
3123.8 (a) to (d)	3101.1-4; 3501.1-3
3123.9(a)	3112.1-1(a)
3123.9(b)	3112.1-2
3123.9(c), (c) (1), (2), (3)	3112.2; 3112.3; 3112.4; 3112.5; 3110.1-4(b)
3123.9(d)	3110.1-6(b)
3123.9(e)	3110.1-6(a)
3123.9(f)	3112.1-1(b)
3124.1	3120.1-3(a); 3120.2-2
3124.2	3120.2-2; 3120.2-3
3124.3	3120.1-4
3124.4(a)	3120.3; 3120.4
3124.4(b)	3120.1-3(b)
3124.5	3120.3
3125.1 (a) to (e)	3103.3-2
3125.2	3103.3-5
3125.3 (a) to (d)	3103.3-4
3125.4	3103.3-6
3126.1(a)	3104.1(b)
3126.1(b)	3104.1(c)
3126.1(c)	3104.1(a); 3104.2
3126.1(d)	3104.1; 3104.3-1 (b); 3104.4-2; 3504.1-1
3126.1(e)	3104.4-1(a); 3104.5; 3104.6; 3104.7; 3504.8
3126.2	3104.1-3
3127.1(a)	3107.1-1(a)
3127.1(b)	3107.1-1(b)
3127.1(c)	3107.1-5
3127.1(d)	3107.1-2
3127.1(e)	3107.1-3
3127.1(f)	3107.1-4
3127.1(g)	3107.1-6
3127.2(a)	3107.2-3
3127.2(b)	3107.2-2
3127.2(c) (1), (2)	3107.2-1 (a), (b)
3127.3 (a), (b)	3107.3
3127.4 (a) to (c)	3107.4
3127.5	3107.5
3128.1	3106.1-1; 3106.1-2; 3106.1-4
3128.2(a)(1)	3106.1-3
3128.2(a)(2)	3106.2-2(a)(1); 3106.3-1
3128.2(a)(3)	3103.2-1(b)
3128.2(a)(4)	3106.2-6
3128.2(b)	3106.1-5
3128.2(c)	3106.2-2; 3106.2-3 (a); 3106.2-4
3128.2(d)	3106.1-6
3128.2(e)	3106.2-3(b)
3128.2(f)	3106.2-5
3128.3	3106.2(a)(2)
3128.4	3106.2-6(a)
3128.5 (a) to (c)	3107.6
3128.6	3106.4
3129.1	3108.1
3129.2(a)	3108.2-1
3129.2(b)	3108.2-3
3129.2(c)	3108.3
3130.0-3	3500.0-3(a)(1)
3130.0-3(a)	3520.0-3(a)
3130.0-3(b)	3510.0-3(a)
3130.0-3(c)	3530.0-3
3130.1	3501.3-2(a)
3131.1(a)	3500.0-5(g)
3131.1 (a), (b)	3501.1-3
3131.1 (a), (c)	3501.1-4(a)
3131.1 (d) to (f)	3524.1-1 (a) to (d)
3131.2(a)	3502.1-1
3131.2(b)	3502.1
3131.2(c)	3502.1-1(c)
3131.2(d)	3502.1(a)(1)
3131.2(e)	3502.7
3131.3(a)	3502.2-2(a); 3503.3(b)(1); 3503.3(b)(1)(i)
3131.3(b)	3502.2-2(b)
3131.4	3501.3-2(b)(2)
3131.5-1	3505.1-1
3131.5-2	3505.2-1
3131.5-3	3505.2-3
3131.5-4	3505.2-4
3131.5-5	3505.2-2 (a), (b)
3131.5-6	3505.2-2(c)
3132.1-1 (a) to (c)	3520.1-2(a)
3132.1-1(c)	3501.1-2(b)
3132.1-2 (a) to (b)	3524.2-1
3132.1-2(d)	3503.2-1
3132.2(a) (1), (3)	3521.2-1 (a), (b)
3132.2(a)(2)	3502.2-1; 3502.3-1(a); 3502.4-1; 3502.9-1(a)
3132.2(a)(4)	3501.1-3
3132.2(b)	3502.6-1(a); 3502.6-2
3132.2(c)	3503.2-1
3132.3-1	3504.2-1(b); 3504.5; 3504.6; 3504.7
3132.3-2	3521.3-1(a)
3132.3-3	3503.3-2(b)(1)
3132.4-1	3521.2-2(c)(1)
3132.4-2	3521.2-3
3132.4-3(a)	3521.2-4(b)
3132.4-3(b)	3501.1-2(b)(2); 3502.8-1(b)(1); 3520.2-2(b); 3521.2-5(a); 3521.3-2(a); 3521.4-2(a)
3132.5	3522.2-1
3132.6	3523.1
3132.7(a)	3523.2-1
3132.7(b)	3511.4-4(a); 3523.2-1(a)
3133.1	3510.1-1; 3511.1-1; 3511.2-1(a)
3133.2	3510.1-2
3133.3	3502.2-1; 3502.3-1(a); 3502.4-1(a); 3503.2-1; 3503.3-1(a); 3511.2-1 (a), (b), (c)
3133.4(a)	3504.2-1(a); 3504.2-4
3133.4(b)	3504.2-3
3133.5(a)	3503.2-1; 3511.3-1 (a), (b); 3511.3-2 (a), (b); 3511.3-3; 3511.4-2(a)
3133.5(b)	3511.4-1 (a), (b)
3133.5(c)	3511.4-2(b); 3511.4-3(a)
3133.5(d)	3511.4-2(b)
3133.6(a)	3503.3-1(b); 3520.1-1; 3520.2-2(a); 3521.1-1(a); 3521.1-1(b); 3521.4-1(a)
3133.6(b) (1), (2)	3502.8-1; 3521.1-2(a)
3133.6(b)(3)(i)	3502.5-1
3134.1(a)	3506.1-1; 3506.2-2(a); 3506.2-2(b); 3506.2-3(a); 3506.2-5(a); 3506.3-1; 3506.3-3; 3506.4; 3506.5
3134.1(b)	3506.2-3(b); 3506.2-4
3134.1(c)	3503.2-1
3134.1(d)	3506.1-1(a)
3134.1(e)	3506.1-6
3134.2	3503.3-2(c)(3)(i)
3135.0-1	3503.3-1(d); 3530.0-1
3135.1(a)	3530.1-2(a)
3135.1(b)	3530.1-2(c)
3135.1(c)	3530.1-3
3135.2	3530.1-1(a); 3530.2-3
3135.3 (a) to (c)	3530.1-2(b) (1) to (3)
3135.3(d)	3503.2-2; 3530.1-2(b)(4)
3140.0-3(a)	3500.0-3(a)(2); 3520.0-3(a)

Old	New
3140.0-3(a) (1)	3510.0-3(a)
3140.0-3(a) (2)	3520.0-3(a)
3140.0-3(b)	3500.1-1(a); 3520.0-3(a)
3140.0-6	3501.1-1(a)
3141.1(a)	3500.05(g); 3501.1-3; 3501.1-4(b) (2)
3141.1(b)	3503.2-1; 3524.1-2(b)
3141.2(a)	3502.1-1
3141.2(b)	3502.1-3
3141.2(b) (1)	3502.2-1
3141.2(b) (2)	3502.3-1(a)
3141.2(b) (3)	3502.4-1(a) (1)
3141.2(b) (4)	3502.1
3141.2(b) (5)	3502.7
3141.3	3501.3-2(b)
3141.4	3501.3-2(a)
3142.1(a)	3502.3-1(a); 3502.4-1(a) (2); 3503.2-1; 3503.3-1; 3511.2-1 (a), (c)
3142.1(b)	3503.3-1
3142.2	3510.1-2; 3511.1-1; 3511.2-1(a)
3142.3	3504.2-1(a); 3504.2-3
3142.4	3503.2-1; 3511.3-1 (a), (b); 3511.3-2 (a), (b); 3511.4-2(a)
3142.5(a)	3511.4-1 (a), (b); 3511.4-2(b)
3142.5(b)	3511.4-3(a)
3142.5(c)	3511.4-2(b)
3142.6(a)	3503.3-1(b); 3520.1-1; 3520.2-2(a); 3521.1-1(b); 3521.4-1(a)
3142.6(b)	3501.1-2(b) (1); 3521.3-1(b)
3142.6(c) (1), (2), (4)	3502.8-1; 3521.1-2(a)
3142.6(c) (3)	3502.5-1; 3521.1-2(a)
3143.1(a)	3503.2-1; 3521.2-1(a)
3143.1(a) (1)	3521.2-1(a)
3143.1(a) (2)	3501.1-3
3143.1(b)	3502.6-1(a) (1); 3521.2-1(a)
3143.1(c)	3521.2-1(a)
3143.1(d)	3524.1-2
3143.1(e)	3520.1-2(b)
3143.2-1	3521.3-1(a)
3143.2-2	3504.2-1(b); 3504.5
3143.2-3	3503.3-2(b) (1) (i)
3143.3-1	3521.2-3(a)
3143.3-2	3521.2-4
3143.3-3	3502.8-1; 3521.2-5(a); 3521.3-2(a); 3521.4-2(a)
3143.4	3522.2-1
3143.5	3523.1
3143.6	3523.2-1
3144.1(a)	3506.1-1; 3506.2-2(a); 3506.2-3(a); 3506.2-4; 3506.2-5(a); 3506.3-1; 3506.3-3; 3506.4; 3506.5
3144.1(b)	3503.2-1
3144.1(c)	3506.1-1(a); 3506.1-2
3144.1(d)	3506.1-6
3145.1	3503.3-2(c) (1)
3150.0-3	3500.0-3(a) (3)
3150.0-3(a)	3510.0-3(a)
3150.0-3(b)	3520.0-3(a)
3150.0-3(c)	3540.0-1(a)
3150.0-4	3501.1-1(b)
3151.1(a)	3500.0-5(g); 3501.1-3; 3501.1-4(b) (3)
3151.1(b)	3524.1-3(a)
3151.1(c)	3501.1-4(a)
3151.2(a)	3502.1-1
3151.2(b)	3502.1-3(a)
3151.2(b) (1)	3502.2-1
3151.2(b) (2)	3502.3-1(a)
3151.2(b) (3)	3502.4-1
3151.2(b) (4)	3502.1
3151.2(b) (5)	3502.7
3151.3	3501.3-2(b) (2) (iii)
3151.4	3501.3-2(a)
3152.1(a)	3511.2-1(a), (c)
3152.1(b)	3502.1-1(b); 3511.2-1(a)
3152.1(c) (1)	3503.2-1
3152.1(c) (2)	3502.3-1(a); 3502.4-1
3152.1(c) (3) (i)	3502.6-1(a) (3)
3152.1(c) (3) (ii)	3502.2-1
3152.1(c) (4)	3503.3-1(a)
3152.1(d) (1) to (3)	3511.2-3; 3511.2-4
3152.1(e)	3511.2-3
3152.1(f)	3502.8-1
3152.1(g)	3511.2-4(b)
3152.1(h)	3503.3-1(a) (1)
3152.2	3510.1-2; 3511.1-1; 3511.1-2
3152.3	3504.2-1(a); 3504.2-3
3152.4(a)	3511.4-1 (a), (b)
3152.4(b)	3511.4-2(b); 3511.4-3(a)
3152.4(c)	3511.4-2(b)
3152.5(a)	3503.3-1(b); 3520.1-1; 3520.2-2(a); 3521.1-1(a), (b); 3521.4-1(a)
3152.5(b)	3501.1-2(b) (1) (i); 3521.3-1(b)
3152.5(c) (1) to (3)	3502.5-1; 3502.8-1; 3521.1-2(a)
3152.6	3511.3-1(a) (1)
3153.1	3521.2-1(a)
3152.1(a)	3503.2-1
3153.1(a) (2)	3501.1-3
3153.2-1	3521.3-1(a)
3153.2-2	3504.2-1(b); 3504.5
3153.3-1	3503.3-2(b)
3153.3-2	3521.2-3(a)
3153.3-3	3521.2-4
3153.3-4	3502.8-1; 3521.2-5(a); 3521.3-2(a); 3521.4-2(a)
3153.4	3503.2-1; 3522.1
3153.5	3523.1
3153.6	3523.2-1
3154.1(a)	3506.1-1; 3506.2-2(a); 3506.2-3(a); 3506.2-4; 3506.2-5(a); 3506.3-1; 3506.3-3; 3506.4; 3506.5
3154.1(b)	3503.2-1
3154.1(c)	3506.1-1(a); 3506.1-2
3154.1(d)	3506.1-6
3154.2	3503.3-2(c)
3155.1(a)	3503.3-1(c); 3540.0-1(a); 3540.1-2
3155.1(b)	3540.1-1(a); 3540.1-3(a)
3155.1(c)	3540.1-2(a)
3160.0-3	3500.0-3(a) (4)
3160.0-3(a)	3510.0-3(a)
3160.0-3(b)	3520.0-3(a)
3160.0-3(c)	3540.0-1(b)
3160.0-4	3501.1-1(c)
3161.1(a)	3501.1-3; 3501.1-4(b) (4); 3511.2-1(a); 3511.3-1 (a), (b); 3520.2-1(a)
3161.1(b)	3524.1-4(a)
3161.2(a)	3502.1-1
3161.2(b) (1)	3502.2-1
3161.2(b) (2)	3502.3-1(a)
3161.2(b) (3)	3502.4-1
3161.2(b) (5)	3502.7
3161.2(c)	3502.1-3(a)
3161.3-1(a)	3500.0-3(a) (4); 3503.2-1; 3503.3-1(a) 3511.2-1 (a), (c)
3161.3-1(a) (1)	3502.2-1; 3502.3-1(a); 3502.4-1
3161.3-1(a) (2)	3501.1-3
3161.3-1(b)	3502.6-1
3161.3-1(c)	3511.2-4(b)
3161.3-1(d)	3511.1-6(b)
3161.3-2	3510.1-2; 3511.1-1
3161.3-3	3503.3-1
3161.3-4	3504.2-1; 3504.2-3
3161.3-5	3503.2-1; 3511.3-1 (a), (b); 3511.3-2 (a), (b); 3511.3-3; 3511.4-2(a)
3161.3-6(a)	3511.4-1 (a), (b)
3161.3-6(b)	3511.4-2(b); 3511.4-3(a)
3161.3-6(c)	3511.4-2(b)
3161.3-7(a)	3503.3-1(b); 3520.1-1; 3520.2-2(a); 3521.1-1 (a), (b); 3521.4-1(a)
3161.3-7(b)	3501.1-2(b) (1); 3521.3-1(b)
3161.3-7(c)	3502.5-1; 3502.8-1; 3521.1-2(a)
3162.1(a)	3501.1-3(c); 3503.2-1; 3521.2-1 (a), (b)
3162.1(b)	3502.6-1; 3521.2-1(a)
3162.2	3504.2-1(b); 3504.5-1
3162.3	3503.3-2(b) (3) (i)
3162.4	3503.3-2(b) (3) (ii)
3162.5	3521.2-2(c)
3162.6	3521.2-3
3162.7 (a), (c)	3521.2-4
3162.7(b)	3521.3-5(a)
3162.8	3501.1-2(b) (2); 3502.8-1; 3520.2-2(b); 3521.2-5(a); 3521.3-2; 3521.4-2(a)
3163.1(a)	3503.1-2
3163.1(b)	3500.1-2
3163.2	3524.3-1
3163.3	3522.2-1
3164.1(a)	3506.1-1; 3506.2-2(a); 3506.2-5(a); 3506.3-1; 3506.3-3; 3506.4; 3506.5

Old	New
3164.1(b)	3503.2–1
3164.1(c)	3506.2–3(a)
3164.1(d)	3506.2–3(b)
3164.1(e)	3506.1–6
3164.1(f)	3506.1–1(a); 3506.1–2; 3506.2–4
3164.2	3503.3–2(c) (3)
3165.1	3523.1
3165.2	3523.2–1
3166.1	3503.3–1(c); 3540.0–1(b); 3540.1–2
3166.2	3540.1–1(a); 3540.1–3(b)
3180.0–3	3500.0–3(a) (5)
3180.0–3(a)	3510.0–3(a); 3510.1–1(a)
3180.0–3(b)	3520.0–3(a)
3181.1	3500.0–5(g); 3501.1–3; 3501.1–4(b) (5)
3181.2(a)	3502.1–1
3181.2(b)	3502.1–3(a)
3181.2(b)(1)	3502.2–1
3181.2(b)(2)	3502.3–1(a)
3181.2(b)(3)	3502.4–1
3181.2(b)(4)	3502.1
3181.2(b)(5)	3502.7
3181.3	3501.3–2(b)(2)
3181.4	3501.3–2(a)
3181.5	3501.1–1(d)
3182.1(a)	3502.2–1; 3502.3–1(a); 3503.2–1; 3511.2–1 (a), (c)
3182.1(b)	3503.3–1
3182.2	3510.1–2; 3511.1–1; 3511.2–1
3182.3	3504.2–1(a); 3504.2–3
3182.4	3511.4–2(b)(3)
3182.5(a)	3503.3–1(b); 3520.1–1(a); 3520.2–2(a); 3521.1–1 (a), (b); 3521.4–1(a)
3182.5(b)	3501.1–2(b)(1); 3521.3–1(b)
3182.5(c)	3502.5–1; 3502.8–1(b); 3521.1–2(a)
3182.6	3511.3–1(a)(1); 3511.4–2(a)(1)
3183.1–1	3521.3–1(a)
3183.1–2	3504.2–1(b)
3183.2–1	3503.3–2(a)
3183.2–2	3503.3–1(b)(1)
3183.2–3	3503.3–2(b)
3183.3–1(a)	3503.2–1
3183.3–1(a)(1)	3521.2–1(a)
3183.3–1(a)(2)	3501.1–3
3183.3–1(b)	3502.6–1
3183.3–2	3521.2–3(a)
3183.3–3	3521.2–4
3183.3–4	3502.6–1; 3502.8–1(b); 3521.2–5(a); 3521.3–2(a); 3521.4–2(a)
3183.4	3503.2–1; 3522.1–1
3183.5–1	3523.1–1; 3523.1–2
3183.5–2	3523.2–1(a)
3184.1(a)	3506.1–1; 3506.2–2(a); 3506.2–3(a); 3506.2–4; 3506.2–5(a); 3506.3–1; 3506.3–3; 3506.4; 3506.5
3184.1(b)	3503.2–1
3184.1(c)	3506.1–1(a)
3184.1(d)	3506.1–6
3184.1(e)	3506.2–3(b)
3185.1	3503.3–2(c)
3190.0–3	3500.0–3(a)(6); 3520.0–3(a)
3191.1(a)	3502.1–3(a); 3502.2–1; 3502.3–1; 3502.4–1(a); 3502.6–1; 3502.7; 3502.8–1; 3520.2–2(b); 3521.2–1(a)
3191.1(b)	3501.1–3; 3501.1–4(b)(6); 3502.1
3191.1(c)	3503.2–1
3191.1(d)	3521.2–3(a)
3191.2	3503.3–1(b); 3503.3–2
3191.3	3520.2–1(a)
3191.4	3500.2
3191.5	3521.3–1
3191.6	3504.2–1(b)
3210.0–3(a)	3100.0–3(b); 3500.0–3(b)(1); 3500.1–1; 3501.2–5(b); 3510.0–3(a); 3511.2–1(c)(1)
3210.0–6	3101.2–2; 3501.2–2
3211.1	3101.2–1; 3501.2–1
3211.2(a)	3109.3–1; 3501.2–6(a)
3211.2(b)	3111.1–2(a)(5); 3130.4–2; 3501.2–6(c)
3211.2(c)	3111.1–2(a)(5); 3501.2–6(b); 3501.3–3
3211.3	3111.1–2(a)(7); 3130.4–3
3212.1(a)(1)	3111.1–2(a)(6); 3502.1
3212.1(a)(2)	3101.2–3(b)(1); 3501.2–4(b)(4)
3212.1(a)(3)(i)	3101.2–3(a); 3501.2–4(a)
3212.1(a)(3)(ii)	3101.2–3(b); 3501.2–4(b)
3212.1(a)(3)(iii)	3101.2–3(b)(1); 3501.2–4(b)(4)
3212.1(a)(3)(iv)	3101.2–3(c); 3501.2–4(c)
3212.1(a)(3)(v)	3501.2–6(c)
3212.1(b)	3111.1–2(a)(3)
3212.2	3101.2–4; 3501.2–5(a)
3212.3(a)	3130.4–1; 3550.1(a); 3550.1–1 (a), (b)
3212.3(b)	3101.2–6(a); 3130.4–5 (a), (b)
3212.3(c)	3130.4–5(c)
3212.3(d)	3101.2–5(b); 3130.4–4(a)
3212.4 (a), (b)	3111.1–2(a)(1)
3212.4(c)	3110.1–3(b)
3212.4(d)	3111.1–2(a)(4)
3212.4(e)	3130.4–5(d)
3212.5(a)	3101.2–7
3212.5(b)	3501.2–3(a)(1)
3220.0–3 (a) to (c)	3500.0–3(b)(2); 3520.0–3(a)
3220.0–3(b)	3510.0–3(a)
3220.0–6(b)	3501.2–6 (d), (e)
3220.0–7	3501.2–3(a)(2)
3221.1(a)(1)	3511.2–1 (b), (c)
3221.1(a)(2)	3501.2–6(c)
3221.1(a)(3)	3502.1; 3502.2–1; 3502.3–1(a); 3502.4–1
3221.1(a)(4)	3501.2–4(b)
3221.1(a)(5)	3501.2–4(b)(4)
3221.1(b)	3502.3–1(b); 3503.2–1; 3511.2–1(c)(1)
3221.1(c)	3501.2–5(b)(2)
3221.1(d)	3501.1–3; 3501.2–5(b)(2); 3511.2–4
3221.2(a)	3510.1–2; 3511.1–1; 3511.2–1(a)
3221.2(b)	3504.2–1 (a), (b); 3504.2–3
3221.2(c)	3501.2–6(a)
3221.3(a)	3511.3–2 (a), (b)
3221.3(b)	3511.4–2(a)(1); 3522.1–2(d)
3221.4(a)	3520.1–1(a)
3221.4(b)	3520.2–3(c)
3221.4(c)	3520.2–3(c); 3521.1–1 (a), (b)
3221.4(d)	3503.3–1(b); 3520.2–2(a); 3521.4–1(a)
3221.4(e)	3521.4–1(a)
3221.4(f)	3503.3–2; 3520.2–1(a); 3522.1–2(c)
3222.1(a)	3520.1–2
3222.1(b)	3502.3–1; 3521.2–2(c)
3222.2(a)	3502.2–1; 3504.2–1(a); 3521.2–1(a)
3222.3	3521.2–3(a)
3222.4 (a), (c)	3521.2–4
3222.4(b)	3521.2–5(a)
3222.5	3504.2–1(b); 3521.3–2(a); 3521.4–2(a)
3222.6–1	3500.1–2; 3503.1–2
3222.6–2	3503.3–2(e)(6)
3222.7	3504.2–1(b); 3504.2–4; 3504.4–1(b)
3223.1 (a), (b)	3505.1–2; 3505.3–1; 3505.3–2
3224.1	3511.4–1 (a), (b); 3523.1
3224.2(a)	3511.4–3(a); 3523.2–1(a)
3224.2 (b), (c)	3511.4–2(b)
3225.1	3503.2–1; 3506.2–2(a); 3506.2–3(a); 3506.2–5(a); 3506.3–1; 3506.3–3; 3506.4; 3506.5
3226.1	3566.2
3227.1	3550.1(b)
3227.2	3550.2–1
3227.3	3550.3–1; 3550.3–2
3227.4	3550.3–3
3310.0–3	3101.4–1; 3100.0–3(d)(1)
3311.1(a)	3111.1–3(a)(1)
3311.2(a)	3111.1–3(a)(2)
3311.2(b)	3111.1–3(a)(3)
3311.3	3110.1–1(c)(1); 3111.1–3(a)(4)
3312.1	3111.1–3(a)(4)
3312.2	3111.1–3(a)(4)
3313.1	3111.1–3(a)(4)
3313.2	3111.1–3(a)(4)
3321.0–3	3500.0–3(c)(1); 3500.1–3
3321.1	3561.1
3321.2	3561.2–1
3321.3	3561.3–2
3321.4	3561.3–4
3321.5	3504.1–2(a); 3561.3–3
3321.6	3561.3–1
3322.0–3	3500.0–3(c)(2)
3322.1–1	3562.1
3322.1–2	3500.0–5(g); 3562.2
3322.1–3 (a) to (b)(4)	3502.1; 3562.3–1
3322.1–4	3501.3–2(b)(2); 3562.3–2

Old	New
3322.1-5	3501.3-2(a); 3562.3-3
3322.1-6	3521.3-1(a); 3562.3-4
3322.1-7	3504.1-2(b); 3562.3-5
3322.2-1	3562.3-6
3322.2-2	3562.3-7
3322.3-1	3562.4-1
3322.3-2	3521.2-3(a); 3562.4-2
3322.3-3	3521.2-4; 3562.4-3
3322.3-4	3521.2-5; 3521.3-2(a); 3521.4-2(a); 3562.4-4
3322.4	3562.5
3322.5	3562.6
3322.6-1	3562.7-1
3322.6-2	3562.7-2
3322.7-1	3562.8-1
3322.7-2	3562.8-2
3323.1-1	3100.0-3(d)(2); 3500.0-3(c)(3); 3500.1-3(c)(1)
3323.1-2	3111.1-3(b)(1); 3500.1-3(c)(1); 3563.1-1
3323.1-3	3101.4-2; 3563.1-2
3323.1-4	3563.1-4(e)
3323.1-5	3563.1-3(b)
3323.1-6	3563.1-4(d)
3323.1-7(a)	3563.1-4(a)
3323.1-7(b)	3563.1-3(c)
3323.1-7(c)(1)	3563.1-3(a)(1)(i)
3323.1-7(c)(2)	3563.1-3(a)(1)(ii)
3323.1-7(c)(3)	3502.1(a); 3563.1-3(a)(1)(iii)
3323.1-7(c)(4)	3501.1-3(d); 3563.1-3(a)(1)(iv)
3323.1-7(c)(5)	3563.1-3(a)(1)(v)
3323.1-7(c)(6)	3563.1-3(a)(1)(vi)
3323.1-7(c)(7)	3563.1-3(a)(1)(vii)
3323.1-8(a)	3563.1-4(f)
3323.1-8(b)	3504.1-2(c)(1); 3563.1-4(c),(f)
3323.1-8(c)	3563.1-4(b)
3323.2-1	3500.0-3(c)(4); 3500.1-3(c)(2); 3563.2-1
3323.2-2	3563.2-2
3323.2-3	3563.2-4(b)
3323.2-4	3563.2-4(c)
3323.2-5	3563.2-4(f)
3323.2-6(a)	3563.2-4(a)
3323.2-6(b)	3563.2-3(b)
3323.2-6(c)	3563.2-3(a)
3323.2-7(a)	3563.2-4(g)
3323.2-7(b)	3504.1-2(c)(2); 3563.2-4(e)
3323.2-7(c)	3563.2-4(d)
3323.2-7(d)	3563.1-5; 3563.2-5
3324.0-3	3100.0-3(d)(3); 3500.0-3(c)(5); 3500.1-3(d)
3324.1-1	3101.4-3; 3564.2
3324.1-2	3111.1-3(c)(1); 3564.3
3324.1-3	3111.1-3(c)(3); 3564.4
3324.2-1	3111.1-3(c)(4); 3564.5-1
3324.2-2	3111.1-3(c)(4); 3504.1-2(d); 3564.5-2
3324.2-3	3111.1-3(c)(5); 3564.6
3324.3	3111.1-3(c)(2); 3500.0-5(g); 3564.1
3324.4	3111.1-3(c)(4); 3564.5-3
3324.5-1	3564.7-1
3324.5-2	3564.7-2
3324.5-3	3564.7-3
3324.5-4	3564.7-4
3324.5-5	3564.7-5
3324.5-6	3564.7-6
3324.5-7	3564.7-7
3324.5-8	3564.7-8
3325.0-3	3100.0-3(d)(4); 3101.4-4; 3500.0-3(c)(6); 3500.0-5(g); 3500.1-3(e); 3565.1
3325.1	3111.1-3(d)(1); 3565.2
3325.2	3109.5-2(d); 3111.1-3(d)(2); 3565.3
3325.3	3111.1-3(d)(3); 3504.1-2(e); 3565.4
3326.0-3(a)	3100.0-3(d)(5); 3111.1-3(e)(1); 3500.0-3(c)(7); 3566.1
3326.0-3(b)	3101.4-5; 3111.1-3(e)(3); 3566.2
3326.1	3111.1-3(e)(2); 3500.0-5(g); 3500.1-3(f); 3504.1-2(f); 3566.3
3326.2	3566.5-2
3326.3(a)	3566.5-3(a)
3326.3(b)	3566.5-3(b)
3326.3(c)	3566.5-3(c)
3326.4-1	3566.5-1
3326.4-2	3566.4-1
3326.5-1	3566.5-5
3326.5-2	3566.5-4
3326.5-3	3566.6
3326.6	3111.1-3(e)(4); 3566.2-1
3326.7	3566.7
3327.1	3100.0-3(d)(6); 3567.1
3327.2	3101.4-6; 3567.2
3327.3(a)	3567.3-1
3327.3(b)	3567.3-2
3327.4(a)	3111.1-3(f)(1); 3500.0-3(c)(8); 3500.0-5(g); 3500.1-3(g); 3504.1-2(g); 3567.4-1
3327.4(b)	3109.5-2(f)(1); 3111.1-3(f)(2); 3567.4-2
3327.4(c)	3109.5-2(f)(2); 3111.1-3(f)(3); 3567.4-3
3327.5	3111.1-3(f)(4); 3567.5
3328.0-3	3500.0-3(c)(9); 3500.1-3(h)
3328.0-3(a)	3100.0-3(d)(7); 3568.1
3328.0-3(b)	3101.4-7; 3568.2
3328.0-3(c)	3109.5-2(g); 3568.2-1
3328.1(a)	3568.3-1
3328.1(b)	3111.1-3(g)(1); 3504.1-2(h); 3568.3-2
3328.1(c)	3568.7
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Subpart 1725—Program Policy

AUTHORITY: The provisions of this Subpart 1725 issued under R.S. 2478, 43 U.S.C. 1201.

§ 1725.0–1 Purpose.

This subpart lists general and basic policies which will be followed in the implementation of the various public land disposal and management authorities administered by the Secretary of the Interior through the Bureau of Land Management.

§ 1725.1 Current administration.

Pending classification authorized by the Classification and Multiple Use Act (78 Stat. 986, 43 U.S.C. 1411–18) or other available authority, all lands administered by the Secretary through the Bureau of Land Management will continue to be administered for multiple use and sustained yield of the several products and services obtainable therefrom.

§ 1725.2 Disposal policy.

Public lands will be transferred out of Federal ownership in the most efficient manner possbile. This will be accomplished, where practicable, by the following procedures.

* * * * *

(a) Encouragement and assistance will be extended to State, county, and local governments in master planning and zoning. They will be encouraged to utilize the best modern techniques for quality land utilization, including preservation of natural beauty and open space values, and the prevention of uneconomic use and development of flood plains.

(b) Inclusion in patents of suitable conditions or restrictions on the use of the land, in those situations where a tract of land is suitable for disposal but has been evaluated as having a flood hazard potential which may cause economic loss to improvements or may endanger human life. If inclusion of needed conditions or restrictions in the deed are not permitted by law, the tract may be withheld from disposal to avoid such losses.

(c) Participation of the public and consultation with local government will be invited in the formulation of plans for transfers of public lands.

(d) Timely and orderly identification and disposition of lands needed for urban or suburban purposes, or chiefly valuable for residential, commercial, industrial, agricultural, or public purposes will be made.

(e) Practices and procedures will be utilized which will achieve appropriate dispositions with minimum administrative costs.

(f) Priorities will be established based upon availability of funds, urgency of needs for public lands, and resulting economies or effectiveness of Government operations.

§ 1725.2–1 Pricing policy.

The public land laws generally require as consideration for transfer of public lands out of Federal ownership, a fair return in the form of one or more of the following: Money, scrip, lands, or other property; development of the lands; or some public benefit, tangible or intangible. Where the law requires the Secretary to determine the return, such determination will be made in accordance with the following principles:

(a) Wherever the law does not provide otherwise, disposals to private persons and profit organizations will be made at not less than fair market values for the interests conveyed and through competitive bidding.

(b) Transfers to States and local government agencies for commercial, or industrial purposes will be through negotiated sale at fair market values.

(c) Transfer of land to States and local government agencies and to nonprofit organizations to be developed for public purposes will be made at prices and other terms that will encourage and facilitate the accomplishment of the public purposes involved.

(d) Where development is required by law or regulation in lieu of less than full payment, there must be appropriate assurance that the development effort will be bona fide and substantial.

§ 1725.3 Management policy.

§ 1725.3–1 Priority of use for lands retained for multiple use management.

No overall priority is assigned by the Classification and Multiple Use Act or by the Secretary to any specific use. The Secretary or his delegate will authorize, under applicable authority, that use or combination of uses which will best achieve the objectives of multiple use, taking into consideration all pertinent factors, including, but not limited to, ecology, existing uses, and the relative values of the various resources in particular areas.

§ 1725.3–2 Intensity of use and management of lands retained for multiple use management.

The lands will be managed for optimum production of the various products and for those uses for which they are physically and economically suited. The following matters will be considered:

(a) Existing or future demand for the resource use, value, or commodity.

(b) Coordination and cooperation with the resource use and management programs of States, local governments, public organizations and private landowners.

(c) Consistency with national programs.

(d) Compatibility of the possible uses.

§ 1725.3–3 Components of multiple use management.

Section 1 of the Classification and Multiple Use Act lists ten objectives of public land management. The methods of management of the public lands will be governed by the provision of existing laws. The listed objectives as interpreted by the Secretary are as follows:

(a) *Domestic livestock grazing.* Management of public lands for domestic livestock grazing involves the protection, regulated use, and development of forage producing public lands and the management of livestock (cattle, sheep, horses, and goats) use to obtain a sustained yield of forage.

(b) *Fish and wildlife development and utilization.* Management of public lands for fish and wildlife development and utilization involves the protection, regulated use, and development of habitat on public lands and waters to obtain a sustained yield of fish and wildlife and provision and maintenance of public access to fish and wildlife resources.

(c) *Industrial development.* Management of public lands for industrial development involves the protection, regulated use, and development of public lands in a manner to facilitate the growth and stability of industry, whether off-site or on-site, long term or short term.

(d) *Mineral production.* Management of public lands for mineral production involves the protection, regulated use, and development of public lands in a manner to facilitate the extraction and processing of minerals, whether off-site or on-site, long term or short term.

(e) *Occupancy.* Management of public lands for occupancy involves the protection, regulated use, and development of lands as sites for economically and socially useful structures, either publicly or privately owned.

(f) *Outdoor recreation.* Management of public lands for outdoor recreation involves the protection, regulated use, and development of public lands having open-space values in a manner that will preserve those values and will make

them available for appropriate recreation enjoyment by the public.

(g) *Timber production.* Management of public lands for timber production involves the protection, regulated use, and development of public forest and woodland areas to obtain a sustained yield of forest products.

(h) *Watershed protection.* Management of public lands for watershed protection involves the protection, regulated use, and development of any public lands in a manner to control runoff; to minimize soil erosion, siltation, and other destructive consequences of uncontrolled water flows; and to maintain and improve storage, yield, quality, and quantity of surface and subsurface waters.

(i) *Wilderness preservation.* Management of public lands for wilderness preservation involves the protection and regulated use of public lands which are in a roadless and primitive condition in a manner to preserve their essential wilderness character.

* * * * *

(j) *Preservation of public values.* Management of public land for preservation of public values that would be lost if the land passed from Federal ownership involves the protection, regulated use, and development of any public lands having unique or scarce characteristics or site values in a manner to insure their continued availability to the general public, either national or local, temporarily or permanently. It also involves the prevention of avoidable losses and damage, including avoidance of use and development which may require future expenditures for flood protection and flood damage relief.

Group 1800—Public Administrative Procedures

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

Subpart 1810—General Rules

Sec.

1810.1 Rules of construction; words and phrases.
1810.2 Communications by mail; when mailing requirements are met.
1810.3 Effect of laches; authority to bind government.
1810.4 Information required by forms.

Subpart 1812—Qualifications of Practitioners

1812.1 General.
1812.1–1 Regulations governing practice before the Department.
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Subpart 1813—Public Land Records

1813.1 Tract books and plats.
1813.1–1 Notations to records.
1813.1–2 Filing of township plats.
1813.2 Serial register.
1813.2–1 Inspection of serial register.
1813.3 Production of records in court.
1813.3–1 Statutory authority.

Subpart 1815—Disaster Relief

1815.0–5 Definitions.
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1815.1–1 Authority.
1815.1–2 Application for relief.
1815.1–3 Requirements for relief.
1815.1–4 Length of extension of time.

AUTHORITY: The provisions of this Part 1810 issued under R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 1810—General Rules

§ 1810.1 Rules of construction; words and phrases.

Except where the context of the regulation or of the Act of the Congress on which it is based, indicates otherwise, when used in the regulations of this chapter:

(a) Words importing the singular include and apply to the plural also;

(b) Words importing the plural include the singular;

(c) Words importing the masculine gender include the feminine as well;

(d) Words used in the present tense include the future as well as the present;

(e) The words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

(f) "Officer" and "authorized officer" include any person authorized by law or by lawful delegation of authority to perform the duties described;

(g) "Signature" or "subscription" includes a mark when the person making the same intended it as such;

(h) "Oath" includes "affirmation", and "sworn" includes "affirmed";

(i) "Writing" includes printing and typewriting as well as holographs, and "copies" include all types of reproductions on paper, including photographs, multigraphs, mimeographs and manifolds.

(j) The word "company" or "association", when used in reference to a corporation, shall be deemed to embrace the words "successors and assigns of such company or association", in like manner as if these last-named words, or words of similar import, were expressed.

§ 1810.2 Communications by mail; when mailing requirements are met.

(a) Where the regulations in this chapter provide for communication by mail by the authorized officer, the requirement for mailing is met when the communication, addressed to the addressee at his last address of record in the appropriate office of the Bureau of Land Management, is deposited in the mail.

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

§ 1810.3 Effect of laches; authority to bind government.

(a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

(b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

(c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

§ 1810.4 Information required by forms.

Whenever a regulation in this chapter requires a form approved or prescribed by the Director of the Bureau of Land Management, the Director may in that form require the submission of any information which he considers to be necessary for the effective administration of that regulation.

Subpart 1812—Qualifications of Practitioners

§ 1812.1 General.

§ 1812.1–1 Regulations governing practice before the Department.

Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

§ 1812.1–2 Inquiries.

No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

Subpart 1813—Public Land Records

§ 1813.1 Tract books and plats.

§ 1813.1–1 Notations to records.

(a) 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 person exmining either tract book or plat, and the manager shall cause the proper notations to be made on the plats as well as on the tract books.

(b) All withdrawals, reservations, classifications, designations, and similar orders affecting the disposition of the land will be noted on the appropriate records.

§ 1813.1–2 Filing of township plats.

(a) After acceptance of a survey, the original plat thereof will be returned to the State Director, 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.

§ 1813.2 Serial register.

§ 1813.2–1 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.

§ 1813.3 Production of records in court.

§ 1813.3–1 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.

Subpart 1815—Disaster Relief

AUTHORITY: The provisions of this Subpart 1815 issued under secs. 2, 11, 80 Stat. 1316, 1321; 42 U.S.C. 1855aa, 1855gg.

§ 1815.0–5 Definitions.

(a) *Major disaster.* As defined in section 2 of the Disaster Relief Act of 1966 (80 Stat. 1316), hereinafter called "the Act," "major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments in alleviating the damage, hardship, or suffering caused thereby, and respecting which the governor of any State (or the Board of Commissioners of the District of Columbia) in which such catastrophe may occur or threaten certifies the need for disaster assistance and shall give assurance of expenditure of a reasonable amount of the funds of the government of such State, local governments therein, or other agencies, for the same or similar purposes with respect to such catastrophe.

§ 1815.1 Extensions of time in public land matters.

§ 1815.1–1 Authority.

Section 11 of the Act (80 Stat. 1321) authorizes the Secretary of the Interior to grant an extension of time to the holder of any lease, license, permit, contract, or entry on lands administered by the Bureau of Land Management where a major disaster has impeded timely fulfilment of requirements and where rights of other parties will not be prejudiced by such relief.

§ 1815.1–2 Application for relief.

(a) *Place of filing.* The application shall be filed in the proper land office (see § 1821.2–1 of this chapter).

(b) *Fees.* Application for an extension of time under this subpart must be accompanied by a nonrefundable service fee of $10.

(c) *Form of application.* No special form of application is required.

(d) *Contents of application.* An application for relief under this subpart shall state:

(1) The law under which the lease, license, permit, contract, or entry was issued.

(2) The date of issuance and any other identification number.

(3) The extent to which requirements had been fulfilled prior to the disaster.

(4) The nature of the disaster.

(5) The effect of the disaster on performance under the lease, license, permit, contract, or entry.

(6) An estimate of the time which will be needed to overcome the delay in performance caused by the disaster.

(7) Steps taken or to be taken to overcome the effects of the disaster and to assure that an extension of time will permit completion of performance.

§ 1815.1–3 Requirements for relief.

The authorized officer may grant relief where the following conditions are met:

(a) The obligations or work required by the lease, license, permit, contract, or entry were prosecuted timely and with due diligence up to the time of the occurrence of the disaster;

(b) The disaster which impeded prosecution of the work was a major disaster as defined in section 2 of the Act (80 Stat. 1316).

(c) The granting of relief by an extension of time will not prejudice the rights of other parties; and

(d) The granting of relief by an extension of time will not adversely affect the public interest.

§ 1815.1–4 Length of extension of time.

(a) The length of extension of time granted will be determined by the circumstances in each case. Consideration will be given to the condition in which the disaster left the applicant or the land involved, and sufficient time will be given to allow the applicant to fulfill the requirements of his lease, license, permit, contract, or entry.

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

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1821.1 Names of claimants.
1821.2 Office hours; time and place for filing.
1821.2–1 Office hours of land offices; place for filing.
1821.2–2 Time limit for filing documents.
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1822.3–3 Recording of reconveyance.
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Subpart 1823—Proofs and Testimony

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1823.2 Procedures.
1823.2–1 Examination of claimant and witnesses.
1823.2–2 Testimony to be taken separate and apart from and not within the hearing of the others.
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1823.3 Transmittal of proof papers.
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Subpart 1824—Publication and Posting of Notices

1824.0–1 Purpose.
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1825.1 When relinquished land becomes subject to further appropriation.
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Subpart 1826—Reinstatement of Canceled Entries

1826.1 Application for reinstatement.

Subpart 1821—Execution and Filing of Forms

AUTHORITY: The provision of this Subpart 1821 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1821.1 Names of claimants.

Full names of claimants must appear in applications, final certificates, and patents.

§ 1821.2 Office hours; time and place for filing.

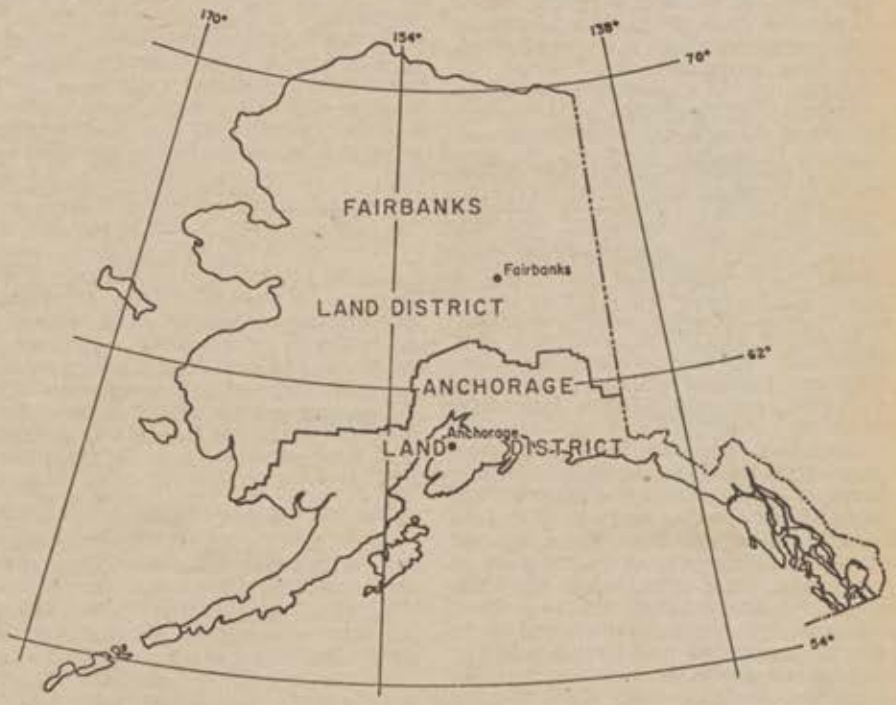
§ 1821.2–1 Office hours of land offices; place for filing.

(a) Land offices and the Washington office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the land offices and the Washington office are open to the public for the filing of documents and inspection of records are from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

(b) 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.

(c) Copies of forms may be obtained from any of the land offices. However, completed forms and other land office filings must be made in the proper land office. Location of the land offices and area of jurisdiction of each office are as follows:

Land office	*Area of jurisdiction*
Anchorage Land Office, 555 Cordova Street, Anchorage, Alaska 99501.	Southern Alaska.[1]
Fairbanks District and Land Office, 516 Second Avenue, Fairbanks, Alaska 99701.	Northern Alaska.
Arizona Land Office, Federal Building, Phoenix, Ariz. 85025.	Arizona.



FOOTNOTE 1.

Riverside District and Land Office, 1414 University Avenue, Riverside, Calif. 92502.	Southern California.
Sacramento Land Office, Federal Building, 2800 Cottage Way, Sacramento, Calif. 95825.	Northern California.[2]
Colorado Land Office, Federal Building, 1961 Stout Street, Denver, Colo. 80202.	Colorado.
Eastern States Office, 7981 Eastern Avenue, Silver Spring, Md. 20910.	Arkansas, Iowa, Louisiana, Missouri, and all States east of the Mississippi River.
Idaho Land Office, Federal Building, Boise, Idaho 83701	Idaho.
Montana Land Office, Federal Building and U.S. Courthouse, 316 North 26th Street, Billings, Mont. 59101.	Montana, North Dakota, South Dakota, and Minnesota.

[1] See diagram below for division line.
[2] See diagram on page 19 for division line.

Land office	*Area of jurisdiction*
Nevada Land Office, Federal Building and U.S. Courthouse, 300 Booth Street, Reno, Nev. 89502.	Nevada.
New Mexico Land Office, U.S. Post Office and Federal Building, South Federal Place, Santa Fe, N. Mex. 87501.	New Mexico, Oklahoma and Texas.
Oregon Land Office, 729 Northeast Oregon Street, Portland, Oreg. 97208.	Oregon and Washington.

FOOTNOTE 2.

Land office	*Area of jurisdiction*
Utah Land Office, Federal Building, Salt Lake City, Utah 84111.	Utah.
Wyoming Land Office, U.S. Post Office and Courthouse, 2120 Capitol Avenue, Cheyenne, Wyo. 82001.	Wyoming, Kansas and Nebraska.

§ 1821.2–2 Time limit for filing documents.

(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 right of appeal and the right to file a new and properly executed application, or to reexecute the rejected application, without priority.

(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.

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the land office or the Washington office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the land office or the Washington office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

(f) Except when (c) of this section is applicable, filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing.

(g) When the regulations of this chapter (except Parts 1840 and 1850) provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

1. The law does not permit him to do so.

2. The rights of a third party or parties have intervened.

3. The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

§ 1821.2–3 Simultaneous filings; determination of order of priority.

(a) Two or more documents are considered as simultaneously filed when:

(1) In accordance with the regulations in § 1821.2–2, they are delivered to and received by the proper office at the same time; or

(2) They are filed pursuant to an order which specifies that documents delivered to and received by the proper land office during a specified period shall be considered as simultaneously filed.

(b) Whenever it is necessary, for the purposes of the regulations in this chapter, to determine the order of priority of consideration among documents which have been simultaneously filed, such order of priority will be established by a drawing open to public view.

(c) Nothing in this regulation shall be construed as denying any preference right granted by applicable law or regulation or as validating any document which is invalid under applicable law or regulation.

§ 1821.2–4 Use of certified mail.

Certified mail as outlined in 39 CFR Part 58, may be used in lieu of registered mail in public land matters within the jurisdiction of the Department of the Interior except where use of registered mail is specifically required by statute.

§ 1821.3 Oaths.

§ 1821.3–1 Elimination of the requirements.

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 (43 U.S.C. 1211). 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 Parts 1840 and 1850.

(2) Final proofs required by R.S. 2294 (43 U.S.C. 254). (See §§ 1821.3–2, 2511.3–4 and 2521.6(d) 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) Unsworn statements in public land matters are subject to Title 18, U.S.C., section 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.

(c) False statements as to any material fact made by an applicant in connection with applications, allowance of which is discretionary with the authorized officer, are a proper basis for rejection of the applications.

§ 1821.3–2 Officers qualified.

(a) Oaths required under the homestead, and, desert-land acts may be made before the manager or the acting manager of the land office for the district embracing the land sought; or before any person authorized by the laws of or pertaining to the State to administer oaths.

§ 1821.4 Notations on applications.

§ 1821.4–1 Notation of rights-of-way.

(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 issued to the entryman.

§ 1821.4–2 When notation 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. See: 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 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.

§ 1821.5 Entries for lands in more than one land district.

§ 1821.5–1 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 §§ 1821.5, 1823.4 (a) and (b).

§ 1821.5–2 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.

§ 1821.5–3 Mining claims.

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 feees, and the purchase price of the land will be further governed by the provisions of § 1823.4(a).

CROSS REFERENCE: For mining claims, see Subpart 3821 of this chapter.

§ 1821.6 Amendments.

§ 1821.6–1 Authority.

Section 2372, United States Revised Statutes, as amended by the act of 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.

§ 1821.6–2 Application to amend; form; where filed.

(a) Application for amendment must be filed in accordance with the provisions of § 1821.2. The application should be substantially in accordance with the form approved by the director. 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.

(b) All applications must be accompanied by an application service fee of $10 which is not returnable.

§ 1821.6–3 Showings required.

(a) *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 appears that proper precaution was taken to avoid error at the time of selection. The application will be closely scrutinized, and will not be allowed uness the utmost good faith is shown.

(b) *Removal of timber.* 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 an 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.

(c) *Ownership; deed of reconveyance.* (1) Where no 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 paragraph (d) of this section will be sufficient; but where final certificate has been 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, 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. (51 L.D. 281.) Similarly, patent may be issued to the transferee of the entryman of an unpatented entry which has been amend-before issuance of patent. (51 L.D. 335.)

(d) *Corroboration.* 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 vertify 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.

§ 1821.6–4 Publication of notice; statements of witnesses.

Where amendments are allowed of claims upon which final proof has bee 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.

§ 1821.6–5 Amendments in exercise of equitable powers.

(a) The statute to which §§ 1821.6–1 to 1821.6–3(d) 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.

(b) Applications for amendment presented pursuant to paragraph (a) of this section 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 §§ 1821.6–1 to 1821.6–5(a), and 2521.7 (a) of this chapter and on the prescribed form, insofar as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCES: For homesteads, generally, see Subpart 2510 of this chapter. For desert-land entries, see Subpart 2520 of this chapter.

§ 1821.6–6 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 entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

§ 1821.7 Alaska.

§ 1821.7–1 Applications not to be rejected because executed more than 10 days prior to filing.

Section 1821.2–2 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.

§ 1821.7–2 Joint action to acquire public lands.

(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) 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 applicant, 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, D.C., 20240. 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 § 2511.1(a) 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 § 2511.1–6(a) 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. 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.

Subpart 1822—Payments, Repayments, and Bonds

AUTHORITY: The provisions of this Subpart 1822 issued under sec. 4, 21 Stat. 287, as amended; 43 U.S.C. 263, unless otherwise noted.

§ 1822.0–3 Authority for repayments.

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 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).

§ 1822.1 Payments.

§ 1822.1–1 Amount.

(a) The amount of payments required in connection with the processing of any application, sale, entry, lease, permit, or other transaction governed by the regulations in this chapter are set forth in applicable regulations.

(b) The amount of payments required for copies and abstracts of records, including plats and diagrams showing the status of lands, are determined as provided in Part 2 of this title.

(R.S. 2478; 43 U.S.C. 1201)

§ 1822.1–2 Forms of remittances.

(a) Subject to the condition set forth in paragraph (b) of this section, forms of remittances that will be accepted in payment of fees, rentals, purchase price, and other charges required by the regulations in this chapter include cash and currency of the United States and checks, money orders, and bank drafts made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the Government.

office.

(b) Personal checks are an acceptable form of remittance except where the regulations in this chapter specifically provide otherwise.

(R.S. 2478; 43 U.S.C. 1201)

§ 1822.2 Repayments.

§ 1822.2–1 Filing of applications.

Applications for repayment should be filed on a form approved by the Director with the manager of the proper land office.

§ 1822.2–2 Statement of grounds for repayment.

Where an application is filed, it should be accompanied by a statement by the applicant setting forth fully the grounds upon which repayment is claimed.

§ 1822.3 Act of June 16, 1880.

§ 1822.3–1 Statutory provisions.

(a) *Act of June 16, 1880.* 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 canceled for conflict, or where, from any cause, the entry was erroneously allowed. 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.

§ 1822.3–2 Applications.

(a) Claims for repayment should be made on a form approved by the Director 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.

(b) 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 the words "except as shown by accompanying evidence," in which event the evidence hereinafter required must be furnished.

(c) A duly executed relinquishment must be furnished by the applicant on a form approved by the Director.

(d) The relinquishment must be witnessed by two persons.

§ 1822.3–3 Recording of reconveyance.

(a) *When not required.* 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.

(b) *When required.* 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.

(c) *When quitclaim deed required.* 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.

(d) *Recording of quitclaim deed.* 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.

(e) *Conformance to State laws.* The reconveyance to the United States must conform in every particular to the laws of the State in which the land is located relative to transfers of real property.

(f) *Reconveyance unnecessary.* If the applicant has also acquired the valid title conveyed by the United States, a reconveyance of the land is unnecessary, 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.

§ 1822.3–4 Repayment to heirs, executors, administrators.

(a) 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.

(b) 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.

(c) 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.

(d) Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

(e) Where application is made by administrators, the original, or a certified copy, of the letters of administration must be furnished.

§ 1822.3–5 Repayment to assignees.

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.)

(g) 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.)

§ 1822.3–6 Repayment to mortgagees.

(a) 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:

(1) 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.)

(2) 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.)

(b) 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.

Subpart 1823—Proofs and Testimony

AUTHORITY: The provision of this Subpart 1823 issued under R.S. 2478, 43 U.S.C. 1201

§ 1823.1 Time and place; appearances.

§ 1823.1–1 Time; place; 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 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 cannot 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.

§ 1823.1–2 Who may appear.

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.

§ 1823.2 Procedures.

§ 1823.2–1 Examination of claimant and witnesses.

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.

§ 1823.2–2 Testimony 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.

§ 1823.2–3 Advice concerning 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.

§ 1823.2–4 Fees; costs.

(a) Reducing testimony to writing. On all final proofs made before the manager, or before any other officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until such payment has been made.

§ 1823.3 Transmittal of proof papers.

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.

§ 1823.4 Proof on entries in more than one district.

(a) 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.

(b) 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.

§ 1823.5 Conduct of officers.

§ 1823.5–1 Prohibited activities.

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.

Subpart 1824—Publication and Posting of Notices

AUTHORITY: The provisions of this Subpart 1824 issued under 20 Stat. 472; 43 U.S.C. 251.

§ 1824.0–1 Purpose.

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.

§ 1824.1 Selection of newspaper.

§ 1824.1–1 Qualifications of newspaper.

(a) 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 132).

§ 1824.1–2 Discretionary authority of manager; limitations.

(a) 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.

(b) 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 laws for the publication of legal notices.

§ 1824.2 Payment for republication of notice.

(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.

§ 1824.3 Frequency of publication.

(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 other claims.

(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 designates 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 designates 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 § 3862.4–1 of this chapter.

Subpart 1825—Relinquishments

AUTHORITY: The provisions of this Subpart 1825 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1825.1 When relinquished land becomes subject to further appropriation.

(a) 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)

(b) 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.

§ 1825.2 Relinquishment of right-of-way.

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.

Subpart 1826—Reinstatement of Canceled Entries

AUTHORITY: The provisions of this Subpart 1826 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1826.1 Application for reinstatement.

(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 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.

(e) All applications must be accompanied by an application service fee of $10 is not returnable.

PART 1840—APPEALS PROCEDURES

Subpart 1840—Appeals Procedures; General

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1844.3 Statement of reasons, written arguments, briefs.
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1844.5 Answers.
1844.6 Oral argument.
1844.9 Finality of decision.

AUTHORITY: The provisions of this Part 1840 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

Subpart 1840—Appeals Procedures: General

§ 1840.0-3 Authority.

Sections 1840.0-3 to 1844.9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1840.0-5 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart 1851.

§ 1840.0-6 Documents.

(a) *Filing of documents.* A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 except § 1853.7 (c).

(c) *Record address.* Every person who files a document in connection with an appeal or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

(d) *Transferees and encumbrancers* Transferees and encumbrancers of land the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(e) *Service of documents.* (1) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed except that proof of service of a notice of appeal should be filed in the office of the officer to whom the appeal is made, if the proof of service is filed later than the notice of appeal.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post office of an undelivered registered or certified letter.

(4) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

(g) *Extensions of time.* (1) With the exception of the time fixed for filing a notice of appeal, the time for filing or serving any document in connection with an appeal may be extended by the officer to whom the appeal is taken.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 1840.0-7 Summary dismissal.

An appeal to the Director or to the Secretary will be subject to summary dismissal by the officer to whom it is made for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;

(b) If the notice of appeal is not served upon adverse parties within the time required; and

(c) If the statement of reasons, if not contained in the notice of appeal, is not served upon adverse parties within the time required.

§ 1840.0–8 Basis of decision.

(a) Where a hearing has been held in a contest the record made shall be the sole basis for decision on appeal except to the extent that official notice may be taken of a fact as provided in § 1850.0–8 (b).

(b) No decision on appeal shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal.

§ 1840.0–9 General provisions.

(a) *Effect of decision pending appeal.* Normally a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the officer to whom an appeal may be or is taken may provide that a decision or any part of it shall be in full force and effect immediately.

(b) *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

(c) *Inquiries.* No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

(d) *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

Subpart 1842—Appeals to the Director of the Bureau of Land Management

§ 1842.2 Who may appeal.

Except as otherwise provided in Subpart 2400 of this chapter, any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management other than the Director or person signing for the Director, shall have a right of appeal to the Director.

§ 1842.4 Appeal; how taken, filing fee, mandatory time limit.

(a) A person who wishes to appeal to the Director must file in the office of the officer who made the decision (not the office of the Director) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make. This paragraph does not apply to grazing appeals filed pursuant to § 1853.7(a).

(b) Except where an agency of the Federal Government or of a State government or political subdivision thereof or a municipal corporation is the appellant, or where a grazing appeal is taken pursuant to § 1853.7(b), a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the office where the notice of appeal is required to be filed within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 1840.0–6 (a) and (b), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 1840.0–6 (a) and (b) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will by closed by the Director.

§ 1842.5 Examination of case record.

§ 1842.5–1 Statement of reasons, written arguments, briefs.

If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b). In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 1842.5–2 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 1840.0–6(e), not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7. Proof of such service as required by § 1840.0–6(e) must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) within 15 days after service unless filed with the notice of appeal.

§ 1842.5–3 Answers.

If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) and must be served on the appellant, in the manner prescribed in § 1840.0–6(e), not later than 15 days thereafter. Proof of such service, as required by § 1840.0–6(e), must be filed in the office of the Director (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b).

Subpart 1843—Actions by Director

§ 1843.5 Request for hearings on appeals involving questions of fact.

Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to a Field Commissioner of the Bureau of Land Management for such a hearing. Such

a request must be made in writing and filed with the Director within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Director, and the Director may, on his own motion, refer any case to a Field Commissioner for a hearing on an issue of fact. If a hearing is ordered, the Director will specify the issues upon which the hearing is to be held.

§ 1843.6 Request for oral argument.

The Director may, in his discretion, grant an opportunity for oral argument before him or a person designated by him.

§ 1843.7 Decision by Director.

The Director will render a written decision in each case appealed to him. Such decisions will be served on all parties and shall be subject to an appeal to the Secretary as provided in Subpart 1844.

§ 1843.9 Effect of failure to appeal.

When any party fails to appeal to the Secretary from an adverse decision of the Director, that decision shall as to such party be final and will not be disturbed except for fraud or for gross irregularity.

Subpart 1844—Appeals to Secretary of the Interior

§ 1844.1 Right of appeal to the Secretary of the Interior.

Any party adversely affected may appeal to the Secretary of the Interior from a final decision of the Director, whether such final decision is on an appeal or is an original decision, except from such a decision which, prior to promulgation, has been approved by the Secretary. No appeal, however, may be taken from a decision of the Director affirming a decision of a subordinate official of the Bureau in any case where the party adversely affected shall have failed to appeal from the decision of such official.

§ 1844.2 Appeal; how taken, filing fee, mandatory time limit.

(a) A person who wishes to appeal to the Secretary must file in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the Director's office within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

(b) Except where an agency of the Federal Government or of a State government or political subdivision thereof or a municipal corporation is the appellant, a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the Director's office within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 1840.0–6 (a) and (b), the notice of appeal will not be considered and the case will be closed by the Director. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 1840.0–6 (a) and (b) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will be closed by the Secretary.

§ 1844.3 Statement of reasons, written arguments, briefs.

If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b). In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 1844.4 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 1840.0–6(e), not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7. Proof of such service as required by § 1840.0–6(e) must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) within 15 days after service unless filed with the notice of appeal.

§ 1844.5 Answers.

If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) and must be served on the appellant, in the manner prescribed in § 1840.0–6(e), not later than 15 days thereafter. Proof of such service, as required by § 1840.0–6 (e), must be filed in the office of the Secretary (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b).

§ 1844.6 Oral argument.

The Secretary may in his discretion grant an opportunity for oral argument before him or a person designated by him.

§ 1844.9 Finality of decision.

No appeal will lie in the Department from a decision of the Secretary.

PART 1850—HEARINGS PROCEDURES

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Subpart 1850—Hearing Procedures; General

AUTHORITY: The provisions of this Subpart 1850 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1850.0–3 Authority.

(a) Sections 1850.0–3 to 1852.3–9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201.

(b) Sections 1853.1 to 1853.9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201 and sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

(c) Sections 1855.1 to 1855.9–2 are issued under the authority of R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 1850.0–5 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart 1851.

§ 1850.0–6 Documents.

(a) *Filing of documents.* A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 except § 1853.7(c) and does not apply to requests for postponement of hearings under §§ 1852.3–1 and 1852.3–2.

(c) *Record address.* Every person who files a document in connection with a contest or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

(d) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(e) *Service of documents.* (1) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post-office of an undelivered registered or certified letter.

(4) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

(g) *Extensions of time.* (1) The Manager or the Examiner, as the case may be, may extend the time for filing or serving any document in a contest.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 1850.0–7 Subpoena power and witness provisions.

(a) *Compulsory attendance of witnesses.* The Field Commissioner or the examiner, as the case may be, is authorized to issue subpoenas directing the attendance of witnesses and the production of books, papers, documents, or other tangible things at hearings to be held before him or at the taking of depositions to be held before himself or other officers for the purpose of discovery or for use as evidence in the hearing or for both purposes. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the act of January 31, 1903 (43 U.S.C. 102–106), and 28 U.S.C. 1821. Subpoenas will be issued on a form approved by the Director.

(b) *Application for subpoena.* An application for a subpoena may be filed in the office of the Field Commissioner or the examiner before whom the hearing is to be held, in the office of the officer who made the decision appealed from, or in the office of the manager in which a complaint was filed, in which case the officer or manager will forward the application to the Field Commissioner or the examiner, as the case may be. Prior to the referral of a case to an examiner and upon certification by the manager that a complaint has been signed and is a matter of public record in his office, an examiner may upon proper showing and prior to the filing of an answer issue subpoenas as provided in paragraph (a) of this section.

(c) *Fees payable to witness who testifies on request without issuance of subpoena.* Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party.

§ 1850.0–8 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of the Director, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in a contest the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision in a contest shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the contest.

(b) *Official notice.* Official notice may be taken of the contents of the tract books, the serial registers, the approved plats of survey and other public records of the Department of the Interior and of any matter of which the courts may take judicial notice. Where a decision in a case in which a hearing has been held rests upon official notice of a material fact relating to an issue upon which the hearing was held, the decision will so state and will allow any party upon request to have an opportunity to show to the contrary. Such request must be filed and served within the time and in the manner prescribed in the decision Where a decision or recommendation has rested upon such official notice and has afforded the parties an opportunity to show to the contrary, no further opportunity to show to the contrary will be allowed.

§ 1850.0–9 General provisions.

(a) *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

(b) *Inquiries.* No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

(c) *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

Subpart 1851—Hearings on Appeals Involving Questions of Fact

AUTHORITY: The provisions of this Subpart 1851 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1851.1 Prehearing conferences.

(a) The Field Commissioner may, in his discretion, on his own motion or motion of one of the parties or of the Bureau of Land Management, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings before the Field Commissioner or before the Director.

(b) The Field Commissioner shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the Field Commissioner unless modified for good cause, by subsequent order.

§ 1851.2 Fixing of place and date for hearing; notice.

The Field Commissioner shall fix a place and date for the hearing and notify all parties and the Bureau.

§ 1851.2–1 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Field Commissioner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justified beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Field Commissioner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 1851.3 Authority of the Field Commissioner.

The Field Commissioner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102–106), to administer oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the

hearing as may be prescribed by the Director in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by § 1850.0–7.

§ 1851.4 Conduct of hearing.

So far as not inconsistent with the prehearing order, the Field Commissioner may seek to obtain stipulations as to material facts. Unless the Field Commissioner directs otherwise, the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

§ 1851.5 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The Field Commissioner may question any witnesses. Documentary evidence may be received if pertinent to any issue. The Field Commissioner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Field Commissioner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of a Field Commissioner sustains 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 and the objecting party may then make an offer of proof in rebuttal.

§ 1851.6 Reporter's fees.

Reporter's fees shall be borne by the Bureau.

§ 1851.7 Copies of transcript.

Each party shall pay for any copies of the transcript obtained by him. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

§ 1851.8 Summary of evidence.

The parties and the Bureau may, with the consent of the Field Commissioner, agree that a summary of the evidence approved by the Field Commissioner may be filed in the case in lieu of a transcript. In such case the Field Commissioner will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record. If, on appeal to the Secretary, a party wishes to utilize the transcript instead of the summary, he must furnish at his expense a copy of the transcript for the case record.

§ 1851.9 Action by Field Commissioner.

Upon completion of the hearing and the incorporation of the summary or transcript in the record, the Field Commissioner will send the record and proposed findings of fact on the issues presented at the hearing to the Director. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Director such briefs or statements as they may wish respecting the facts developed at the hearing. Any findings of fact made or adopted by the Director will be subject to attack in an appeal to the Secretary.

Subpart 1852—Contest and Protest Proceedings

AUTHORITY: The provisions of this Subpart 1852 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1852.1 Private contests and protests.

§ 1852.1–1 By whom private contest may be initiated.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U.S.C. 185), or the act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations in the subpart.

§ 1852.1–2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

§ 1852.1–3 Initiation of contest.

Any person desiring to initiate a private contest must file a complaint in the proper land office, (see § 1821.2–1 of this chapter). The contestant must serve a copy of the complaint on the contestee not later than 30 days after filing the complaint and must file proof of such service, as required by § 1850.0–6(e), in the office where the complaint was filed within 30 days after service.

§ 1852.1–4 Complaints.

(a) *Contents of complaint.* The complaint shall contain the following information, under oath:

(1) The name and address of each party interested, including the age of each heir of any deceased entryman.

(2) A legal description of the land involved.

(3) A reference, so far as known to the contestant, to any proceedings pending for the acquisition of title to, or an interest in, such land.

(4) A statement in clear and concise language of the facts constituting the grounds of contest.

(5) A statement of the law under which contestant claims or intends to acquire title to, or an interest in, the land and of the facts showing that he is qualified to do so.

(6) A statement that the proceeding is not collusive or speculative but is instituted and will be diligently pursued in good faith.

(7) A request that the contestant be allowed to prove his allegations and that the adverse interest be invalidated.

(8) The office in which the complaint is filed and the address to which papers shall be sent for service on the contestant.

(9) A notice that unless the contestee files an answer to the complaint in such office within 30 days after service of the notice, the allegations of the complaint will be taken as confessed.

(b) *Amendment of complaint.* Except insofar as the Manager, Examiner, Director or Secretary may raise issues in connection with deciding a contest, issues not raised in a complaint may not be raised later by the contestant unless the examiner permits the complaint to be amended after due notice to the other parties and an opportunity to object.

(c) *Corroboration required.* All allegations of fact in the complaint which are not matters of official record or capable of being judicially noticed and which, if proved, would invalidate the adverse interest must be corroborated under oath by the statement of witnesses. Each such allegation of fact must be corroborated by the statement of at least one witness having personal knowledge of the alleged fact and such fact must be set forth in the statement. All statements by witnesses shall be attached to the complaint.

(d) *Filing fee.* Each complaint must be accompanied by a filing fee of $10 and a deposit of $20 toward reporter's fees. Any complaint which is not accompanied by the required fee and deposit will not be accepted for filing.

(e) *Waiver of issues.* Any issue not raised by a private contestant in accordance with the provisions of paragraph (b) of this section, which was known to him, or could have been known to him by the exercise of reasonable diligence, shall be deemed to have been waived by him, and he shall thereafter be forever barred from raising such issue.

§ 1852.1–5 Service.

The complaint must be served upon every contestee. If the contestee is of record in the land office, service may be made and proved as provided in § 1850.0–6(e). If the person to be served is not of record in the land office, proof of service may be shown by a written statement of the person who made personal service, by post-office return receipt showing personal delivery, or by an acknowledgment of service. In certain circumstances, service may be made by publication as provided in § 1852.1–5(b)(1). When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the person to be personally served is an infant

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 legal guardian or committee, if there be one, of such infant or person of unsound mind; 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.

(a) *Summary dismissal; waiver of defect in service.* If a complaint when filed does not meet all the requirements of §§ 1852.1–4 (a) and (c), or if the complaint is not served upon each contestee as required by this section, the complaint will be summarily dismissed by the manager and no answer need be filed However, where prior to the summary dismissal of a complaint a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived

(b) *Service by publication—(1) When service may be made by publication* When the contestant has made diligent search and inquiry to locate the contestee, and cannot locate him, the contestant may proceed with service by publication after first filing with the Manager an affidavit which shall:

(i) State that the contestee could not be located after diligent search and inquiry made within 15 days prior to the filing of the affidavit;

(ii) Be corroborated by the affidavits of two persons who live in the vicinity of the land which state that they have no knowledge of the contestee's whereabouts or which give his last known address;

(iii) State the last known address of the contestee; and

(iv) State in detail the efforts and inquiries made to locate the party sought to be served.

(2) *Contents of published notice.* The published notice must give the names of the parties to the contest, legal description of the land involved, the substance of the charges contained in the complaint, the office in which the contest is pending, and a statement that upon failure to file an answer in such office within 30 days after the completion of publication of such notice, the allegations of the complaint will be taken as confessed. The published notice shall also contain a statement of the dates of publication.

(3) *Publication, mailing and posting of notice.* (i) Notice by publication shall be made by publishing notice at least once a week for five successive weeks in some newspaper of general circulation in the county in which the land in contest lies.

(ii) Within 15 days after the first publication of a notice, the contestant shall send a copy of the notice and the complaint by registered or certified mail, return receipt requested, to the contestee at his last known address and also to the contestee in care of the post office nearest the land. The return receipts shall be filed in the office in which the contest is pending.

(iii) A copy of the notice as published shall be posted in the office where the contest is pending and also in a conspicuous place upon the land involved. Such postings shall be made within 15 days after the first publication of the notice.

(c) *Proof of service.* (1) Proof of publication of the notice shall be made by filing in the office where the contest is pending a copy of the notice as published and the affidavit of the publisher or foreman of the newspaper publishing the same showing the publication of the notice in accordance with § 1852.1–5(b)(3).

(2) Proof of posting of the notice shall be by affidavit of the person who posted the notice on the land and by the certificate of the Manager or the Director as to posting in his office.

(3) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice to which shall be attached the return receipt.

§ 1852.1–6 Answer to complaint.

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 1852.1–5(b)(3). The answer shall contain or be accompanied by the address to which all notices or other papers shall be sent for service upon contestee.

§ 1852.1–7 Action by Manager.

(a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decided the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the Manager will refer the case to an examiner upon determining that the elements of a private contest appear to have been established.

§ 1852.1–8 Amendment of answer.

At the hearing, any allegation not denied by the answer will be considered admitted. The examiner may permit the answer to be amended after due notice to other parties and an opportunity to object.

§ 1852.2 Government contests.

§ 1852.2–1 How initiated.

The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

§ 1852.2–2 Proceedings in Government contests.

The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions:

(a) No corroboration shall be required of a Government complaint and the complaint need not be under oath.

(b) No filing fee or deposit toward reporter's fee shall be required of the Government.

(c) Any action required of the contestant may be taken by any authorized Government employee.

(d) The statements required by § 1852.1–4(a) (5) and (6) need not be included in the complaint.

(e) No posting of notice of publication on the land in issue shall be required of the Government.

(f) Where service is by publication, the affidavits required by § 1852.1–5(b)(1) need not be filed. The contestant shall file with the Manager a statement of diligent search which shall state that the contestee could not be located after diligent search and inquiry, the last known address of the contestee and the detail of efforts and inquiries made to locate the party sought to be served. The diligent search shall be concluded not more than 15 days prior to filing of the statement.

(g) In lieu of the requirements of § 1852.1–5(b)(3)(ii) the contestant shall, as part of the diligent search before the publication or within 15 days after the first publication send a copy of the complaint by Certified Mail, return receipt requested, to the contestee at the last address of record. The return receipts shall be filed in the office in which the contest is pending.

(h) The affidavit required by § 1852.1–5(b)(3)(iii) need not be filed.

(i) The provisions of paragraph (e) of § 1852.1–4 shall be inapplicable.

§ 1852.3 Proceedings before the examiner.

§ 1852.3–1 Prehearing conferences.

(a) The Examiner may in his discretion, on his own motion or on motion of one of the parties, or of the Bureau, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The simplification of the issues, (2) the necessity of amendments to the pleadings, (3) the possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (4) the limitation of the number of expert witnesses, and (5) such other matters as may aid in the disposition of the proceedings.

(b) The Examiner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements. Such order shall control the subsequent course of the proceedings before the Examiner unless modified for good cause, by subsequent order.

§ 1852.3–2 Notice of hearing.

The examiner shall fix a place and date for the hearing and notify all parties and the Bureau at least 30 days in advance of the date set, unless the parties and the Bureau request or consent

to an earlier date. The notice shall include (a) the time, place, and nature of the hearing, (b) the legal authority and jurisdiction under which the hearing is to be held, and (c) the matters of fact and law asserted.

§ 1852.3–3 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Examiner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 1852.3–4 Authority of Examiner.

The Examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (43 U.S.C. 102–106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by § 1850.0–7.

§ 1852.3–5 Conduct of hearing.

So far as not inconsistent with a prehearing order, the Examiner may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

§ 1852.3–6 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross examination. The Examiner may question any witness. Documentary evidence may be received if pertinent to any issue. The Examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Examiner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of an Examiner sustains 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, and the objecting party may then make an offer of proof in rebuttal.

§ 1852.3–7 Reporter's fees; transcript.

(a) The Government agency initiating the proceedings will pay all reporting fees in hearings in Government contest proceedings, in hearings under the Surface Resources Act of 1955, as amended, in hearings under the Multiple Mineral Development Act of 1954, as amended, where the United States is a party, and in hearings under the Mining Claims Rights Restoration Act of 1955, regardless of which party is ultimately successful.

(b) In the case of a private contest, each party will be required to pay the reporter's fees covering the party's direct evidence and cross-examination of witnesses, except that if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(c) Each party to a private contest shall be required by the Examiner to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits shall be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (b) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's fee. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

(d) Each party to a Government or private contest shall pay for any copies of the transcript obtained by him.

§ 1852.3–8 Findings and conclusions; decision by examiner; submission to Director for decision.

(a) At the conclusion of the testimony the parties at the hearing shall be given a reasonable time by the examiner, 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 or to stipulate to a waiver of such findings and conclusions.

(b) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner shall make findings of fact and conclusions of law (unless waiver has been stipulated), giving the reasons therefor, upon all the material issues of fact, law, or discretion presented on the record. The examiner may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each proposed finding and conclusion submitted by the parties and such ruling shall be shown in the record. The examiner will render a written decision in the case which shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, and his rulings upon the findings and conclusions proposed by the parties if such rulings do not appear elsewhere in the record. A copy of the decision will be served upon all parties to the case.

(c) The Director may require, in any designated case, that the examiner make only a recommended decision and that the decision and the record be submitted to the Director for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (b) of this section. The Director shall then make the initial decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the examiner.

§ 1852.3–9 Appeal to Director.

Any party, including the Government, adversely affected by the decision of the examiner may appeal to the Director as provided in Part 1840. No further hearing will be allowed in connection with the appeal to the Director but the Director, after considering the evidence, may remand any case for further hearing if he considers such action necessary to develop the facts.

Subpart—1853 Grazing Proceedings (Inside Grazing Districts)

AUTHORITY: The provisions of this Subpart 1853 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived

ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) 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.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and 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 district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so 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. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. 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.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, 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. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily 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, or which is obviously irrelevant and immaterial to the issues in the case. 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, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law 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. 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 further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, 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 Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Dintention to appeal. Notice of appeal shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, 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 the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *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 Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, 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 5 U.S.C. § 704 unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; 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 or by the State Director 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.

(b) *Effect of substantial compliance.* 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 Part 4110 of this chapter.

Subpart 1855—Hearings Upon Possessory Claims to Lands and Waters Used and Occupied by Natives of Alaska

AUTHORITY: The provisions of this Subpart 1855 issued under R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 1855.1 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.

§ 1855.2 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.

§ 1855.3 Powers of presiding officer.

(a) 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: (1) Administer oaths; (2) rule upon motions and requests; (3) examine witnesses and receive evidence; (4) admit or exclude evidence and rule upon objections; (5) hear oral arguments and receive memoranda on facts and law in his discretion; (6) do all acts and take all measures necessary for the maintenance of order at the hearing and the official conduct of the proceeding.

(b) 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.

(c) The presiding officer may take official notice of any generally recognized fact, any established technical or scientific fact, or any official public records.

§ 1855.4 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.

§ 1855.5 Evidence.

(a) 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.

(b) 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.

§ 1855.5–1 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.

§ 1855.5–2 Opinion evidence.

In the discretion of the presiding officer, opinion evidence by properly qualified witnesses may be admitted.

§ 1855.5–3 Stipulations.

In the discretion of the presiding officer, stipulations of facts signed by the parties or their representatives may be introduced.

§ 1855.5–4 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.

§ 1855.5–5 Objections.

It shall not be necessary to make formal exceptions to adverse rulings of the presiding officer upon objections.

§ 1855.6 Oral arguments and briefs.

(a) 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.

(b) 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.

§ 1855.7 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.

§ 1855.8 Determination by the Secretary of the Interior.

§ 1855.8–1 Report of findings and conclusions by 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.

§ 1855.8–2 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.

§ 1855.9 Publication and revision.

§ 1855.9–1 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.

§ 1855.9–2 Revision of subpart.

This subpart 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.

PART 1860—CONVEYANCING DOCUMENTS

Subpart 1862—Patent Preparation and Issuance

Sec.
1862.0–3 Authority.
1862.1 Contents.
1862.2 Delivery.
1862.3 Issuance of supplemental noncoal patents.
1862.4 Patent to be withheld pending report from Forest Service.
1862.5 Suits to vacate and annul patents.
1862.6 Patent to issue after 2 years from date of manager's final receipt.

Subpart 1863—Other Title Conveyances

1863.5 Title transfer to the Government.
1863.5–1 Evidence of title.

Subpart 1862—Patent Preparation and Issuance

AUTHORITY: The provisions of this Subpart 1862 issued under R.S. 2450, as amended; 43 U.S.C. 1161.

§ 1862.0–3 Authority.

(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) 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 except exchange transactions involving lands under the jurisdiction of the Secretary of Agriculture, 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 quit-claim deed of the conveyed land to the party or parties entitled thereto.

§ 1862.1 Contents.

(a) 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.

(b) 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.

(c) 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.

§ 1862.2 Delivery.

(a) *Issued on or after August 1, 1950.* 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.

§ 1862.3 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 non-coal 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.

§ 1862.4 Patent to be withheld pending report from Forest Service.

In no claim, mineral or non-mineral, shall patent issue for land within a national forest until the Bureau of Land Management is notified by, or ascertains from, the Forest Service, that the claim will not be contested. A claim may be contested by the Forest Service at any time prior to the issuance of patent.

§ 1862.5 Suits to vacate and annul patents.

(a) Suits to vacate and annul patents shall only be brought within 6 years after the date of the issue of such patents (26 Stat. 1093; 43 U.S.C. 1166).

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).

§ 1862.6 Patent to issue 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, or desert-land laws, 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 satute 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.

CROSS REFERENCES: For mineral reservations, see Subpart 2093 of this chapter; for rights-of-way for roadways, see Subpart 2800 of this chapter.

Subpart 1863—Other Title Conveyances

AUTHORITY: The provisions of this Subpart 1863 issued under R.S. 2478; 43 U.S.C. 1201.

§ 1863.5 Title transfer to the Government.

§ 1863.5–1 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.

CROSS REFERENCE: For evidence of title in mining cases, see § 3862.1–3 of this chapter.

PART 1870—ADJUDICATION PRINCIPLES AND PROCEDURES

Subpart 1871—Principles

Sec.
1871.0–3 Authority.
1871.1 Equitable adjudication.
1871.1–1 Cases subject to equitable adjudication.

AUTHORITY: The provisions of this Subpart 1871 issued under R.S. 2450; 43 U.S.C. 1161.

§ 1871.0–3 Authority.

The act of September 20, 1922 (42 Stat. 857; 43 U.S.C. 1161–1163), as modified by section 403 of Reorganization Plan No. 3 of 1946 (60 Stat. 1100), reads 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.

§ 1871.1 Equitable adjudication.

§ 1871.1–1 Cases subject to equitable adjudication.

The cases subject to equitable adjudication by the Director, Bureau of Land Management, cover the following:

(a) Substantial compliance: 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.

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

Group 2000—Land Resource Management; General

PART 2070—DESIGNATION OF AREAS AND SITES

Subpart 2070—Designation of Areas and Sites

Sec.
2070.0–1 Purpose.
2070.0–2 Objective.
2070.0–3 Authority.
2070.0–5 Definitions.

Subpart 2071—Type and Effect of Designations

2071.1 Areas or sites that may be designated.
2071.2 Standards for names.
2071.3 Standards for identification.
2071.4 Effect of designations.

Subpart 2072—Procedures

2072.1 Procedure for designating areas and sites.

Subpart 2070—Designation of Areas and Sites

AUTHORITY: The provisions of this Subpart 2070 issued under sec. 1(b)(1), 78 Stat. 986, R.S. 2478, as amended; 43 U.S.C. 1411, 1201.

§ 2070.0–1 Purpose.

This subpart defines the circumstances and procedures under which specific areas of public and other Federal lands exclusively administered by the Secretary of tne Interior through the Bureau of Land Management may be designated and identified.

§ 2070.0–2 Objective.

The objective is to provide guidelines for the designation and identification of such areas, and to specify the nature and effect of such designations.

[1] The receipts formerly issued by the receivers are now issued by the managers.

§ 2070.0–3 Authority.

(a) Section 1(b)(1) of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411) provides that none of the public or other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management shall be given a designation or classification unless such designation or classification is authorized by statute or defined in regulations promulgated by the Secretary of the Interior. Classifications are described in Group 2400 of this chapter.

(b) Section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), authorizes the Secretary of the Interior to enforce and carry into execution, by appropriate regulation, every part of the provisions of the public land laws not otherwise specially provided for.

§ 2070.0–5 Definitions.

(a) "Designation" refers to the official identification and naming of a general area or site on public land or other Federal land exclusively administered by the Secretary through the Bureau of Land Management.

Subpart 2071—Type and Effect of Designations

§ 2071.1 Areas or sites that may be designated.

(a) No lands may be designated under the regulations in this subpart unless they are either (1) classified for retention for multiple use management under the regulations and criteria in Group 2400 of this chapter, or (2) withdrawn or reserved under the regulations in Group 2300 of this chapter or other appropriate authority, or (3) given special status by act of Congress such as the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands or lands acquired under the Bankhead-Jones Act and transferred to the Bureau of Land Management for administration.

(b) The following types of areas and sites may be designated under the regulations in this subpart:

(1) *Recreation lands.* A tract of land usually several thousand acres in size where recreation is or is expected to be a major use, and designation will assist the public by making the areas known to them. Some examples of areas which may be designated as recreation lands follow: Scenic areas of natural beauty such as waterfalls; habitat of interesting, rare or unusual plants or animals; gorges; natural lakes; geological areas of outstanding structural or historical features of the earth's development such as caves, glaciers and other phenomena; roadless areas in which the primitive environment is preserved, sometimes referred to as wilderness, wild, primitive, roadless or virgin areas. Recreation lands will contain one or more of the six classes adopted by the Bureau of Outdoor Recreation. These classes will be identified and described at the time an area is designated. These lands may be defined briefly as follows:

(i) Class I—High-density recreation areas: Areas intensively developed and managed for mass use.

(ii) Class II—General outdoor recreation areas: Areas subject to substantial development for a wide variety of specific recreation uses.

(iii) Class III—Natural environment areas: Varied and interesting land forms, lakes, streams, flora, and fauna within attractive natural settings suitable for recreation in a natural environment and usually in combination with other uses.

(iv) Class IV—Outstanding natural areas: Areas of outstanding scenic splendor, natural wonder, or scientific importance that merit special attention and care in management to insure their preservation in their natural condition. These usually are relatively undisturbed, representative of rare botanical, geological, or zoological characteristics of principal interest for scientific and research purposes.

(v) Class V—Primitive areas: Extensive natural, wild, and undeveloped areas and settings essentially removed from the effects of civilization. Essential characteristics are that the natural environment has not been disturbed by commercial utilization and that the areas are without mechanized transportation.

(vi) Class VI—Historic and cultural sites: Sites of major historical or cultural significance, either national, regional, or local. These are usually small tracts of lands containing significant evidence of American history, such as battlegrounds, mining camps, cemeteries, pioneer trails, and trading posts; or lands which contain significant evidence of prehistoric life such as pictographs, petroglyphs, burial grounds, prehistoric structures, middens, fossils, paleontological remains, and any other evidences of prehistoric life forms.

(2) *Recreation sites.* These are relatively small tracts of land which have value for concentrated and intensive recreation use that usually requires construction and maintenance of public facilities. Recreation sites will contain Class I, II, III, or VI recreation lands under the Bureau of Outdoor Recreation classification system described in subparagraph (1) of this paragraph.

(3) *Resource conservation areas.* These are relatively small areas of land which include a variety of resource management activities demonstrating multiple use and sustained yield conservation in action.

(4) *Natural resources experiment and research areas.* These are relatively small areas of land which are used for research or experimental purposes.

(5) *National resource lands.* These are relatively large areas of land, generally more than half of which is managed by the Bureau of Land Management under principles of multiple-use and sustained yield of the several products and services obtainable therefrom, as defined and prescribed in the Classification and Multiple-Use Act of September 19, 1964 (43 U.S.C. 1411–18 (1964)).

§ 2071.2 Standards for names.

(a) To the fullest extent possible, standards established by the Board on Geographic Names will be followed in naming special management areas.

(b) First preference will generally be given to a geographic feature within the site or area if the feature significantly affects the utilization of the natural resources of the area.

(c) No site or area will be named after a living person. An area may be named after a deceased person if that person made a personal contribution to the utilization or management of the natural resources in the area.

(d) For public identification purposes, names of sites and areas designated in accordance with the regulations in this subpart shall be brief and descriptive.

§ 2071.3 Standards for identification.

Lands designated in accordance with the regulations in this subpart may be—

(a) Posted by means of entrance and boundary signs sufficient to make the lands and the reason for posting known on the ground.

(b) Identified on maps or diagrams sufficient to make the existence and locations known to the general public.

§ 2071.4 Effect of designations.

(a) Designation under this section will have no effect upon established use or management of the areas or sites involved.

(b) If changes in the status of the land or use arrangements are desired, such changes must be accomplished by—

(1) Segregation under the Classification and Multiple Use Act regulations in Group 2400 of this chapter;

(2) Withdrawal or reservation under regulations in Group 2300 of this chapter or other appropriate authority;

(3) Modification of existing use arrangements, to the extent authorized by existing authority and regulations, such as Subchapter D—Range Management (4000) of this chapter for livestock grazing.

Subpart 2072—Procedures

§ 2072.1 Procedure for designating areas and sites.

The sites and areas defined under § 2071.1 may be designated, named, and posted by the authorized officer, after consultation and coordination with the authorized users and any other parties, organizations, and units of government which may have an interest in such action.

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation of Lands

Sec.	
2091.0–7	Cross references.
2091.1	Rejection of applications.
2091.2	Upon application for.
2091.2–1	Indian allotment.
2091.2–2	Airports.
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2091.3-2 Under Taylor Grazing Act and the Recreation and Public Purposes Act.
2091.4 Lands occupied as townsites.
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Subpart 2093—Minerals (Nonmineral Entries on Mineral Lands)

2093.0-3 Authority.
2093.0-5 Definitions.
2093.0-6 Notations required.
2093.0-7 Compensation for damages.
2093.1 Surface rights of nonmineral entrymen.
2093.1-1 Act of March 3, 1909.
2093.1-2 Election to take patent with reservation to United States of the coal deposits.
2093.1-3 Procedures.
2093.2 Agricultural entries on coal lands.
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2093.2-3 Procedures.
2093.3-4 Patent with reservation of coal deposits; disposal of coal deposits.
2093.3 Agriculture entry of lands withdrawn, classified or valuable for minerals.
2093.3-1 Acts of July 17, 1914, and March 4, 1933.
2093.3-2 Lands to which applicable.
2093.3-3 Procedures.
2093.3-4 Patents.
2093.3-5 Disposition of reserved deposits; protection of surface claimant.
2093.4 Entries on coal, oil, and gas lands in Alaska.
2093.4-1 Acts of March 8, 1922, and May 17, 1906 as amended.
2093.4-2 Rights of prior mineral permittees or lessees.
2093.4-3 Obligations of subsequent mineral permittees or lessees.
2093.5 Disposition of minerals reserved to the U.S. Government.
2093.5-1 Act of December 29, 1916.

Subpart 2094—Special Resource Values—Shore Space

2094.0-3 Authority.
2094.0-5 Definitions.
2094.1 Methods of measuring; restrictions.
2094.2 Waiver of 160-rod limitation.

Subpart 2096—Veterans

2096.0-3 Authority.
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2096.2 Act of October 17, 1940; benefits to persons in military service.
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2096.2-4 Notice, proof, required.
2096.2-5 Homesteads.
2096.2-6 Desert-land entries.
2096.2-7 Mining claims.
2096.2-8 Leases, permits, licenses, and claims.

Subpart 2091—Segregation of Lands

AUTHORITY: The provisions of this Subpart 2091 issued under R.S. 2478; 43 U.S.C. 1201, except as otherwise noted.

§ 2091.0–7 Cross references.

(a) For rule of priority in the case of mineral permits and leases see 2093.0–5.
(b) For enlarged homestead see 2514.
(c) For Indian allotment see 2530.
(d) For airports see 2911.
(e) For Carey Act lands see 2620.
(f) For stock-driveway withdrawal see 2313.
(g) For withdrawals and reservations see 2300.
(h) For small tracts see 2730.
(i) For recreation and public purposes see 2740.
(j) For exchanges see 2200.
(k) For native allotments see 2530.
(l) For Alaska Public Sale Act see 2771.

§ 2091.1 Rejection of applications.

Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(a) Withdrawal or reservation of the lands;

(b) An allowed entry or selection of record;

(c) An irrevocable lease which grants the lessee exclusive use of the land;

(d) Classification under appropriate law;

(e) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

§ 2091.2 Upon application for.

§ 2091.2–1 Indian allotment.

Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

§ 2091.2–2 Airports.

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) as amended, will operate as a segregation of the lands described therein from the time such application is filed in the proper land office.

§ 2091.2–3 State exchange.

The filing of a valid application for exchange under the regulations of Subpart 2244 will segregate the selected public lands to the extent that any subsequently tendered application, allowance of which is discretionary, will not be accepted, will not be considered as filed, and will be returned to the applicant. Where an application is withdrawn or finally rejected in whole or in part, the segregative effect of the application on the lands covered by the recall or rejection will terminate at 10:00 a.m. on the 30th day from and after the date a notice of the withdrawal or rejection is first posted in the land office having jurisdiction over said lands.

§ 2091.2–4 Stock-driveway withdrawal.

(a) *Temporary segregation.* 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) *Action on conflicting applications.* (1) Pending and during such temporary segregation, applications to enter or select any affected lands may be received and suspended.

(2) The Bureau will consider applications for the exchange of lands withdrawn for stock driveways, which show that they are filed pursuant to a program for the improvement of stock driveways, and will also consider 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 that purpose.

§ 2091.2–5 Withdrawal or reservation of Federal lands.

(a) *Application.* The noting of the receipt of the application under §§ 2351.1 1 to 2351.6 in the tract books or on the official plats maintained in the appropriate Land Office 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) *Amendments.* (1) 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 authorized officer of the Bureau of Land Management will have a notice published in the FEDERAL REGISTER specifying the date and hour that the lands so eliminated will be relieved 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.

(2) 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.

§ 2091.3 Upon classification.

§ 2091.3–1 Under Small Tract Act.

Lands classified under the act of June 1, 1938, 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.

§ 2091.3–2 Under Taylor Grazing Act and the Recreation and Public Purposes Act.

(a) *Alaska.* Lands in Alaska classified under the Recreation and Public Purposes 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) *Termination.* Classifications made for recreation and public purpose 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.

§ 2091.4 Lands occupied as townsites.

Public lands settled upon and occupied as a townsite are segregated from entry 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).

§ 2091.5 Lands occupied by Indians.

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.

§ 2091.6 Alaska.

§ 2091.6–1 Lands under grazing leases; Act of March 4, 1927.

(a) *Determinations involving nonmineral entries.* Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be cancelled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands § 4131.2–7 of this chapter, and that the lands are suitable for and otherwise subject to the intended settlement, location, entry or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee the grazing lease may be cancelled or reduced to permit the settlement, location, entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

(b) *Disposition of minerals.* Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Subparts 3800 and 3826 of this chapter.

(44 Stat. 1452; 43 U.S.C. 471, 471a–471c)

§ 2091.6–2 Lands subject to reindeer grazing; Act of September 1, 1937.

(a) *Settlement, location, acquisition.* (1) Lands included in grazing permits under the act are subject to settlement, location, and acquisition under the nonmineral public land laws applicable to the State of Alaska.

(2) Upon settlement, location or entry of any lands included within a reindeer grazing permit, the permittee shall be notified of the settlement, location or entry, and the permitted area shall be reduced by the area involved in the settlement, location or entry.

(b) *Disposition of minerals.* Unless otherwise withdrawn therefrom, lands included in grazing permits under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Subparts 3800 and 3826 of this chapter.

(50 Stat. 902; 48 U.S.C. 250, 250a–250p)

§ 2091.6–3 Occupied lands.

Lands occupied by Indians, Aleuts, and Eskimos in good faith are not subject to entry or appropriation by others.

§ 2091.6–4 State selections.

Lands desired by the State under the regulations Subpart 2600 will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the appropriate land office properly describing the lands as provided in § 2627.3(c). Such segregation will automatically terminate unless the State publishes first notice as provided by § 2627.4(c) within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

§ 2091.9–5 Application for native allotment.

The filing of an acceptable application for allotment will segregate the lands to the extent that conflicting applications for such lands will be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned occupancy of the land.

Subpart 2093—Minerals (Nonmineral Entries on Mineral Lands)

AUTHORITY: The provisions of this Subpart 2093 issued under R.S. 2478; sec. 32, 41 Stat. 450; 43 U.S.C. 1201, 30 U.S.C. 189, unless otherwise noted.

§2093.0–3 Authority.

(a) 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, 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 Parts 1840 and 1850 of this chapter.

§ 2093.0–5 Definitions.

As used in §§ 2093.0–3 to 2093.0–7 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 Stat. 388, 43 U.S.C. 372 et seq.) for lands applied for by a mineral claimant under the Leasing Act after withdrawal for reclamation purposes.

§ 2093.0–6 Notations required.

(a) *On notice of allowance.* Whenever 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.

(b) *On final certificate.* (1) Whenever a nonmineral application, which is affected by the notation described in paragraph (a) of this section, proceeds to issuance of 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).

(2) 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.

§ 2093.0–7 Compensation for damages.

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.

§ 2093.1 Surface rights of nonmineral entrymen.

§ 2093.1–1 Act of March 3, 1909.

(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.

§ 2093.1–2 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 § 2093.1–3 (a) and (b).

§ 2093.1–3 Procedures.

(a) *Where final proof has been submitted.* (1) 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.

(2) In the event of election to receive such a patent, no further inquiry will be necessary respecting the coal character of the land.

(3) 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.

(4) 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.

(b) *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.

§ 2093.2 Agricultural entries on coal lands.

§ 2093.2–1 Acts of June 22, 1910, and April 30, 1912.

(a) Section 1 of the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83), provides that 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, the desert land law, 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; 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) 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, 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.

(c) 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 REFERENCE: See Subparts 2510, 2520, and 2620 for additional information on this subject.

§ 2093.2–2 Lands on which entries may be made.

(a) The act of June 22, 1910 applies to unreserved public lands in the United States, exclusive of the State 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.

(b) 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.

§ 2093.2–3 Procedures.

(a) *Applications.* (1) 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.

(2) 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).

(b) *Hearing.* 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.

§ 2093.2–4 Patent with reservation of coal deposits; disposal of coal deposits.

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).

§ 2093.3 Agriculture entry of lands withdrawn, classified or valuable for minerals.

§ 2093.3–1 Acts of July 17, 1914, and March 4, 1933.

(a) Section 1 of the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121), as amended, 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, and sodium and sulphur under 30 U.S.C. 124, 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.

(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).

(Interprets or applies sec. 1, 36 Stat. 583, sec. 1, 38 Stat. 509, as amended; 138; 30 U.S.C. 83, 121)

§ 2093.3–2 Lands to which 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 State 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.

§ 2093.3–3 Procedures.

(a) *General.* 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 §§ 2093.1 to 2093.2 may be followed, so far as applicable, in matters of practice and procedure.

(b) *Notations on applications and in orders of withdrawal.* (1) 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).

(2) 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.

(c) *Notice to entryman; action by entryman.* (1) 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 notified thereof and allowed a reasonable time 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 and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States.

(2) 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 a mineral reservation 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 notify the entryman of the mineral classification and that a hearing will be ordered if he manifests disagreement with the classification within a reasonable period. 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 within the time allowed, the entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil or gas to the United States.

CROSS REFERENCE: For Geological Survey, classification of public coal lands, see 30 CFR 201.

(d) *Applications to disprove classification of land; hearing thereon.* (1) (i) 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.

(ii) 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.

(iii) 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.

(iv) 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 Parts 1840 and 1850 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.

(v) 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.

(2) (i) 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.

(ii) 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 Parts 1840 and 1850 of this chapter.

(e) *Burden of proof.* (1) Where application is made to enter, locate, or select 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.

(2) 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).)

§ 2093.3–4 Patents.

(a) *Patent with reservation.* Under section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123), any person who 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.

(b) *Application for patent.* 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.

(c) *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).

§ 2093.3–5 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.

§ 2093.4 Entries on coal, oil, and gas lands in Alaska.

§ 2093.4–1 Acts of March 8, 1922, and May 17, 1906, as amended.

(a) The act of March 8, 1922 (42 Stat. 415), as amended August 23, 1958 (72 Stat. 730; 48 U.S.C. 376, 377), referred to in §§ 2093.4–1 to 2093.4–3 as "the act of 1922," provides that (1) in Alaska, homestead, including soldiers' additional homestead, homesite, headquarters site, and trade and manufacturing site claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits or that may be valuable for the coal, oil, or gas contained therein, and which are not otherwise reserved or withdrawn; (2) such claims initiated in good faith may be perfected under the appropriate public land laws and, 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; and (3) should it be discovered at any time prior to the issuance of a final certificate on any claim initiated for unreserved lands in Alaska that the lands are coal, oil, or gas in character, the patent issued on such entry shall contain the reservation referred to in subparagraph (2) of this paragraph.

(b) The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357), permits, subject to the provisions of the act of 1922, homestead allotments to Indians, Aleuts, and Eskimos of vacant, unappropriated, and unreserved lands in Alaska that may be valuable for coal, oil, or gas deposits and the act of August 17, 1961 (75 Stat. 384), permits the Secretary of the Interior to sell under the provisions of section 2455 of the Revised Statutes (43 U.S.C. 1171), as amended, lands in Alaska known to contain workable coal, oil, or gas deposits, or that may be valuable for the coal, oil, or gas contained therein, and which are otherwise subject to sale under said section 2455, as amended, upon the condition that the patent issued to the purchaser thereof shall contain the reservation required by section 2 of the act of 1922. (See Part 2710.)

(c) Section 2 of the act of 1922 provides (1) the coal, oil, and gas deposits reserved under the act 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; (2) 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 (after the issuance of, and pursuant to, a lease or permit therefor) to enter upon the lands as provided by the 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 damages to the crops and improvements on such lands by reason of such prospecting; (3) any person who has acquired from the United States the 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.

(d) The act of 1922 extends to Alaska the principles of 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), which, among other things, govern agricultural entries on coal, oil, or gas lands in States other than Alaska. The general instructions under these acts relating to the reservation of coal, oil, or gas to the United States as set forth in this subpart will, therefore, be followed in matters of practice and procedure.

§ 2093.4–2 Rights of prior mineral permittees or lessees.

If prior to the date of the initiation of a claim that is subject to the provisions of the act of 1922, the land was embraced in an oil and gas lease, or a coal permit or lease, or an application for or offer of such a lease or permit, the land will be subject to the right of such prior mineral permittee or lessee, or of such prior applicant for or offeror of 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 entryman, allottee, or patentee for crop and improvement damages resulting from such mineral activity.

§ 2093.4–3 Obligations of subsequent mineral permittees or lessees.

(a) Any coal permit applicant or noncompetitive oil and gas lease offeror whose application or offer was filed subsequent to the date of the initiation of a claim that is subject to the provisions of the act of 1922 must file with the appropriate Land Office Manager a waiver from, or a consent of, the claimant or a bond or undertaking on forms approved by the Director, for coal applicants and for oil and gas offerors for the payment of all damages to the crops and improvements on the lands caused by the prospecting.

§ 2093.5 Disposition of minerals reserved to the U.S. Government.

§ 2093.5–1 Act of December 29, 1916.

(a) *Reservation of rights.* (1) 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.

(2) 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).

Subpart 2094—Special Resource Values—Shore Space

AUTHORITY: The provisions of this Subpart 2094 issued under R.S. 2478, secs. 4, 5, 69 Stat. 444; 43 U.S.C. 1201, 48 U.S.C. 462 note.

§ 2094.0–3 Authority.

Section 1 of the act of May 14, 1898 (30 Stat. 409) as amended by the acts of March 3, 1903 (32 Stat. 1028) and August 3, 1955 (69 Stat. 444; 48 U.S.C. 371) provides that no entry shall be allowed extending more than 160 rods along the shore of any navigable water. Section 10 of the act of May 14, 1898, as amended by the acts of March 3, 1927 (44 Stat. 1364), May 26, 1934 (48 Stat. 809), and August 3, 1955 (69 Stat. 444), provides that trade and manufacturing sites, rights-of-way for terminals and junction points, and homesites and headquarters sites may not extend more than 80 rods along the shores of any navigable water.

§ 2094.0–5 Definitions.

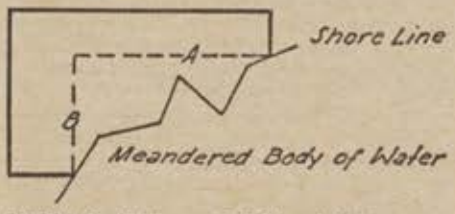
The term "navigable waters" is defined in section 2 of the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411), "to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark".

§ 2094.1 Methods of measuring; restrictions.

(a) 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.

(b) 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.

(c) 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:



§ 2094.2 Waiver of 160-rod limitation.

(a) 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, 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 does not authorize the waiver of the 80-rod restriction, mentioned in § 2094.0–3.

(b) Except as to trade and manufacturing sites, and home and headquarters sites, any applications to enter and notices of settlement which cover lands extending more than 160 rods along the shore of any navigable water will be considered as a petition for waiver of the 160-rod limitation mentioned in paragraph (a) of this section, provided that it is accompanied by a showing that the lands are not necessary for harborage, landing and wharf purposes and that the public interests will not be injured by waiver of the limitation.

Subpart 2096—Veterans

AUTHORITY: The provisions of this Subpart 2096 issued under sec. 6, 45 Stat. 1061, as amended, sec. 5, 58 Stat. 748, as amended; 43 U.S.C. 617e, 283, unless otherwise noted.

§ 2096.0–3 Authority.

(a) *Act of September 27, 1944.* The act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279–284), as amended, referred to in this part as the "1944 Act", grants to veterans of World War II and of the Korean Conflict certain benefits in connection with the public lands. These rights are in addition to the benefits conferred on persons in the military service by the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178; 50 U.S.C., App. 560–572), as amended, and the regulations thereunder in this part, relating to rights initiated or acquired under the public land laws prior to the entrance of the claimant into the military or naval service.

(b) *Other war statutes.* Other statutes have granted benefits under the homestead laws (43 U.S.C. 164, 169, 218) 233) to veterans who served in earlier wars.

(c) *Boulder Canyon Project Act.* 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, World War I, 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.

(d) *Act of October 17, 1940.* (1) 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 Subpart 2033.

(2) 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."

(3) 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 § 2096.0–5 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).

§ 2096.0–5 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 § 2096.2.

(a) The term "persons in the military service" includes the following persons and no others: All members of the 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 "period of military service" and equivalent terms, includes 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.

§ 2096.1 Act of September 27, 1944; benefits to veterans.

§ 2096.1–1 Persons entitled to veterans' benefits.

(a) A veteran is entitled to benefits under the 1944 act if he has served in the military or naval forces of the United States including the Coast Guard, on or after September 16, 1940, and prior to the termination of the Korean Conflict, referred to in this part as the "statutory period" of the 1944 act, and has been honorably discharged from such forces. The veteran is considered to have been honorably discharged for the purposes of the 1944 act if separated from the service by means of an honorable discharge, by the acceptance of resignation, or by a discharge under honorable conditions. A release from active duty is acceptable instead of a discharge if the release from active duty to an inactive status was under honorable conditions, whether or not in a reserve component or retirement, and whether or not the veteran thereafter resumes active military duty. In addition, the veteran must have:

(1) Served at least 90 days during the statutory period, or

(2) Been discharged on account of wounds received or disability incurred during the statutory period in line of duty, or

(3) After regular discharge, been furnished hospitalization or awarded compensation by the Government on account of wounds received or disability incurred during the statutory period.

A veteran, under 21 years of age, who is otherwise entitled to benefits under the 1944 act, may not be disqualified from making homestead entry or from any other benefits of the 1944 act merely because of age.

(b) A "veteran of other wars" is entitled to benefits if he was honorably discharged and served with the United States Army or Navy or with a unit of the Federalized National Guard between May 9, 1916, and March 3, 1921; or with the Allied armies between July 28, 1914, and March 3, 1921, and thereafter resumed his United States citizenship; and if the veteran served for at least 90 days during any one of those periods, or was wounded or disabled in line of duty while in such service, or was awarded compensation by the United States for wounds or disability resulting from such service; or

(c) The following persons may exercise the rights of a veteran under the regulations of this part, subject to compliance with other applicable regulations:

(1) The wife or husband of a veteran entitled to benefits under the 1944 act, if the veteran gives written consent, such benefits being in addition to any to which the spouse may individually be entitled under the 1944 act as a qualified veteran.

(2) The surviving wife or husband, or the surviving minor children if the spouse dies or remarries, of a veteran entitled to benefits under the 1944 act or of a person who died as the result of wounds received or disability incurred in line of duty while serving with the military or naval forces during the statutory period of the 1944 act.

(3) The heirs or devisees of a veteran entitled to the benefits of the 1944 act with respect to a homestead settlement or entry made by the veteran who died before perfecting title to the claim, without leaving a surviving spouse or minor children.

§ 2096.1–2 Credit for and evidence of service.

(a) Any person, entitled to benefits under the regulations of this part, may obtain credit only for actual service, with the organizations and for the "statutory periods" specified in the regulations of this part, subject to minimum requirements specified in the regulation in this part except as follows:

(1) Credit is granted for the equivalent of two years' service, regardless of the actual length of service by a veteran entitled to the benefits of the 1944 act, if the veteran was discharged because of wounds received or disability incurred in line of duty during the "statutory period" of the 1944 act; or after regular discharge, was furnished hospitalization or awarded compensation by the Government on account of such wounds or disability; or died as the result of wounds received or disability incurred in line of duty during such period.

(2) Credit is granted for the whole term of enlistment, regardless of actual length of service by any "veteran of other wars" who was discharged because of wounds received or disability incurred in the line of duty, or who subsequent to discharge was awarded compensation for such wounds or disability.

(3) Credit is granted for the whole term of enlistment, regardless of actual length of service by any "veteran of other wars", except of the Indian wars, if the veteran died during the term of his enlistment.

(4) Credit is granted for service by any "veteran of other wars" except of the Indian wars, for the full term of the service under his enlistment, although such term did not expire until after the war ceased.

(5) Credit granted for service between May 9, 1916, and March 3, 1921, includes time spent in a course of training under the Vocational Rehabilitation Act of June 27, 1918 (40 Stat. 617), or under treatment in a Government hospital on account of wounds or disabilities incurred in line of duty during that period.

(b) For the purpose of the regulations of this part, credit for service in the military or naval forces of the United States begins upon induction into such service whether by enlistment, draft, appointment, or call into active service from a reserve status. Credit for service by a veteran entitled to the benefits of the 1944 act terminates upon his honorable discharge or release from active duty under honorable conditions to an inactive status, whether or not in a reserve component, or retirement, and whether or not he has thereafter resumed active duty. He is considered to have been honorably discharged for the purposes of the 1944 act if he has been separated from the service by means of an honorable discharge, or by the acceptance of resignation or a discharge under honorable conditions.

(c) No credit for military service can be allowed where commutation proof is submitted.

(d) A veteran claiming benefits under this part must submit evidence clearly showing:

(1) A discharge from the armed forces or other unit on the basis of service with which he claims benefits under the regulations in this part;

(2) The period of his service; and

(3) Other facts upon which his claim is based.

Preferred evidence for subparagraphs (1) and (2) of this paragraph is a photostatic copy of both sides of the veteran's certificate of discharge although other duly corroborated evidence will be accepted.

(e) Any other person claiming benefits under this section must submit all

the evidence required of a veteran; and in addition, must include information as to whether the veteran is deceased, the date of his or her death, and whether the spouse has remarried, and facts as to homestead entry made by the veteran. A guardian, duly appointed and accredited to the Department must represent any surviving minor children. He must submit a like statement, and in addition give the name, address, and age of each surviving minor child.

§ 2096.1–3 Residence requirements under the homestead and Alaska homesite laws.

(a) Persons claiming benefits under the regulations in this part must comply with the homestead or Alaska homesite laws, as the case may be, for a period of at least one year and for such additional period as, added to the term of qualifying service, equals three years. Except as elsewhere indicated in this section, the following tables list the amount of residence required of such persons, according to the service credit to which they are entitled.

(1) Residence requirements under the homestead laws (43 U.S.C., sec. 161, et seq.):

(i) In the computation of the required periods of homestead residence, there has been excluded the five months' of absence each year which may be taken by giving notice as required in Subpart 2511.

Number of months of service credit	Number of months of residence required during the first 3 years after entry		
	1 year	A second year	A third year
19 or more	7		
18	7	1	
17	7	2	
16	7	3	
15	7	4	
14	7	5	
13	7	6	
7 to 12	7	7	
6	7	7	1
5	7	7	2
4	7	7	3
3	7	7	4
2	7	7	5
1	7	7	6

[1] Applicable only as to service in any Indian war, campaign, or in a zone of active Indian hostilities since veterans need a minimum of only 30 days service to obtain statutory benefits for such service.

(2) Residence requirements under the Alaska Homesite Act (48 U.S.C., sec. 461):

(i) These reduced residence requirements are applicable only to persons entitled to the benefits of the 1944 act.

Number of months of service credit	Number of months of residence required after entry		
	1 year of the entry	A second year of the entry	A third year of the entry
17 or more	5		
16	5	1	
15	5	2	
14	5	3	
13	5	4	
5 to 12	5	5	
4	5	5	1
3	5	5	2

(b) The following persons are excused from residence requirements:

(1) The surviving spouse, surviving minor orphan children, or other heirs or devisees, of a homestead entryman, who have succeeded to the homestead entry are excused from further residence on the land after the death of the entryman.

(2) Surviving minor orphan children of a veteran entitled to the benefits of the 1944 act who made an Alaska homesite entry are excused from further residence on the land after death of the entryman.

§ 2096.1–4 Cultivation and other requirements under the homestead and the Alaska homesite laws.

(a) An entryman entitled to benefits under the regulations in this part must comply with the requirements of these regulations and any others relating to his entry under the homestead or Alaska homesite law. If the entryman succeeds to the rights of a deceased entryman, the successor must show that the deceased entryman had complied with the applicable laws and regulations up to the time of his death.

(b) A homestead entryman obtaining benefits under the regulations in this part, may comply with the cultivation and other requirements and become entitled to a patent for his homestead prior to the termination of the three-year period otherwise required of homestead entrymen for such compliance, if he promptly files his final homestead proof. He must in any case cultivate at least one-eighth of the area entered. The following tables indicate the area of cultivation required under the homestead law of such persons, according to the service credit to which they are entitled.

(1) Cultivation requirements under the homestead laws for persons entitled to the benefits of the 1944 act:

Year after date of entry during which proof is filed [1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First [2]	1/8				
Second [3]		1/8			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] This table assumes that final homestead proof is filed promptly after completion of the cultivation requirements listed in the above table. The homestead law requires cultivation until final proof. If the homesteader delays submission of final homestead proof beyond the period of residence required, therefore, he must perform the necessary cultivation during each annual cultivable season elapsing or reached before the submission of proof, except for those years to which his service credit is applied.

[2] Applicable only to persons entitled to credit for 19 months or more of service.

[3] Applicable only to persons entitled to credit for 7 months or more of service.

(2) Cultivation requirements under the homestead laws for persons entitled to the benefits of "veterans of other wars":

Year after date of entry during which proof is filed [1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First [2]					
Second [3]		1/16			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] See footnote 1 in table in subparagraph (1) of this paragraph.

[2] See footnote 2 in table in subparagraph (1) of this paragraph.

[3] See footnote 3 in table in subparagraph (1) of this paragraph.

(c) The following persons are excused from any further compliance with the requirements of laws and regulations relating to the entries to which they have succeeded, nor do they have to show that the entryman had complied with applicable laws and regulations prior to his death:

(1) The surviving minor orphan children of a person entitled to the benefits of the 1944 act.

(2) The surviving minor orphan children of anyone else who made homestead entry but who died prior to perfection of title, leaving only a minor child or minor children.

(d) A person entitled to benefits under the regulations of this part may receive a reduction in the area to be cultivated under the homestead regulations Subpart 2510 in the same manner and under the same conditions required of other applicants.

§ 2096.2 Act of October 17, 1940; benefits to persons in military service.

§ 2096.2–1 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.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2–2 Rights protected.

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.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2–3 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.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2–4 Notice, proof, required.

(a) *Notice.* (1) Where notice of entrance into military service and of a desire to hold claims or obtain benefits is required by the act of October 17, 1940 (54 Stat. 1187, 50 U.S.C. App. sections 561–572) (except notice of a mining location), it shall be given on a form approved by the Director to the proper land office, as provided in § 1821.2–1(b)(1) of this chapter, within 6 months after entrance into service.

(2) A claimant of a mining location shall, in accordance with § 2096.2–7, give notice of his military service before the close of the assessment year.

(3) Notice shall be by registered mail unless it is filed personally in the proper office by the claimant or by his agent.

(b) *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.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2–5 Homesteads.

Homestead claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture, as provided in § 2096.2–1:

(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.

(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) *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 cannot 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, patent will be issued to the person or persons entitled thereto.

(d) *Contest of homestead.* (1) 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.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2–6 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 § 2096.2–1:

(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 expand 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 § 2096.2–4(a).

(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) 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.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2–7 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.* (1) 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 a form approved by the Director.

(2) If application for patent to the mining claim has been made, notice to the Bureau of Land Management of the applicant's entrance into military service is desirable, but not mandatory.

§ 2096.2–8 Leases, permits, licenses, and claims.

(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.

(c) 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 and regulations, contained in section 507 of the act.

(d) 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.

(e) In order to obtain the benefits of section 506 of the act, a permittee or lessee of public domain under the Federal mineral leasing laws shall file a notice of his entrance into military service and of his desire to avail himself of the benefits of that section, in accordance wih paragraph 2096.2–4(a).

(f) The suspension of a lease, permit, license, etc., will not be construed to supersede the terms of any contract for the operation thereof.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

Group 2100—Acquisitions

PART 2110—GIFTS

Subpart 2110—Gifts; General

Sec.
2110.0–1 Purpose.
2110.0–3 Authority.

Subpart 2111—Procedures

2111.1 Offer to convey.
2111.1–1 Place of offering.
2111.1–2 Designation of authority and description of property.
2111.1–3 Statement of ownership, encumbrances.
2111.2 Acceptance of offer.
2111.3 Deed of conveyance.
2111.4 Status of lands.

AUTHORITY: The provisions of this Part 2110 issued under sec. 2, 48 Stat. 1270, R.S. 2478, as amended, sec. 8, 48 Stat. 1272, as amended; 43 U.S.C. 315a, 1201, 315g.

Subpart 2110—Gifts; General

§ 2110.0–1 Purpose.

The Secretary of the Interior may accept as a gift, lands, with or without improvements thereon, with or without limitations or conditions as to the future use and disposition thereof, in fee simple or any interest less than fee, where possession of such land or interest will promote the purposes of a grazing district or facilitate the administration or contribute to the improvement, management, use or protection of public lands and their resources. The authority of the Secretary is discretionary and acceptance of offers rests, among other things, upon a determination that the public interest will be served thereby.

§ 2110.0–3 Authority.

(a) *Section 8(a) of the Taylor Grazing Act.* Section 8(a) of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, authorizes the Secretary of the Interior to accept on behalf of the United States, any lands within or without the exterior boundaries of a grazing district as a gift, where such action will promote the purposes of a district or facilitate the administration of the public lands.

(b) *Section 103(a) of the Public Land Administration Act.* Section 103(a) of the Public Land Administration Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1364), authorizes the Secretary to accept contributions or donations of real or mixed property, including rights-of-way, for the improvement, management, use and protection of the public lands and their resources administered by the Bureau of Land Management.

Subpart 2111—Procedures

§ 2111.1 Offer to convey.

§ 2111.1–1 Place of offering.

Any person desiring to make a gift, contribution, or donation of land or interest in land to the United States should submit an offer to convey and transfer said property to the United States voluntarily. The offer should be transmitted to the proper land office in accordance with the provisions of § 1821.2 of this chapter.

§ 2111.1–2 Designation of authority and description of property.

The offer should designate the statute under which the gift is to be made and should describe the lands by legal subdivisions of the public land surveys, if possible, with a description of any permanent improvements fixed to the land. Any limitations on title should be fully detailed and any conditions as to future use and disposition of the land should be set forth.

§ 2111.1–3 Statement of ownership encumbances.

The offer should be accompanied by a statement showing that the offeror is the record owner in fee of lands so offered, free and clear of all encumbrances; that there are no persons claiming the land adversely to the offeror;

whether there are any unpaid taxes or assessments levied or assessed against the offered land or that could operate as a lien thereon; 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 the lands.

§ 2111.2 Acceptance of offer.

Where the authorized officer finds that acceptance of the offered lands is in consonance with the program set forth in § 2110.0–1, he shall advise the offeror of the acceptance of the offer and request the offeror to submit a voluntary deed of conveyance to the United States of the land offered, together with an affidavit that the 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.

§ 2111.3 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 statute appropriately designated. Where such deed is made by an individual, it must show whether the person making the conveyance is married or single. If married, the spouse of the donor must join in the execution and acknowledgment of the deed in such manner as to bar effectually any right of courtesy or dower, or any claim whatsoever to 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 spouse has no interest, present or prospective, which makes his or her joining in the deed of conveyance necessary. Where the deed of conveyance is by a corporation, the order or direction of the board of directors or other governing body should be recited in the deed, and a copy thereof must accompany the instrument of transfer. Both the deed and the instrument must bear the impression of the corporate seal.

§ 2111.4 Status of lands.

Upon acceptance of the deed of conveyance, the lands or interests so conveyed will become property of the United States but will not become subject to applicable land and mineral laws of this title unless and until an order to that effect is issued by the authorized officer.

PART 2120—LEASES

Subpart 2120—Leases; General

Sec.
2120.0–2 Objectives.
2120.0–3 Authority.

Subpart 2121—Procedures

2121.1 Evidence of ownership.
2121.1–1 Certificate of ownership for State or county lands.
2121.1–2 Certificate of ownership for private lands.
2121.2 Leases.
2121.2–1 Form of lease.
2121.2–2 Period of lease.
2121.2–3 Approval of lease; renewal.
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2121.4–1 Computation of fees.
2121.4–2 Disposition of receipts.
2121.4–3 Allocation of funds appropriated.
2121.5 Improvements by the United States on leased lands.

AUTHORITY: The provision of this Part 2120 issued under 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 2120—Leases; General

§ 2120.0–2 Objectives.

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.

§ 2120.0–3 Authority.

(a) *The Act of June 23, 1938.* The act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m–1, 315m–4 inclusive), 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, and 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.

Subpart 2121—Procedures

§ 2121.1 Evidence of ownership.

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:

§ 2121.1–1 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.

§ 2121.1–2 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.

§ 2121.2 Leases.

§ 2121.2–1 Form of lease.

Leases under the Pierce Act should conform in general to a form approved by the Director. 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.

§ 2121.2–2 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.

§ 2121.2–3 Approval of lease; renewal.

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.

§ 2121.3 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).

§ 2121.4 Fees.

§ 2121.4–1 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 the lands leased in any one State must

be at least equal to the aggregate of the rentals paid in that State.

§ 2121.4–2 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).

§ 2121.4–3 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 State Director for disbursement in accordance with that act and the regulations in this part. Records of disbursements thereof will be maintained under existing procedure.

§ 2121.5 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 4110 of this chapter.

Group 2200—Exchanges

PART 2200—EXCHANGES—GENERAL PROCEDURES

Subpart 2200—Exchanges—Introduction

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2200.0–2 Objectives.
2200.0–5 Definitions.
2200.0–8 Provisions applicable to all exchanges.

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2201.2 Preliminary negotiations.
2201.3 Costs.
2201.3–1 Appraisals.
2201.3–2 Publication and securing title evidence.
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Subpart 2204—Approval of Exchange and Subsequent Action

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Subpart 2200—Exchanges—Introduction

AUTHORITY: The provisions of this Subpart 2200 issued under sec. 8, 48 Stat. 1272; 43 U.S.C. 315g, as amended.

§ 2200.0–1 Purpose.

The regulations in this Group 2200 provide procedures for processing exchanges of U.S. property for other property.

§ 2200.0–2 Objectives.

The discretionary authority of the Secretary of the Interior to make exchanges will be used to consolidate land holdings of the United States, and to establish land ownership and use patterns which will permit more effective administration of the public lands of the United States, the stability of communities and enterprises dependent on the public lands, and other program objectives described in Subpart 1725 of this chapter.

§ 2200.0–5 Definitions.

(a) As used in this part the term "person" includes any person or entity legally capable of conveying and holding real property under the laws of the States within which the property is located.

§ 2200.0–8 Provisions applicable to all exchanges.

Except where otherwise noted in the regulations of this Group 2200, the regulations in this Part 2200 are applicable to all exchanges involving the selection of lands under the jurisdiction of the Department of the Interior.

Subpart 2201—Preliminary Requirements

§ 2201.1 Classification of land.

No preliminary negotiations will be conducted, and no application will be accepted for lands administered by the Bureau of Land Management which have not been classified as proper for disposal by exchange, consistent with the provisions of Group 2400 of this chapter. This does not, however, prevent an interested agency from requesting that the authorized officer of the Bureau of Land Management schedule classification action, in accordance with the provisions of Group 2400 of this chapter, for any lands which the interested agency considers may have value for exchanges.

§ 2201.2 Preliminary negotiations.

Preliminary negotiations for exchanges must be conducted with the Federal bureau or agency which would administer the offered lands if the exchange were completed. Any person who holds an interest in property within the boundaries of the area of responsibility of such Federal bureau or agency and who desires to negotiate an exchange with the United States must file with the appropriate field officer of that bureau or agency an informal proposal, in writing, describing the property which is to be offered to the United States and the property which is desired in exchange. After consultation with the authorized officer of the bureau or agency which has jurisdiction over the property desired by the proponent, the appropriate field officer will notify the proponent in writing whether the proposal appears feasible and, if so, whether any adjustments appear necessary for its consummation.

§ 2201.3 Costs.

Whenever the law permits, the bureau or agency which will administer the offered lands if the exchange is consummated will be required to do the following:

§ 2201.3–1 Appraisals.

At the request and with the approval of the authorized officer of Bureau of Land Management, arrange, by contract or otherwise, for the services of appraisers, for the purpose of appraising both the offered and selected property.

§ 2201.3–2 Publication and securing title evidence.

Pay for costs of publication of the exchange and of securing title evidence for the offered property, except as provided otherwise in other sections of this subpart.

§ 2201.3–3 Processing.

At the request of authorized officers of Bureau of Land Management, reimburse the Bureau of Land Management and the bureau having jurisdiction over the selected lands, if other than the Bureau of Land Management, for any costs incurred by them in processing an exchange filed pursuant to the regulations in this subpart.

Subpart 2202—Applications

§ 2202.1 Form.

Any person desiring to effect an exchange hereunder must file with the Bureau of Land Management an application, in duplicate, on a form approved by the Director, Bureau of Land Management, or its equivalent, properly describing the offered and selected property. If the selected property is surveyed, it must be described by legal subdivisions of the public land surveys. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter. The application must be accompanied by the notice required by § 2201.2 of this part, stating that the proposal appears feasible.

§ 2202.2 Springs and water holes.

The application must include a corroborated statement relative to springs and water holes on the selected property, in accordance with §§ 2311.1 and 2311.2 of this chapter.

§ 2202.3 Statement of value, payment.

The application must state that the value of the selected property does not exceed the value of the offered property or in a case where, by statute, equalization of values is permitted by a cash payment, the amount of cash payment

that must be made to equalize values shall be stated in the application.

§ 2202.4 Qualifications of applicant.

The application must state that the applicant is the owner of the interest in the property offered in exchange and that such offered interest is not the basis of any other exchange.

§ 2202.5 Segregation upon application.

Segregation of the land: The filing of a valid formal application for exchange under the regulations of this subpart will segregate the selected public lands as provided in § 2091.2–4.

§ 2202.6 Service or filing fees.

Where the law permits, no service or filing fees shall be required in connection with an application for exchange.

Subpart 2203—Requirements for approval

§ 2203.1 Criteria.

The criteria in Part 1720 and Group 2400 of this chapter and the provisions of appropriate law shall be used in determining whether an application for exchange should be approved.

§ 2203.2 Basis for exchange.

The fair market value of the property conveyed to the United States in any exchange shall not be less than the fair market value of the U.S. property exchanged therefor.

§ 2203.3 Evidence of title.

§ 2203.3–1 Private land owners.

Owners of private property offered in exchange must submit as evidence of title to the offered lands a policy of title insurance on the form prescribed by the Department of the Interior (Form 4–1202), or on the form approved by the Attorney General (See "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by the Department of Justice, 1964 ed.); or a certificate of title issued by a title insurance company authorized by law to issue same, or an abstract of title prepared and authenticated by a licensed abstractor or abstract company or by the recorder of deeds or other proper officer of the State under his official seal.

§ 2203.3–2 States.

States must submit satisfactory evidence of title to the offered property. If the offered property was ever held in private ownership, certificate of title, or an abstract of title as prescribed in subparagraph (1) of this paragraph must be submitted. If the offered property was never held in private ownership the State must submit a certificate of the proper State officer showing that the offered property had not been sold or otherwise encumbered by the State, and a certificate by the recorder of deeds or other proper officer under his official seal or by an abstrator or abstract company that no instrument purporting to convey or in any way encumber title to the offered property is of record or on file.

§ 2203.4 Deed to the United States.

§ 2203.4–1 Private land owners.

Owners of private property will be required to submit a warranty deed of conveyance of the offered property to the United States, properly executed, acknowledged, and recorded in accordance with the laws of the State in which the property is situated. Revenue stamps required by State law must be affixed to the deed and canceled. 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 curtesy, dower, community interest, or any other claim to the property conveyed, or it must be fully shown that under the laws of the State in which the conveyed property is situated, the grantor's spouse has no interest, present or prospective, in the property. 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.

§ 2203.4–2 States.

States will be required to submit a deed of conveyance of the offered property to the United States, properly executed, acknowledged, and duly recorded in accordance with the laws of the State making the exchange, together with a certificate of the proper State officer showing that the officer executing the conveyance was authorized to do so under the State law.

§ 2203.4–3 Statement of authorization.

All deeds and relinquishments must state that they are made "for and in consideration of the exchange of certain lands, as authorized by" the appropriate act of the Congress.

§ 2203.5 Taxes and equalizing money.

Where taxes which have been assessed or levied on the offered property constitute liens against the property 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 property 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. Cash deposit or bond for taxes and, where applicable, cash payment of the amount determined to be needed to equalize values, will be payable upon request of the authorized officer of the Bureau of Land Management.

§ 2203.6 Publication.

Upon a determination by the authorized officer of the bureau or agency having jurisdiction over the selected property and the authorized officer of the bureau or agency which will administer the offered property, if the exchange is completed, that the exchange is consistent with the law and regulations and is otherwise in the public interest, notice of the proposed exchange will be published by the Bureau of Land Management. The notice of publication will give the name and post office address of the applicant, the serial number and date of the application, a reference to the statute authorizing the exchange, and the description of the offered and selected property. It will also state that all persons asserting a claim to the selected property 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 objections has been served upon the applicant. The notice will 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 property is situated, and in the same manner in a newspaper of general circulation in the county or counties in which the selected property is situated. Proof of publication of notice shall consist of a certificate by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, attached to a copy of the notice as published.

Subpart 2204—Approval of exchange and subsequent action

§ 2204.1 Acceptance of conveyance.

If the title and other evidence required of the applicant are found regular and in conformity with the law and regulations, and there are no objections, the authorized officer may accept title to the property offered and conveyed to the United States. He will then issue a patent or other instrument of transfer for the property selected in exchange and, where authorized by law, will transmit to the applicant the cash payment, if any, necessary to equalize the values.

§ 2204.2 Right to reject.

§ 2204.2–1 Basis for denial.

An application may be rejected at any time prior to the issuance of patent or other instrument of transfer. Exchanges will not be consummated, in the discretion of the authorized officer when, for example, after public notice—

(a) An appropriate public requirement for the selected property is identified, or

(b) Information is recieved which establishes that the exchange is not in the public interest.

§ 2204.2–2 Changes in value after publication.

Changes in values, after publication of the notice required by § 2203.6 will ordinarily not be a basis for rejection of an application, all other factors being equal.

§ 2204.2–3 Contractual rights.

Prior to issuance of patent, no action taken shall establish any contractual or other rights against the United

States, or create any contractual or other obligation of the United States.

§ 2204.3 Return of title evidence.

If an applicant has submitted deed and title evidence in connection with an exchange and his application is rejected, the evidence of title will be returned to the applicant. If the deed was recorded, 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. sec. 872).

§ 2204.4 Removal of improvements.

When any buildings, fencing, or other movable improvements owned or erected by an applicant on the land relinquished or conveyed are not a part of the offer to relinquish or convey, the applicant may remove such improvements from the land upon receipt of notice that the exchange has been approved, provided that such removal is accomplished within the time period specified in said notice.

PART 2210—STATE EXCHANGES

Subpart 2211—Under the Taylor Grazing Act

Sec.
2211.0–3 Authority.
2211.0–6 Policy.
2211.0–8 Lands subject to exchange.
2211.1 Terms and conditions.
2211.1–1 Reservations.
2211.1–2 Patent subject to lease.
2211.1–3 Publication costs.
2211.2 Status of conveyed lands.

Subpart 2212—Miscellaneous State Exchanges

2212.1 General.

Subpart 2211—Under the Taylor Grazing Act

§ 2211.0–3 Authority.

(a) *Section 8 of the Taylor Grazing Act.* Subsections (c) and (d) of section 8 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. sec. 315g), authorize exchanges of lands between the United States and a State, upon the application of the 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.

(b) *Applicable regulations.* All the provisions of § 2200.0–8 apply to State exchanges except:

(1) States may file applications for exchanges without meeting the requirements for preliminary negotiations.

(2) State exchanges are not subject to the classification requirements of Group 2400 of this chapter.

§ 2211.0–6 Policy.

The program of the Secretary of the Interior is to cooperate with the States to effect mutually advantageous exchanges and to process State proposals for exchange as rapidly as possible, consistent with the law and the regulations of this subpart.

§ 2211.0–8 Lands subject to exchange.

(a) *Generally.* Lands offered in exchange by a State may be State-owned lands within or without the boundaries 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 must be within the same grazing district and the selected lands must lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining lands in the district for grazing purposes.

(b) *Unsurveyed school sections.* 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. 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.

(c) *State-owned lands within areas reserved or withdrawn.* 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.

§ 2211.1 Terms and conditions.

§ 2211.1–1 Reservations.

Either party to an exchange may make reservations of minerals, easements, or rights of use. The right to enjoy reservations made in lands conveyed to or by the United States shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the lands as the authorized officer deems necessary.

§ 2211.1–2 Patent subject to lease.

Where a State exchange under this section involves lands embraced in outstanding grazing leases under section 15 of the Taylor Grazing Act (43 U.S.C., sec. 315m) issued prior to the filing of the State exchange application, the Secretary of the Interior, upon the request of the State, may issue patent to the State, subject to such outstanding lease, in accordance with the Act of August 24, 1937 (50 Stat. 748; 43 U.S.C. sec. 315p).

§ 2211.1–3 Publication costs.

The State shall pay one-half the cost of publication.

§ 2211.2 Status of conveyed lands.

Lands conveyed to the United States pursuant to a State exchange under this section, upon acceptance of title thereof, become public lands. If the lands are located within the exterior boundaries of a grazing district, they become a part of that district.

Subpart 2212—Miscellaneous State Exchanges

§ 2212.1 General.

Because of the infrequency of transactions involving State exchanges under the Acts of May 7, 1932 (47 Stat. 150), section 3 of the Act of June 14, 1934 (48 Stat. 962), and the Act of December 7, 1942 (56 Stat. 1042), regulations covering these transactions are not codified. Any such transaction will be handled in a manner consistent with the authorizing laws and with the regulations in § 2200.0–8.

PART 2220—PRIVATE EXCHANGES UNDER TAYLOR GRAZING ACT

§ 2220.0–3 Authority.

Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C., sec. 315g), authorize the Secretary of the Interior, when the public interests will be benefited thereby, to accept on behalf 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. The applicant must pay one-half the cost of publication. Any such transaction will be handled in a manner consistent with the regulations in § 2200.0–8.

PART 2230—NATIONAL FOREST EXCHANGES

Sec.
2230.0–3 Authority.
2230.1 Applicable regulations.

§ 2230.0–3 Authority.

The Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C., sec. 485), and other acts authorize the United States to convey Federal lands or timber and in exchange therefor to accept title to non-Federal lands which thereupon become a part of the national forest system administered by the Secretary of Agriculture.

§ 2230.1 Applicable regulations.

All proposals for exchange for the consolidation or extension of national forests shall be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture in compliance with

the regulations of the Secretary of Agriculture. In addition, when an application involves the selection of public lands outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the proponents must comply with the regulations in § 2200.0–8.

PART 2240—NATIONAL PARK SYSTEM EXCHANGES

Sec.
2240.0–3 Authority.
2240.1 General.

§ 2240.0–3 Authority.

(a) *Point Reyes National Seashore, Calif.* The Act of September 13, 1962 (76 Stat. 538; 16 U.S.C., secs 459c–459c–7), providing for the establishment of the Point Reyes National Seashore in the State of California, authorizes the Secretary of the Interior, when the public interest will be benefited thereby, to acquire land, waters, and other property within the boundaries of the Point Reyes National Seashore by exchange. He may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within Arizona, California, Nevada, and Oregon, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, provided that when such values are not equal the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the value of the properties exchanged.

(b) *Fire Island National Seashore.* The Act of September 11, 1964 (78 Stat. 928; 16 U.S.C., secs. 459e–459e–9), authorizes the Secretary of the Interior to establish an area to be known as the "Fire Island National Seashore" and to acquire by exchange lands within the boundaries of the seashore as specified in the act. When acquiring land by exchange the Secretary may accept title to any nonfederally owned land located within the boundaries of the national seashore and may convey to the grantor any federally owned land under his jurisdiction. The properties so exchanged shall be approximately equal in fair market value, but the Secretary may accept cash from or pay cash to a grantor in order to equalize the values of the lands exchanged.

(c) *Lake Mead National Recreational Area.* The Act of October 8, 1964 (78 Stat. 1039, 16 U.S.C., secs. 460n–460n–9) authorizes the Secretary of the Interior to revise the boundaries of the Lake Mead National Recreation Area and to procure property within the exterior boundaries of such area in such manner as he shall consider to be in the public interest. In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within the boundaries of the recreation area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the values of the properties exchanged.

(d) *Whiskeytown-Shasta-Trinity National Recreation Area, Calif.* The Act of November 8, 1965 (79 Stat. 1295) authorizes the Secretary of the Interior to administer the Whiskeytown unit of the Whiskeytown-Shasta-Trinity National Recreation Area. The Secretary is authorized to accept title to any non-Federal property within any part of the recreation area and in exchange therefor to convey to the grantor any federally owned property under his jurisdiction within the State of California which he classifies as suitable for exchange or disposal. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the value of the properties exchanged.

* * * * *

(e) *Bighorn Canyon Recreation Area.* The Act of October 15, 1966 (16 U.S.C. 460t (Supplement III, 1965–67)) establishes the Bighorn Canyon National Recreation Area. It authorizes the Secretary of the Interior to accept title to any non-Federal property within the area and convey in exchange therefor any federally owned property under his jurisdiction in the States of Montana and Wyoming which he classifies as suitable for exchange or other disposal, notwithstanding any other provision of law. Property so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from, or pay cash to, the grantor in an exchange in order to equalize the values of the properties exchanged.

(f) *Act of July 15, 1968.* (1) The Act of July 15, 1968 (16 U.S.C.A. 460L–22, 1969 Supplement) authorizes the Secretary of the Interior to accept title to any non-Federal property or interest therein within a unit of the National Park System or miscellaneous area under his administration, in exchange for any federally owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal. The selected land shall be located in the same State as the offered land. Timber lands subject to harvest under a sustained yield program shall not be exchanged. Public hearings will be held in the area where the lands to be exchanged are located, if a written request therefor is submitted to the Secretary or his authorized officer prior to such exchange, by a State or a political subdivision thereof or by a party in interest. The value of the properties exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by payment of cash to the grantor or to the Secretary, as circumstances require. Payment of cash by the Secretary shall be made only from funds appropriated for the acquisition of land for the area.

(2) The term "National Park System" means all federally owned or controlled lands which are administered under the direction of the Secretary of the Interior in accordance with 16 U.S.C. sections 1 and 2–4, and which are grouped into the following descriptive categories: (i) National parks, (ii) national monuments, (iii) national historical parks, (iv) national memorials, (v) national parkways, and (vi) national capital parks.

(3) The term "miscellaneous areas" includes lands under the administrative jurisdiction of another Federal agency, or lands in private ownership, and over which the National Park Service, under the direction of the Secretary of the Interior, pursuant to cooperative agreement, exercises supervision for recreational, historical, or other related purposes, and also any lands under the care and custody of the National Park Service other than those described above.

(g) *North Cascades National Park, Washington.* The Act of October 2, 1968 (82 Stat. 926) establishes the North Cascades National Park, the Ross Lake National Recreation Area, and the Lake Chelan National Recreation Area. The act authorizes the Secretary of the Interior to accept title to any non-Federal property within the boundaries of the park and the recreation areas and in exchange therefor to convey to the grantor of such property and federally owned property under his jurisdiction in the State of Washington which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(h) *Redwood National Park, Calif.* The Act of October 2, 1968 (82 Stat. 931) establishes the Redwood National Park. The Secretary of the Interior is authorized to accept title to any non-Federal property within the boundaries of the park, and outside of such boundaries within prescribed limits in exchange for any federally owned property under the jurisdiction of the Bureau of Land Management in California, except property needed for public use and management, which he classifies as suitable for exchange or other disposal. Such federally owned property shall also be available for use by the Secretary in payment of just compensation for real property taken pursuant to the act. The values of the properties exchanged either shall be approximately equal or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(i) *Biscayne National Monument, Fla.* The Act of October 18, 1968 (Public Law 90–606) authorizes the Secretary of the Interior to establish the Biscayne National Monument, and to accept title to any non-Federal property within the boundaries of the national monument and outside such boundaries within prescribed areas, in exchange for any federally owned property under his jurisdiction in the State of Florida which he classifies as suitable for exchange or other disposal. The values of the properties exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as circumstances require.

§ 2240.1 General.

Exchanges to eliminate private holdings from national parks and national monuments for which no specific provisions are made in this section have generally reached the limits allowed by enabling legislation. Regulations covering such transactions are, therefore, not codified. Any such transactions will be handled in a manner consistent with the authorizing laws and with the regulations in § 2200.0–8.

PART 2250—WILDLIFE REFUGE EXCHANGES

Sec.
2250.0–3 Authority.
2250.1 Applicable Regulations.

§ 2250.0–3 Authority.

(a) Section 4(b)(3) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire lands or interests therein by exchange (1) for acquired lands or public lands under his jurisdiction which he finds suitable for disposition, or (2) for the right to remove, in accordance with such terms and conditions as the Secretary may prescribe, products from the acquired or public lands within the National Wildlife Refuge System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(b) Section 2(b) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire by purchase, donation, or otherwise, lands or interests therein necessary for the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

(c) Section 1 of the Act of August 22, 1957 (71 Stat. 412), as amended (16 U.S.C. 696) authorizes the Secretary of the Interior to acquire, for the National Key Deer Refuge, lands in designated areas in Florida which he finds suitable for the conservation and management of key deer and other wildlife by exchange for any Federally owned property in Florida which he classifies as suitable for exchange or other disposal. The values of the property so exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Secretary as required.

§ 2250.1 Applicable regulations.

Any such transaction will be handled in a manner consistent with the authorizing law and with the regulations in § 2200.0–8.

PART 2260—O&C EXCHANGES

Sec.
2260.0–2 Objectives.
2260.0–3 Authority.
2260.0–6 Policy.
2260.1 Applicable regulations.

§ 2260.0–2 Objectives.

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.

(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 sustained-yield management units, with a view to sustaining dependent industry, dependent labor and dependent communities.

(d) The effective administration of 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, open space, and natural beauty values against impairment or destruction.

§ 2260.0–3 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 nonmineral land formerly granted to the Oregon and California Railroad Co., 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 Co. 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. Both the offered and selected lands in Coos Bay Wagon Road exchanges must be in the same county.

§ 2260.0–6 Policy.

(a) *Forest management.* The Act of August 28, 1937 (50 Stat. 874), 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.

(b) *Exchanges.* Lands and timber to be acquired under authority of the Act of July 31, 1939, will 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 will be of such a type and so located that the transfer of these resources will not interfere with those principles. 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.

§ 2260.1 Applicable regulations.

These exchanges are subject to the provisions of § 2200.0–8.

PART 2270—MISCELLANEOUS EXCHANGES

Subpart 2271—Indian Reservation Exchanges

Sec.
2271.0–3 Authorities.
2271.1 Reservations established by statute.

Subpart 2272—Reclamation Exchanges

2272.1 Applicable regulations.

Subpart 2273—National Wild and Scenic Rivers System; National Trails System

2273.0–3 Authority.

Subpart 2271—Indian Reservation Exchanges

§ 2271.0–3 Authorities.

(a) *Executive order reservations.* The Act of April 21, 1904 (33 Stat. 211; 43 U.S.C., sec. 149), authorizes the Secretary of the Interior to exchange any vacant, nonmineral, nontimbered, surveyed public lands located in the same State as the offered lands for any privately owned lands over which an Indian reservation has been extended by Executive order. The offered and selected lands must be approximately equal both in value and area. The applicant must pay all costs of consummating the exchange.

(b) *San Juan, McKinley, and Valencia Counties, N. Mex.* Section 13 of the Act of March 3, 1921 (41 Stat. 1239).

(c) *Apache, Coconino, and Navajo Counties, Ariz.* Section 2 of the Act of June 14, 1934 (48 Stat. 961), as supplemented by the Act of May 9, 1938 (52 Stat. 300).

§ 2271.1 Reservations established by statute.

Exchanges and lieu selections involving lands within Indian reservations occur infrequently. Regulations covering such transactions are, therefore, not codified. Any such transactions will be handled in a manner consistent with the authorizing laws and with the general regulations of § 2200.0–8 for exchanges,

and of Subpart 2211 for State lieu selections.

Subpart 2272—Reclamation Exchanges

§ 2272.1 Applicable regulations.

(a) Regulations for exchange under the Act of August 13, 1953 (67 Stat. 566; 43 U.S.C. 451–451K), are in Part 406 of this title and for exchanges under the Act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c), are in §§ 403.6–403.11 of this title.

Subpart 2273—National Wild and Scenic Rivers System; National Trails System Exchanges

§ 2273.0–3 Authority.

(a) *National wild and scenic rivers system.* The Act of October 2, 1968 (82 Stat. 906) institutes a national wild and scenic rivers system, designates the initial components of that system and provides for additional components to be added to the system. The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands within any component of the system administered by him to an average of not more than 100 acres per mile on both sides of the river. The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the system in exchange for any federally owned property under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require.

(b) *National trails system.* The Act of October 2, 1968 (82 Stat. 919), provides for the establishment and designation of trails by the Secretary of the Interior or the Secretary of Agriculture, each on lands administered by him.

(1) The Act authorizes the Secretary of the Interior to accept title to any non-Federal property within the trail right-of-way in exchange for any federally owned property under his jurisdiction which is located in the State and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not, shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require.

(2) The Act authorizes the Secretary of Agriculture to use authorities and procedures available to him in connection with exchanges of national forest lands.

(3) When an application involves the selection of public domain land outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the proponents shall comply with the regulations in § 2244.1.

Group 2300—Land Withdrawals and Revocations

PART 2300—GENERAL PRINCIPLES

Subpart 2300—Authority and Definitions

Sec.
2300.0–3 Authority.
2300.0–5 Definitions.

Subpart 2300—Authority and Definitions

§ 2300.0–3 Authority.

(a) Act of June 25, 1910. (1) 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.

(2) The provisions 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.

(3) 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.

(b) *E.O. 6910, November 26, 1934, and E.O. 6964, February 5, 1935.* (1) E.O. 6910, November 26, 1934, and E.O. 6964, February 5, 1935, withdrew the remaining public lands for classification.

(2) 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 Reclamation Homestead Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), respectively.

(3) 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.

§ 2300.0–5 Definitions.

As used in §§ 2351.1 to 2351.6, and 2357.1, the term "withdrawal or reservation" means "withdrawal, reservation, or restriction" and "land" includes both land and water areas.

PART 2310 — WITHDRAWALS — BUREAU OF LAND MANAGEMENT

Subpart 2311—Public Water Reserves

Sec.
2311.0–3 Authority.
2311.0–8 Lands subject to withdrawal.
2311.1 Selections, filings, or entries.
2311.2 Application to select or enter lands.
2311.3 Use of lands withdrawn as public water reserves.
2311.4 Leasing of public lands near or adjacent to springs, for bath houses, hotels or other improvements.

Subpart 2313—Stock Driveways

2313.0–3 Authority.
2313.1 Application for stock-driveway withdrawal.

Subpart 2317—Public Aviation Fields

2317.0–3 Authority.
2317.0–7 Cross references.
2317.1 Procedures.

AUTHORITY: The provisions of this Subpart 2311 issued under sec. 11, 39 Stat. 865; 43 U.S.C. 301, unless otherwise noted.

Subpart 2311—Public Water Reserves

§ 2311.0–3 Authority.

(a) (1) *Withdrawal of lands from settlement, location, sale, or entry; reservation for public use.* 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.

(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.

(b) *Withdrawal of land from settlement, location, sale, or entry; reservation for lease.* (1) By E.O. 5389, July 7, 1930, as amended, by P.L.O. 399 of August 20, 1947, 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 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."

(2) *Purpose of withdrawal.* The Executive order mentioned in paragraph (a) of this section 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. 971), and the regulations issued thereunder, contained in section 2311.4.

§ 2311.0–3 Lands subject to withdrawal.

(a) Lands not needed or used by the public for watering purposes. (1) 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.

(2) 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.

(3) By E.O. 5106 of May 4, 1929 Alaska was excluded from the public water reserve created by E.O. of Apr. 17, 1926.

§ 2311.1 Selections, filings, or entries.

(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.

(c) Where orders of designation under the said acts contain the quoted paragraph in paragraph § 2311.0–8(a) of this section, it will not be necessary for an entryman to make the showing required by §§ 2311.1 (a) and (b) of this section.

(d) *Application of order of withdrawal to specified cases.* (1) 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 § 2311.1(a) of this subpart must be furnished, irrespective of the date of filing of the application, entry, or selection, before favorable action is taken thereon.

(2) 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.

(3) 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.

§ 2311.2 Application to select or enter lands.

(a) *Showing as to hot or medicinal springs required with applications to enter or select; permission to use lands.* (1) An applicant to enter or select lands situated outside of a national forest in any State 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.

(2) 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.

(3) Permission may be obtained to use or improve lands containing such springs under the said act of March 3, 1925.

(4) 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 States and the Bureau of Land Management.

(b) *Application of order of withdrawal to specified cases.* (1) In case the attempted appropriation of lands is one of 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 paragraph (a) of this section must be furnished irrespective of the date of filing of the application, entry, or selection before favorable action is taken thereunder.

(2) 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.

(3) 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 paragraph (a) of this section.

(4) 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 paragraph (a) of this section.

(R.S. 2478; 43 U.S.C. 1201)

§ 2311.3 Use of lands withdrawn as public water reserves.

(a) *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 Parts 2850, 2860, and 2870 of this chapter, as supplemented by this section.

(b) *Who may make application; form and contents.* (1) 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.

(2) 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.

(c) *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.

(d) *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.

(e) *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.

(f) *Conditions of permit; failure to comply with the same.* (1) Each permit shall contain, besides those found necessary in individual cases, the following conditions:

(i) 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.

(ii) 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.

(iii) That of 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)

(2) 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 terminate the permit at any time when in his judgment such action is desirable.

(3) Permits issued hereunder are transferable only upon the written authority and consent of the manager.

(g) *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.

(R.S. 2478; 43 U.S.C. 1201)

§ 2311.4 Leasing of public lands near or adjacent to springs, for bath houses, hotels, or other improvements.

(a) *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.

(b) *Lands which may be leased.* Leases may be issued for surveyed or unsurveyed unreserved public lands in the several States, 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.

(c) *Form and contents of application.* An application for lease should be filed in duplicate in the proper land office and should include the following:

(1) Applicant's name and address.

(2) If applicant is a private corporation, a certified copy of the articles of incorporation.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(d) *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.

(e) *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.

(43 Stat. 1133; 43 U.S.C. 971)

Subpart 2313—Stock Driveways

§ 2313.0–3 Authority.

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.

§ 2313.1 Application for stock-driveway withdrawal.

(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.

Subpart 2317—Public Aviation Fields

§ 2317.0–3 Authority.

(a) The act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, authorizes the Secretary of the Interior to withdraw lands for beacon lights and other air-navigation facilities, under such rules as he may prescribe.

(b) Under the authority given to the President by the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141, 16 U.S.C. 471) to withdraw lands for public purposes, withdrawals may be made for beacon lights, emergency or intermediate landing fields, and terminal airports.

§ 2317.0–7 Cross references.

To the extent applicable, the procedures in Part 2350 of this chapter shall apply.

§ 2317.1 Procedures.

(a) Withdrawals under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211) may be made on motion of the Bureau of Land Management, or upon application of the Federal Aviation Agency or any other Federal agency, or the lessee of a terminal airport or the applicant for such a lease.

(b) In addition to the requirements of Part 2350 of this chapter, all applications for withdrawal shall contain a statement by the authorized officer of the Federal Aviation Agency as to the need and feasibility of the facility for which the withdrawal is requested.

PART 2320—WITHDRAWALS FOR OTHER INTERIOR AGENCIES

Subpart 2322—Bureau of Reclamation

Sec.
2322.0–3 Authority.
2322.0–5 Definitions.
2322.0–7 Cross references.
2322.1 Effect of withdrawals.
2322.1–1 Under first form.
2322.1–2 Effect of withdrawals under second form.
2322.1–3 Claims initiated prior to withdrawals; reservation for ditches or canals.
2322.1–4 Effect of filing of farm-unit plats.
2322.2 Payment for lands acquired.
2322.3 Effective dates of withdrawals and restorations.

Subpart 2325—Bureau of Indian Affairs

2325.1 Designation of Indian reservations in Alaska.

Subpart 2322—Bureau of Reclamation

AUTHORITY: The provisions of this Subpart 2322 issued under sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373.

§ 2322.0–3 Authority.

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 affected 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.

§ 2322.0–5 Definitions.

(a) *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.

§ 2322.0–7 Cross references.

(a) For regulations concerning rights-of-way for ditches or canals, see Subpart 2871.

(b) For the Bureau of Reclamation regulations relating to the filing of farm-unit plats, see Part 401 of this title.

(c) For mineral locations and entries in reclamation withdrawals, see § 3816.1 of this chapter.

(d) For conformation to farm units, see § 2515.5.

(e) For cancellations, see Subpart 1826 of this chapter.

§ 2322.1 Effect of withdrawals.

§ 2322.1–1 Under first form.

After lands have been withdrawn under the first form they cannot 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.)

§ 2322.1–2 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 prior 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.

§ 2322.1–3 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).

§ 2322.1–4 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.

§ 2322.2 Payment for lands acquired.

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).

§ 2322.4 Effective dates of withdrawals and restorations.

(a) 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.)

(b) 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.

Subpart 2325—Bureau of Indian Affairs

§ 2325.1 Designation of Indian reservations in Alaska.

(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 State 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 State.

(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.

(R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357)

PART 2340—WITHDRAWAL FOR OTHER AGENCIES

Subpart 2344—Federal Power Commission

Sec.
2344.0–3 Authority.
2344.1 Lands considered withdrawn or classified for power purposes.
2344.2 General determination of availability of land.
2344.3 Petitions for restoration.

AUTHORITY: The provisions of this Subpart 2344 issued under R.S. 2478; 43 U.S.C. 1201.

CROSS REFERENCES: For applications and entries, Alaska, see § 1824.9 of this chapter. For rights-of-way for power projects and for power transmission lines, see Subpart 2800. 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 161.27.

§ 2344.0–3 Authority.

(a) Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended. The Act provides that any lands of the United States included in an application for power development, under said Act, shall from the date of filing of application therefor 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 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 under such restrictions as the Commission may determine, and 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. Before the lands are declared open to location, entry or selection, the Secretary of the Interior must give notice of his intention to make such declaration, to the Governor of the State within which such lands are located, and the State shall have a preference for a period of 90 days from the date of such notice to file under any applicable law or regulation, an application for the reservation to the State, or any political subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways.

(b) The act of August 11, 1955 (69 Stat. 681; 30 U.S.C. 621). The Act opened lands then, theretofore or thereafter withdrawn or classified for power purposes, with certain specified exceptions, to mineral location and development under certain conditions.

§ 2344.1 Lands considered withdrawn or classified for power purposes.

The following classes of lands are considered as withdrawn or classified for power purposes for the purposes of section 24 of the Federal Power Act: Lands withdrawn for powersite reserves under 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); lands included in an application for power development under the Federal Power Act; lands classified for powersite purposes under the act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31); lands designated as valuable for power purposes under the acts of June 20, 1910 (36 Stat. 557, 564, 575), June 9, 1916 (39 Stat. 218, 219), and February 26, 1919 (40 Stat. 1178, 1180); lands within final hydroelectric power permits under the act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959); and lands within transmission-line permits or approved right-of-way under said act of 1901 or the act of March 4, 1911 (36 Stat. 1253; 16 U.S.C. 5, 420, 523; 43 U.S.C. 961).

§ 2344.2 General determination under section 24.

(a) On April 17, 1922, the Federal Power Commission made a general determination "that where lands of the United States have heretofore been, or hereafter may be, reserved or classified as powersites, 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."

(b) The regulations governing mining locations on lands withdrawn or classified for power purposes, including lands restored under section 24 of the Federal Power Act, are contained in Group 3800 of this chapter.

§ 2344.3 Petitions for restoration.

(a) Petitions for restoration of lands withdrawn or classified for power purposes, under the provisions of section 24 of the Federal Power Act, must be filed, in duplicate, in the proper land office (see § 1821.2–1 of this chapter). No particular form of petition is required, but it must be typewritten or in legible handwriting. Each petition must be accompanied by a service charge of $10 which is not returnable.

(b) Favorable action upon a petition for restoration will not give the petitioner any preference right or right to preferential treatment if or when the lands are finally restored.

[29 F.R. 4341, Mar. 31, 1964, as amended by Circ. 2220, 31 F.R. 16784, Dec. 31, 1966]

PART 2350—WITHDRAWAL PROCEDURES

Subpart 2350—Withdrawal Procedure—General

Sec.
2350.0–1 Purpose.

Subpart 231—Applications

2351.1 Who may apply.
2351.7 Effect of withdrawals made subsequent to completion of State and other selections.
2351.2 Filing of applications.
2351.2–1 Applications for more than 5,000 acres.
2351.3 Segregative effect of applications.
2351.4 Approval of application; publicity; hearing; investigations; and negotiations.
2351.5 Findings, reviews.
2351.6 Payment for improvements.

Subpart 2353—Public Land Order

2353.1 Public land order preparation, approval and publication.

Subpart 2357—Transfer of Jurisdiction

2357.1 Withdrawals or reservations for the use or benefit of non-Federal agencies.

AUTHORITY: The provisions of this Part 2350 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

Subpart 2350—Withdrawal Procedures, General

§ 2350.0–1 Purpose.

The regulations in this part 2350 apply to all proposals for withdrawal, reservation or restriction, under the authority of Executive Order 10355, May 26, 1952 (17 F.R. 4831), or under the statutory authority of the Secretary of the Interior, or under the Act of February 28, 1958 (72 Stat. 27), of lands or water areas owned or controlled by the United States. However, only the following apply to proposals by the Department of Defense which are governed by the provisions of sections 1, 2, and 3 of the Act of 1958, supra: §§ 2091.2–5, 2300.0–5, 2351.1, 2351.2, 2351.3, and 2351.4.

Subpart 2351—Applications

§ 2351.1 Who may apply.

The heads of Federal agencies and instrumentalities or any subordinate officer designated by them may apply for the withdrawal, reservation or restriction of lands or water areas owned or controlled by the United States for the use or benefit of the agency or instrumentality they represent or where such agency has a direct interest in a State, Territorial, or local program, for the use or benefit of a State or Territory, or political subdivision thereof in connection with such program.

§ 2351.2 Filing of applications.

(a) Except where the application is classified by the applicant for national security reasons, all applications for withdrawal or reservation must be filed in duplicate in accordance with the provisions of § 1821.1 of this chapter. Where the application is classified by the applicant agency for national security reasons, it must be submitted to the Office of the Secretary, Department of the Interior, Washington 25, D.C.

(b) No specific form of application is prescribed but it must contain the following information:

(1) The name and address of the applicant agency and intended using agency;

(2) Legal description of the lands desired, in terms of the public land surveys, where applicable;

(3) When sections 1, 2, and 3 of the Act of February 28, 1958 (72 Stat. 27), are applicable, location of the area involved, to include a detailed description of the exterior boundaries of the lands to be included within, and those to be excepted from, the proposed withdrawal or reservation.

(4) Gross acreage within the exterior boundaries of the requested withdrawal or reservation, and net public land, water, or public land and water acreage covered by the application;

(5) The purpose or purposes for which the area is proposed to be withdrawn, reserved, or restricted, or if the purpose or purposes are classified for national security reasons, a statement to that effect;

(6) Whether the proposed use will result in contamination of any or all of the requested withdrawal or reservation area, and if so, whether such contamination will be permanent or temporary;

(7) The estimated period during which the proposed withdrawal or reservation will continue in effect;

(8) Whether, and if so to what extent, the proposed use will affect continuing full operation of the public land laws and Federal regulations relating to conservation, utilization, and development of mineral resources, timber and other material resources, grazing resources, fish and wildlife resources, water resources, and scenic, wilderness, and recreation and other values;

(9) If effecting the purpose for which the area is proposed to be withdrawn, reserved, or restricted, will involve the use of water in any State, whether, subject to existing rights under law, the intended using agency has acquired, or proposes to acquire, rights to the use thereof in conformity with State laws and procedures relating to the control, appropriation, use, and distribution of water.

(10) A justification for the proposed withdrawal or reservation, including statements showing the need for all the area requested and for the limitation, if any, of concurrent uses;

(11) Citation of the statutory or other authority for the type of withdrawal or reservation requested.

§ 2351.2–1 Applications for more than 5,000 acres.

If the application is for the withdrawal of more than 5,000 acres for any one project or facility, the application must be accompanied by a map or maps, in duplicate, of adequate scale, showing clearly the location of the land by legal subdivisions; the proposed utilization of the property, including the location of the major improvements to be erected or installed; areas to be inundated, if any; and any cultural or other features of the lands requested and of the surrounding area deemed by the applicant to be significant and to illustrate the need for and effect of the proposed withdrawal. Standard base maps, where suitable, may be used for the purposes of this paragraph.

§ 2351.3 Segregative effect of applications.

(a) The noting of the receipt of the application in the tract books or on the official plats maintained by the Land Office in which the application was properly filed or in the tract books maintained by the Washington Office of the Bureau of Land Management if there is no Land Office for the State in which the lands are located shall temporarily segregate such lands as provided in § 2091.2–7.

§ 2351.4 Approval of application; publicity; hearing; investigations; and negotiations.

(a) The authorized officer of the Bureau of Land Management will have published in the FEDERAL REGISTER a notice of the filing of the application and of the opportunity of the public to object to, or comment on, the proposed withdrawal or reservation. In cooperation with the applicant agency, he will also provide for publicity sufficient to inform the interested public of the proposed withdrawal or reservation.

(b) If, as a result of such notice and publicity, sufficient protest is filed against the proposal, or if, in his discretion, it is otherwise desirable in the public interest, the authorized officer of the Bureau of Land Management will, subject to the approval of the Secretary of the Interior if the applicant agency objects, hold a public hearing at a time and in a place convenient to the interested public and to the agencies involved. Costs of such hearings incurred by the Bureau of Land Management, except for the salaries of its personnel, will be borne by the applicant agency.

(c) The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

§ 2351.5 Findings, reviews.

(a) The authorized officer of the Bureau of Land Management will report

to the applicant agency his findings of fact, and where he has authority to effect the withdrawal or reservation, his conclusions in respect to the application. If the applicant agency does not concur with such findings or conclusions, it may request the Director, Bureau of Land Management, to review the case, and if it feels aggrieved by the findings or conclusions of the Director, may request the Secretary for further review. When the proposed withdrawal or reservation involves authority delegated to the Secretary by Executive Order 10355, May 26, 1952 (17 F.R. 4831) and if the applicant is a Federal agency or instrumentality outside of the Department of the Interior and it does not concur in the findings of the Secretary, the applicant may request the Secretary to refer the case to the Bureau of the Budget.

(b) The Secretary of the Interior, or his authorized agent, will approve or deny the application in whole or in part, provided that no withdrawal or reservation affecting land under the administrative jurisdiction of an Executive department or agency of the Government other than the Department of the Interior will be effected without the prior approval or concurrence of the head of the department or agency concerned, or his delegate.

§ 2351.6 Payment for improvements.

The allowance of an application for withdrawal under the regulations of this part will be conditional upon the payment by the applicant agency or upon agreement of the applicant agency to pay to the owner or owners of range or other improvements placed upon the lands pursuant to an agreement with the United States such amount and at such times as the authorized official of the Bureau of Land Management deems fair and reasonable under the circumstances and the terms of such agreement to compensate for the loss of the improvements, providing that the applicant agency is authorized by law to make such compensation. In addition, a holder of a grazing license or permit for lands within a grazing district will be compensated for the loss resulting from the use of the lands embraced in the license or permit for war or national defense purposes in an amount to be determined fair and reasonably by, and to be paid by, the head of the Department or Agency of the Federal Government making such use.

Subpart 2353—Public Land Order

§ 2353.1 Public land order preparation, approval, and publication.

(a) When an application is finally denied in whole or in part by the authorized officer, he will have published in the FEDERAL REGISTER a Notice of Determination which will specify the date and hour that the affected lands will be relieved of the segregative effect of the agency's application.

(b) When an application is finally approved in whole or in part by the authorized officer, he will have published in the FEDERAL REGISTER an appropriate order of withdrawal or reservation.

Subpart 2357—Transfer of Jurisdiction

§ 2357.1 Withdrawals or reservations for the use or benefit of non-Federal agencies.

Lands withdrawn or reserved under Group 2300 for the use or benefit of a non-Federal agency will remain or will be placed under the jurisdiction of the appropriate Federal agency.
(R.S. 2478; 43 U.S.C. 1201)

PART 2370—RESTORATIONS AND REVOCATIONS

Subpart 2370—Restorations and Revocations; General

Sec.
2370.0–1 Purpose.
2370.0–3 Authority.

Subpart 2372—Procedures

2372.1 Notice of intention to relinquish action by holding agency.
2372.2 Report to General Services Administration.
2373.3 Return of lands to the public domain; conditions.

Subpart 2374—Acceptance of Jurisdiction by BLM

2374.1 Property determinations.
2374.2 Conditions of acceptance by BLM.

Subpart 2370—Restorations and Revocations; General

AUTHORITY: The provisions of this Subpart 2370 issued under 63 Stat. 377 as amended, R.S. 2478; 40 U.S.C. 472, 43 U.S.C. 1201.

§ 2370.0–1 Purpose.

The regulations of this Part 2370 apply to lands and interests in lands withdrawn or reserved from the public domain, except lands reserved or dedicated for national forest or national park purposes, which are no longer needed by the agency for which the lands are withdrawn or reserved.

§ 2370.0–3 Authority.

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, governs the disposal of surplus Federal lands or interests in lands. Section 3 of that act (40 U.S.C. 472), as amended, February 28, 1958 (72 Stat. 29), excepts from its provisions the following:

(a) The public domain.

(b) Lands reserved or dedicated for national forest or national park purposes.

(c) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws.

(d) Lands withdrawn or reserved from the public domain, but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of the General Services Administration, determines are not suitable for return to the public domain for disposition under the general public-land laws, because such lands are substantially changed in character by improvements or otherwise.

Subpart—2372 Procedures

§ 2372.1 Notice of intention to relinquish action by holding agency.

(a) Agencies holding withdrawn or reserved lands which they no longer need will file, in duplicate, a notice of intention to relinquish such lands in the proper land office (see § 1821.2–1 of this chapter).

(b) No specific form of notice is required, but all notices must contain the following information:

(1) Name and address of the holding agency.

(2) Citation of the order which withdrew or reserved the lands for the holding agency.

(3) Legal description and acreage of the lands, except where reference to the order of withdrawal or reservation is sufficient to identify them.

(4) Description of the improvements existing on the lands.

(5) The extent to which the lands are contaminated and the nature of the contamination.

(6) The extent to which the lands have been decontaminated or the measures taken to protect the public from the contamination and the proposals of the holding agency to maintain protective measures.

(7) The extent to which the lands have been changed in character other than by construction of improvements.

(8) The extent to which the lands or resources thereon have been disturbed and the measures taken or proposed to be taken to recondition the property.

(9) If improvements on the lands have been abandoned, a certification that the holding agency has exhausted General Services Administration procedures for their disposal and that the improvements are without value

(10) A description of the easements or other rights and privileges which the holding agency or its predecessors have granted covering the lands.

(11) A list of the terms and conditions, if any, which the holding agency deems necessary to be incorporated in any further disposition of the lands in order to protect the public interest.

(12) Any information relating to the interest of other agencies or individuals in acquiring use of or title to the property or any portion of it.

(13) Recommendations as to the further disposition of the lands, including, where appropriate, disposition by the General Services Administration.

§ 2372.2 Report to General Services Administration.

The holding agency will send one copy of its report on unneeded lands to the appropriate regional office of the General Services Administration for its information.

§ 2373.3 Return of lands to the public domain; conditions.

(a) When the authorized officer of the Bureau of Land Management determines the holding agency has complied with the regulations of this part, including the conditions specified in § 2374.2 of this subpart, and that the lands or interests in lands are suitable for return to

the public domain for disposition under the general public land laws, he will notify the holding agency that the Department of the Interior accepts accountability and responsibility for the property, sending a copy of this notice to the appropriate regional office of the General Services Administration.

Subpart 2374—Acceptance of Jurisdiction by BLM

§ 2374.1 Property determinations.

(a) When the authorized officer of the Bureau of Land Management determines that the holding agency has complied with the regulations of this part and that the lands or interests in lands other than minerals are not suitable for return to the public domain for disposition under the general public land laws, because the lands are substantially changed in character by improvements or otherwise, he will request the appropriate officer of the General Services Administration, or its delegate, to concur in his determination.

(b) When the authorized officer of the Bureau of Land Management determines that minerals in lands subject to the provisions of paragraph (a) of this section are not suitable for disposition under the public land mining or mineral leasing laws, he will notify the appropriate officer of the General Services Administration or its delegate of this determination.

(c) Upon receipt of the concurrence specified in paragraph (a) of this section, the authorized officer of the Bureau of Land Management will notify the holding agency to report as excess property the lands and improvements therein, or interests in lands to the General Services Administration pursuant to the regulations of that Administration. The authorized officer of the Bureau of Land Management will request the holding agency to include minerals in its report to the General Services Administration only when the provisions of paragraph (b) of this section apply. He will also submit to the holding agency, for transmittal with its report to the General Services Administration, information of record in the Bureau of Land Management on the claims, if any, by agencies other than the holding agency of primary, joint, or secondary jurisdiction over the lands and on any encumbrances under the public land laws.

§ 2374.2 Conditions of acceptance by BLM.

Agencies will not be discharged of their accountability and responsibility under this section unless and until:

(a) The lands have been decontaminated of all dangerous materials and have been restored to suitable condition or, if it is uneconomical to decontaminate or restore them, the holding agency posts them and installs protective devices and agrees to maintain the notices and devices.

(b) To the extent deemed necessary by the authorized officer of the Bureau of Land Management, the holding agency has undertaken or agrees to undertake or to have undertaken appropriate land treatment measures correcting, arresting, or preventing deterioration of the land and resources thereof which has resulted or may result from the agency's use or possession of the lands.

(c) The holding agency, in respect to improvements which are of no value, has exhausted General Services Administration's procedures for their disposal and certifies that they are of no value.

(d) The holding agency has resolved, through a final grant or denial, all commitments to third parties relative to rights and privileges in and to the lands or interests therein.

(e) The holding agency has submitted to the appropriate office mentioned in paragraph (a) of subpart 2372.1 a copy of, or the case file on, easements, leases, or other encumbrances with which the holding agency or its predecessors have burdened the lands or interests therein.

Group 2400—Land Classification

PART 2400—LAND CLASSIFICATION

Subpart 2400—Land Classification; General

Sec.
2400.0–2 Objectives.
2400.0–3 Authority.
2400.0–4 Responsibilities.
2400.0–5 Definitions.

§ 2400.0–2 Objectives.

The statutes cited in § 2400.0–3 authorize the Secretary of the Interior to classify or otherwise take appropriate steps looking to the disposition of public lands, and on an interim basis, to classify public lands for retention and management, subject to requirements of the applicable statutes. In addition to any requirements of law, it is the policy of the Secretary (a) to specify those criteria which will be considered in the exercise of his authority and (b) to establish procedures which will permit the prompt and efficient exercise of his authority with, as far as is practicable, the knowledge and participation of the interested parties, including the general public. Nothing in these regulations is meant to affect applicable State laws governing the appropriation and use of water, regulation of hunting and fishing or exercise of any police power of the State.

§ 2400.0–3 Authority.

(a) All vacant public lands, except those in Alaska, have been, with certain exceptions, withdrawn from entry, selection, and location under the nonmineral land laws by Executive Order 6910, of November 26, 1934, and Executive Order 6964 of February 5, 1935, and amendments thereto, and by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315). Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify and open to entry, selection, or location under applicable law 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 established under that act which he finds 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 for the use provided for under said act, or proper for acquisition in satisfaction of any outstanding lieu, exchange, or scrip rights or land grant. Classification under section 7 is a prerequisite to the approval of all entries, selections, or locations under the following subparts of this chapter, except as they apply to Alaska and with certain other exceptions: Original, Additional, Second, and Adjoining Farm Homesteads—Subparts 2511, 2512, and 2513; Enlarged Homestead—Subpart 2514; Indian Allotments—Part 2530; Desert Land Entries—Part 2520; Recreation and Public Purposes Act—Part 2740 and Subpart 2912; State Grants for Educational, Institutional, and Park Purposes—Part 2620; Scrip Selections—Part 2610 and Exchanges for the Consolidation or Extension of National Forests, Indian Reservations or Indian Holdings—Group 2200.

(b) Section 8(b) of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315g), authorizes the Secretary of the Interior, when public interests will be benefited thereby, to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district established under that act and in exchange therefor to issue 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 base lands. The regulations governing such exchanges are contained in Group 2200 of this chapter.

(c) Section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), authorizes the Secretary of the Interior in his discretion to order into market and sell at public auction isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not exceeding 760 acres the greater part of which are mountainous or too rough for cultivation. The regulations governing such sales are contained in Part 2710 of this chapter.

(d) Section 3 of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181c), authorizes the Secretary of the Interior to classify, either on application or otherwise, and restore to homestead entry, or purchase under the provisions of section 2455 of the Revised Statutes, as amended, any of the revested Oregon and California Railroad or reconveyed Coos Bay Wagon Road grant land which, in his judgment, is more suitable for agricultural use than for afforestation, reforestation, stream-flow protection, recreation, or other public purposes. The regulations governing disposal under this act are contained in Part 2710 of this chapter.

(e) The Small Tract Act of June 1, 1938 (52 Stat. 609), as amended (43

U.S.C. 682a–e), authorizes the Secretary of the Interior, in his discretion, to lease or sell certain classes of public lands which he classifies as chiefly valuable for residence, recreation, business or community site purposes. The regulations governing leases and sales under this act are contained in Part 2730 and Subpart 2913 of this chapter.

(f) The Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended (43 U.S.C. 869–869–4), requires the Secretary of the Interior, in the exercise of his discretion to make a determination that land is to be used for an established or definitely proposed project, and in the case of Alaska authorizes him to classify certain classes of public lands for lease or sale for recreation or other public purposes. The regulations governing lease and sale of land under this act are contained in Part 2740 and Subpart 2912 of this chapter.

(g) The Act of July 31, 1939 (53 Stat. 1144), authorizes and empowers the Secretary of the Interior, in the administration of the Act of August 28, 1937 (supra), in his discretion, to exchange any land formerly granted to the Oregon & California Railroad Co., 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 Co. pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), for lands of approximately equal aggregate value held in private, 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 regulations governing exchanges under this act are contained in Part 2260 of this chapter.

(h) The Alaska Public Sales Act of August 30, 1949 (63 Stat. 679), as amended (48 U.S.C. 364a–f), authorizes the Secretary of the Interior in his discretion to classify certain classes of public lands in Alaska for public sale for industrial or commercial purposes. The regulations governing sales of land under this act are contained in Part 2770 of this chapter.

(i) The Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C. 1421–27), authorizes and directs the Secretary of the Interior to sell public lands in tracts not exceeding 5,120 acres, that have been classified for sale in accordance with a determination that (1) the lands are required for the orderly growth and development of a community or (2) the lands are chiefly valuable for residential, commercial, agricultural (which does not include lands chiefly valuable for grazing or raising forage crops), industrial, or public uses or development. The regulations governing such sales are contained in Part 2720 of this chapter.

(j) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411–18), authorizes the Secretary of the Interior to determine which of the public lands (and other Federal lands), including those situated in the State of Alaska exclusively administered by him through the Bureau of Land Management shall be (1) sold because they are (i) required for the orderly growth and development of a community or (ii) are chiefly valuable for residential, commercial, agricultural (which does not include lands chiefly valuable for grazing or raising forage crops), industrial, or public uses or development or (2) retained, at least for the time being, in Federal ownership and managed for (i) domestic livestock grazing, (ii) fish and wildlife development and utilization, (iii) industrial development, (iv) mineral production, (v) occupancy, (vi) outdoor recreation, (vii) timber production, (viii) watershed protection, (ix) wilderness preservation, or (x) preservation of public values that would be lost if the land passed from Federal ownership.

§ 2400.0–4 Responsibility.

(a) Except where specified to the contrary in this group, the authority of the Secretary of the Interior to classify lands and make other determinations in accordance with the regulations of this part has been delegated to persons authorized to act in his name; to the Director, Bureau of Land Management and persons authorized to act in his name; to State Directors of the Bureau of Land Management and to any person authorized to act in the name of a State Director.

(b) Classifications and other determinations in accordance with the regulations of this group may be made by the authorized officer whether or not applications or petitions have been filed for the lands.

§ 2400.0–5 Definitions.

As used in the regulations of this group—

(a) "Residential" refers to single or multi-family dwellings or combinations thereof, and related community facilities, both seasonal and year-round.

(b) "Commercial" refers to the sale, exchange, or distribution of goods and services.

(c) "Industrial" refers to the manufacture, processing, and testing of goods and materials, including the production of power. It does not refer to the growing of agricultural crops, or the raising of livestock, or the extraction or severance of raw materials from the land being classified, but it does include activities incidental thereto.

(d) "Agricultural" refers to the growing of cultivated crops.

(e) "Community" refers to a village, town or city, or similar subdivision of a State, whether or not incorporated.

(f) "Domestic livestock" refers to cattle, horses, sheep, goats and other grazing animals owned by livestock operators, provided such operators meet the qualification set forth in § 4111.1–1 or § 4131.1–3 of this chapter. This definition includes animals raised for commercial purposes and also "domestic livestock" within the meaning of § 4111.3–1(d)(1) of this chapter.

(g) "Fish and wildlife" refers to game, fish and other wild animals native or adaptable to the public lands and waters.

(h) "Mineral" refers to any substance that (1) is recognized as mineral, according to its chemical composition, by the standard authorities on the subject, or (2) is classified as mineral product in trade or commerce, or (3) possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts.

(i) "Occupancy" refers to use of lands as a site for any type of useful structure whatsoever.

(j) "Outdoor recreation" includes, but is not limited to, hunting, fishing, trapping, photography, horseback riding, picnicking, hiking, camping, swimming, boating, rock and mineral collecting, sightseeing, mountain climbing, and skiing.

(k) "Timber production" refers to the growth of trees in forests and woodlands.

(l) "Watershed protection" refers to maintenance of the stability of soil and soil cover and the control of the natural flow of water.

(m) "Wilderness" refers to areas in a native condition or reverted to a native condition, substantially free of man-made structures and human habitation.

(n) "Public value" refers to an asset held by, or a service performed for, or a benefit accruing to the people at large.

(o) "Multiple use" means the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the American people; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(p) "Sustained yield of the several products and services" means the achievement and maintenance of a high-level annual or regular periodic output of the various renewable resources of land without impairment of the productivity of the land.

PART 2410—CRITERIA FOR ALL LAND CLASSIFICATIONS

Subpart 2410—General Criteria

Sec.
2410.1 All Classifications.
2410.2 Relative value-disposal or retention.

§ 2410.1 All Classifications.

All classifications under the regulations of this part will give due consideration to ecology, priorities of use, and the relative values of the various resources in particular areas. They must

be consistent with all the following criteria:

(a) The lands must be physically suitable or adaptable to the uses or purposes for which they are classified. In addition, they must have such physical and other characteristics as the law may require them to have to qualify for a particular classification.

(b) All present and potential uses and users of the lands will be taken into consideration. All other things being equal, land classifications will attempt to achieve maximum future uses and minimum disturbance to or dislocation of existing users.

(c) All land classifications must be consistent with State and local government programs, plans, zoning, and regulations applicable to the area in which the lands to be classified are located, to the extent such State and local programs, plans, zoning, and regulations are not inconsistent with Federal programs, policies, and uses, and will not lead to inequities among private individuals.

(d) All land classifications must be consistent with Federal programs and policies, to the extent that those programs and policies affect the use or disposal of the public lands.

§ 2410.2 Relative value, disposal or retention.

When, under the criteria of this part, a tract of land has potential for either retention for multiple use management or for some form of disposal, or for more than one form of disposal, the relative scarcity of the values involved and the availability of alternative means and sites for realization of those values will be considered. Long-term public benefits will be weighed against more immediate or local benefits. The tract will then be classified in a manner which will best promote the public interests.

PART 2420—MULTIPLE-USE MANAGEMENT CLASSIFICATIONS

Subpart 2420—Criteria for multiple-use management classifications

Sec.

2420.1 Use of Criteria.
2420.2 Criteria.

§ 2420.1 Use of Criteria.

In addition to the general criteria in Subpart 2410, the following criteria will be used to determine whether public lands will be retained, in Federal ownership and managed for domestic livestock grazing, fish and wildlife development and utilization, industrial development, mineral production, occupancy, outdoor recreation, timber production, watershed protection, wilderness preservation, or preservation of public values that would be lost if the land passed from Federal ownership.

§ 2420.2 Criteria.

Lands may be classified for retention under the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411–18), if they are not suitable for disposal under the criteria set forth in Part 2430 and such classification will do one or more of the following:

(a) Assist in effective and economical administration of the public lands in furtherance of the several objectives of such administration as expressed in the various public land laws.

(b) Further the objectives of Federal natural resource legislation directed, among other things towards:

(1) Stabilization and development of the livestock industry dependent upon Federal lands, such as sections 1 and 15 of the Taylor Grazing Act (43 U.S.C. 315 and 315m), and the Alaska Grazing Act (48 U.S.C. 471–471o).

(2) Provision or preservation of adequate areas of public hunting and fishing grounds and public access thereto, and maintenance of habitat and food supplies for the fish and wildlife dependent upon the public lands and maintained under Federal and State programs, such as section 9 of the Taylor Grazing Act (43 U.S.C. 315h) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c).

(3) Fostering the economy of the nation by industrial and mineral development, such as through the materials sales and mineral leasing laws (Group 3000 of this chapter) and the rights-of-way laws (Group 2800 of this chapter).

(4) Realization of the beneficial utilization of the public lands through occupancy leases, such as under the Recreation and Public Purposes Act (43 U.S.C. 869–869–4) and the Small Tract Act (43 U.S.C. 682a–682e).

(5) Provision of needed recreation, conservation, and scenic areas and open space (42 U.S.C. 1500–1500e) and assurance of adequate outdoor recreation resources for present and future generations of Americans (16 U.S.C. 460:1 et seq.).

(6) Stabilization of the timber industry and dependent communities and sustained-yield production of timber and other forest products, such as the Materials Sales Act (30 U.S.C. 601–604), and, in connection with management of other Federal lands, the O and C Act (43 U.S.C. 1181a–1181f, 1181g–1181j).

(7) Protection of frail lands, conservation of productive soils and water supplies, and prevention of damage and loss due to excessive runoff, flooding, salination, and siltation, such as the Soil and Moisture Conservation Act (16 U.S.C. 590a et seq.) and § 2 of the Taylor Grazing Act (43 U.S.C. 315a).

(c) Preservation of public values that would be lost if the land passed from Federal ownership (43 U.S.C. 1411–1418) such as where

(1) The lands are needed to protect or enhance established Federal programs, by such means as provision of buffer zones, control of access, maintenance of water supplies, reduction and prevention of water pollution, exclusion of nonconforming inholdings, maintenance of efficient management areas, provision of research areas, and maintenance of military areas or sites for other government activities.

(2) The lands should be retained in Federal ownership pending enactment of Federal legislation, which would affect them.

(3) The lands should be retained in Federal ownership pending their acquisition by a State or local government.

(4) The lands are best suited for multiple use management and require management for a mixture of uses in order to best benefit the general public and such management could not be achieved if the lands were in private ownership.

(5) The lands contain scientific, scenic, historic, or wilderness values which would be lost to the general public if they were transferred out of Federal ownership.

(6) Transfer of the lands would be inconsistent with national objectives for the preservation of natural beauty of the country and the proper utilization of open space.

PART 2430—DISPOSAL CLASSIFICATIONS

Subpart 2430—Criteria for Disposal Classifications

Sec.

2430.1 Use of criteria.
2430.2 General criteria for disposal classification.
2430.3 Additional criteria for classification of lands needed for urban or suburban purposes.
2430.4 Additional criteria for classification of lands valuable for public purposes.
2430.5 Additional criteria for classification of lands valuable for residential, commercial, agricultural, or industrial purposes.
2430.6 Additional criteria for lands valuable for other purposes.

§ 2430.1 Use of criteria.

In addition to the general criteria in Subpart 2410 the following criteria will govern classifications under the authorities listed in § 2400.0–3 for sale, selection, grant or other disposal under the Public Land Sale Act (78 Stat. 998, 43 U.S.C. 1421–27) and other laws authorizing the Secretary of the Interior to dispose of public lands. The criteria are set forth in terms of land use classes. Where appropriate, the applicability of specific disposal laws to lands in each use class is discussed.

§ 2430.2 General criteria for disposal classification.

The general approach to determine the act under which lands are to be classified and disposed of is as follows:

(a) Consideration under criteria listed in this part will first be given to whether the lands can be classified for retention for multiple use management, for disposal, or for both. If, under these criteria, they could be classified for both, the principles of § 2410.2 will be applied.

(b) If the lands are found to be suitable for disposal, consideration under the criteria of this part will be given to whether the lands are needed for urban or suburban purposes or whether they are chiefly valuable for other purposes. Lands found to be valuable for public purposes will be considered chiefly valuable for public purposes, except in situations where alternate sites are available to meet the public needs involved.

§ 2430.3 Additional criteria for classification of lands needed for urban or suburban purposes.

(a) To be needed for urban or suburban purposes it must be anticipated that a community will embrace the lands within 15 years.

(b) Lands determined to be needed for urban or suburban purposes may be classified for sale pursuant to the Public Land Sale Act as being required for the orderly growth and development of a community, if (1) adequate zoning regulations are in effect and (2) adequate local governmental comprehensive plans have been adopted.

(c) Lands determined to be needed for urban or suburban purposes may be classified for disposal under any appropriate law other than the Public Land Sale Act, if disposal under such other authority would be consistent with local comprehensive plans, or in the absence of such plans, with the views of local governmental authorities.

(d) Where more than one form of disposal is possible, the authorized officer will select that course of action which will best promote development of the land for urban or suburban purposes.

§ 2430.4 Additional criteria for classification of lands valuable for public purposes.

(a) To be valuable for public purposes, lands must be suitable for use by a State or local governmental entity or agency for some noncommercial and nonindustrial governmental program or suitable for transfer to a non-Federal interest in a transaction which will benefit a Federal, State, or local governmental program.

(b) Lands found to be valuable for public purposes may be classified for sale pursuant to the Public Land Sale Act as chiefly valuable for public uses or development or for transfer in satisfaction of a State land grant, or for transfer to a State or local governmental agency in exchange for other property, or for transfer to a governmental agency under any applicable act of Congress other than the Recreation and Public Purposes Act (44 Stat. 741), as amended (43 U.S.C. 869–869–4), if (1) the proposed use includes profit activities or if the interested, qualified governmental agency and the authorized officer agree that there is no need for the perpetual dedication of the lands to public uses required by the Recreation and Public Purposes Act, and (2) in the case of sales under the Public Land Sale Act, adequate zoning regulations exist in the area in which the lands are located.

(c) Lands found to be valuable for public purposes will ordinarily be classified for sale or lease under the Recreation and Public Purposes Act (see Part 2740 and Subpart 2912 of this chapter) if the proposed use involves nonprofit activities and if it is determined by the authorized officer that the provisions of that Act are required to insure the continued dedication of the lands to such uses, or otherwise to carry out the purposes of the Act.

(d) Lands may be classified for exchange under appropriate authority where they are found to be chiefly valuable for public purposes because they have special values, arising from the interest of exchange proponents, for exchange for other lands which are needed for the support of a Federal program.

§ 2430.5 Additional criteria for classification of lands valuable for residential, commercial, agricultural, or industrial purposes.

(a) Lands which have value for residential, commercial, agricultural, or industrial purposes, or for more than one of such purposes, will be considered chiefly valuable for that purpose which represents the "highest and best use" of the lands, i.e., their most profitable legal use in private ownership.

(b) Lands may be classified for sale pursuant to the Public Land Sale Act as being chiefly valuable for residential, commercial, agricultural, or industrial uses or development (other than grazing use or use for raising native forage crops), if (1) adequate zoning regulations are in effect, and, where the lands also are needed for urban or suburban development, (2) adequate local governmental comprehensive plans have been adopted.

(c) Lands determined to be valuable for residential, commercial, agricultural, or industrial purposes may be classified for disposal under any appropriate authority other than the Public Land Sale Act if (1) disposal under such other authority would be consistent with local governmental comprehensive plans, or (2) in the absence of such plans, with the views of local governmental authorities.

(d) Lands outside of Alaska may be classified as suitable for homestead entry under Part 2510 of this chapter if they are (1) chiefly valuable for agricultural purposes, and (2) suitable for development as a home and farm for a man and his family, and (3) the anticipated return from agricultural use of the land would support the residents. If it is determined that the irrigation of land otherwise suitable for homestead entry would endanger the supply of adequate water for existing users or cause the dissipation of water reserves, such land will not be classified for entry. Land may be classified for homestead entry only if rainfall is adequate, or if under State law, there is available to the land sufficient irrigation water, to permit agricultural development of its cultivable portions.

(e) Lands may be classified as suitable for desert land entry under Part 2520 of this chapter if (1) the lands are chiefly valuable for agricultural purposes, and (2) all provisions concerning irrigation water set forth in § 2430.5(d) are met.

(f) Lands outside of Alaska may be classified as suitable for Indian allotment under Part 2530 of this chapter if (1) the lands are valuable for agricultural purposes, and (2) the lands are on the whole suitable for a home for an Indian and his family, and (3) the anticipated return from agricultural use of the land would support the residents, and (4) the requirements for water supplies set forth in § 2430.5(d) are met.

(g) Lands determined to be valuable for purposes other than public purposes may be determined to be suitable for exchange if the acquisition of the offered lands, the disposition of the public lands, and the anticipated costs of consummating the exchange will not disrupt governmental operations.

§ 2430.6 Additional criteria for lands valuable for other purposes.

Lands may be classified for disposal under any applicable authority where they are found to be chiefly valuable for purposes other than those described in §§ 2430.2–2430.5 of this section and to be not suitable for retention for multiple use management.

PART 2440—SEGREGATION BY CLASSIFICATION

Subpart 2440—Criteria for Segregation

Sec.

2440.1 Use of criteria.
2440.2 General criterion.
2440.3 Specific criteria for segregative effect of classification for retention.
2440.4 Specific criteria for segregative effect of classification for disposal.

§ 2440.1 Use of criteria.

The following criteria will govern the determination of the extent to which classifications and proposed classifications will segregate the affected lands from settlement, location, sale, selection, entry, lease, or other forms of disposal under the public land laws, including the mining and mineral leasing laws. The segregative effect of each classification or proposed classification will be governed by applicable laws and regulations, and will be stated in the classification notice or decision.

§ 2440.2 General criterion.

The public lands classified or proposed to be classified under the regulations of this part will be kept open to (i.e., not segregated from) as many forms of disposal as possible consistent with the purposes of the classification and the resource values of the lands.

§ 2440.3 Specific criteria for segregative effect of classification for retention.

(a) Public lands classified or proposed to be classified for retention for multiple-use management will be segregated from those forms of disposal which, if the lands remain open thereto, could:

(1) Interfere significantly with the management of the lands under principles of multiple use and sustained yield, or

(2) Impair or prevent, to an appreciable extent, realization of public values in the lands, or

(3) Impair or prevent, to an appreciable extent, realization of the objectives of retention and management set forth in Part 2420, or

(4) Lead to unnecessary expenditures of public or private funds arising out of

individual efforts to acquire public lands under laws, which are in fact not applicable, because of the nature of the resources of the lands.

(b) In applying the criteria in subparagraph (1) of this paragraph, land shall not be closed to mining location unless the nonmineral uses would be inconsistent with and of greater importance to the public interest than the continued search for a deposit of valuable minerals.

§ 2440.4 Specific criteria for segregative effect of classification for disposal.

Public lands classified or proposed to be classified for disposal will be segregated from those forms of disposal which, if the lands remained open thereto, could interfere with the orderly disposal of the lands pursuant to appropriate law. Public lands classified or proposed to be classified for sale under the Public Land Sale Act (78 Stat. 988, 43 U.S.C. 1411–18) will be segregated from all forms of disposal under the mining and mineral leasing laws.

PART 2450—PETITION-APPLICATION CLASSIFICATION SYSTEM

Subpart 2450—Petition-Application Procedures

Sec.
2450.1 Filing of petition.
2450.2 Preliminary determination.
2450.3 Proposed classification decision.
2450.4 Protests: Initial classification decision.
2450.5 Administrative review.
2450.6 Effect of final order.
2450.7 Right to occupy or settle.
2450.8 Preference right of petitioner-applicant.

§ 2450.1 Filing of petition.

(a) When (1) land must be classified or designated pursuant to the authorities cited in § 2400.0–3 before an application may be approved and (2) the filing of applications is permitted prior to classification, the application together with a petition for classification on a form approved by the Director (hereinafter referred to collectively as a "petition-application") must be filed in accordance with the provisions of § 1821.2 of this chapter. Lists indicating the proper office for filing of applications may be obtained from the Director or any other officer of the Bureau of Land Management. Copies of the petition for classification form and the application forms may be obtained from the land offices or from the Bureau of Land Management, Washington, D.C. 20240.

§ 2450.2 Preliminary determination.

Upon the filing of a petition-application, the authorized officer shall make a preliminary determination as to whether it is regular upon its face and, where there is no apparent defect, shall proceed to investigate and classify the land for which it has been filed. No further consideration will be given to the merits of an application or the qualifications of an applicant unless or until the land has been classified for the purpose for which the petition-application has been filed.

§ 2450.3 Proposed classification decision.

(a) The State Director shall make and issue a proposed classification decision which shall contain a statement of reasons in support thereof. Such decisions shall be served upon (1) each petitioner-applicant for the land, (2) any grazing permittee, licensee, or lessee on the land, or his representative, (3) the District Advisory Board, (4) the local governing board, planning commission, State coordinating committee, or other official or quasi-official body having jurisdiction over zoning in the geographic area within which the lands are located, and (5) any governmental officials or agencies from whom the record discloses comments on the classification have been received. If the decision affects more than 2,560 acres and would lead to the disposal of the lands, the decision will also be published in accordance with the provisions of Subpart 2462.

(b) When there are multiple petition-applications for the same land, the proposed classification decision shall state which petition-application, if any, will be entitled to preference under applicable law; or where no petition-application has been filed for the purpose for which the land is proposed to be classified, the decision shall so state.

(1) When multiple petition-applications have been filed for the same land, the one first filed for the purpose for which the land is classified will be entitled to preference under applicable law.

(2) When two or more petition-applications have been simultaneously filed for the purpose for which the land is classified, the petition-application entitled to preference will be the first to be selected by drawing.

(3) If no petition-application has been filed for the purpose for which it is proposed to classify the land, the proposed decision shall state that the land will be opened to application by all qualified individuals on an equal-opportunity basis after public notice.

§ 2450.4 Protests: Initial classification decision.

(a) For a period of 30 days after the proposed classification decision has been served upon the parties listed in § 2450.3(a), protests thereto may be filed by an interested party with the State Director. No particular form of protest is required under this subparagraph, it being the intent of this procedure to afford the State Director the opportunity to review the proposed classification decision in the light of such protests.

(b) If no protests are filed within the time allowed, the proposed classification action shall be issued as the initial classification decision of the State Director, and shall be served on the petitioner-applicants and upon grazing permittees, licensees, or lessees.

(c) If protests are timely filed, they shall be reviewed by the State Director, who may require statements or affidavits, take testimony, or conduct further field investigations as are deemed necessary to establish the facts. At the conclusion of such review, the State Director shall issue an initial classification decision, either revised or as originally proposed, which shall be served on all interested parties.

§ 2450.5 Administrative review.

(a) For a period of 30 days after service thereof upon all parties in interest, the initial classification decision of the State Director shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review.

(b) If, 30 days from receipt by parties in interest of the initial decision of the State Director, the Secretary has not either on his own motion, or motion of any protestant, petitioner-applicant, or the State Director, exercised supervisory authority for review, the initial classification decision shall become the final order of the Secretary.

(c) The exercise of supervisory authority by the Secretary shall automatically vacate the initial classification decision and the final Departmental decision shall be issued by the Secretary of the Interior and served upon all parties in interest.

(d) No petitioner-applicant or protestant to a proposed classification decision of a State Director to whom the provisions of this section are applicable shall be entitled to any administrative review other than that provided by this section or to appeal under provisions of Parts 1840 and 1850 of this chapter.

§ 2450.6 Effect of final order.

(a) A final order of the Secretary shall continue in full force and effect so long as the lands remain subject to classification under the authorities cited in Subpart 2400 until an authorized officer revokes or modifies it. Until it is so revoked or modified, all applications and petition-applications for the lands not consistent with the classification of the lands will not be allowed. Any payments submitted therewith will be returned. If the order is revoked or modified, the land will be opened to entry on an equal-opportunity basis after public notice in accordance with applicable regulations for the purpose for which it may be classified.

(b) Nothing in this section, however, shall prevent the Secretary of the Interior, personally and not through a delegate, from vacating or modifying a final order of the Secretary. In the event that the Secretary vacates or modifies a final order within sixty days of the date it became final, any preference right of a petitioner-applicant will be restored.

§ 2450.7 Right to occupy or settle.

The filing of a petition-application gives no right to occupy or settle upon the land. A person shall be entitled to the possession and use of 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.

§ 2450.8 Preference right of petitioner-applicant.

Where public land is classified for entry under section 7 of the Taylor Grazing Act or under the Small Tract Act pursuant to a petition-application filed under this part, the petitioner-applicant is entitled to a preference right of entry, if qualified. If, however, it should be necessary thereafter for any reason to reject the application of the preference right claimant, the next petitioner-applicant in order of filing shall succeed to the preference right. If there is no other petitioner-applicant the land may be opened to application by all qualified individuals on an equal-opportunity basis after public notice or the classification may be revoked by the authorized officer.

PART 2460—BUREAU INITIATED CLASSIFICATION SYSTEM

Subpart 2461—Multiple-Use Classification Procedures

Sec.
2461.0–1 Purpose.
2461.1 Proposed classifications.
2261.2 Classifications.
2461.3 Administrative review.
2461.4 Changing classifications.
2461.5 Segregative effect.

Subpart 2462—Disposal Classification Procedure—Over 2,560 Acres

2462.0–3 Authority.
2462.1 Publication of notice of, and public hearings on, proposed classification.
2462.2 Publication of notice of classification.
2462.3 Administrative review.
2462.4 Segregative effect of publication.

Subpart 2461—Multiple-Use Classification Procedures

§ 2461.0–1 Purpose.

Formal action to classify land for retention for multiple use management will be governed by the following procedures.

§ 2461.1 Proposed classifications.

(a) Proposed classifications will be clearly set forth on a map by the authorized officer, and on the Land Office records. (1) Notice of proposed classifications involving more than 2,560 acres will be, and those involving 2,560 acres or less may be, published in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected lands. (2) Notice of the proposals will be sent to authorized users, licensees, lessees, and permittees, or their selected representatives, the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area in which the lands are located, the governor of that State, the BLM multiple use advisory board in that State, and the District advisory board and to any other parties indicating interest in such classifications. (3) The notice will indicate where and when the map and Land Office records may be examined. The notice will specify the general location of the lands, the acreage involved, and the extent to which the land is proposed to be segregated from settlement, location, sale, selection, entry, lease, or other form of disposal under the public land laws, including the mining and mineral leasing laws. The notice of proposed classification will specify the period during which comments will be received, which will not be less than 60 days from date of publication of the notice. (4) The authorized officer will hold a public hearing on the proposal if (1) the proposed classification will affect more than 25,000 acres or (2) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

§ 2461.2 Classifications.

Not less than 60 days after publication of the proposed classification, a classification will be made by the authorized officer, and a notice of classification published in the FEDERAL REGISTER and recorded in the Land Office records and on a map which will be filed in the local BLM District Office. Such map will be available for public inspection.

§ 2461.3 Administrative review.

For a period of 30 days after publication of the classification in the FEDERAL REGISTER, the classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior.

§ 2461.4 Changing classifications.

Classifications may be changed, using the procedures specified in this subpart.

§ 2461.5 Segregative effect.

Segregative effect of classifications and proposed classifications:

(a) Publication in the FEDERAL REGISTER of a notice of proposed classification pursuant to § 2461.1(a) or of a notice of classification pursuant to § 2461.2 will segregate the affected land to the extent indicated in the notice.

(b) The segregative effect of a proposed classification will terminate in one of the following ways:

(1) Classification of the lands within 2 years of publication of the notice of proposed classification in the FEDERAL REGISTER;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the proposed classification;

(3) An Act of Congress;

(4) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification and Multiple Use Act, or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(c) The segregative effect of a classification for retention will terminate in one of the following ways:

(1) Reclassification of the lands for some form of disposal;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the classification;

(3) An Act of Congress;

(4) Expiration of the classification.

Subpart 2462—Disposal Classification Procedure—Over 2,560 Acres

§ 2462.0–3 Authority.

Section 2 of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1412), requires the Secretary of the Interior to take certain actions when he proposes the classification for sale or other disposal under any statute of a tract of land in excess of 2,560 acres.

§ 2462.1 Publication of notice of, and public hearings on, proposed classification.

The authorized officer shall publish a notice of his proposed classification in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected land. The notice shall include the legal description of the affected land, the law or laws under which the lands would be disposed of together with such other information as the authorized officer deems pertinent. Copies of the notice will be sent to the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area within which the affected lands are located, the governor of that State and the BLM multiple use advisory board in that State, the land-use planning officer and land-use planning committees, if any, of the county, in which the affected lands are located, the authorized user or users of the lands or their selected representatives, all petitioner-applicants involved, and any other party the authorized officer determines to have an interest in the proper use of the lands. The authorized officer will hold a public hearing on the proposal if (1) the proposed classification will affect more than 25,000 acres or (2) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

§ 2462.2 Publication of notice of classification.

After having considered the comments received as the result of publication, the authorized officer may classify the lands any time after the expiration of 60 days following the publication of the proposed classification in the FEDERAL REGISTER. The authorized officer shall publicize the classification in the same manner as the proposed classification was publicized, indicating in the notice the differences, if any, between the proposed classification and the classification.

§ 2462.3 Administrative review.

For a period of 30 days after publication in the FEDERAL REGISTER of a notice of classification for disposal pursuant to paragraph (c) of this section, the classification shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review. If, 30 days from date of publication, the Secretary has neither on his own motion, on motion of any protestant or the State Director

exercised supervisory authority for review, the classification shall become the final order of the Secretary. The exercise of supervisory authority by the Secretary shall automatically vacate the classification and reinstate the proposed classification together with its segregative effect. In this event the final departmental decision shall be issued by the Secretary and published in the FEDERAL REGISTER.

§ 2462.4 Segregative effect of publication.

(a) Publication in the FEDERAL REGISTER of a notice of proposed classification pursuant to § 2462.1 or of a notice of classification pursuant to § 2462.2 will segregate the affected land from all forms of disposal under the public land laws, including the mining laws except the form or forms of disposal for which it is proposed to classify the lands. However, publication will not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

(b) The segregative effect of a proposed classification will terminate in one of the following ways:

(1) Classification of the lands within two years of publication of the notice of proposed classification in the FEDERAL REGISTER;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the proposed classification;

(3) An Act of Congress;

(4) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411–18), or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(c) The segregative effect of a classification for sale or other disposal will terminate in one of the following ways:

(1) Disposal of the lands;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the classification;

(3) An Act of Congress;

(4) Expiration of 2 years from the date of publication of the proposed classification without disposal of the land and without the notice of proposed continuance as prescribed by the Classification and Multiple Use Act; or

(5) Expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

PART 2470—POSTCLASSIFICATION ACTIONS

Subpart 2470—Opening and Allowance

Sec.
2470.1 Opening of lands to disposal.
2470.2 Allowance and entry.

§ 2470.1 Opening of lands to disposal.

After lands have been classified for disposal, the authorized officer shall, at the appropriate time, open the lands to those forms of disposal consistent with the classification.

§ 2470.2 Allowance and entry.

(a) After lands are classified pursuant to the regulations of this part, and opened for entry or other disposal, all the laws and regulations governing the particular kind of entry, location, selection, or other disposal must be complied with in order for title to vest or other interests to pass.

(b) After lands are classified for disposal under the regulations of this Subpart, the lands shall be offered for sale or other disposal consistent with the classification. If a petitioner-applicant does not have a preference right under § 2450.8, the lands shall be opened on an equal-opportunity basis.

Group 2500—Disposition; Occupancy and Use

PART 2510—HOMESTEADS

Subpart 2511—Original Homesteads

Sec.
2511.0–7 Cross references.
2511.0–8 Lands subject to entry.
2511.0–9 Mortgage loans.
2511.1 Applicants.
2511.2 Initiation of claims.
2511.3 Procedures.
2511.3–1 Petitions and applications.
2511.3–2 Showing required of applicant.
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2511.3–4 Proof.
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Subpart 2512—Additional Entries

2512.1 After proof; on original claim (act of March 2, 1889).
2512.2 For land contiguous to original entry (act of April 28, 1904, as amended).

Subpart 2513—Second Entries

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Subpart 2515—Reclamation Homesteads

2515.0–3 Authority.
2515.0–7 Cross reference.
Sec.
2515.1 Applications.
2515.2 Entry.
2515.3 Loans.
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2515.8 Flathead Irrigation District, Mont.
2515.8–1 Authority.
2515.8–2 Requirements and limitations on entries.
2515.8–3 Assignment.
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2515.8–5 Mortgages.
2515.8–6 Widows, heirs, or devisees of entrymen.
2515.8–7 Proof.
2515.8–8 Final certificates.
2515.8–9 Cancellation of entries.

Subpart 2511—Original Homesteads

AUTHORITY: The provisions of this Subpart 2511 issued under R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

§ 2511.0–7 Cross references.

(a) For surveys in Alaska, and surveys and resurveys, generally, see Part 9180 of this chapter.

(b) For general regulations involving applications and entries, see Subpart 1823 of this chapter. For proofs, see Subpart 1824 of this chapter. For railroad grants see Subpart 2630 of this chapter.

(c) For equitable adjudication, see Subpart 1870 of this chapter.

(d) For desert-land entries, see Subpart 2520 of this chapter.

(e) For soldiers' and sailors' homestead and preference rights, see Subpart 2096 of this chapter.

(f) For proofs, see Subpart 1824 of this chapter.

(g) For agricultural entries on mineral lands, see Subpart 2093 of this chapter.

(h) For enlarged homesteads, see Subpart 2514.

§ 2511.0–8 Lands subject to entry.

The laws relating to homesteads provide that homestead entry may be made on unappropriated surveyed public lands which are adaptable to agricultural use, with the following exceptions:

(a) Public lands are not subject to homestead entry if they are mineral or saline in character. However, public lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, sodium, or asphaltic minerals may be subject to homestead entry if the requirements of Subpart 2093 of this chapter are met.

(b) Public lands are not subject to homestead entry if they are occupied for purposes of trade or business.

(c) Public lands are not subject to homestead entry if they are within the limits of any withdrawal, reservation, or incorporated town or city. However, public lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, as amended, or Executive Order 6964 of February 5, 1935, as amended, or by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315), are subject to homestead entry if they are so classified pursuant to Group 2400 of this chapter.

§ 2511.0–9 Mortgage loans.

(a) *Mortgage loans on existing homestead entries.* (1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(b) *Mortgage loans on enlarged homesteads.* 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 paragraph (a) of this section.

(c) *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.

§ 2511.1 Applicants.

(a) *Examination of land.* (1) 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.

(2) 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.

(b) *Qualifications and disqualifications.* Homestead entries may be made by any person who does not come within any one of the following classes:

(1) Married women, except as stated in paragraph (c) of this section.

(2) Persons who have already made homestead entry, except as stated in Subparts 2512 and 2513.

(3) Foreign-born persons who have not declared their intention to become citizens of the United States.

(4) Persons who are the owners of more than 160 acres of land in the United States.

(5) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs.

(6) 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.

(c) *Married women.* A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following classes:

(1) Where she has been actually deserted by her husband.

(2) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.

(3) Where the husband is confined in a penitentiary and she is actually the head of the family.

(4) Where the married women is the heir of a settler or contestant who dies before making entry.

(5) 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.

(6) 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 cannot 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 cannot 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).

(d) *Widows.* 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.

(e) *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.

(f) *Insanity of entryman.* 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 reestablish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

(g) *Adjoining farm entry.* 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.

§ 2511.2 Initiation of claims.

(a) *Ways in which claims may be initiated; area enterable.* (1) Claims in

Alaska 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 presentation of an application to enter.

(2) 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.

(b) *Alienation of all or part of claim; mortgages; relinquishments.* (1) 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.

(2) 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 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.

(3) 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.

(4) 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.

§ 2511.3 Procedures.

§ 2511.3–1 Petitions and applications.

(a) A person who desires to enter public lands outside of Alaska must file an application together with a petition on forms approved by the Director. However, if the lands described in the application have been already classified and opened to homestead entry under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter. (See subpart 2450.)

(b) Applications for public lands in Alaska subject to entry under the regulations of this part must be filed with the proper land office on a form approved by the Director.

§ 2511.3–2 Showing required of applicant.

(a) *General requirements.* 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.

(b) *Indian applicants.* (1) *Certificate required under act of July 4, 1884.* (i) 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.

(ii) 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.

(iii) 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.

(2) *Where Indian makes entry as citizen.* If an Indian makes application under the general homestead act, 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.

(3) *Charges, patents.* The act of July 4, 1884 (23 Stat. 6; 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 non-Indian 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).

(c) *Settlers, widows, devisees, or heirs.* All applications by persons claiming as settlers must in addition to the facts required in paragraph (a) of this section 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

§ 2511.3–3 Payments; form of remittance; receipts; notice.

(a) When a homesteader applies to make entry he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the act of May 14, 1880, as amended (21 Stat. 141, 43 U.S.C. 185) must pay, as a cancellation service charge, an additional $10, which is not returnable. On all final proofs made before the manager, or before any other officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted until all charges have been paid.

(b) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

(c) 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.

§ 2511.3–4 Proof.

(a) *Time for making.* (1) 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 cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued.

(2) 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 that applicant or his witnesses from making such proof on the day specified.

(b) *Officers qualified to take proof.* Final or commutation proofs may be made before any of the officers mentioned in § 1821.3–2 of this chapter as being authorized to administer oaths.

(c) *Notice; publication.* (1) 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.

(2) 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 § 1824.3 of this chapter.

(3) 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.

(4) 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.

(d) *Who may submit proof—(1) General requirements.* 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 section 2511.1 and paragraphs 2511.3–4(d)(4)(i) and 2511.5–1(a). Final proof can be made only by citizens of the United States.

(2) *Minor orphans of soldiers and sailors.* Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

(3) *When homesteaders intermarry.* (i) 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.

(ii) 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.

(iii) 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.

(iv) 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 on record in accordance with an approved survey.

(v) 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.

(4) *Deserted wife.* (i) 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.

(ii) Upon the wife's filing notice of intention to submit proof, together with a statement alleging desertion, as stated in (i) of this paragraph, and subparagraph, 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:

(iii) 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 cannot 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.

(iv) 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.

(v) 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.

(vi) 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 Parts 1840 and 1850 of this chapter pertaining to contests.

(vii) 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.

(e) *Citizenship requirements.* (1) 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 entitled to become one (38 Stat. 740; 43 U.S.C. 168).

(2) 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 Subpart 1811 of the chapter.

(3) 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 Subpart 1811 of this chapter.

§ 2511.3–5 Amendments; exercise of equitable powers.

Applications for amendment presented pursuant to § 1821.6–5(a) 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 §§ 1821.6 and 2521.7(a) and on the prescribed form, insofar as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

§ 2511.4 Requirements for proof.

§ 2511.4–1 Habitable house.

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.

§ 2511.4–2 Residence.

(a) *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 paragraph (c) of this section and must maintain residence there for 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 paragraph (e)(1)(i) of this section.

(b) *For commutation proof.* (1) 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.

(2) 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 paragraph 2511.4–3(a), as to 3-year proof.

(3) 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).

(4) 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.

(5) The claimant must show full citizenship, as in case of 3-year proof.

(6) The provisions of law explained in paragraph 2511.4–3(b) apply to commutation proof also.

(7) 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).

(c) *Extension of time to establish.* (1) 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.

(2) 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.

(3) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(d) *Reduction in requirements*—(1) *Authority.* The act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), authorizes the manager of the 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.

(2) *To 6 months in each year.* (i) 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.

(ii) 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.

(iii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(3) *To 5 months in each year.* (i) 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.

(ii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(4) *Conditions warranting reduction.* 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.

(5) *Residence each year 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.

(6) *Time for making proof.* (i) 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.

(ii) 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.

(7) *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.

(8) *Absence by settlers on unsurveyed lands.* A homestead settler on unsurveyed lands who makes the showing required by subparagraphs (1) to (7) of this paragraph 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.

(e) *Absences*—(1) *Up to 5 months.* 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.

(2) *For 1 year.* (i) 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.

(ii) All applications for leave of absence for one year or less because of failure of crops, sickness, or other unavoidable casualty must be accompanied by an application service fee of $5 which will not be returnable.

(f) *Contest.* 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 cannot 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.

§ 2511.4–3 Cultivation.

(a) *For 3-year proof.* (1) Cultivation of the land in a manner reasonably calculated to produce profitable results is required for a period of at least 2 years. This must consist of actual breaking of the soil, followed by planting, sowing of seed, tillage for a crop other than native grasses, and, in areas where rainfall is inadequate, the application of such amounts of water as may reasonably be required to produce a crop. 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.

(2) 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 paragraph (b) of this section. Moreover, the requirements as to cultivation have been eliminated as to certain homestead claims initiated prior to February 5, 1937, as set forth in subparagraphs (1) to (3) of paragraph (b) of this section.

(b) *Reduction of requirements.* (1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) All applications for reduction in area of cultivation must be accompanied by an application service fee of $5 which will not be returnable.

§ 2511.4–4 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.

§ 2511.4–5 Noncompliance.

Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

§ 2511.5 Rights of widows, heirs, or devisees.

§ 2511.5–1 On death of entryman.

(a) 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.

(b) 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.

§ 2511.5–2 Heirs of contestants.

If a contestant dies after having secured the cancellation 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.

Subpart 2512—Additional entries

§ 2512.1 After proof; on original claim (act of March 2, 1889).

(a) *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 the managers final receipt 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.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 6 of the Act of March 2, 1889, must comply with the provisions of § 2511.3. In addition, he must file with the prescribed form or forms a reference to the Act of March 2, 1889, and a description, by number, section, township, and range of his original entry, together with the date of the issuance of the final receipt thereon. He is not required to show that he is still the owner or occupant of the land originally entered.

(c) *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.

§ 2512.2 For land contiguous to original entry (act of April 28, 1904 as amended).

(a) *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 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.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 2 of the act of April 28, 1904, must comply with the provisions of § 2511.3–1. In addition, he must file with the prescribed form or forms a reference to the act of April 28, 1904, and a description by number, section, township, and range of his original entry. He must also show that he owns and resides upon the land embraced in his original entry.

(c) *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.

(d) *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.

Subpart 2513—Second Entries

§ 2513.0–7 Cross reference.

For enlarged homesteads see subpart 2514.

§ 2513.1 Former entry lost, forfeited or abandoned (act of September 5, 1914).

(a) 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.

(b) 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.

(c) 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:

(1) 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.

(2) 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.

(3) 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.

(4) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(5) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(6) 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.

(d) 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.

Subpart 2514—Enlarged Homesteads

§ 2514.0–5 Definitions.

(a) 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.

§ 2514.0–7 Cross reference.

(a) For proofs, see Subpart 1824 of this chapter.

(b) For cultivation requirements, see §§ 2511.4–1, 2511.4–2, and 2511.4–3 (b) and (c).

§ 2514.0–8 Land subject to entry.

(a) *States affected; character of land.* (1) 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."

(2) 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.

(3) A tract included in an entry under the Enlarged Homestead Acts or in any entry under the general law, and an additional entry under said acts, 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 acts.

(4) An original entry under the Enlarged Homestead Acts may not exceed one and one-half miles in extreme length (47 L.D. 370).

(b) *Initiation of settlement claims under enlarged homestead law.* 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.

§ 2514.1 Petitions and applications.

(a) A person who desires to enter public lands under the enlarged homestead laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands have been already classified and opened to entry under the enlarged homestead laws, only an application should be filed. The documents must be filed in the proper land office (see § 1821.2–1 of this chapter).

(b) 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.

(c) When a homesteader applies to make entry, he must pay a nonrefundable application service charge of $25 In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof can be accepted or approved until all charges have been paid.

(d) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

§ 2514.2 Additional entry for contiguous lands.

(a) *Before proof on original claim.* (1) 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.

(2) 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.

(3) 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 § 2511.4–3 (b) of this chapter are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(4) 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.

(b) *After proof on original claim (act of March 3, 1915).* (1) 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.

(2) *Who may make additional entry; additional information required.* 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. It should be observed that no change has been made in the requirement of the law that the tracts be contiguous; and this would not be fulfilled by the fact that they corner on each other. Where a person desires to make an entry under the Act of March 3, 1915, he must file in addition to the form or forms required by paragraph 2514.1 (a) and (b) a statement showing continued ownership and occupancy of the land first entered, and a statement setting forth the character of the land in both tracts. These statements together with the required forms will be considered as a petition for designation under the enlarged homestead laws.

(3) *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).

(4) *Cultivation.* 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.

§ 2514.3 Additional entries for incontiguous lands.

(a) *Acts of July 3, 1916 and Sept. 5, 1916.* 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) *20 Mile Limitation.* A qualifed 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.

(c) *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.

(d) *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.

(e) *Designation and classification 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 classification of the undesignated tract and separate petitions must be filed for the different tracts if both be undesignated or not classified.

(f) *Showing required for proof.* (1) 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.

(2) 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.

(g) *Showing required in petition for designation.* (1) 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.

(2) 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.

(h) *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.

§ 2514.4 Additional entry for double the area of the additional rights.

(a) *Act of February 20, 1917.* 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.

(b) *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.

(c) *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.

(d) *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.

(e) *Petition for classification.* In connection with an application pursuant to the provisions of the act of February 20, 1917, a petition for classification 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.

(f) *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.

(g) *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.

§ 2514.5 Nonresidence homesteads.

(a) *In Utah.* (1) 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.

(2) 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.

(3) The rules relating to petitions for designation of lands apply to section 6 of the enlarged Homestead Act.

(b) *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."

Subpart 2515—Reclamation Homesteads

§ 2515.0–3 Authority.

(a) *Effect of reclamation withdrawals.* 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).

(b) 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.)

§ 2515.0–7 Cross reference.

(a) For lands in State irrigation districts, see Subpart 2783 of this chapter.

(b) For regulations relating to the payment of water-right charges, see paragraph 2515.7(d) (1) and § 2524.8.

(c) For cultivation requirements of the homestead laws, see paragraphs 2511.4–2(b), and 2511.4–3(b) of this chapter.

§ 2515.1 Applications.

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 been 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.

§ 2515.2 Entry.

(a) *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).

(b) *Contests.*—(1) *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 for 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 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.

(2) *When contests are allowable.* Under the regulations in subparagraph (1) of this section and in this paragraph, the filing of contests will be allowed against homestead entries made subject to the reclamation law in the following cases:

(i) Where the entry was made on or after June 25, 1910.

(ii) 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.

(iii) 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.

(iv) 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."

(c) *Exchanges.*—(1) *Applications for exchange.* 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.

(2) *Conditions permitting exchange; act of March 4, 1915.* 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.

(3) *Conditions permitting exchange; other acts.* Other exchanges within reclamation projects under certain conditions, have been authorized, as indicated below:

(i) The act of August 13, 1953 (67 Stat. 566; 43 U.S.C. secs. 451–451k), provides for the exchange of certain unpatented farm units or private lands on a Federal irrigation project, for farm units available on the same or any other such project, and the amendment of farm units by the addition of contiguous or noncontiguous land on the same project. For the regulations under this act see Part 406, Chapter II, of this title.

(ii) 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.

(iii) 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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.3 Loans.

(a) *Mortgage loans on existing reclamation homestead entries.* (1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(b) *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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.4 Leave of absence.

(a) *Showing required.* (1) 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.

(2) All applications for leave of absence within Federal irrigation projects under the act of June 25, 1910, must be accompanied by an application service fee of $5 which will not be returnable.

(b) *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.

(c) *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 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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.5 Assignments, mortgages.

(a) *Assignments—(1) When assignments may be made.* The act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), authorizes persons who have made or may make homestead entries subject to the reclamation law to assign their entries in whole or in part at any time after filing in the appropriate land office satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law.

(2) *Farm units.* (i) In cases where the entry involves all or parts of 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 units or parts of such units which he does not elect to retain. 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.

(ii) Where it is desired to assign a part of an established farm unit, and application for the amendment and subdivision of such unit must be filed with the official in charge of the project, together with the showing required by paragraph (a)(4) of this section. 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.

(3) *Limitations and conditions.* (i) The law expressly makes assignments "subject to the limitations, charges, terms, and conditions of the Reclamation Act," which, among other things, 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.

(ii) Assignments must be an absolute sale, divesting the assignor of all interest in the premises assigned. 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.

(iii) Assignees must be more than 21 years of age and must not own, hold, or claim 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 or betterment charges have not been paid in full. If the assignee is a married woman, she must purchase the assignment with her own separate money, in which her husband has no interest or claim (39 L.D. 504 and 43 L.D. 364). If the assignment involves a partial farm unit which an entryman does not elect to retain in accordance with paragraph (a)(2)(i) of this section the assignee must also have an entry or an assignment covering the remainder of such unit.

(4) *Showing required.* Whenever assignments are presented to the land office in accordance with paragraph (a)(5) of this section they must be accompanied by the following:

(i) A showing that the assignment and the assignee meet the requirements of paragraph (a)(3) of this section.

(ii) The original instrument of assignment, or where the instrument is recorded, a copy thereof certified by the officer who has custody of the record, or 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 if accompanied by satisfactory evidence of compliance with the documentary stamp tax provisions of the Internal revenue law.

(iii) 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.

(iv) Where not all the predecessors in interest to an assignee have had their assignments approved by the land office, such assignee, in addition to the showings required by subdivisions (i), (ii) and (iii) of this subparagraph, must submit satisfactory evidence of title to the land consisting of either the recorded deed or deeds in the chain of title from the original entryman, an abstract of title, or a certificate of title issued by a qualified title company which is acceptable to the Department of the Interior.

(v) A service fee of $5 which will not be returnable.

(5) *When showing is required.* The showing required by subparagraph (4) of this paragraph is required whenever an assignment is presented to the appropriate land office for filing. All assignments should be presented for filing. They must be presented, however, when:

(i) The assignments involve, under subdivision (a)(2)(i) of this section all or part of farm units which an entryman does not elect to retain, or under subdivision (a)(2)(ii) of this section, parts of established farm units.

(ii) The assignee desires to make proof of full compliance with the reclamation law with the view of receiving patent for the land.

(6) *Requirements for patent.* Upon the approval of an assignment, the assignee will become entitled to a patent upon payment of the water-right charges and submittal of satisfactory proof of reclamation as would have been required of the original entryman, and after proof of compliance with the law.

(b) *Mortgages—(1) Notice of interest by mortgagees.* (i) Mortgages 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.

(ii) All notices of mortgage interest on homestead or desert land entries filed in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

(2) *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 desertland 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.

(3) *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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.6 Rights of widows and heirs of entryman.

(a) *Completion of entries.* 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.

(b) *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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.7 Final proof; final certificates; patents.

(a) *Requirements for issuance.* (1) 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.

(2) 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.

(3) 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.

(4) 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.

(b) *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.

(c) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as stated in Subpart 2096 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 waterright charges due have been paid and the requirements as to reclamation have been met.

(d) *Reclamation required.* (1) 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 forefeiture, whether water-right application has been made or not.

(2) 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.

(e) *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.

(f) *Certifications by superintendents or other officers of irrigation districts and water users' associations.* (1) On a reclamation project (other than the Salt River Valley Project) 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.

(g) *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.

(h) *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.

(i) *Liens for unpaid charges*—(1) *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.

(2) *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, 1962, 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.

(3) *Act of May 15, 1922.* 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: * * *. (Sec. 10, 32 Stat. 390, as amended: 43 U.S.C. 378)

§ 2515.8 Flathead Irrigation District, Mont.

§ 2515.8–1 Authority.

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.

(Sec. 15, 35 Stat. 450)

§ 2515.8–2 Requirements and limitations on entries.

(a) *Payment of appraised Indian price of land.* An entrymen 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.

(b) *Acreage limitations.* 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.

(c) *Payment of costs.* 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.

(Sec. 15, 35 Stat. 450)

§ 2515.8–3 Assignment.

(a) *Right to assign.* 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, of the Flathead project. Assignment of part of an entry within the Flathead project may be made only after the subdivision of the farm units.

(b) *Assignment of part of farm unit.* 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.

(c) *Filing of instruments of assignment.* No assignment of a warm 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 paragraph (d) of this section.

(d) *Showing required.* 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 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.

(e) *Procedure governing assignments.* Assignments made and filed in accordance with the regulations in paragraph (a) to (d) of this section 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.

(Sec. 15, 35 Stat. 450)

§ 2515.8–4 Surveys; plats.

(a) *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.

(b) *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.

(Sec. 15, 35 Stat. 450)

§ 2515.8–5 Mortgages.

(a) *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.

(b) *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.

(c) *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 land office and to the engineer in charge of the project within 60 days thereafter.

(Sec. 15, 35 Stat. 450)

§ 2515.8–6 Widows, heirs, or devisees of entrymen.

(a) *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.

(b) *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.

(Sec. 15, 35 Stat. 450)

§ 2515.8–7 Proof.

(a) *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.

(b) *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. 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.

(c) *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.

(d) *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 "reducing 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.

(e) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as provided in Subpart 2096 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 waterright charges have been met.

(Sec. 15, 35 Stat. 450)

§ 2515.8–8 Final certificates.

(a) *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 subparagraph (d)(1) of this section.

(b) *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.

(c) *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 by 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.

(d) *Liens*—(1) *Endorsed on final certificate.* (i) 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)."

(ii) 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.

(2) *Release of lien.* The Area Director, Bureau of Indian Affairs, will, upon the full payment of all buildings 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.

(Sec. 15, 35 Stat. 450)

§ 2515.8–9 Cancellation of entries.

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.

(Sec. 15, 35 Stat. 450)

PART 2520—DESERT LAND ENTRIES

Subpart 2520—Desert Land Entries: General

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Subpart 2520—Desert Land Entries—General

AUTHORITY: The provisions of this Subpart 2520 issued under R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

§ 2520.0–1 Purpose.

(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.

§ 2520.0–3 Authority.

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.

§ 2520.0–5 Definitions.

(a) As used in the desert-land laws and the regulations of this subpart:

(1) "Reclamation" requires conducting water in adequate amounts and quality to the land so as to render it available for distribution when needed for irrigation and cultivation.

(2) "Cultivation" requires the operation, practice, or act of tillage or preparation of land for seed, and keeping the ground in a state favorable for the growth of crops.

(3) "Irrigation" requires the application of water to land for the purpose of growing crops.

(4) "Crop" includes any agricultural product to which the land under consideration is generally adapted and which would return a fair reward for the expense of producing it.

(5) "Water supply", to be adequate, must be sufficient to irrigate successfully and to reclaim all of the irrigable land embraced in an entry.

(6) "Water right" means the authority, whether by prior ownership, contract, purchase, or appropriation in accordance with state law, to use water on the land to be irrigated.

§ 2520.0–7 Cross references:

(a) For assignment of desert-land entries within Government reclamation projects, see § 2524.5(a).

(b) For provisions under Appeals and Hearings see Parts 1840 and 1850 of this chapter.

(c) For relinquishments, in general, see Subpart 1825 of this chapter.

(d) For residence and cultivation requirements under the homestead laws, see §§ 2511.-4–2(a).

§ 2520.0–8 Land subject to disposition.

(a) *Land that may be entered as desert land.* (1) 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 Subpart 2093, 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.)

(2) 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 §§ 2093.0–3 to 2093.0–7. 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.

(3) Land that has been effectually reclaimed is not subject to desert land entry.

(b) *Quantity of lands that may be entered.* An entry of lands under the act of March 3, 1877, is limited to 320 acres, subject to the following additional limitations:

(1) An entry of lands within an irrigation district which the Secretary of the Interior or his delegate has approved under the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), is limited to 160 acres.

(2) An entryman 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 (acts of August 30, 1890; 26 Stat. 391; 43 U.S.C. 212; and of February 27, 1917; 39 Stat. 946; 43 U.S.C. 330).

(c) *Entries restricted to surveyed lands.* 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 Parts 2410, 2420, and 2430.)

(d) *Economic unit requirements, compactness.* (1) One or more tracts of public lands may be included in a desert land entry and the tracts so entered need not be contiguous. All the tracts entered, however, shall be sufficiently close to each other to be managed satisfactorily as an economic unit. In addition, the lands in the entry must be in as compact a form as possible taking into consideration the character of available public lands and the effect of allowance of the entry on the remaining public lands in the area.

(2) In addition to the other requirements of the regulations in this part, applicants for desert land entry must submit with their applications information showing that the tracts applied for are sufficiently close to each other to be managed satisfactorily as an economic unit and that the lands in the application are as compact as possible in the circumstances.

(3) In determining whether an entry can be allowed in the form sought, the authorized officer of the Bureau of Land Management will take into consideration such factors as the topography of the applied for and adjoining lands, the availability of public lands near the lands sought, the private lands farmed by the applicant, the farming systems and practices common to the locality and the character of the lands sought, and the practicability of farming the lands as an economically feasible operating unit.

Subpart 2521—Procedures

§ 2521.1 Who may make desert-land entry.

(a) *Citizenship.* (1) 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 paragraphs 2520.0–8(c) and 2521.2(a) 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.

(2) 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.

(b) *Second and additional entries.* 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 under the conditions described in subparagraphs (1) and (2) of this paragraph.

(1) 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 to make another entry or to take one or any part thereof by assignment except where subparagraph (2) of this paragraph applies.

(2) The act of June 16 1955 (69 Stat. 138) authorizes any person who prior to June 16, 1955, made a valid desert-land entry on lands subject to the acts of June 22, 1910 (36 Stat. 583; 30 U.S.C. 33–85), or of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123), if otherwise qualified to enter as a personal privilege not assignable, an additional tract of desert land, providing such additional tract shall not, together with the original entry, exceed 320 acres. Applicants and entrymen under the act of June 16, 1955, are subject to, and must comply with, all the regulations of this part, including the acreage limitations of § 2520.0–8(b).

§ 2521.2 Petitions and applications.

(a) *Filing and fees.* (1) A person who desires to enter public lands under the desert land laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the desert land laws, no petition is required. The documents must be filed in the proper land office (see § 1821.2–1 of this chapter).

(2) All applications must be accompanied by an application service fee of $15 which is not returnable, and the payment of 25 cents per acre for the lands therein described as required by law.

(b) *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.

(c) *Execution of applications and proofs; time for filing of applications.* (1) 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 § 1821.3–2 of this chapter.

(2) An application to make desert-land entry is not acceptable if dated more than 10 days before its filing at the land office.

(d) *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, or, in States where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed, a showing that the applicant is otherwise qualified under State law to secure such permit or 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. The manager will examine the evidence submitted in such applications and either reject defective applications or require additional evidence.

§ 2521.3 Assignment.

(a) *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.

(b) *Qualifications of assignees.* (1) 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 § 2521.1 to make a second or an additional entry, he cannot 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 or additional entry.

(2) A person who has the right to make a second or additional desert-land entry 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.

(3) The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

(c) *Showing required of assignees, recognition of assignments.* (1) 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.

(2) An assignee must file with his deed of assignment, a statement on a form approved by the Director, 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 Subpart 1811 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 Subpart 1811 of this chapter. 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 acknowledgements of deeds. The assignee must furnish a statement on a form approved by the Director as to his qualifications.

(3) 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.

(4) All applications for recognition of assignment of desert-land entries must be accompanied by an application service fee of $10 which will not be returnable.

§ 2521.4 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 contained 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.

(e) The filing of all notices of recordation of claim by transferees, mortgagees or other encumbrancer under this section must be accompanied by a service charge of $10 which will not be returnable.

§ 2521.5 Annual proof.

(a) *Showing required.* (1) 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.

(2) Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have general 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.

(b) *Acceptable expenditures.* (1) 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.

(2) 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.)

(c) *Expenditures not acceptable.* (1) 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 instances, 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, cannot 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.)

(2) 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.

(3) 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.

(d) *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 initiated 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.

(e) *Desert land entry in more than one district.* 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.

(f) *Extensions of time.* (1) The law makes no provision for extensions of time 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.

(2) 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.

(g) *Submission of proof before due date.* 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.

§ 2521.6 Final proof.

(a) *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.

(1) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

(b) *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.

(c) *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 someone authorized to act for him.

(d) *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 § 1821.3–2 of this chapter.

(e) *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, canals, conduits, and other means to conduct water 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.

(f) *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, canals, conduits, and other means to conduct water 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.)

(g) *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 grass 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.

(h) *Showing as to water right.* (1) 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.

(2) 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.)

(3) 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, has 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.

(4) 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.

(i) *Showing where water supply is derived from irrigation project.* (1) 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.

(2) 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 State Director. 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.

(j) *Final-proof expiration notice.* (1) 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.)

(2) 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.

(k) *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.

§ 2521.7 Amendments.

(a) *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.

(1) 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 purpose, said lands having since been released from such appropriations.

(2) 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.

(3) 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.

(b) *Conditions governing amendments in exercise of equitable powers; amendments involving homestead and desert-land entries of adjoining lands.* Applications for amendment presented pursuant to § 1821.6–5(a) of this chapter 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 §§ 1821.6–1 to 1821.6–5 of this chapter 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.

(c) *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 § 2521.2.

§ 2521.8 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.

§ 2521.9 Relinquishments.

A desert-land entry may be relinquished at any time by the party owning the same. Conditional relinquishments will not be accepted.

Subpart 2522—Extensions of Time To Make Final Proof

§ 2522.1 General acts authorizing extensions of time.

(a) 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 some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388).

(b) 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.

§ 2522.2 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.

§ 2522.3 Act of March 28, 1908.

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.

§ 2522.4 Act of April 30, 1912.

(a) 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 cannot be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

(b) 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.

§ 2522.5 Act of February 25, 1925.

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.

§ 2522.6 Service fees.

All applications for extension of time made under the acts of March 28, 1908, April 30, 1912, or February 25, 1925, must be accompanied by an application service fee of $10 which will not be returnable.

Subpart 2523—Payments

§ 2523.1 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.

(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.

§ 2523.2 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 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 the final proof. On all final proofs made before the manager, or before any other officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

Subpart 2524—Desert-Land Entries Within a Reclamation Project

§ 2524.1 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.

(b) *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.

(c) *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.

(Sec. 10, 32 Stat. 390; as amended; 43 U.S.C. 373)

§ 2524.2 Annual proof.

(a) *Extension of time.* 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.

(b) *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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2524.3 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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2524.4 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).

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2524.5 Assignment of desert-land entries in whole or in part.

(a) *Act of July 24, 1912.* 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.

(b) *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 § 2515.5(a) (3) to (5).) The same disposition of amendatory diagrams will be made and the same procedure followed as provided for assignments of homestead entries.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2524.6 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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C 373)

§ 2524.7 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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C 373)

§ 2524.8 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-tight application has been made or not.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C 373)

PART 2530—INDIAN ALLOTMENTS

Subpart 2530—Indian Allotments: General

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2533.2 Approval.

Subpart 2530—Indian Allotments: General

AUTHORITY: The provisions of this Subpart 2530 issued under R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 2530.0–3 Authority.

(a) *General Allotment Act of February 8, 1887.* 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.

(b) *Act of March 1, 1933.* 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 Order 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 Parts 2410, 2420, and 2430 of this chapter.

§ 2530.0–7 Cross reference:

For native allotments in Alaska see Subpart 2561 of this chapter.

§ 2530.0–8 Land subject to allotment.

(a) *General.* (1) 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.

(2) 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.

(3) An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

Subpart 2531—Applications, Generally

§ 2531.1 Qualifications of applicants.

(a) *General.* 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 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.

(b) *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 § 2531.2(b).

(c) *Heirs of Indian settlers and applicants.* (1) 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.

(2) 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.

(3) 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.

(d) *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.

(e) *Indian wives.* (1) 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.

(2) 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.

(3) An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regarded as the head of a family and may file applications for herself and for the minor children under her care.

(4) 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.

(f) *Citizenship.* (1) 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.

(2) 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.

(3) 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.

§ 2531.2 Petition and applications.

(a) Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see subpart 2533 of this part) must file with the manager of the land office for the district in which the land is situated, an application, together with a petition on forms approved by the Director, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and entitled to allotment, as specified in paragraph 2531.1(b). However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

The petition and the statement attached to the application for certificate must be signed by the applicant.

(b) Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

§ 2531.3 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 is approved by the authorized officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

Subpart 2532—Allotments

§2532.1 Certificate of allotment.

(a) When the manager approves an application for allotment, 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 allotted.

(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.

§ 2532.2 Trust patent.

(a) 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.

(b) 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.

Subpart 2533—Allotments Within National Forests

§ 2533.0–3 Authority.

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.

§ 2533.0–8 Land subject to allotment.

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.

§ 2533.1 Application.

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.

§ 2533.2 Approval.

(a) 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.

(b) 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.

(c) 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.

PART 2540—COLOR-OF-TITLE

Subpart 2540—Color-of-Title: Authority and Definitions

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Subpart 2546—Snake River, Idaho, Omitted Lands

2546.1 Offers of lands for sale.
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Subpart 2540—Color-of-Title: Authority and Definitions

§ 2540.0–3 Authority.

(a) *Act of December 22, 1928.* 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 § 2540.0–5(b) upon payment of the sale price of the land.

(b) *Act of February 23, 1932.* 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.

(c) *Act of September 21, 1922.* 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 appropriated 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.

(d) *Act of February 19, 1925.* 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.

(e) *Act of August 24, 1954.* The act of August 24, 1954 (68 Stat. 789), directs the Secretary of the Interior to issue patents for public lands which lie between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed, under certain terms and conditions. The act of February 27, 1925 (43 Stat. 1013; 43 U.S.C. 994), authorized the Secretary of the Interior to sell such public lands under certain other terms and conditions. These acts are cited as "the act of 1954" and "the act of 1925," respectively, in §§ 2545.1 to 2545.4.

(f) *Act of May 31, 1962.* (1) The act of May 31, 1962 (76 Stat. 89), hereafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to sell at not less than their fair market value any of those lands in the State of Idaho, in the vicinity of the Snake River or any of its tributaries, which have been, or may be, found upon survey to be omitted public lands of the United States, and which are not within the boundaries of a national forest or other Federal reservation and are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, or are not used and occupied by Indians claiming by reason of aboriginal rights or are not used and occupied by Indians who are eligible for an allotment under the laws pertaining to allotments on the public domain.

(2) The Act provides that in all patents issued under the Act, the Secretary of the Interior (i) shall include a reservation to the United States of all the coal, oil, gas, oil shale, phosphate, potash, sodium, native asphalt, solid and semisolid bitumen, and bitumen rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried), together with the right to prospect for, mine, and remove the same; and (ii) may reserve the right of access to the public through the lands and such other reservations as he may deem appropriate and consonant with the public interest in preserving public recreational values in the lands.

(3) The Act further provides that the Secretary of the Interior shall determine the fair market value of the lands by appraisal, taking into consideration any reservations specified pursuant to subparagraph (2) of this section and excluding, when sales are made to preference-right claimants under section 2 of the Act, any increased values resulting from the development or improvement thereof for agricultural or other purposes by the claimant or his predecessors in interest.

(4) The Act grants a preference right to purchase lands which are offered by the Secretary of the Interior for sale under the Act to any citizen of the United States (which term includes corporations, partnerships, firms, and other legal entities having authority to hold title to lands in the State of Idaho) who, in good faith under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation or occupied any of the lands so offered for sale, or whose ancestors or predecessors in title have taken such action.

§ 2540.0–5 Definition.

(a) "The act", when used in this section 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).

(b) The claims recognized by the act will be referred to in this part as claims of class 1, and claim 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. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

Subpart 2541—Color-of-Title: General

§ 2541.1 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.

§ 2541.2 Procedures.

(a) *Application.* (1) An application for a claim of class 1 or of class 2 must be filed in duplicate on a form approved by the Director. It must be filed in accordance with the provisions of § 1821.2 of this chapter.

(2) Every application must be accompanied by a filing fee of $10, which will be nonreturnable.

(3) The application must be in typewritten form, or in legible handwriting, and it must be completely executed and signed by the applicant.

(4) Every applicant must furnish information required in the application form concerning improvements, cultivation, conveyances of title, taxes, and related matters.

(b) *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.

(c) *Presentation and verification of factual statements.* (1) Information relating to all record and nonrecord conveyances, or to nonrecord claims of title, affecting the land shall be itemized on a form approved by the Director. 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.

(2) Applicants for claims of class 2 must itemize all information relating to tax levies and payments on the land on a form approved by the Director which must be certified by the proper county official or by an abstractor.

§ 2541.3 Patents.

(a) Any applicant who satisfied all requirements for a claim of class 1 or 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.

(c) The maximum area for which patent may be issued for any claim under the act is 160 acres. Where an area held under a claim or color of title is in excess of 160 acres, the Secretary has authority under the act to determine what particular subdivisions not exceeding 160 acres, may be patented.

§ 2541.4 Price of land; payment.

(a) *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.

(b) *Payment.* Applicant will be required to make payment of the sale price of the land within the time stated in the request for payment.

§ 2541.5 Publication; protests.

(a) The applicant will be required to publish once a week for four consecutive weeks in accordance with § 1824.3 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 paragraph 2541.1–2(a) 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.

Subpart 2542—Color-of-Title Claims, New Mexico, Contiguous to Spanish or Mexican Grants

§ 2542.1 Application.

(a) *Where filed; 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.

(b) *Form.* No special form of application is provided. 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.

(c) *Contents of application.* Applicants desiring to take advantage of the benefits of the act of February 23, 1932, must show the following matters in their applications:

(1) Full name and post-office address of the applicant and whether married or single.

(2) 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.

(3) 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.

(4) 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 land, and the acts of dominion exercised over the land by each possessor.

(5) 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.

(6) 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.

§ 2542.2 Evidence required.

(a) *Citizenship.* 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.

(b) *Acreage claimed.* The applicant in the statement required under paragraph (a) of this section 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.

§ 2542.3 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 evidence must consist of the statement of the publisher, accompanied by a copy of the notice as published.

§ 2542.4 Patent.

(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, patent 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).

Subpart 2543—Erroneously Meandered Lands, Arkansas

§ 2543.1 Applications.

(a) 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.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2543.2 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.

§ 2543.3 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.

§ 2543.4 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 elaspe 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.

§ 2543.5 Patent.

Upon submission of satisfactory proof, if no protest or contest is pending, patent will be issued.

Subpart 2544—Erroneously Meandered Lands, Louisiana

§ 2544.1 Applications.

(a) 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.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2544.2 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.

§ 2544.3 Notice to deposit purchase price.

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.

§ 2544.4 Publication and posting.

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 § 1824.3 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.

§ 2544.5 Patent.

Upon the submission of satisfactory proof, the Bureau will, if no protest or contest is pending, issue patent, such patent 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.

Subpart 2545—Erroneously Meandered Lands, Wisconsin

§ 2545.1 Qualifications of applicants.

(a) To qualify under the act of 1954, a person, or his predecessors in interest, (1) must have been issued, prior to January 21, 1953, a patent for lands lying along the meander line as originally determined, and (2) must have held in good faith and in peaceful, adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line.

(b) To qualify under the act of 1925, a person must either (1) be the owner in good faith of land, acquired prior to February 27, 1925, shown by the official public land surveys to be bounded in whole or in part by such public lands or (2) be a 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 public lands.

§ 2545.2 Applications.

(a) Claimants under the act of 1925 have a preferred right of application for a period of 90 days from the date of filing of the plat of survey of lands claimed by them. Applications for public lands under the act of 1954 must be filed within 1 year after August 24, 1954, or 1 year from the date of the official plat or resurvey, whichever is later. All applications must be filed in the proper land office (see § 1821.2–1 of this chapter).

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the applicant.

(2) The legal description and acreage of the public lands claimed or desired.

(3) The legal description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired. If the claim is based on ownership of such adjoining lands, the application must be accompanied by a certificate from the proper county official or by an abstractor, showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) If the applicant is a color-of-title applicant under the act of 1925, a statement whether or not the applicant is a citizen of the United States.

(5) If the application is based on color of title or riparian claim under the act of 1925, a statement fully disclosing the facts of the matter; or if the application is based on peaceful, adverse possession under the act of 1954, a similar statement showing peaceful, adverse possession by the applicant, or his predecessors in interest, since the issuance of the patent to the lands adjoining the claimed lands.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation, if any, of the lands applied for, including the nature, location, and dates of such cultivation.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands applied for or claimed.

(9) The names and post office addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2545.3 Publication and protests.

(a) The applicant will be required to publish once a week for five consecutive weeks in accordance with § 1824.3 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 with the Bureau of Land Management, Washington, D.C., their objections to 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.

§ 2545.4 Price of land; other conditions.

(a) Persons entitled to a patent under the act of 1954 must, within 30 days after request therefor, pay, under the same terms and conditions, the same price per acre as was paid for the land included in their original patent.

(b) Persons entitled to a patent under the act of 1925, within 30 days after request therefor, must pay the appraised price of the lands, which price will be the value of the lands as of the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands for agricultural purposes by the applicant or his predecessors in interest but inclusive of the stumpage value of any timber cut or removed by them.

Subpart 2546—Snake River, Idaho, Omitted Lands

§ 2546.1 Offers of lands for sale.

Before any lands may be sold under the Act, the authorized officer of the Bureau of Land Management shall publish in the FEDERAL REGISTER and in at least one newspaper of general circulation within the State of Idaho a notice that the lands will be offered for sale, which notice shall specify a period of time not less than 30 days in duration during which citizens may file with the land office at Boise, Idaho, a notice of their intention to apply to purchase all or part of the lands as qualified preference-right claimants.

§ 2546.2 Applications for purchase.

(a) All citizens who file a notice of intention in accordance with § 2546.1 within the time period specified in the published notice or any amendment thereof will be granted by the authorized officer a period of time not less than 30 days in duration in which to file, in duplicate with the Manager of the Boise Land Office, their applications to purchase lands as preference-right claimants.

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the claimant.

(2) The description and acreage of the public lands claimed or desired.

(3) The description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired, accompanied by a certificate from the proper county official or by an abstractor or, by an attorney showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) A statement showing that the claimant is a citizen of the United States, as defined in subparagraph (4) of § 2540.0–3(f).

(5) A statement giving the basis for color of title or claim of riparian ownership.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation and occupancy, if any, of the lands applied for, including the nature, location, and date of such cultivation and occupancy.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands claimed.

(9) The names and addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2546.3 Payment and publication.

(a) Before lands may be sold to a qualified preference-right claimant, the claimant will be required to pay the purchase price of the lands and will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons having objections to file with the Manager of the Land Office at Boise, Idaho, their objections to issuance of patent to the claimant. A protestant must serve on the claimant a copy of the objections and must furnish the Manager with evidence of such service.

(b) Among other things, the notice will describe the lands to be patented state the purchase price for the lands and the reservations, if any, to be included in the patent to preserve public recreational values in the lands.

(c) The claimant 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.

§ 2246.4 Public auctions.

(a) The authorized officer may sell under the Act at public auction any lands for which preference-claimants do not qualify for patents under the regulations of paragraph 2540.0–3(f) and subpart 2546.

(b) Lands will be sold under this section at not less than their appraised fair market value at the time and place and in the manner specified by the authorized officer in a public notice of the sale.

(c) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(d) A bid sent by mail must be received at the place and within the time specified in the public notice. Each such bid must clearly state (1) the name and address of the bidder and (2) the specified tract, as described in the notice for which the bid is made. The envelope must be noted as required by the notice.

(e) Each bid by mail must be accompanied by certified or cashier's check, post office money order or bank draft for the amount of the bid.

(f) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared the purchaser.

PART 2550—MINING CLAIM OCCUPANCY ACT

Subpart 2550—Mining Claim Occupancy Act: General

Sec.
2550.0–2 Objectives.
2550.0–3 Authority.
2550.0–5 Definitions.
2550.0–7 Cross reference.

Subpart 2551—Mining Claim Occupancy

2551.1 Petitions.
2551.2 Applications.
2551.3 Offers to convey an interest in the lands applied for.
2551.4 Offers of alternate tracts.

Subpart 2550—Mining Claim Occupancy Act: General

AUTHORITY: The provisions of this Subpart 2550 issued under secs. 1–4, 76 Stat. 1127, R.S. 453, as amended, R.S. 2478, sec. 201, 74 Stat. 506; 30 U.S.C. 701–704, 43 U.S.C. 2, 1201, 1371. (70 Stat. 1127) and 43 U.S.C. 2, 1201, 1371.

§ 2550.0–2 Objectives.

(a) The program of the Secretary of the Interior in the administration of the Act is to grant to qualified applicants maximum tenure consistent with the public interest in the lands which they occupy. Where the public interest does not permit sale of a fee simple interest, the period of tenure granted will ordinarily not terminate until the land is needed for a public program, provided that, where paragraph (b) of § 2550.0–3 is applicable, tenure shall also be consistent with the terms and conditions specified by the agency or department in aid of whose function the lands are used. The right to purchase an alternate tract will ordinarily be granted a qualified applicant where the consent mentioned in paragraph (b) of § 2550.0–3 is required but not given and the other requirements of that paragraph are satisfied.

(b) In determining the price for the interest to be conveyed under the Act, the Secretary of the Interior will weigh and evaluate the equities claimed by the applicant and will also give consideration to other equities which his investigation may reveal.

§ 2550.0–3 Authority.

(a) The Act of October 23, 1962, as amended (76 Stat. 1127; 30 U.S.C. 701–709), hereinafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to convey to any qualified applicant who is an occupant of an unpatented mining claim which is determined by the Secretary to be invalid, an interest, up to and including a fee simple, in and to an area within the claim of not more than (1) five acres, or (2) the acreage actually occupied by him, whichever is less. The Act permits the Secretary to make a like conveyance to any occupant of an unpatented mining claim, who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. Such conveyances may be made only to a qualified applicant who applies therefor within the period ending June 30, 1971, and upon payment of an amount established in accordance with the Act.

(b) The Act further provides that when the qualified applicant applies for lands which have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary. Where such consent is not given, the Act permits the Secretary, after arrangements satisfactory to the Secretary have been made for termination of the applicant's occupancy of his unpatented mining claim and for settlement of any liability for the unauthorized use thereof which may have been incurred, to grant the applicant a right to purchase, for residential use, an interest in another tract made available by him for sale under the Act (1) from unappropriated and unreserved lands of the United States or (2) from lands subject to classification under section 7 of the Taylor Grazing Act (48 Stat. 1272, 43 U.S.C. 315f), as amended, said right to expire within 5 years from the date on which it is granted, unless sooner exercised.

(c) The Act requires the Secretary, prior to any conveyance under the Act, to determine the fair market value, as of the date of appraisal, of the interest to be conveyed exclusive of the value of any improvements placed on the lands by the applicant or his predecessors in interest. It also requires him, in establishing the purchase price to be paid by the applicant, to take into consideration any equities of the applicant and his predecessors in interest, including conditions of prior use and occupancy, the price never to exceed its fair market value nor to be less than $5 per acre and to be payable, in the discretion of the Secretary, in a lump sum or in installments.

(d) The Act provides that all conveyances thereunder shall reserve to the United States all mineral interests of the United States in the lands conveyed for the term of the estate. It withdraws from all forms of entry and appropriation, for the term of the estate conveyed, reserve minerals locatable under the mining laws or disposable under the Act of July 31, 1947 (61 Stat. 681, 30 U.S.C. 601–604, as amended). It permits the Secretary to lease, under the mineral leasing laws, reserved oil, gas, and other leasable minerals for exploration and development purposes, but without the right of surface ingress or egress.

(e) The Act provides that the execution of any conveyance thereunder does not relieve an applicant of any liability, existing on the date of the conveyance, to the United States, for unauthorized use of the land in and to which an interest is granted. However, it provides that with respect to persons who file applications for conveyance pursuant to the Act within the period ending June 30, 1971, trespass charges shall not be sought or collected from any qualified applicant who has filed an application for land in the mining claim pursuant to the Act, based upon occupancy of such claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary or the voluntary relinquishment of the mining claim, whichever occurs earlier, provided that the mining claim embracing the land applied for was not located at a time when the land included therein was withdrawn or otherwise not subject to location.

(f) The Act provides that any conveyance of less than a fee made under the Act shall include provision for removal from the tract of any improvements or other property of the applicant at the close of the period for which the conveyance is made, or if it be an interest terminating on the death of the applicant, within one year thereafter.

§ 2550.0–5 Definitions.

As used in the Act and the regulations of this part:

(a) The term "qualified applicant" means (1) a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the heirs or devisees of such a residential occupant-owner.

(b) The term "occupant-owner" refers to persons who, on October 23, 1962, claimed title to valuable improvements which they or their predecessors in interest have constructed on an unpatented mining claim even though title to the improvements might ultimately be found to be in the Government.

(c) The term "interest" includes any estate in lands, including, but not limited to, fee simple, life estate, estate for a term of years, lease, or permit.

(d) The term "a principal place of residence" means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent residential use, such as for a hunting cabin or for weekend occupancy.

(e) The term "qualified officer of the United States" means the Secretary of the Interior or his designate within the Department of the Interior or, with respect to lands within the administrative jurisdiction of any other department or agency, the designate of the head of that department or agency under authority delegated to him by the Secretary of the Interior.

(f) The word "equities" is intended to include for consideration such things as the pecuniary situation of the applicant, his ability to pay, whether he previously paid market value for the property, the date when the mining claim was first staked, whether there are substantial

reasons to believe that a concerted effort was made to develop and extract the minerals sought as compared to a casual attempt, whether such minerals were actually extracted and the deposit depleted, and whether the applicant was relying on custom in his occupancy. The word "equities" does not include any payments of real property taxes, public benefit assessments, or any other public service charges.

§ 2550.0–7 Cross reference.

For conveyance of less than a fee see also Part 2914 of this chapter.

Subpart 2551—Mining Claim Occupancy

§ 2551.1 Petitions.

Any person who holds a mining claim which has not been invalidated and who wishes to determine whether he should make application under the Act, may petition, in writing, any qualified officer of the United States to state whether or not he believes the claim to be invalid. The petition must be accompanied by a nonrefundable petition service fee of $5. Such a petition will not be considered an admission of the invalidity of a claim. The petition should include the name and post office address of the claimant, the name, location and legal description of the mining claim or references sufficient to identify the land on the ground, the date of the location, date and place of recordation and claim of title, a description, including dates, of improvements placed on the lands, and a request for a statement of belief as to the invalidity of the claim.

§ 2551.2 Applications.

(a) A filing fee of $10 which is not returnable is required, and should accompany the application.

(b) Applicants must file applications on or before June 30, 1971, in the proper land office (see § 1821.2–1 of this chapter).

(c) No particular form of application is required but the application must be typewritten or in legible handwriting and should contain the following information:

(1) Name and post office address of the applicant.

(2) Location of the mining claim by legal or other description sufficient to permit ready, accurate identification of the lands on the ground.

(3) Date of location of mining claim, name of claim, date and place of recordation, and chain of title.

(4) A description of the improvements placed upon the lands involved, and a statement showing that a residence had been on the claim since prior to July 23, 1955.

(5) A statement as to ownership and possession of the improvements during the period beginning with July 23, 1955, through October 23, 1962, including the name or names of any predecessors in interest during said period.

(6) Reference to the Act of October 23, 1962 (76 Stat. 1127).

(7) The date the mining claim was determined to be invalid or the date the claim was relinquished to the United States.

(8) A statement of the interest in lands which the applicant desires, such as "fee title," "lease," or "life estate."

(9) A statement of any equities which the applicant feels should be considered in establishing the purchase price.

(10) A description of the lands, not to exceed 5 acres, claimed to be actually occupied.

§ 2551.3 Offers to convey an interest in the lands applied for.

Where the authorized officer determines that an interest in the lands applied for can be conveyed, he will submit to the applicant an offer to convey, specifying the term of the estate offered, the conditions precedent which must be met before conveyance may be made, the limitations and reservations to be contained in the conveyance, the price to be paid, the cost of survey, if any, the conditions subsequent to be performed by the applicant, and the time within which the offer must be accepted. (See § 2550.0–3.)

§ 2551.4 Offers of alternate tracts.

(a) Where the authorized officer determines that an interest in the lands sought cannot be conveyed, he will so notify the applicant, giving his reasons therefor.

(b) Where the authorized officer determines that the conveyance of an interest in lands is otherwise justified but that the interests cannot be conveyed because the consent mentioned in § 2552.1–1 is not given, and he determines further that it would be proper to grant the applicant the right to select an alternate tract under the Act, he will advise that if satisfactory arrangements are made for termination of the occupancy of the unpatented mining claims and for settlement of any liability for unauthorized use thereof which may have been incurred, he will grant the applicant the right to select and purchase within 5 years an alternate tract from lands available or to be made available under the Act. The first applicant to select an available tract will have a preference right to purchase it at the price and under the terms set by the authorized officer, including a limitation on the time within which the applicant may purchase the tract selected.

PART 2560—ALASKA OCCUPANCY AND USE

Subpart 2561—Native Allotments

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Subpart 2561—Native Allotments

§ 2561.0–2 Objectives.

It is the program of the Secretary of the Interior to enable individual natives of Alaska to acquire title to the lands

they use and occupy and to protect the lands from the encroachment of others.

§ 2561.0–3 Authority.

The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357, 357a, 357b), authorizes the Secretary of the Interior to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska or, subject to the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), of vacant, unappropriated, and unreserved public land in Alaska that may be valuable for coal, oil, or gas deposits, or, under certain conditions, of national forest lands in Alaska, to any Indian, Aleut or Eskimo of full or mixed blood who resides in and is a native of Alaska, and who is the head of a family, or is twenty-one years of age.

§ 2561.0–5 Definitions.

As used in the regulations in this section,

(a) The term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

(b) "Allotment" is an allocation to a Native of land of which he has made substantially continuous use and occupancy for a period of five years and which shall be deemed the "homestead" of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable except as otherwise provided by the Congress.

(c) "Allotment Act" means the Act of May 17, 1906 (34 Stat. 197), as amended (48 U.S.C. 357, 357a, 357b).

§ 2561.0–8 Lands subject to allotment.

(a) A Native may be granted a single allotment of not to exceed 160 acres of land. All the lands in an allotment need not be contiguous but each separate tract of the allotment should be in reasonably compact form.

(b) In areas where the rectangular survey pattern is appropriate, an allotment may be in terms of 40-acre legal subdivisions and survey lots on the basis that substantially continuous use and occupancy of a significant portion of such smallest legal subdivision shall normally entitle the applicant to the full subdivision, absent conflicting claims.

(c) Allotments may be made in national forests if founded on occupancy of the land prior to the establishment of the particular forest or if an authorized officer of the Department of Agriculture certifies that the land in the application for allotment is chiefly valuable for agricultural or grazing purposes.

(d) Lands in applications for allotment and allotments that may be valuable for coal, oil, or gas deposits are subject to the regulations of § 2093.4 of this chapter.

§ 2561.1 Applications.

(a) Applications for allotment properly and completely executed on a form approved by the Director, Bureau of Land Management, must be filed in the land office which has jurisdiction over the lands.

(b) Any application for allotment of lands which extend more than 160 rods along the shore of any navigable waters shall be considered a request for waiver of the 160-rod limitation (see Part 2094 of this chapter).

(c) If surveyed, the land must be described in the application according to legal subdivisions and must conform to the plat of survey when possible. If unsurveyed, it must be described as accurately as possible by metes and bounds and tied to natural objects. On unsurveyed lands, the application should be accompanied by a map or approved protracted survey diagram showing approximately the lands included in the application.

(d) An application for allotment shall be rejected unless the authorized officer of the Bureau of Indian Affairs certifies that the applicant is a native qualified to make application under the Allotment Act, that the applicant has occupied and posted the lands as stated in the application, and that the claim of the applicant does not infringe on other native claims or area of native community use.

(e) The filing of an acceptable application for allotment will segregate the lands. Thereafter subsequent conflicting applications for such lands shall be rejected, except when accompanied by a showing that the applicant for allotment has permanently abandoned use and occupancy of the land.

(f) By the filing of an application for allotment the applicant acquires no rights except as provided in paragraph (e) of this section. If the applicant does not submit the required proof within six years of the filing of his application in the land office, has application for allotment will terminate without affecting the rights he gained by virtue of his occupancy of the land or his right to make another application.

§ 2561.2 Proof of use and occupancy.

(a) An allotment will not be made until the lands are surveyed by the Bureau of Land Management, and until the applicant or the authorized officer of the Bureau of Indian Affairs has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years by the applicant. Such proof shall be made on a form approved by the Director, Bureau of Land Management, and filed in the appropriate land office. If made by the applicant, it must be signed by him, but if he is unable to write his name, his mark or thumb print shall be impressed on the statement and witnessed by two persons. This proof may be submitted with the application for allotment if the applicant has then used and occupied the land for five years, or may be made at any time within six years after the filing of the application when the requirements have been met.

§ 2561.3 Effect of allotment.

(a) Land allotted under the Act is the property of the allottee and his heirs in perpetuity, and is inalienable and nontaxable. However, a native of Alaska who received an allotment under the Act, or his heirs, may with the approval of the Secretary of the Interior or his authorized representative, convey the complete title to the allotted land by deed. The allotment shall thereafter be free of any restrictions against alienation and taxation unless the purchaser is a native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions.

(b) Application by an allottee or his heirs for approval to convey title to land allotted under the Allotment Act shall be filed with the appropriate officer of the Bureau of Indian Affairs.

Subpart 2562—Trade and Manufacturing Sites

AUTHORITY: The provisions of this Subpart 2562 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2562.0–3 Authority.

Section 10 of the act of May 14, 1898 (30 Stat. 413, as amended August 23, 1958 (72 Stat. 730; 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. The lands must be nonmineral in character, except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), as amended, and the regulations of § 2093.4 of this chapter.

§ 2562.1 Initiation of claim.

(a) *Notice.* 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.

(b) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (1) The name and address of the claimant, (2) age and citizenship, (3) date of occupancy, and (4) 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.

(c) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (a) of this section 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.

(d) *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.

§ 2562.2 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.

§ 2562.3 Applications.

(a) *Execution.* 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.

(b) *Fees.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Time for filing.* 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.

(d) *Contents.* The application to enter must show:

(1) 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).

(2) 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.

(3) That the land does not abut more than 80 rods of navigable water.

(4) 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 paragraph 2311.2(a) of this chapter.

(5) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(e) *Description of land.* If the land be surveyed, it must be described in the application according 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.

§ 2562.4 Survey.

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 State Director for the survey of the land. Upon receipt of an application, the State Director 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.

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 condtions, it will result to the advantage of the Government or claimant to have the survey executed by a deputy surveyor, the State Director will deliver an order to the applicant for such survey, which will be sufficient authority for any deputy surveyor to make a survey of the claim.

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 unnecessary delay.

§ 2562.5 Publication and posting.

The instructions given in section 1824 of this chapter, relative to publication and posting.

§ 2562.6 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.

§ 2562.7 Patent.

The application and proofs filed therewith will be carefully examined and, if all be found regular, the application will be allowed and patent issued upon payment for the land at the rate of $2.50 per acre, and in the absence of objections shown by his records.

Subpart 2563—Homesites or Headquarters

§ 2563.0–2 Purpose.

(a) *Act of March 3, 1927.* 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 State, not exceeding 5 acres, as homesteads or headquarters.

§ 2563.0–3 Authority.

The act of March 3, 1927 (44 Stat. 1364; 48 U.S.C. 461), as amended, authorizes the sale as a homestead or headquarters of not to exceed five acres of unreserved public lands in Alaska 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, association 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. The lands must be nonmineral in character except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), as amended.

(b) 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 of 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.

§ 2563.0–7 Cross references.

See the following parts in this subchapter: For soldiers' additional rights, Subpart 2616; for Indian and Eskimo allotments, Part 2530; for mining claims, Subpart 3826; for school indemnity selections, Subpart 2627; for

shore space, Subpart 2094 for trade and manufacturing sites, Subpart 2562.

§ 2563.1 Purchase of tracts not exceeding 5 acres, on showing as to employment or business (Act of March 3, 1927).

(a) *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 § 2563.2–1 (a) to (d).

§ 2563.1–1 Application.

(a) *Form and contents of applications.* 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:

(1) The age and citizenship of applicant.

(2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

(3) The date when the land was first occupied as a homestead or headquarters.

(4) 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.

(5) 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.

(6) 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.

(7) 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 paragraph 2311.2(a).

(8) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(9) 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.

(10) 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.

(b) *Filing fee.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *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.

§ 2563.1–2 Approval.

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.

§ 2563.2 Purchase of tracts not exceeding 5 acres, without showing as to employment or business (Act of May 26, 1934).

§ 2563.2–1 Procedures for initiating claim.

(a) *Who must file.* Any qualified person initiating a claim 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.

(b) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (1) The name and address of the claimant, (2) age and citizenship, (3) date of settlement and occupancy and (4) 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.

(c) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (b) of this section 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.

(d) *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.

(e) *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:

(1) Full name, post office address and age of applicant.

(2) Whether the applicant is a native-born or naturalized citizen of the United States, and if naturalized, evidence of such naturalization must be furnished.

(3) 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.

(4) 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.

(5) That the land is not included within an area which is reserved because of hot, medicinal or other springs, as explained in paragraph 2311.2(a). 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.

(6) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(7) 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.

(8) 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.

(9) 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.

(f) *Filing fee.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

Subpart 2564—Native Townsites

§ 2564.0–3 Authority.

The act of May 25, 1926, (44 Stat. 629; 48 U.S.C. 355a–355d) provides for the townsite survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee townsites 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 townsite.

§ 2564.0–4 Responsibility.

(a) *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.

(b) *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.

§ 2564.1 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 a form approved by the Director, with the townsite trustee.

§ 2564.2 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.

§ 2564.3 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).

§ 2564.4 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 transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

§ 2564.5 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 a form approved by the Director, 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 Bureau of Indian Affairs who will determine whether it should be approved. Where the deed is approved it shall be returned by the Area Director, Bureau of Indian Affairs, 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.

§ 2564.6 Application for unrestricted deed.

Any Alaska native who claims and occupies a tract of land in a trustee town site 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 Bureau of Indian Affairs.

§ 2564.7 Determination of competency or noncompetency; issuance of unrestricted deed.

(a) Upon a determination by the Bureau of Indian Affairs that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the townsite 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 Part 1840 of this chapter.

(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.

(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)

Subpart 2565—Nonnative Townsites

§ 2565.0–3 Authority.

The entry of public lands in Alaska for townsite 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.

(Sec. 11, 26 Stat. 1099; 48 U.S.C. 355)

§ 2565.0–7 Cross reference.

Townsites 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 townsites are contained in §§ 2760.0–3 and 2761.3.

§ 2565.1 General requirements.

(a) *Survey of exterior lines; exclusions from town site survey.* If the land is unsurveyed the occupants must by application to the State Director, 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.

(b) *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 m 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 paragraph 2565.3(b) of this part.

(c) *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 oy the statute.

§ 2565.2 Application; fees; contests and protests.

(a) *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 initated under Russian rule.

(b) *Application service fee.* The trustee's application shall be accompanied by $10 application service fee which shall not be returnable.

(c) *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.

(d) *Contests and protests.* Applications for entry will be subject to contest or protests as in other cases.

§ 2565.3 Subdivision.

(a) *Subdivision of land and payment therefore.* 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 collected.

(b) *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 this section.

(c) *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.

§ 2565.4 Deeds.

(a) *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.

(b) *Issuance of deeds; procedure on conflicting applications.* (1) 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 Part 1850 of this chapter.

(2) 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 Part 1840 of this chapter.

§ 2565.5 Sale of the land.

(a) *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 townsite 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 § 1824.3 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.

(b) *Sales to Federal, State and local governmental agencies.* (1) Any lot or tract in the townsite which is subject to sale to the highest bidder by the trustee pursuant to this section may in lieu of disposition at public sale be sold by the trustee at a fair value to be fixed by him to any Federal or State agency or instrumentality or to any local governmental agency or instrumentality of the State for use for public purposes.

(2) All conveyances under this section shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances, including, where he deems proper, a provision for reversion of title to the trustee or his successor in interest. Any such provision for reversion of title, however, shall by its terms cease to be in effect 25 years after the conveyance.

(3) Conveyances under this section for lands within any incorporated city, town, village, or municipality may be made only after the proposed conveyance has received the approval of the city, town, or village council, or of the local official designated by such council. Such conveyances for lands within any unincorporated city, town, village or municipality may be made only after notice of the proposed conveyance, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision of the trustee which is adverse to a protest will be subject to the right of appeal under Part 1840 of this chapter. Upon filing of an appeal pursuant to that Part, action by the trustee on the conveyance will be suspended pending final decision on the appeal.

§ 2565.6 Rights-of-way.

(a) Notwithstanding any other provisions of this part, the trustee is authorized to grant rights-of-way for public purposes across any unentered lands within the townsite. This authority is expressly limited to grants of rights-of-way to cities, towns, villages, and municipalities, and to school, utility, and other types of improvement districts, and to

persons, associations, companies, and corporations engaged in furnishing utility services to the general public, and to the United States, any Federal or State agency or instrumentality for use for public purposes.

(b) The trustee may in his discretion fix a reasonable charge for any grant under this authority to private persons, associations, companies and corporations, and to Federal and State agencies and instrumentalities, which charge shall be a lump sum. All grants shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances. No grants of rights-of-way under this authority shall be made across or upon lands on which prior rights of occupancy or entry have vested under the law.

(c) Grants of rights-of-way under this section to Federal and State agencies and instrumentalities to private persons, associations, companies, or corporations affecting lands within any incorporated city, town, village, or municipality, may be made only after the proposed grant has received the approval of the city, town, or village council, or, where applicable, the municipal board or commission having authority under state law to approve rights-of-way for local public utility purposes. Grants of such rights-of-way to Federal and state agencies and instrumentalities and to private persons, associations, companies, or corporations within unincorporated cities, towns, villages, or municipalities may be made only after notice of the proposed grant, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision by the trustee which is adverse to a protest will be subject to the right of appeal under Part 1840 of this chapter. Upon the filing of an appeal, action by the trustee on the application for right-of-way will be suspended pending final decision on the appeal.

§ 2565.7 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 municipality in trust for the public purposes for which they were reserved.

§ 2565.8 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.

§ 2565.9 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 section 2565.8 of this part 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.

(Sec. 11, 26 Stat. 1099; 48 U.S.C. 355)

Subpart 2566—Alaska Railroad Town Sites

§ 2566.0–3 Authority.

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.

(a) *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 subparts 2566.1 and 2566.2. 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.

(b) *Amendments*—(1) *Executive Orders 3529 and 5136.* Subparts 2566.1 and 2566.2 are amended by E.O. 3529, Aug. 9, 1921 and E.O. 5136, June 12, 1929.

(2) 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.

(3) Due to the change in organization, plats of Alaska Railroad town sites are not approved by an official of the Alaska Railroad.

(4) The State Director in Alaska has been designated as Superintendent of Sales of Alaska Railroad town sites.

(d) *Executive Order 5136.* (1) 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 Townsite, 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.

(2) As to the lots within said townsite 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.

(3) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

(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)

§ 2566.0–7 Cross references.

(a) Sales of railroad townsites in Alaska, provided for by Executive Order No. 3489 of June 10, 1921, §§ 2566.1(a) to (f) and 2566.0–3(a), will be made by the authorized officer in Alaska, as superintendent of sales of railroad townsites in accordance with townsite regulations contained in §§ 2760.0–3 to 2761.2(e) so far as those regulations are applicable.

(b) For surveys, Alaska, see Part 9180 of this chapter. For townsites, Alaska, see § 2565.0–7.

§ 2566.1 General procedures.

(a) *Reservations.* The Alaska Railroad 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 Alaska Railroad, 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 Bureau of Land Management.

(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.

§ 2566.2 Public sale.

(a) *Generally.* The unreserved and unsold lots will be offered at public sale 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.

(b) *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.

(c) *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 Director, Bureau of Land Management 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.

Subpart 2567—Alaska: Homestead Settlement

§ 2567.0–3 Authority.

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), April 13, 1926 (44 Stat. 243; 48 U.S.C. 379, 380, 380a), and July 11, 1956 (70 Stat. 528; 48 U.S.C. 371c and 375).

§ 2567.0–7 Cross references.

For Indian and Eskimo allotments, Subpart 2561, for school indemnity selections Subpart 2627; for shore space, Subpart 2094; for soldier's additional rights, Subpart 2616; for trade and manufacturing sites, Subpart 2562.

§ 2567.0–8 Lands subject to settlement and homestead entry.

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.

§ 2567.1 Application.

(a) *Form.* Application to make homestead entry for lands in Alaska should be presented on a form approved by the Director, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U.S.C. 161, 171).

(b) *Showing to accompany application.* Each application on the prescribed form should be accompanied by a corroborated statement showing:

(1) 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 or should be waived. (See § 2094.2 of this subchapter.)

(2) 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 § 2311.2(a) of this chapter.

(c) *Contents.* (1) A homestead application must describe the lands desired, if surveyed, 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.

(2) A homestead application must describe the lands desired, if unsurveyed, by metes and bounds with relation to some natural or permanent monuments, 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 the land claimed, a full explanation must be given of the reason for such deviation. A homestead application for unsurveyed lands must be accompanied by the settler's final or commutation homestead proof.

(d) *Service charges.* (1) When a homesteader applies to make entry he must pay an application nonrefundable service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the Act of May 14, 1880 (21 Stat. 143; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(2) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

§ 2567.2 Homestead settlement entry.

(a) *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.

(b) *Notice of settlement.* (1) 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, or application to make homestead entry, in the land office for the district in which the land is located within 90 days after settlement.

(2) The notice must be filed on a form approved by the Director, 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.

(3) Unless a notice of the claim is filed within the time prescribed in subparagraphs (1) and (2) of this paragraph, no credit shall be given for residence and cultivation had prior to the filing of notice or application to make entry, whichever is earliest.

(c) *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.

(d) *Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.* (1) A settler on unsurveyed land is required to mark the claim by permanent monuments at each corner, in order to establish the boundaries thereof.

(2) 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.

(e) *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.

(Sec. 1, 30 Stat. 409, as amended; 48 U.S.C. 371)

§ 2567.3 Acreage.

(a) *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.

(b) *Limitations.* 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.

(Sec. 1, 30 Stat. 409, as amended; 48 U.S.C. 371)

§ 2567.4 Qualifications of entryman.

(a) *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 State for not exceeding 160 acres.

(b) *Second entries.* No showing is required of an applicant for 160 acres in Alaska as to a former homestead entry outside of the State, but if the applicant has made homestead entry, or made an allowable homestead application or filed a location notice of settlement in the State and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the State, make the showing required by the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) explained in § 2513.1 (a) to (d) of this chapter.

(c) *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 §§ 2512.1 and 2512.2 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

(Sec. 1, 30 Stat. 409, as amended; 48 U.S.C. 371)

§ 2567.5 Residence, cultivation requirements.

(a) *Residence*—(1) *Establishment.* 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.

(2) *Length.* A homestead entryman must show residence upon his claim for at least 3 years; however, 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 proper land office of the time of leaving the homestead and returning thereto.

(3) *Leave of absence.* A leave of absence for 1 year or less may be granted by the manager to the 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.

(b) *Cultivation.* 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. Cultivation, which must consist of breaking of the soil, planting or seeding, and tillage for a crop other than native grasses, must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

(c) *Habitable house.* The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

(d) *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), is not subject to commutation.

§ 2567.6 Surveys.

(a) *Without expense to settler.* The land included in a settlement claim may be surveyed without expense to the settler, provided he submits, within five years from the date of the filing of notice of settlement claim in the land office, an application to enter on a form approved by the Director and acceptable final or commuted homestead proof as required by § 2567.7(a).

(b) *At expense of settler.* A settler who wishes to secure earlier action in the matter of survey may have a survey made at his own expense by a deputy surveyor appointed by the authorized officer of the Bureau of Land Management.

(c) *Application to enter land included in special survey.* After a special survey

has been made, in accordance with paragraph (b) of this section, application to enter should be made as in the case of other settlements on surveyed lands.

§ 2567.7 Proof.

(a) *Submission.* (1) Proof may be submitted without previous notice of intention by publication.

(2) 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 proper land office.

(3) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

(b) *Publication and posting.* (1) Where a special survey has been made, the notice of proof must give the survey number of the land, and it must be published once a week for nine consecutive weeks, in accordance with § 1824.3 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.

(2) 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 § 1824.3 of this chapter. The manager must cause a copy of the notice to be posted in his office during the entire period of publication.

(c) *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 State 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.

(d) *Adverse claim.* (1) 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.

(2) 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.

(3) 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 Parts 1840 and 1850 of this chapter.

§ 2567.8 Loans.

(a) *Mortgage loans on existing homestead entries.* 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 § 2511.0-9(a) of this chapter.

(b) *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.

Group 2600—Disposition; Grants

PART 2610—SCRIP

Subpart 2610—Scrip, General

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Subpart 2610—Scrip, General

§ 2610.0-1 Purpose.

The purpose of the regulations in this subpart is to provide procedures for the orderly satisfaction and retirement of outstanding valid scrip, lieu selection, and similar rights, consistent with the public land laws governing such rights, including the Act of August 31, 1964 (78 Stat. 751). This Act provides that all claims and holdings recorded under the Act of August 5, 1955 (69 Stat. 534, 535) which are not satisfied by methods provided by the Act shall become null and void January 1, 1970, except for soldiers' additional homestead claims which shall become null and void on January 1, 1975.

§ 2610.0-2 Objectives.

The program of the Secretary of the Interior is to encourage the early satisfaction of all outstanding valid scrip consistent with the Act of August 31, 1964.

§ 2610.0-3 Authority.

(a) *Recording action.* (1) The act of August 5, 1955 (69 Stat. 534, 535), requires that any owner of, or any person claiming rights to, the scrip, lieu selection, and similar rights described in paragraph (b) of this section must present his holdings or claim for recordation by the Department of the Interior. The act further provides that claims or holdings not presented for recordation as required by the act will not thereafter be accepted by the Department of the Interior for recordation or as a basis for the acquisition of lands.

(b) The Act of August 31, 1964 (78 Stat. 751) provides methods for the satisfaction of all claims and holdings recorded under the Act of August 5, 1955.

§ 2610.0-5 Definitions.

For the purposes of this subpart:

(a) "Claim" means all valid and unsatisfied claims and holdings recorded under the Act of August 5, 1955 (69 Stat. 534, 535).

(b) "Value" means fair market value, as determined by the Secretary or his delegate.

Subpart 2611—Recordation of Scrip

§ 2611.1 Time limit.

Persons who, by transfer (by assignment, inheritance, operation of law, or otherwise) become owners of, or claimants of rights to, any such rights which have been recorded under the act must present their claims or holdings for recordation within six months after such transfer.

§ 2611.2 How to secure recordation.

Persons who desire to record their holdings or claims under the act must present the following to the Director, Bureau of Land Management, Washington 25, D.C., within the time periods prescribed in section 2611.1.

(a) A statement, in duplicate, captioned "Application for Recordation of Scrip, Lieu Selection, or Similar Rights under the act of August 5, 1955 (69 Stat. 534)," containing the (1) name and full post-office address of the applicant, (2) names and full post-office addresses of all the owners or claimants of the right presented for recordation, (3) the type of script or right presented, and (4) the acreage of such script or right.

(b) The scrip, or other document which evidences their right, providing their right is based on such a document.

(c) A statement, in duplicate, showing the basis of their right, providing the right is not based on scrip, warrant, or other document.

Subpart 2612—Satisfaction of Scrip

§ 2612.1 Classification.

(a) When lands are classified pursuant to section 3 of the Act of August 31, 1964,

for satisfaction of scrip, the classification order will specify the type or types of claims which may be exchanged for the classified lands.

(b) Unless sooner terminated by the authorized officer, any classification, pursuant to section 3 of the Act of August 31, 1964, will terminate on December 31, 1969, except that classification of land for soldiers' additional homestead claims will terminate December 31, 1974.

(c) Land and interests in land may be classified for satisfaction of claims only if they are suitable for claim satisfaction under the terms of the authority establishing the claim and under the provisions of other applicable laws.

(d) Lands classified for the satisfaction of claims 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.

(e) In satisfaction of applications filed on and after July 1, 1966, each claimant is entitled to receive land in tracts having a value per acre no less than the following:

(1) For soldiers' additional homestead, claims, $250;

(2) For Valentine, Sioux Half Breed, Porterfield, and railroad lieu selection claims, $1,270.

(3) For forest lieu selection claims, $275.

(f) Hereafter, no tract of land will be classified as suitable for disposition in satisfaction for claims if the value per acre of the tract exceeds the following:

(1) For soldiers' additional homestead, claims, $275;

(2) For Valentine, Sioux Half Breed, Wyandotte, Porterfield, Gerard, McKee, and railroad lieu selection claims, $1,400;

(3) For forest lieu selection claims, $300

§ 2612.2 Application.

(a) Every application to satisfy a claim must be made on a form approved by the Director, properly executed.

(b) Applications to satisfy claims by the conveyance of public lands will not be accepted, will not be considered as filed, and will be returned to the applicant unless the lands sought have previously been classified as suitable for satisfaction of claims.

(c) If all else is regular the application first received for a tract of land will be entitled to priority, whether delivery was by mail or otherwise. Where applications are received simultaneously, a drawing will be held to determine priority, except that where applications are received simultaneously through the mails, the one bearing the earliest postmark is entitled to priority.

(d) All applications filed pursuant to this section must be accompanied by an application service fee of $10, which will not be returnable.

§ 2612.3 Validity.

No transaction for the satisfaction of a claim, whether by cash or conveyance of land, shall be consummated unless and until the authorized officer determines that the scrip is valid.

§ 2612.4 Election to receive cash.

(a) Any time up to and including December 31, 1974, a claimant may elect, by written notice to the Director, Bureau of Land Management, to receive cash instead of land in satisfaction of soldier's additional homestead claims.

(b) Payments will be made at a rate equal to the value per acre of the lands offered under section 4 of the Act of August 31, 1964, for claims of the type being satisfied.

§ 2612.5 Notice; publication; proof.

Applicants for land in satisfaction of scrip will be required upon demand to publish once a week for four consecutive weeks in accordance with § 1824.3 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice informing all interested persons of the opportunity to file in the appropriate office their objections to the use of such land in satisfaction of claims. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. Proof of publication must be filed in accordance with § 1824.9–3 of this chapter.

PART 2620—STATE GRANTS

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Subpart 2627—Alaska

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2627.3 Grant for general purposes.
2627.4 All grants.

AUTHORITY: The provisions of this Subpart 2621 issued under R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 2621—Indemnity Selections

§ 2621.0–2 Objectives and Background.

Generally, grants made by Statehood Acts to the various States of school sections 16 and 36, and in addition, sections 2 and 32 in Arizona, New Mexico, and Utah, attach to a school sections on the date of acceptance or approval of the plat of survey thereof. If the acceptance or approval was prior to the granting act, or to the date of admission of the State into the Union, the grant attaches either on the date of approval of the act or the date of admission into the Union, whichever is the later date. However, if on the date the grant would otherwise attach, the land is appropriated under some applicable public land law, the grant does not attach, and the State is entitled to indemnity therefor as provided in the regulations in this subpart.

§ 2621.0–3 Authority.

(a) Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), referred to in §§2222.1–1 to 2222.1–5 as "the law," authorize the public land States except Alaska to select lands (or the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals, or any specified mineral or minerals, which interest is referred to in §§ 2621.3 to 2621.4 as the "mineral estate") of equal acreage within their boundaries as indemnity for grant lands in place lost to the States because of appropriation before title could pass to the State or because of natural deficiencies resulting from such causes as fractional sections and fractional townships.

(b) The law provides that indemnity for lands lost because of natural deficiencies will be selected from the unappropriated, nonmineral, public lands, and that indemnity for lands lost before title could pass to the State will be selected from the unappropriated, public lands subject to the following restrictions:

(1) No lands mineral in character may be selected except to the extent that the selection is made as indemnity for mineral lands.

(2) No lands on a known geologic structure of a producing oil or gas field may be selected except to the extent that the selection is made as indemnity for lands on such a structure.

(c) The law also provides that lands subject to a mineral lease or permit may be selected, but only if the lands are otherwise available for selection, and if none of the lands subject to that lease or permit are in producing or producible status. It permits the selection of lands withdrawn, classified, or reported as valuable for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, oil shale, sodium, and sulphur and lands withdrawn by Executive Order No. 5327 of April 15, 1930, if such lands are otherwise available for, and subject to, selection: *Provided*, That except where

the base lands are mineral in character, such minerals are reserved to the United States in accordance with and subject to the regulations in Subpart 2093. Except for the withdrawals mentioned in this paragraph and for lands subject to classification under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315f), as amended, the law does not permit the selection of withdrawn or reserved lands.

(d) Subsection (b) of the section 2276 of the Revised Statutes, as amended, sets forth the principles of adjustment where selections are made to compensate for deficiencies of school lands in fractional townships.

§ 2621.1 Waiver of State preference right of application.

Where the proper selecting agent of the State files in writing in the appropriate land office a waiver of the preference provisions in connection with the proposed revocation of an order of withdrawal, the order or notice effecting such revocation will not provide for such preference.

§ 2621.2 Applications for selection.

(a) Applications for selection must be made on a form approved by the Director, and must be accompanied by a petition on a form approved by the Director properly executed. However, if the lands described in application have been already classified and opened for selection pursuant to the regulations of this part, no petition is required.

(b) Applications for selection under the law will be made by the proper selecting agent of the State and will be filed, in duplicate, in the proper land office in the State or for lands or mineral estate in a State in which there is no land office, will be filed in accordance with the provisions of § 1821.2 of this chapter.

(c) Applications must be accompanied by the following information:

(1) A reference to the act of August 27, 1958 (72 Stat. 928), as amended.

(2) A certificate by the selecting agent showing:

(i) All facts relative to medicinal or hot springs or other waters upon the selected lands.

(This provision does not apply insofar as the application involves the selection of the mineral estate.)

(ii) That indemnity has not been previously granted for the assigned base lands and that no other selection is pending for such assigned base.

(3) A statement describing the mineral or nonmineral character of each smallest legal subdivision of the base and selected lands or mineral estate.

(4) A certificate by the officer or officers charged with the care and disposal of school lands that no instrument purporting to convey, or in any way incumber, the title to any of the land used as base or bases, has been issued by the State or its agents.

(d) In addition to the requirements of paragraph (c) of this section, applications for selection must conform with the following rules:

(1) The selected land and base lands must be described in accordance with the official plats of survey except that unsurveyed lands will be described in terms of protracted surveys as officially approved in accordance with 43 CFR 3101.1–4(d)(1). If the unsurveyed lands are not covered by protracted surveys the lands must be described in terms of their probable legal description, if and when surveyed in accordance with the rectangular system of public land surveys, or if the State Director gives written approval therefor, by a metes and bounds description adequate to identify the lands accurately.

(2) The selection in any one application must not exceed 12,000 acres. This limitation shall not apply to unsurveyed lands if the State Director finds that the selection of a larger tract would not be inconsistent with the management of the remaining public lands and their resources. However, in this latter event, the unsurveyed lands selected must be in one tract.

(3) Separate base or bases must be assigned to each smallest legal subdivision of selected surveyed land or mineral estate and to each tract of unsurveyed land. Such base or bases must correspond in area with each subdivision or tract. A portion of a smallest actual or probable legal subdivision may be assigned as base but such assignment is an election to take indemnity for the entire subdivision and is a waiver of the State's rights to such subdivision, except that any remaining balance may be used as base for future selections.

(4) For purposes of selecting unsurveyed land a protracted section shall be considered to be a smallest legal subdivision except where the State Director finds otherwise.

(5) The cause of loss of the base lands to the State must be specifically stated for each separate base.

(e) Applications for selection must be accompanied by a nonrefundable application service charge of $5.

§ 2621.3 Publication and protests.

(a) The State will be required to publish once a week for five consecutive weeks in accordance with § 1824.3 of this chapter, at its own 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 a certification to the State for lands selected under the law. A protestant must serve on the State a copy of the objections and furnish evidence of service to the appropriate land office.

(b) The State 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.

§ 2621.4 Certifications; mineral leases and permits.

(a) Certifications will be issued for all selections approved under the law by the authorized officer of the Bureau of Land Management.

(b) Where all the lands subject to a mineral lease or permit are certified to a State, or if, where the State has previously acquired title to a portion of the lands subject to a mineral lease or permit, the remaining lands in the lease or permit are certified to the State, the State shall succeed to the position of the United States thereunder. Where a portion of the lands subject to any mineral lease or permit are certified to a State, the United States shall retain for the duration of the lease or permit the mineral or minerals for which the lease or permit was issued.

§ 2621.5 Application for selection of unsurveyed lands.

(a) The authorized officer will reject any application for selection of unsurveyed lands if: (1) The costs of survey of the lands would grossly exceed the average per-acre costs of surveying public lands under the rectangular system of surveys in the State in which the lands are located, or (2) if the conveyance of the lands would create serious problems in the administration of the remaining public lands or resources thereof or would significantly diminsh the value of the remaining public lands. The term "remaining public lands" means the public lands from which the applied-for lands would be separated by survey.

(b) In addition to the provisions of this section, applications for selection of unsurveyed lands are subject to the provisions of Subpart 2400.

Subpart 2622—Quantity and Special Grant Selections

§ 2622.0–1 Purpose and scope.

(a) Sections 2622.0–1 to 2622.0–8 apply generally to quantity and special grants made to States other than Alaska.

(b) The regulations in §§ 2621.2 to 2621.4 apply to quantity and special grants with the following exceptions and modifications:

(1) Sections 2622.4(b) and 2621.2(c)(4); and §§ 2622.2(d)(3) and (4) and all references to base lands and to mineral estate do not apply.

(2) Section § 2621.2(c)(1) is modified to require reference to the appropriate granting act; § 2621.2(c)(3) is modified to require a statement testifying to the nonmineral character of each smallest legal subdivision of the selected land; § 2621.2(d)(2) is modified to permit as much as 6,400 acres in a single selection; and § 2621.2 is modified to require a certificate that the selection and those pending, together with those approved, do not exceed the total amount granted for the stated purpose of the grant.

§ 2622.0–8 Lands subject to selection.

Selections made in satisfaction of quantity and special grants can generally be made only from the vacant, unappropriated, nonmineral, surveyed public lands within the State to which the grant was made. If the lands are otherwise available for selection, the States may select lands which are withdrawn, classified, or reported as valuable for coal,

phosphate, nitrate, potash, oil, gas, asphaltic minerals, sodium, or sulphur, provided that the appropriate minerals are reserved to the United States in accordance with and subject to the regulations of Subpart 2093.

Subpart 2623—School Land Grants to Certain States Extended to Include Mineral Sections

§ 2623.0–3 Authority.

(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.

§ 2623.0–7 Cross reference.

For national forests and national parks, see § 1821.7–2 of this chapter. For naval petroleum reserves, see section 3102.2–2 of this chapter.

§ 2623.0–8 Lands subject to selection.

(a) *Lands included in grant.* (1) 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.

(2) 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.

(b) *Lands excluded from grant.* (1) 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.

(2) 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 Alaska are excluded from the provisions of the act. (2623.4)

(3) The words "existing reservation" 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.

§ 2623.1 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.

§ 2623.2 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 cancellation 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.

§ 2623.3 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.

§ 2623.4 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.

Subpart 2624—Patents for Granted School Sections

§ 2624.0–1 Purpose.

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.

§ 2624.0–3 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.

§ 2624.1 Application for patent.

(a) *Filing and fees.* (1) 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.

(2) 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.

(3) Application shall be filed in the proper land office in accordance with the provisions of § 1821.2 of this chapter.

(b) *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 semiweekly 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.

§ 2624.2 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 Part 1850 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.

Subpart 2625—Swamp-Land Grants

§ 2625.0–3 Authority.

(a) 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, Mississippi, 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 praesenti. 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. 595); 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).

(c) 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.

(d) 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.

(e) 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).

§ 2625.1 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.

§ 2625.2 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.

Subpart 2627—Alaska

§ 2627.1 Grant for community purposes.

(a) *Authority.* The act of July 7, 1958 (72 Stat. 339, 340), grants to the State of Alaska the right to select, within 25 years after January 3, 1959, not to exceed 400,000 acres of national forest lands in Alaska which are vacant and unappropriated at the time of their selection and not to exceed 400,000 acres of other public lands in Alaska which are vacant, unappropriated, and unreserved at the time of their selection. The act provides that the selected lands must be adjacent to the established communities or suitable for prospective community centers and recreational areas. The act further provides that such lands shall be selected with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other lands, and that no selection shall be made north and west of the line described in section 10 of the act without approval of the President or his designated representative.

(b) *Applicable regulations.* Unless otherwise indicated therein, the regulations in § 2627.3 (a) to (d) apply to the grant and selection of lands for community purposes. In addition to the requirements of § 2627.3(c), where the selected lands are national forest, the application for selection must be accompanied by a statement of the Secretary of Agriculture or his delegate showing that he approves the selection.

(c) *Approval of selections outside of national forests.* Selection of lands outside of national forests will be approved by the authorized officer of the Bureau of Land Management if, all else being regular, he finds that approval of a selection of lands adjacent to an established community will further expansion of an established community, or if the lands are suitable for prospective community centers and recreational areas.

§ 2627.2 Grant for University of Alaska.

(a) *Statutory authority.* The act of January 21, 1929 (45 Stat. 1091), as supplemented July 7, 1958 (72 Stat. 339, 343; 48 U.S.C. 354a), grants to the State of Alaska, for the exclusive use and benefit of the University of Alaska, the unsatisfied portion of 100,000 acres of vacant, surveyed, unreserved public lands in said State, to be selected by the State, 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.

(b) *Applications for selection.* (1) 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 State 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 applicable regulations governing selection of lands by States as set forth in part 2620.

(2) Notice of selection and publication is required as provided by § 2627.5 (b) and (c).

(3) Each list of selections must contain a reference to the 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 State of Alaska.

(4) The selections in any one list must not exceed 6,400 acres.

(5) Each list must be accompanied by a certification of the selecting agent stating that the acreage selected together with the cumulative acreage total of all prior sales for lists pending and finally approved for clear-listing or patenting does not exceed 100,000 acres.

(c) *Statement with 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.

(1) That no portion of the land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant; and that at the date of the application no part of the land was claimed under the mining laws.

(2) 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 or should be waived. (See § 2094.2 of this chapter.)

(3) All facts relative to medicinal or hot springs or other waters upon the lands must be stated.

§ 2627.3 Grant for general purposes.

(a) *Statutory authority.* (1) The act of July 7, 1958 (72 Stat. 339–343), referred to in paragraph (a) to (d) of this section as "the act," grants to the State of Alaska the right to select, within 25 years from January 3, 1959, not to exceed 102,550,000 acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of selection. The act of September 14, 1960 (74 Stat. 1024), defines vacant unappropriated, unreserved public lands in Alaska to include the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(2) The act further provides that no selection shall be made in the area north and west of the line described in section

10 thereof (72 Stat. 345) without the approval of the President or his designated representative.

(b) *Lands subject to selection; patents; minerals.* (1) The act as amended August 18, 1959 (73 Stat. 395), provides that any lease, permit, license, or contract issued under the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended, or under the Alaska Coal Leasing Act of 1914 (38 Stat. 741; 30 U.S.C. 432 et seq.), as amended, referred to in this section as "the mineral leasing acts," shall have the effect of withdrawing the lands subject thereto from selection by the State.

(2) Under the act, the State may select any vacant, unappropriated, and unreserved public lands in Alaska, whether or not they are surveyed and whether or not they contain mineral deposits. For the purposes of selection, leases, permits, licenses, and contracts issued under the mineral leasing acts of 1914 and 1920 will be considered an appropriation of lands. Where the preference provisions of § 2627.4(a) do not apply, selections by the State of lands covered by an application filed prior to the State selection will be rejected to the extent of the conflict when and if such application is allowed. Conflicting applications and offers for mineral leases and permits, except for preference right applicants, filed pursuant to the Mineral Leasing Act, whether filed prior to, simultaneously with, or after the filing of a selection under this part will be rejected when and if the selection is tentatively approved by the authorized officer of the Bureau of Land Management in accordance with paragraph (d) of this section.

(3) Patents will be issued for all selections approved under the act by the authorized officer of the Bureau of Land Management but such patents will not issue unless or until the exterior boundaries of the selected area are officially surveyed.

(4) (i) Where the State selects all the lands in a mineral lease, permit, license, or contract, issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act will convey to the State all mineral deposits in the selected lands. Any such patent shall vest in the State all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract. Issuance of patent will not affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(ii) Where the State selects a portion of the lands subject to a mineral lease, permit, license, or contract issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act shall reserve to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contracts. Upon the termination of the lease, permit, license, or contract, title to minerals so reserved to the United States shall pass to the State.

(c) *Applications for selection.* (1) Applications for selection of lands under the act will be made by the proper selecting agent of the State and will be filed, in duplicate, in the land office of the district in which such selected lands are situated. No special form is required but it must be typewritten and must contain the following information:

(i) A reference to the act of July 7, 1958 (70 Stat. 709), as supplemented, and a statement that the selection, together with other selections under the act pending or approced, does not exceed 102,550,000 acres (400,000 acres where one of the grants for community purposes is involved).

(ii) A certificate by the selecting agent showing:

(*a*) That the selection is made under and pursuant to the laws of the State.

(*b*) The acreage selected and the cumulative acreage of all prior selection lists pending and finally approved for clear-listing or patenting.

(*c*) His official title and his authority to make the selection on behalf of the State.

(*d*) That no portion of the selected land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the land other than the applicant, and that at the date of the application no part of the land claimed or occupied under the mining laws.

(*e*) That the selected land does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived or should be waived. (§ 2094.2 of this chapter.)

(*f*) All the facts relative to medicinal or hot springs or other waters upon the selected lands.

(iii) If the selected lands are surveyed, the legal description of the lands in accordance with official plats of survey.

(iv) If the selected lands are unsurveyed and are described by approved protraction diagrams of the rectangular system of surveys, such description is required.

(v) If the selected lands are unsurveyed and are not described by approved protraction diagrams, a description of the lands and a map or maps, in duplicate, sufficient to permit ready identification of the location, boundaries, and area of the lands.

(2) Selections must be accompanied by a filing fee of $10 for 5,760 acres or fraction thereof in the selection which fee is not returnable.

(3) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. A tract will not be considered compact if it excludes other public lands available for selection within its exterior boundary. Each tract selected shall contain at least 5,760 acres unless isolated from other tracts open to selection.

(4) If the selected lands are in the area north and west of the line described in section 10 of the act, all selection made or confirmed by the act must be accompanied by a statement of the President or his designated representative showing that he approves the selection.

(5) Section 2627.3(a)(1) and (c)(1)(ii) do not apply to the extent that an application embraces a reserved or retained interest.

(d) *Effect of approval of selections.* Following the selection of lands by the State and the tentative approval of such selection by the authorized officer of the Bureau of Land Management, the State is authorized to execute conditional leases and to make conditional sales of such selected lands pending survey of the exterior boundaries of the selected area, if necessary, and issuance of patent. Said officer will notify the appropriate State official in writing of his tentative approval of a selection after determining that there is no bar to passing legal title to the lands to the State other than the need for the survey of the lands or for the issuance of patent or both.

§ 2627.4 All grants.

(a) *State preference right of selection: waivers.* (1) The act of July 7, 1958 (see § 2627.3(a), provide that upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than 90 days before the date on which it otherwise becomes effective during which period the State of Alaska shall have a preferred right of selection under the acts of 1956 and 1958, except as against prior existing valid rights, equitable claims subject to allowance and confirmation and other preferred rights of application conferred by law.

(2) Where the proper selecting agent of the State files in writing in the appropriate land office a waiver of the preference provisions of paragraph (a) of this section in connection with the proposed revocation of an order of withdrawal, the order affecting such revocation will not provide for such preference.

(b) *Segregative effect of applications.* Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the appropriate land office properly describing the lands as provided in § 2627.3(c)(1)(iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first notice as provided by paragraph (c) of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

(c) *Publications and protests.* (1) The State will be required to publish

once a week for five consecutive weeks in accordance with 1824.4 of this chapter, at its own 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 or certification for lands selected under the regulations of this part. A protestant must serve on the State a copy of the objections and furnish evidence of service to the appropriate land office.

(2) The State 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 2630—RAILROAD GRANTS

Subpart 2631—Patents for Lands Sold by Railroad Carriers (Transportation Act of 1940)

Sec.
2631.0-3 Authority.
2631.0-8 Lands for which applications may be made.
2631.1 Applications.
2631.2 Publication of notice.
2631.3 Surveying and conveyance fees.
2631.4 Patents.

AUTHORITY: The provisions of this Subpart 2630 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 2631—Patents for lands Sold by Railroad Carriers (Transportation Act of 1940)

§ 2631.0-3 Authority.

Subsection (b) of section 321, Part II, Title III, of the Transportation Act of September 18, 1940 (54 Stat. 934), 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.

§ 2631.0-8 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.

§ 2631.1 Applications.

Application, and supporting evidence, must be filed by the carrier in the proper land office, accompanied by a nonrefundable application service charge of $10. The lands listed in any one application must be limited to those embraced in a single sale upon which the claim for patent is based. 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 (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 by 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 lands 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.

§ 2631.2 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.

§ 2631.3 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 Subpart 1822 of this chapter.)

§ 2633.4 Patents.

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 costs of preparation and issuance of the patent.

PART 2640—FAA AIRPORT GRANTS

Subpart 2640—Federal Airport Act of May 13, 1946

Sec.
2640.0-3 Authority.
2640.0-5 Definitions.
2640.0-7 Cross Reference.

Subpart 2641—Procedures

Sec.
2641.1 Request by Administrator for transfer of property interest.
2641.2 Action on the request.
2641.3 Publication and posting.
2641.4 Approval of transfer.

Subpart 2640—Federal Airport Act of May 13, 1946

§ 2640.0-3 Authority.

(a) Section 16 of the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U.S.C. 1115) provides that whenever the Administrator of the Federal Aviation Agency 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 the Federal Aviation Agency, 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.

§ 2640.0–5 Definitions.

As used in the regulations in this section 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 the Federal Aviation Agency or his duly authorized representative.

(e) "Applicant" means any public agency as defined in 14 CFR 153.3, 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.

§ 2640.0–7 Cross reference.

The regulations of the Federal Aviation Agency under this act are found in 14 CFR, Part 153.

Subpart 2641—Procedures

§ 2641.1 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 longtitude should be given when practicable.

§ 2641.2 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 covenants, 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.

§ 2641.3 Publication and posting.

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 semiweekly or triweekly, in any of the issues on the same day each week for 4 consecutive weeks. The notice will also be posted during the entire period of publication in the proper land office (see § 1821.2–1 of this chapter). No transfer will be made until proof of publication and posting of the notice has been filed.

§ 2641.4 Approval of transfer.

(a) *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.

(R.S. 2478, sec. 1, 45 Stat. 728, as amended; 43 U.S.C. 1201, 49 U.S.C. 211)

Group 2700—Dispositions—Sales

PART 2710—PUBLIC SALE—R.S. 2455

Subpart 2710—Public Sale—R.S. 2455: General

Sec.
2710.0–1 Purpose.
2710.0–2 Objectives.
2710.0–3 Authority.
2710.0–5 Definitions.
2710.0–8 Lands subject to sale.

Subpart 2711—Procedures Under R.S. 2455

2711.1 Petition; application.
2711.2 Notice; publication, cost.
2711.3 Bidding: time; place; simultaneous bids.
2711.4 Action at close at bidding.
2711.5 Action at close of preference period; acceptance of offer.
2711.6 Acceptance of offer.
2711.7 Rights of applicants and bidders.
2711.8 Compensation for authorized improvement.

Subpart 2710—Public Sale—R.S. 2455: General

AUTHORITY: The provisions of this Subpart 2710 issued under R.S. 2455; 43 U.S.C. 1171.

§ 2710.0–1 Purpose.

The regulations in this part implement R.S. 2455, as amended (43 U.S.C. 1171), which permits the sale of isolated tracts and tracts mountainous or too rough for cultivation.

§ 2710.0–2 Objectives.

The program of the Secretary of the Interior in the administration of section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), hereinafter referred to as the Act, is to take into consideration the criteria set out in Parts 2410, 2420, and 2430 and to order into market on an orderly basis lands subject to the Act which are more valuable or proper for non-Federal than Federal ownership.

§ 2710.0–3 Authority.

Section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171) authorizes the Secretary of the Interior to order into market and sell at public auction certain public domain as described in § 2710.0–8.

§ 2710.0–5 Definitions.

As used in the regulations of this part:

(a) The terms "public domain" and "public land" mean vacant, unappropriated, and unreserved public lands, or public lands withdrawn by E.O. 6910 of November 26, 1934, as amended, or E.O. 6964 of February 5, 1935, as amended, and not otherwise withdrawn or reserved, or public lands within grazing districts established under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended, and not otherwise withdrawn or reserved.

(b) The terms "appraised value" and "appraised price" mean the amount of money specified as the minimum acceptable bid in the public notice ordering lands into market under the regulations of this part.

(c) The terms "contiguous lands" and "contiguous legal subdivisions" mean lands or legal subdivisions having a common boundary.

(d) The term "isolated or disconnected tract" means a tract of one or more contiguous legal subdivisions completely surrounded by lands held in non-Federal ownership or 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 lands are all patented, even though there are other public lands cornering upon the tract. The term "cornering" refers to lands having a common survey corner but not a common boundary.

(e) The term "mineral in character" refers to lands where the mineral is ordinarily in sufficient quantity to add to their richness and to justify expenditures for its extraction. A "mineral" is a substance that (1) is recognized as mineral, according to its chemical composition, by the standard authorities on the subject or (2) is classified as mineral product in trade or commerce; or (3) possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts. However, the word "mineral", for the purposes of the regulations of this part, does not include those that must be reserved to the United States pursuant to the regulations in §§ 2093.0–3 to 2093.4–3.

(f) The term "proper land office" means the land office of the Bureau of Land Management for the State or Land District in which the lands are situated (see § 1821.2–1 of this chapter).

(g) The word "person" includes but is not necessarily limited to individual, partnership, association or corporation.

(h) The word "bid" means a written or oral "offer to purchase."

§ 2710.0–8 Lands subject to sale.

(a) The Act authorizes the Secretary of the Interior to order into market and sell at public auction for not less than the appraised value any isolated or disconnected tract or parcel of the public domain not exceeding 1520 acres which, in his judgment, it would be proper to expose for sale.

(b) The Act also authorizes the Secretary in his discretion, upon application of any person who owns land or holds a valid entry adjoining such tract, to order into market and sell at public auction for not less than their appraised value any legal subdivision or contiguous legal subdivisions of public land not exceeding 760 acres, the greater part of each of which subdivisions is mountainous or too rough for cultivation.

(c) The Secretary of the Interior has full discretion to determine whether lands should be ordered into market under the regulations of this part. Factors that will be taken into consideration in making these determinations are described in Group 2400. Lands which are mineral in character will not be sold, but this is not to imply that lands which are not mineral in character, as defined in paragraph (e) of § 2710.0–5, will be sold regardless of whether they possess some mineral value, present or prospective.

Subpart 2711—Procedures Under R.S. 2455

§ 2711.1 Petition; application.

(a) Applications, together with petitions as required under Part 2450 (hereinafter called petition-applications), to have tracts ordered into market under the regulations of this part must be made on forms approved by the Director, properly executed and filed in the proper land office.

(b) Each petition-application must be accompanied by a nonrefundable application service charge of $25 and by an additional sum of $50 to defray the costs of publication. This $50 deposit will be returned to the applicant if the authorized officer declines to order lands into market, decides to reject all bids, or sells all the lands to persons other than the applicant. Where the authorized officer sells only part of the lands to the applicant and part to one or more other persons, he will return to the applicant such portion of the deposit as the officer deems equitable.

(c) The filing of a petition-application in conformity with the regulations in this part will not segregate the lands applied for from other petition-applications under the public land laws or defeat a prior valid right initiated under any such law. However, the publication of a notice pursuant to § 2711.2 placing lands into market will segregate such lands from all appropriations, including locations under the mining laws, and from other petitions and applications, effective on the date of the first publication of the notice.

§ 2711.2 Notice; publication, cost.

(a) When the authorized officer determines that lands shall be ordered into market under the regulations in this part, he will have a notice thereof published weekly for five consecutive weeks in an appropriate newspaper in accordance with § 1824.3 of this chapter.

(b) Where lands are sold pursuant to notice prescribed in paragraph (a) of this section, the purchaser or purchasers of the lands will be required to pay the cost of publication of the notice. Where more than one purchaser is involved in a transaction, the costs will be shared in such proportions as the authorized officer deems equitable.

§ 2711.3 Bidding: time; place; simultaneous bids.

(a) The time and place for submitting the bids will be specified in the public notice required by § 2711.2.

(b) Bids may be made by the principal or his agent, either personally 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. These bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the Bureau of Land Management for the amounts of the bids plus the cost of publication (see § 2711.2), less any amount previously deposited toward publication costs pursuant to section 2711.1 and must be enclosed in sealed envelopes which must be marked as prescribed in the notice. In the event that valid bids of the same amount are received through the mail from two or more persons, the first in time as shown by the time and date noted by the post office on the envelope will be considered the highest of those bids. If two or more envelopes containing valid bids of the same amount bear the same time and date stamp, they will be considered simultaneously filed. The determination of which is the highest of these bids will be by drawing.

§ 2711.4 Action at close of bidding.

(a) *High bidder.* The person who is declared by the authorized officer to be the high bidder shall be bound by his bid and the regulations in this part to complete the purchase in accordance therewith unless his bid is rejected or he is released therefrom by the authorized officer.

(b) *Preference rights.* (1) The owners of contiguous lands will have a period of 30 days, commencing on the day after the close of bidding and the announcement of the amount of the highest bid received, in which to offer to purchase the lands at the highest bid price, or at three times the appraised value, if three times such appraised value is less than the highest bid price. Failure of a preference-right applicant to submit to the authorized officer prior to the termination of the 30-day period an amount equal to his offer plus the cost of publication (see § 2711.2) will cause the preference right to be lost as to that particular public sale.

(2) Each preference-right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30-day period. The authorized officer will specify that date. Such proof must consist of (i) a certificate of the local recorder of deeds, or (ii) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, or by a duly qualified attorney authorized to practice in the State stating on the basis of an examination of title records that the applicant owned adjoining land in fee simple on the last day of the 30-day period. If the preference-right applicant does not own adjoining land at the close of the preference-right period, his preference-right claim will be lost. After a case has been closed, the data filed pursuant to this section may be returned by the authorized officer.

(3) Where two or more applicants apply to exercise the preference right provided for by the Act, to the same tract of land, they will be afforded an opportunity to agree among themselves upon a division of the lands. 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 between the applicants, (ii) desirable land use, based on topography, land pattern, location of water, proper development of the lands, and similar factors, (iii) legitimate historical use, including construction and maintenance of authorized improvements, and (iv) extent of contiguity and duration of ownership of adjacent lands. If considerations dictate, all of the lands may be awarded to one of the applicants.

§ 2711.5 Action at close of preference period; acceptance of offer.

After the close of the preference period described in § 2711.4(b), the authorized officer will determine whether the lands will be sold. If he determines that they will be sold and if there are no qualified preference applicants or if

there is only one qualified preference applicant, he will accept the bid of the highest bidder, in the first instance, or the offer of the preference applicant, in the second. If there are two or more preference applicants, he will give them the opportunity to agree as to the division of the lands (paragraph (b) of section 2711.4) and to amend their offers accordingly. If no agreement is reached, he will determine the division of the lands and give the applicants an opportunity to amend their offers accordingly.

§ 2711.6 Acceptance of offer.

The acceptance of an offer to purchase (bid) will be made by the issuance of a patent to the bidder. Until the patent is issued, the right is reserved to the authorized officer at any time to determine that the sale should not be held, that the lands should not be sold, or that any and all bids should be rejected. Generally, if the high bid is not less than the fair market value of the land on the date for receiving bids as specified in the public notice issued pursuant to § 2711.2(a), any appreciation or depreciation thereafter in value of the lands will not necessarily be a basis for a determination that the lands will not be sold. Sales will not be consummated, in the discretion of the authorized officer, when, for example:

(a) Circumstances reveal that the highest bid otherwise acceptable is less than the fair market value of the land on the date of the sale set in the public notice thereof, or

(b) An appropriate public requirement for the lands is identified subsequent to the public notice, or

(c) Collusive or other activities have hindered or restrained free and open bidding.

§ 2711.7 Rights of applicants and bidders.

The petitioner-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 obligations of the United States until the patent is issued. Issuance of the patent, however, will not preclude the Secretary of the Interior from vacating the sale in whole or in part because of fraud not disclosed at the time of issuance of the final certificate or because of lack of knowledge of facts or conditions existing at that time which, if known prior to issuance of the final certificate, would have been grounds for refusing to consummate the sale (see section 2711.6).

§ 2711.8 Compensation for authorized improvements.

Under the regulations in this chapter relating to grazing, no lands embraced in a grazing lease, license or permit may be sold unless and until the prospective purchaser has made provision for compensation for any grazing improvements placed on the lands.

PART 2720—PUBLIC SALE—PUBLIC LAND SALE ACT

Subpart 2720—Public Sale—Public Land Sale Act: General

Sec.
2720.0–1 Purpose.
2720.0–2 Objectives.
2720.0–3 Authority.
2720.0–5 Definitions.
2720.0–8 Lands subject to sale.

Subpart 2721—Public Land Sale Act Procedures

2721.1 Petitions and applications.
2721.2 Classification notice; segregative effect.
2721.3 Notice; publication.
2721.4 Sales through competitive bidding; time, place, simultaneous bids.
2721.5 Compensation for authorized grazing improvements.
2721.6 Patents: Reservations and restrictions.

Subpart 2720—Public Sale—Public Land Sale Act: General

§ 2720.0–1 Purpose.

The regulations in this part implement the Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C 1421–1427), which authorizes the sale of public lands that are required for the orderly growth and development of a community or which are chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for grazing and raising forage crops), industrial, or public uses or development.

§ 2720.0–2 Objectives.

(a) In the administration of the Public Land Sale Act the Secretary will place on the market, as soon as possible after needs are determined and the local zoning authority having jurisdiction enacts zoning regulations, public lands required for the orderly growth or development of a community or chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for raising forage crops), industrial or public uses or development and classified for sale under this Act pursuant to the regulations in Group 2400 of this chapter.

(b) Sale programs will be scheduled in a manner to make all actions consistent insofar as practicable with established or proposed State or local governmental programs and with State, county, and other local governmental comprehensive and detailed plans. Sales of lands required for the orderly growth and development of a community will not be made unless adequate local governmental comprehensive plans have been adopted and adequate zoning regulations are in effect. Sales of lands not required for the orderly growth and development of a community may be made where, the authorized officer determines that adequate zoning regulations exist and the disposal would be consistent with the objectives of the local governments involved.

(c) The authorized officers of the Bureau of Land Management will cooperate with State, county, and local governmental agencies to facilitate the achievement of the objectives of these regulations.

(d) Reservations and restrictions in patents issued under the Act will be kept to the minimum necessary to carry out the requirements of the law, and to protect the public interest in the lands and their development, but in no case will restrictions be imposed to insure proper development of the lands after they have passed from Federal ownership.

§ 2720.0–3 Authority.

The Public Land Sale Act authorizes and directs the Secretary to sell public lands that are classified under the Classification and Multiple Use Act (78 Stat. 986, 43 U.S.C. 1411–18) for sale after a determination that the lands are required for orderly growth and development of a community or are chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for raising forage crops), industrial or public uses or development. Such lands shall be sold in tracts not exceeding 5,120 acres, to qualified governmental agencies at appraised fair market value, or to qualified individuals through competitive bidding at not less than the appraised fair market value. The authority to make such sales shall terminate December 31, 1970, except that sales for which notice has been given in accordance with section 3 of the Act, prior to December 31, 1970, may be consummated and patents issued in connection therewith after December 31, 1970.

§ 2720.0–5 Definitions.

As used in this section:

(a) The term "public land" means vacant, unappropriated, and unreserved public lands in Alaska, or public lands withdrawn by E.O. 6910 of November 26, 1934, as amended, or E.O. 6964 of February 5, 1935, as amended, and not otherwise withdrawn or reserved, or public lands within grazing districts established under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315), and not otherwise withdrawn or reserved.

(b) The term "fair market value of the lands" means the dollar value of the lands as estimated by the authorized officer in accordance with approved Department of the Interior standards, taking into consideration all the terms and conditions of the transfer including restrictions to be inserted in the patent for the lands.

(c) The term "proper land office" means the land office of the Bureau of Land Management for the State or Land District in which the lands are situated (see § 1821.2–1 of this chapter).

(d) "Qualified governmental agency" means any of the following, including their lawful agents and instrumentalities, which are authorized under State law to own the land: (1) the State, county, municipality, or other local government subdivision within which the land is located and (ii) any municipality within convenient access to the lands, if

the lands are within the same State as the municipality.

(e) "Qualified individual" means: (1) Any individual who is a citizen or otherwise a national of the United States (or who has declared his intention to become a citizen) aged 21 years or more;

(2) Any partnership or association, each of the members of which is a qualified individual as defined in subdivision (i); and

(3) Any corporation organized under the laws of the United States or of any State thereof, and authorized to hold title to real property in the State in which the land is located.

(f) The "Act" means the Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C. 1421–1427), as amended.

§ 2720.0–8 Lands subject to sale.

Only tracts of public land that are classified by the authorized officer, pursuant to the criteria and procedures in Group 2400 of this chapter for sale under the Act can be sold pursuant to the regulation in § 2720.

Subpart 2721—Public Land Sale Act Procedures

§ 2721.1 Petitions and applications.

(a) Applications, together with petitions required under Part 2450 (hereinafter called petition-applications) to have tracts classified and ordered into market under this section of the regulations, shall be made on forms approved by the Director, properly executed by the applicant and filed in the proper land office.

(b) With every petition-application shall be submitted:

(1) A statement designed to show that the lands are needed for the orderly growth and development of a community or are chiefly valuable for residental, commercial, agricultural (exclusive of lands chiefly valuable for grazing and raising forage crops) industrial or public uses or development, plus information on the type of development contemplated, use to which the land is to be put, structures and other improvements which should be erected on the land, and approximate dates of need for the development.

(2) A statement by local planning or governing officials showing the nature of the zoning regulations, if any, which are in effect.

(c) Each petition-application, except those filed by a qualified governmental agency, must be accompanied by a nonrefundable service charge of $25.

§ 2721.2 Classification; notice; segregative effect.

(a) Classification shall be made in accordance with the provisions of Group 2400 of this chapter. The authorized officer may, either on his own motion or in response to a petition for classification, classify lands in accordance with the criteria of Parts 2410, 2420, and 2430, and offer them for sale under the provisions of this subpart.

(b) At least 60 days before classification for sale under the Act of tracts of land in excess of 2,560 acres, the authorized officer shall publish a notice of the proposed classification in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the land to be classified. Publication in the FEDERAL REGISTER of a notice of proposed classification or of a notice of classification for sale under the Act will segregate the affected land from all forms of disposal, including the mining laws, other than sale under the Act, except to the extent that the classification notice or any modification thereof, may specifically limit is segregative effect. See § 2462.4. The notice shall state that all mineral deposits in lands sold under the Act will be reserved to the United States.

(c) Where tracts of 2,560 acres or less are involved, notation on the land office records of a proposed classification or classification for sale under the Act will segregate the lands from all appropriations, including locations under the mining laws, and from other petitions and applications except for sale under this Act and except also to the extent that the classification order or any modification thereof may specifically limit its segregative effect.

(d) The segregative effect of such classification order shall continue for 2 years from the date of publication unless the classification is continued thereafter in accordance with law and pertinent regulations, in which event the segregation shall continue for the duration of the classification, unless sooner terminated by the authorized officer.

§ 2721.3 Notice; publication.

(a) Not less than 90 days before offering lands for sale under the Act, the authorized officer will notify the head of the governing body of the political subdivision of the State having jurisdiction over zoning in the geographic area within which the lands are located, to afford that body an opportunity to zone or rezone the land for use in accordance with local planning and development. In the absence of such political subdivision, notification will be sent to the Governor of the State. This notice may be a copy of a classification decision (either proposed or initial) issued pursuant to Subpart 2462 of this chapter.

(b) Not less than 30 days before entering into an agreement with a governmental agency or the opening of bids, notice of offering of lands for sale shall be published in the FEDERAL REGISTER and an announcement published in a newspaper of general circulation in the area in which the lands are situated.

(c) Where lands are sold pursuant to notice prescribed in paragraph (b) of this section, the purchaser or purchasers of the lands will be required to pay the cost, if any, of publishing the announcement in the newspaper. Where more than one purchaser is involved in a transaction, the costs will be shared in such proportions as the authorized officer deems equitable.

§ 2721.4 Sales through competitive bidding; time, place, simultaneous bids.

If classified lands are offered through competitive bidding:

(a) The date, time, place and manner for submitting bids will be specified in the public notice required by § 2721.3(b).

(b) Bids may be made by the principal or his agent.

(c) Sealed bids sent will be considered only if received at the place and prior to the hour fixed in the notice. Each bid shall be accompanied by certified check, post office money order, bank draft or cashier's check made payable to the Bureau of Land Management, for the amount of the bid plus cost of publication (as contained in the notice of sale) and must be enclosed in a sealed envelope which shall be marked as prescribed in the notice. In the event that valid sealed bids of the same amount are received from two or more persons, the first in time, as shown by the date stamp on the envelope, will be considered the highest of those bids. For sealed bids sent by mail, the date stamp means the stamp affixed by the Post Office. For sealed bids delivered to the Bureau of Land Management other than by mail, the date stamp means the stamp affixed by the Bureau of Land Management. If two or more envelopes containing valid bids of the same amount bear the same date stamp, they will be considered simultaneously filed, and the determination of which is the highest of these bids will be by drawing.

(d) The authorized officer shall publicly declare the highest qualifying sealed bid received. If the public notice of sale published pursuant to § 2721.3(b) provides for oral bids, such bids, in increments specified by the authorized officer, shall then be invited. After oral bids, if any, are received, the authorized officer shall declare the highest qualifying bid. The person declared to have entered the highest qualifying bid shall be afforded a reasonable time, in the judgment of the authorized officer, in which to submit payment in the form provided in paragraph (c) of this section. Such person shall be bound by his bid and the regulations in this section to complete the purchase in accordance therewith from the time he is declared high bidder until the end of the tenth day after he submits the payment requested by the authorized officer. In the event the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer will determine whether the lands will be withdrawn from the market or reoffered.

(e) The acceptance of an offer to purchase will be by the issuance of a patent to the bidder. Until the patent is issued, the authorized officer has the right at any time to determine that the lands should not be sold, or that any and all bids should be rejected. If the high bid is not less than the fair market value of the land on the date for receiving bids, as specified in the public notice issued pursuant to § 2721.3(b), any appreciation or depreciation thereafter in value of the lands will not be a basis for a determination that the lands will not be sold. Sales will not be consummated, in the discretion of the authorized officer, when for example:

(1) Circumstances reveal that the highest bid otherwise acceptable is less than the fair market value of the land on the date of the sale set in the public notice thereof, or

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

(f) The petitioner-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 obligations of the United States until the patent is issued. Issuance of the patent, however, will not preclude the Secretary of the Interior from vacating the sale in whole or part because of fraud not disclosed at the time of issuance of the patent or because of lack of knowledge of facts or conditions existing at that time which, if known prior to issuance of the patent, would have been grounds for refusing to consummate the sale.

§ 2721.5 Compensation for authorized grazing improvements.

Under regulations in this chapter relating to grazing, no lands embraced in a grazing lease, license or permit may be sold unless and until the prospective purchaser has made provision for compensation for any authorized grazing improvements placed on the lands. See § 4122.3–5.

§ 2721.6 Patents: Reservations and restrictions.

(a) All patents or other evidence of title issued under the Act shall contain a reservation to the United States of all mineral deposits. Such reserved mineral deposits are withdrawn, by operation of law, from appropriation under the public land laws including the mining and mineral leasing laws.

(b) Patents may also contain any additional reservations or restrictions which the authorized officer determines are necessary in the public interest, in the light of the objectives and principles stated in § 2720.0–2.

PART 2730—SMALL TRACT

Subpart 2730—Small Tract: General

Sec.
2730.0–2 Objectives.
2730.0–3 Authority.
2730.0–7 Cross reference.

Subpart 2731—Small Tracts: General Requirements

2731.1 Qualification of applicants, restrictions, preference.
2731.2 Classification of the land.
2731.3 Procedures.
2731.3–1 Application; general procedure.
2731.3–2 Exception-public auctions.
2731.3–3 Application following lease terminations, unsuccessful public auctions.
2731.3–4 Drawing procedure.
2731.4 Fees and payments.
2731.5 Public auctions.
2731.6 Terms and conditions.
2731.6–1 Acreage limitations.
2731.6–2 Rights-of-way.
2731.6–3 Mineral reservation.
2731.6–4 Timber.

Subpart 2730—Small Tract: General

AUTHORITY: The provisions of this Subpart 2730 issued under sec. 1, 52 Stat. 609, as amended; 43 U.S.C. 682a, unless otherwise noted.

§ 2730.0–2 Objectives.

(a) It is the program in the administration of the act of June 1, 1938, as amended, 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 small tract activity shall be coordinated with interested local governmental agencies, and small tract sites will be considered in the light of their effect upon the conservation of natural resources and upon the communities or area involved and in the light of availability of schools, utilities, and other facilities. Lands will not be leased or sold, 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; police, health, and fire protection; and other facilities. Undesirable types of construction for settlement or business 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 or the stability of existing economic enterprises.

(b) Under this act lands may be classified for direct sale, for lease and sale, or for lease only. Revested Oregon and California Railroad lands and reconveyed Coos Bay Wagon Road grant lands in Oregon will be classified for lease only—as will other public lands where title should remain in the United States and leasing is not contrary to the interests of the United States. Lands suitable for community site purposes will be classified for lease, lease and sale, or direct sale at appraised prices and will be subject to application only by nonprofit corporations or associations, States, municipalities, or other governmental subdivisions. Lands may be classified for lease and sale, as provided for in § 2913.3 where such action is necessary for the protection of adjacent property and the community as a whole. In other cases, lands will be sold at public auction at not less than their appraised fair market value in accordance with § 2731.5.

§ 2730.0–3 Authority.

(a) The act of June 1, 1938 (52 Stat. 609), as amended by the act of June 8, 1954 (68 Stat. 239; 43 U.S.C. 682a) authorizes the Secretary of the Interior, in his discretion, to sell or lease a tract not exceeding five acres, of any vacant unreserved public lands, including such lands in Alaska, public lands withdrawn by Executive Orders Numbered 6910 of November 26, 1934, and 6964 of February 5, 1935, or public lands withdrawn or reserved by the Secretary of the Interior for any purposes, which the Secretary may classify as chiefly valuable for residence, recreation, business, or community sites. The act is applicable to lands in such areas as grazing districts and lands withdrawn for reclamation or stock driveway purposes. The act does not apply to lands withdrawn by the Secretary solely under delegated authority (e.g., under Executive Order 10355 of May 26, 1952) or to reservations such as national forests, national parks, or national mounments. Authority to lease lands under the act for residence, recreation and community site purposes extends to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grants lands in Oregon under the jurisdiction of the Department of the Interior provided that such leases will not interfere with sustained yield timber management on these lands. The lands may not be leased or sold until classified for small tract purposes; and may not be occupied until the lands are leased or sold.

§ 2730.0–7 Cross reference.

For requirements and procedures concerning leases under the Small Tract Act see Subpart 2913 of this chapter.

Subpart 2731—Small Tracts: General Requirements

§ 2731.1 Qualification of applicants, restrictions, preference.

(a) *Qualifications.* An application may be made by any of the following:

(1) An individual who is a citizen of the United States or who has filed declaration of intention to become a citizen.

(2) A partnership or an association, each of the members of which is a citizen of the United States or has filed declaration of intention to become a citizen.

(3) A corporation, including nonprofit corporations organized under the laws of the United States or of any State or Territory thereof and authorized to do business in the State or Territory in which the land is located.

(4) A State, Territory, Municipality or other governmental subdivision.

(2) Any employee of the Department of the Interior, stationed in Alaska may purchase or lease one tract in Alaska for residence or recreation purposes. The conveyance of the tract will provide for reversion to the United States if the land is used for purposes other than residence or recreation within twenty-five years.

(b) *Restrictions.* Generally no person will be permitted to obtain by lease or purchase more than one tract under the act. Where more than one tract is needed, however, each tract must be the subject of a separate application, complete in itself, and must be accompanied by a satisfactory showing that the allowance of more than one application is warranted by the circumstances. In each application the applicant must identify

all other applications under the act, if any, filed by him or any member of his family residing with him.

(c) *Preference rights.* Where public land is classified pursuant to a validly filed application on a form approved by the Director, accepted for unclassified lands open to application under the regulations of this part (see subparagraph 2731.3–1(d)(4), the applicant is entitled to a preference right of lease or purchase, as the case may be, if (1) the land is thereafter classified for the type of site applied for; (2) the applicant agrees to conform his application to the area, classification, and dimensions of the tract as specified in the classification order; and (3) where the land is classified for direct sale, the applicant tenders the fair market value of the land when required.

§ 2731.2 Classification of the land.

(a) No lease will be issued or sale authorized prior to classification of land for such purpose. If the tract is found not suitable for such purpose, the application will be rejected.

(b) Lands classified under the act of June 1, 1938, 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.

§ 2731.3 Procedures.

§ 2731.3–1 Application; general procedure.

(a) Any person who desires to lease or purchase unclassified lands that have been opened to application pursuant to the regulations of this part (see subparagraph (4) of paragraph (d) of this section) must file an application, in duplicate, together with a petition, properly executed, on forms approved by the Director. If the lands have been already classified and opened to application, only an application is required. If the lands have been already classified for direct sale at public auction no application or petition should be filed (see subsection 2731.3–2 of this section). The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(b) If the land has not been classified the applicant should describe the desired tract, not to exceed five acres, by aliquot parts of a legal subdivision if surveyed and if unsurveyed by metes and bounds sufficient to permit ready and accurate identification. Where the land has been classified the applicant should describe the selected land in accordance with the classification order or official plat of survey. The applicant may also indicate that if the selected tract is not available he is willing to accept any other available tract described in the classification order which may be allocated to him.

(c) No application for small tracts will be accepted under the regulations in this part unless applicant certifies that he has personally inspected the small tract described in his application or lands within one mile of that tract.

(d) An application will not be accepted, will not be considered as filed, and will be returned to the applicant if:

(1) The land description in the application does not conform with the classification order or official plat of survey, or if the lands are unclassified and unsurveyed, the metes and bounds description is inadequate to permit ready and accurate identification of the tract (see paragraph (b) of this section).

(2) The application is not accompanied by the filing fee of $10 and the advance rental required by § 2731.4 (a) and (b) namely, the advance rental specified in the classification order or if the lands are not classified, $100 for business sites and $25 for other sites.

(3) The application is not signed by the applicant, or

(4) The lands applied for are not open to application pursuant to a notice published in the FEDERAL REGISTER.

§ 2731.3–2 Exception—public auctions.

(a) Any person desiring to purchase a tract already classified for sale at public auction under the act may submit a bid in accordance with the provisions of the classification order and § 2731.5. No application should be filed in the above circumstances.

§ 2731.3–3 Application following lease terminations, unsuccessful public auctions.

(a) In any of the following circumstances, a tract shall not be subject to further application until an order is issued specifying the time and manner in which the tract shall be made available for lease or purchase: (1) When a small tract lease has terminated, been relinquished or canceled for any reason; (2) where no one has been declared purchaser for a tract offered at public auction.

(b) The order will be posted in the land office at least 15 days prior to its effective date and will be given wide publicity through appropriate news media in the area.

(c) The order will specify which one of the following methods will be used for disposing of the land: (1) Sale at public auction to the highest bidder in accordance with § 2731.5; (2) a special drawing procedure indicated in paragraph (d) of this section.

(d) Any order calling for a special drawing procedure will specify (1) the time and place for filing drawing cards, and (2) that Special Drawing Card on a form approved by the Director must be properly executed. The drawing will determine priority and establish an adequate list of eligibles. Drawings may be held for several tracts, and at whatever intervals of time the authorized official feels warranted by the circumstances.

§ 2731.3–4 Drawing procedure.

(a) Whenever filings in excess of the number of tracts available are anticipated for lands classified for lease and sale or for lease, or when the conditions of § 2731.3–3(c) apply, a drawing or drawings will be held. The classification or other order will give all relevant information concerning the drawing.

(b) The classification or other order may require the filing of Special Drawing Cards on a form approved by the Director in lieu of an application. Any person who has the necessary qualifications may obtain an official drawing entry card upon request to the land office manager. The request should designate the classification order by number. It should be accompanied by a stamped, self-addressed return envelope. Each successful entrant in a drawing will be furnished in duplicate, an application on a form approved by the Director, bearing the description of the tract allocated to him. The forms must be completely filled out, signed and returned, accompanied by the proper rental and fees within the time allowed by the authorized officer of the Bureau of Land Management. Where an entrant for any reason fails to comply with the requirements within the time allowed, the tract will become available to the alternate next in line in the drawing.

(c) The classification or other order may require the filing of a stamped, self-addressed return envelope and a sealed envelope containing properly executed copies of application together with the required filing fees and advance payments (see paragraphs 2731.4 (a) and (b)).

(d) To qualify for a tract, the entrant must qualify under the regulations of this part and must comply with all instruction in the order and on the entry card, when entry cards are required. If any entrant files more than one entry card or applies for more than one tract in any drawing, the entrant shall be ineligible to participate in the drawing.

§ 2731.4 Fees and payments.

(a) *Filing fee.* Every application must be accompanied by a filing fee of $10. No fee is required for the filing of a "Special Drawing Entry Card," but the fee is required of entrants who are successful in the drawing. No fee is required in connection with a bid in a sale at public auction. A fee of $10 is required with each application to purchase, based upon an outstanding lease and with each application for renewal or assignment of an outstanding lease. All filing fees will be retained by the Government.

(b) *Advance payment.* In addition to filing fees, every application except applications for community sites, and every bid for lands subject to sale at public auction, must be accompanied by an advance payment, which will be applied against the rental or purchase price of the land:

(1) If the land has been classified for lease or for lease and sale, the advance payment is the rental for the entire lease period, as specified in the classification order if such period does not exceed five years. Where lands are classified for lease for periods in excess of five years, the advance payment will be as specified in the classification order. If the land has not been classified, the advance payment is $25 for nonbusiness and $100 for

business site applications. Successful applicants will be required to pay any difference between advance payment and rental or purchase price before their applications will be granted.

(2) If the land has been classified for sale at public auction, the advance payment is whatever amount the applicant bids, but not less than the appraised price stated in the classification order.

(3) Advance payments will be refunded to unsuccessful applicants or bidders.

§ 2731.5 Public auctions.

(a) Whenever lands are classified for direct sale by public auction, they will be sold at not less than their appraised fair market value at the time and place and in the manner specified by the classification order.

(b) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(c) A bid sent by mail must be received at the place and within the time specified in the classification order. Each such bid must clearly state (1) the name and address of the bidder and (2) the specific tract, as described in the classification order, for which the bid is made. The envelope must be noted as required by the classification order.

(d) Each bid by mail must be accompanied by certified or cashier's check, post office money order or bank draft for the amount of the bid. Bids by mail for more than one tract offered at a sale must be enclosed in separate envelopes but payment need accompany only the highest bid provided all other bids designate the envelope containing the payment.

(e) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared high bidder. If the high bidder meets the general requirements of a small tract applicant, he will be declared purchaser. Any person who is declared high bidder will automatically be disqualified from consideration for other tracts for which he may have submitted bids.

(f) If there are no successful purchasers of any tracts offered at the sale, the tracts will be closed to filing of applications until an order is issued specifying the time and manner in which they shall be made available in accordance with section 2731.3–3.

§ 2731.6 Terms and conditions.

§ 2731.6–1 Acreage limitations.

No tract shall be larger than five acres except where subdivision of a fractional lot to meet this limitation would leave areas unsuitable for practical use. In such cases, the lots will be subdivided to produce usable units not in excess of 7½ acres.

§ 2731.6–2 Rights-of-way.

The classification order may provide for rights-of-way over each tract for street and road purposes and for public utilities. If the classification order does not so provide, the right-of-way will be 50 feet along the boundaries of the tract.

§ 2731.6–3 Mineral reservation.

(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. Until rules and regulations have been issued, the other kinds of minerals that may be found in such lands are not subject to prospecting or disposition.

§ 2731.6–4 Timber.

A lessee will not be permitted to cut timber from the leased lands without first obtaining permission from the appropriate office mentioned in § 2731.3–1.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

Subpart 2740—Recreation and Public Purposes Act: General

Sec.
2740.0–1 Purpose.
2740.0–3 Authority.
2740.0–7 Cross reference.
2740.0–8 Lands subject to disposition.

Subpart 2741—Recreation and Public Purposes Act: General Requirements

2741.1 Qualification of applicants.
2741.2 Classification of the land.
2741.3 Applications for lands.
2741.4 Applications for transfer, change of use under the Act of June 20, 1966.
2741.5 Publications; protests.
2741.6 General limitations and conditions.
2741.7 Price.
2741.8 Patent provisions.

Subpart 2740—Recreation and Public Purposes Act: General

AUTHORITY: The provisions of this Subpart 2740 issued under 44 Stat. 741, 68 Stat. 173; 43 U.S.C. 869.

§ 2740.0–1 Purpose.

(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 2730), as amended.

§ 2740.0–3 Authority.

The act of June 14, 1926, as amended (43 U.S.C. 869; 869–4), 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 the regulations of this part.

[31 F.R. 11546, Sept. 1, 1966]

§2740.0–7 Cross reference.

For requirements and procedures concerning leases under the Recreation and public purposes act see subpart 2912 of this chapter.

§ 2740.0–8 Lands subject to disposition.

(a) The act is applicable to any public domain lands except (1) lands withdrawn or reserved for national forests, nation parks and monuments, and national wildlife refuges and (2) Indian lands and lands set aside or held for use by or the benefit of Indians. The act is applicable to the Oregon and California Railroad revested grant lands and to the Coos Bay reconveyed wagon-road grant lands only insofar as it applies to leases of land to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

(b) Municipal corporations cannot secure land under this act if it is not within convenient access to the municipality and within the same State as the municipality. Other qualified applicants cannot secure land outside of their political boundaries or other area of jurisdiction.

Subpart 2741—Recreation and Public Purposes Act—Requirements

§ 2741.1 Qualification of applicants.

The following are qualified to make applications under the act; States, Federal and State instrumentalities and political subdivisions, including counties and municipalities; and nonprofit associations and nonprofit corporations.

§ 2741.2 Classification of the land.

(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) 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.

(d) 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.

§ 2741.3 Applications for lands.

Applicants under the act must submit an application accompanied by a petition properly executed on forms approved by the Director. If the lands have been already classified for disposition under the act, no petition is required. 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. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

§ 2741.4 Applications for transfer, change of use under the Act of June 20, 1966.

(a) (1) 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, applications for a new lease under section 2 of the Act of June 20, 1966 (80 Stat. 210), 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.

(2) Applications for permission to add to or to change use must be accompanied by three copies of the showing required by § 2741.3.

(3) Applications for approval of transfers of title or lease must be accompanied by three copies of a form approved by the Director and executed by the proposed transferee in accordance with § 2741.3 and paragraph 2741.6(a).

(4) Each application must be accompanied by a filing fee of $10.

(5) Prior to approval of an application filed under subparagraph (2) of this paragraph, the land may be reappraised in accordance with § 2741.7 and the beneficiary required to make such payments as are found justified by such reappraisal.

(b) (1) 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 this section.

(2) 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.

§ 2741.5 Publications; protests.

(a) Applicants for patents under the act will be required upon demand to publish once a week for four consecutive weeks in accordance with § 1824.3 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.

§ 2741.6 General limitations and conditions.

(a) The acreage applied for in any one application for patent cannot exceed 640 acres except that applications for patent for State park purposes may embrace as much as 6,400 acres, or where provided by law 12,800 acres.

(b) No applicant in any one calendar year can receive under the act patents for land except in conformance with the following:

(1) Any State may acquire in its own name, or in the name of its State park agency, or in the rame of any other agency having jurisdiction over the State park system of said State designated by the Governor of the State as its sole representative for acceptance of lands under this provision for recreational purposes, not more than 6,400 acres involving not more than three sites, except that should any State fail in any one calendar year to receive the maximum herein specified, other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State pursuant to any application on file with the Secretary of the Interior on the last day of said year, to the extent that the conveyances would not have exceeded the limitations of said year. In addition, any State may acquire, in its own name or in the name of an agency or instrumentality of such State not more than 640 acres for each of its programs involving public purposes other than recreation.

(2) Any political subdivision of a State and any nonprofit corporation or nonprofit association may acquire in its own name for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

(c) No patent will be issued under the act unless and until the land is officially surveyed.

(d) 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.

(e) 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.

(f) No lease or patent authorizing use of lands for erection and maintenance of advertising displays on public lands adjacent to the National System of Interstate and Defense Highways (23 U.S.C.) will be issued under the regulations of this part, except in conformity with, and subject to, the national standards prepared and promulgated by the Secretary of Commerce. No lease or patent authorizing use of lands for erection and maintenance of advertising displays on public lands adjacent to any other highway will be issued under the regulations of this part if the proposed display would not conform with the standards or policies established by the appropriate State or local governmental entities which have authority to establish such standards or policies. Where the authorized officer finds that established standards or policies are insufficient in connection with any application under the regulations of this part adequately to promote the safety, convenience, and enjoyment of public travel, to protect the public investment in the highway or in the adjacent public lands, to preserve for the public significant scenic or other recreational values in the public lands, or otherwise to protect the public interest, he shall establish such additional standards as he may deem appropriate in the circumstances, giving due consideration to the need for directional and other official signs, the desirability of permitting, where alternative sites are not readily available, signs advertising legitimate activities being conducted at a location within a reasonable distance thereof, and the interest of the traveling public in, and its need for, specific types of information.

§ 2741.7 Price.

(a) Conveyances under the act for historic monument purposes to a State, county, or other State or Federal instrumentality or political subdivision, will be made without any monetary consideration.

(b) Sales to nonprofit associations or nonprofit corporations 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 appraisal of the fair market value of the lands or otherwise, taking into consideration 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 in advance.

Upon appraisal of the land, a lease applicant will be required to pay at least 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.

§ 2741.8 Patent provisions.

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 or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States. Transferees must meet all the qualifications of applicants under the act and will be subject to the terms and conditions of the regulations of this part.

PART 2750—CEMETERIES

Subpart 2750—Cemeteries: General

Sec.
2750.0–3 Authority.
2750.0–8 Land subject to sale.

Subpart 2751—Cemeteries: Requirements

2751.1 Applications.
2751.2 Acreage limitation and price.
2751.3 Publication and protests.
2751.4 Patent.

Subpart 2750—Cemeteries: General

AUTHORITY: The provisions of this Subpart 2750 issued under R.S. 2478, 34 Stat. 1052; 43 U.S.C. 1201, 682.

§ 2750.0–3 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.

§ 2750.0–8 Land subject to sale.

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.

Subpart 2751—Cemeteries: Requirements

§ 2751.1 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.

§ 2751.2 Acreage limitation and price.

(a) No association or corporation can secure title to more than 80 acres of public lands under the act.

(b) 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.

§ 2751.3 Publication and protests.

(a) Applicants will be required to publish once a week for five consecutive weeks in accordance with § 1824.3 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.

(b) 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.

§ 2751.4 Patent.

(a) Patents will issue only for surveyed land and only in the name of the association or corporation.

(b) 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.

PART 2760—TOWNSITES

Sec.
2760.0–3 Authority.
2760.0–6 Qualifications of town-lot purchasers.

Subpart 2761—Procedures

2761.1 Survey and appraisal.
2761.2 Sale.
2761.3 Rights of transferees of town lots.

Subpart 2762—Townsites Platted by or for Occupants

2762.1 Townsite settlement.
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2762.3 Notice to be issued; preemption proofs; public sale of unclaimed lots.
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2762.7 Conflicts.
2762.8 Forfeiture of preemption right.
2762.9 Conduct of sale; minimum sale price; private entry.

Subpart 2763—Townsites Entered by Trustees

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2763.1 General requirements; who may make townsite entry.
2763.2 Entry must be made in trust.
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2763.8 Additional entries of contiguous tracts.

Subpart 2764—Reclamation Projects

2764.1 Procedure governing appraisement and sale.
2764.2 Installment payments.
2764.3 Reappraisement and sale of unsold lots.
2764.4 Public reserves; patents therefor.

Subpart 2765—Grant of Lands in Reclamation Town Sites for School Purposes

2765.1 Application to be made by school district; action thereon.

Subpart 2766—Public Reserves in Oklahoma Town Sites

2766.1 Applications for patents on behalf of the municipalities.

AUTHORITY: The provision of this Subpart 2760 issued under R.S. 2478, 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. 1201, 711–731, unless otherwise noted.

Subpart 2760—Townsites: General

§ 2760.0–3 Authority.

(a) *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). Reservation for such purposes may now be made by public land order, by the Secretary of the Interior, pursuant to Executive Order No. 9337 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 State Director for the area in which the lands are situated. (E.O. 9337 was superseded by E.O. 10355.)

§ 2760.0–6 Qualifications of town-lot purchasers.

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.

Subpart 2760

Subpart 2761—Procedures

§ 2761.1 Survey and appraisal.

(a) *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 State Director. 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.

(b) *Schedule of appraisement; disposal of copies thereof.* The schedule of appraisement must be prepared in triplicate on forms furnished by the State Director, 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.

§ 2761.2 Sale.

(a) *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.

(b) *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.

(c) *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.

(d) *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.

(e) *Reoffering at public sale; private entry.* (1) An offering at public sale may be adjourned or closed, in the discretion of the State Director 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.

(2) 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.

(3) Lots sold at private sale should be accompanied by an application therefor, signed by the applicant.

§ 2761.3 Rights of transferees of town lots.

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.

Subpart 2762—Town Sites Platted by or for Occupants

§ 2762.1 Town site settlement.

Section 2382 of the Revised Statutes, as amended by the act of August 24, 1954 (68 Stat. 792) and sections 2383, 2384, and 2386 of the Revised Statutes (43 U.S.C. 713–715, 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 2450.

§ 2762.2 Filing required.

(a) *Filing with county recorder of plat, field notes, and statement of improvements.* (1) 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 (i) that the land does not include an area in excess of 640 acres; (ii) 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 townsite survey are tied to a designated, permanent, and thoroughly identified monument; (iii) that the streets, 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 (iv) the exterior lines of all existing railroad rights-of-way and station grounds. The lots shall conform in size to local ordinances or accepted local standards for subdivision platting, or in the absence of such ordinances or standards, to standards prescribed by the authorized official of the Bureau of Land Management. The above-required facts should be embodied in the statement of the surveyor entered upon the margin of the plat.

(2) 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.

(b) *Filing in land office, in duplicate, of transcript of plat, field notes, and statement.* (1) Within one month after filing such plat, field notes, and statement, a transcript thereof in duplicate, each copy duly verified by the certificate of the county recorder, and accompanied by the statement of the 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 having jurisdiction over the land district in which the town site is located.

(2) All filings made in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

§ 2762.3 Notice to be issued; 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.

§ 2762.4 Survey.

(a) *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 State Director 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.

(b) *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 at an increase of 50 per centum on the minimum price.

§ 2762.5 Minimum price of lots.

The minimum price for all lots 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.

§ 2762.6 Preemption rights.

(a) *Preemption claims, publishing and posting of proof notices.* (1) 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 land 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 § 1824.3 of this chapter.

(2) All notices of intention to make proof of preemption claims pursuant to this section must be accompanied by a service charge of $5 which will not be returnable.

(3) 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.

(b) *Preemption proof.* Preemption proof may be made before the manager, or any officer duly authorized by law, and must show (1) due publication of the manager's notice, (2) the claimant's age, (3) his citizenship, and (4) 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.

§ 2762.7 Conflicts.

(a) *Hearings.* Hearings will be ordered and conducted in accordance with Part 1840 and 1850 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.

(b) *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.

(c) *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.

§ 2762.8 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.

§ 2762.9 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 § 2761.2. 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.

Subpart 2763—Townsites Entered By Trustees

§ 2763.0–3 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).

§ 2763.0–8 Lands subject to entry.

(a) 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 2450.)

(b) *Government reservations not subject to entry.* Reservations for the use of the United States Government are not subject to town-site entry.

§ 2763.1 General requirements; 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.

§ 2763.2 Entry must be made in trust.

(a) The entry must be made in trust (1) as to the occupied lots, for the several use and benefit of the occupants thereof according to their respective interests, and (2) 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.

(b) 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.

§ 2763.3 Area that may be entered.

(a) 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.

(b) Entry cannot be made hereunder of a greater quantity of land than 2,580 acres, unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

§ 2763.4 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 State Director 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.

§ 2763.5 Declaratory statements.

(a) *Filing.* 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 townsite 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.

(b) *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 § 1824.3 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, (1) due publication of the manager's notice; (2) 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; (3) certified record evidence of the election, qualification, and the authority of the officer making entry; (4) the number of town-site occupants and claimants on each occupied Government subdivision; (5) the number of inhabitants in the town site; (6) the character, extent, and value of town-site improvements located on each Government subdivision; and (7) the date when the land was first used for town-site purposes.

§ 2763.6 Existing rights.

(a) *Conflicting mineral claims.* (1) 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 townsite patent.

(2) 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 State Director.

(b) *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.

§ 2763.7 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.

§ 2763.8 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.

Subpart 2764—Reclamation Projects

§ 2764.1 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 section 2760.0–3, 2761.1 and 2761.2.

§ 2764.2 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.

§ 2764.3 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.

§ 2764.4 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 § 2766.1.

Subpart 2765—Grant of Lands in Reclamation Town Sites for School Purposes

§ 2765.1 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 ap-

plication 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 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 manager 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.

Subpart 2766—Public Reserves in Oklahoma Town Sites

§ 2766.1 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.

PART 2780—SPECIAL AREAS

Subpart 2781—Choctaw-Chickasaw

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Subpart 2781—Choctaw-Chickasaw

AUTHORITY: The provisions of this Subpart 2781 issued under sec. 1, 69 Stat. 445; 43 U.S.C. 1102.

§ 2781.0–3 Authority.

(a) The act of August 3, 1955 (69 Stat. 445), authorizes the Secretary of the Interior to provide for the management and disposition of any interest of the United States in those lands which were reconveyed to the United States by deeds of conveyance executed on November 29, 1950 by the principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation or which have been or may be reconveyed to the United States by any further or supplemental conveyances made under the authority of the Interior Department Appropriation Act of June 28, 1944 (58 Stat. 463, 483), the joint resolution of June 24, 1948 (62 Stat. 596), and the First Deficiency Appropriation Act of May 24, 1949 (63 Stat. 76, 84). Such reconveyed lands are referred to in this Part as "Choctaw-Chickasaw lands" and the act of August 3, 1955 is referred to as "the act".

(b) The act of June 28, 1944 (58 Stat. 463, 483), declared the Choctaw-Chickasaw lands to be part of the public domain subject to the applicable public land mining and mineral leasing laws.

§ 2781.1 Disposal of surface fee.

Subject to the reservation of all rights of the United States to minerals in the lands and to the payment of the proportionate cost of any survey which may be necessary to describe properly any lands to be disposed of under the act, Choctaw-Chickasaw lands are subject to disposal as follows:

(a) Private sale of tracts to any person having a legal or equitable interest therein under the regulations of § 2781.1–1.

(b) Private sales to occupants under the regulations of § 2781.1–2.

(c) Public sale of tracts and private sale of tracts unsold after offer at public auction, under the regulations of § 2781.1–2.

(d) Private sale of tracts under the provisions of the act of June 4, 1954 (68 Stat. 173; 42 U.S.C. 869) and the regulations thereunder (Part 2740 of this chapter).

§ 2781.1–1 Sales to persons claiming a legal or equitable interest.

(a) Subparagraph 2(a)(2) of the act authorizes the Secretary of the Interior to relinquish any tract of Choctaw-Chickasaw lands to any person having a legal or equitable interest therein.

(b) To qualify under subparagraph 2(a)(2) of the act, a claim of legal or equitable interest must rest on uncertainty as to the title to the tract applied for, resulting from such things as inadequate surveys, judgments, decrees, or orders of condemnation in court proceedings in which the United States did not consent to be a party to the suit, or otherwise. No such claim will be recognized if it is based solely on a lease or permit from the Bureau of Land Management or its predecessors in interest to the lands.

(c) Any individual, group, or corporation which believes it has a legal or equitable interest in one or more tracts of Choctaw-Chickasaw lands may make an application therefor by filing, in duplicate, an application captioned "Claim of legal or equitable interest in Choctaw-Chickasaw lands" with the Manager of the land office at Santa Fe, New Mexico. No particular form of application is required but it must be typewritten or in

legible handwriting and signed by the applicant. Every application must be accompanied by a filing fee of $10 which will be nonreturnable. The application must contain a description of the land claimed 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. It must contain the full name and full post-office address of the claimant. It must also contain a full statement showing the basis for the claim of legal or equitable interest in the lands. The applicant may be called upon to submit documentary or other evidence in support of his claim. Valuable documents submitted by the applicant will be returned to him.

(d) The applicant will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the land office at Santa Fe, New Mexico, their objections to the issuance of a relinquishment under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication had been had for the required time.

(e) 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 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 a total of $10.

(f) Applicants will be required to make payment of the sale price of the land and for the cost of survey, if any, within the time stated in the request for payment.

§ 2781.1–2 Sales to occupants.

(a) Subparagraph 2(b) of the act authorizes the Secretary of the Interior, in selling any tract of Choctaw-Chickasaw lands, to grant a preference right of purchase to any occupant of the tract who has, or whose predecessors in interest have, lawfully and continuously occupied the tract for home, business, or school purposes since April 30, 1949, or earlier.

(b) Before offering any tract at public sale, the land office manager at Santa Fe, New Mexico, will give any such occupant an opportunity to purchase the tract at its fair market value as appraised by the authorized officer of the Bureau of Land Management. In the event the occupant elects to purchase the tract, he will be required to comply with the requirements of paragraphs 2781.1–1 (d) and (f). In the event the occupant elects not to purchase the tract, the land office manager will give the occupant an appropriate period within which the occupant, in the occupant's discretion, may remove improvements on the tract constructed by him or his predecessors in interest or elect to receive compensation for such improvements from the successful purchaser of the tract in an amount equal to the appraised value of the improvements as determined by the authorized officer of the Bureau of Land Management.

§ 2781.1–3 Public and subsequent private sales.

(a) Subparagraph 2(a)(1) of the act authorizes the Secretary of the Interior to sell tracts of Choctaw-Chickasaw lands at public sale to the highest responsible bidder, or at private sale.

(b) Upon request of any interested party or upon his own motion, the manager of the land office at Santa Fe, New Mexico, may subject to the regulations in this part, expose to sale at public auction tracts of Choctaw-Chickasaw lands at not less than their fair market value as appraised by the authorized office of the Bureau of Land Management.

(c) The manager will cause a notice of sale to be published and posted consistent with the requirements of Subpart 2710 of this chapter. The successful purchaser of a tract will be required to reimburse the Government for the cost of publication of such notices, or if more than one successful purchaser is involved, the several purchasers will be required to pay their proportionate share of such costs determined on an acreage basis.

(d) 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. Bids may be made by the principal or his agent, either personally at the sale or by mail. 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. Sealed 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. In the event that two or more bids sent by mail are identical in amount, they will be considered in the award of the lands in the order of their receipt as shown by the hour and date noted on the envelope.

(e) At the close of bidding, owners in fee simple of lands contiguous to the offered tract, providing that they or their agents are present at the sale, will be granted a preference right of purchase by offering at the sale to meet the highest bid for such tract. In the event two or more preference claimants offer to meet the highest bid and in the absence of an agreement among them as to the award of the lands, the award will be determined through drawing.

(f) An awardee of a tract at public sale will be granted a reasonable time in which to pay the purchase price of the lands, the cost of publication, the cost of survey, if any, and the value of the improvements of the former occupant of the lands, if any, and if he is a preference claimant, to submit proof of his ownership in fee simple of lands adjoining the offered tract. Such proof must consist of (1) a certificate of the local recorder of deeds or an authorized abstracter, or (2) 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 the date of the sale. After a case has been closed, the data filed pursuant to this section may be returned. In the event that the awardee does not submit within the time specified the amounts requested or the proof of ownership, the lands will be awarded under the same conditions to the drawee next in order, if any, or to the next highest bidder, if any.

(g) Lands remaining unsold after offer at public sale, for a period of one year after date of sale, will be available, at the discretion of the authorized officer of the Bureau of Land Management and at not less than the price at which they were appraised for the public sale, for purchase by the first qualified applicant who tenders to the Manager, Santa Fe Land Office, an amount equal to the price specified by the manager, the cost of publication, and if any, the cost of survey and the value of the improvements of the former occupant.

(h) Until a cash certificate has been issued, the authorized officer may at any time determine that the lands should not be sold, and no bidder or applicant for private sale shall have any contractual or other rights as against the United States, and no action taken will create any contractual right or obligation of the United States.

§ 2781.2 Leases and permits for nonmineral resources.

(a) Unless otherwise provided for by the regulations in this part, the Choctaw-Chickasaw lands will not be subject to lease or permit for the development and use of nonmineral resources except (1) where disposal of fee title to the tract, in the discretion of the authorized officer of the Bureau of Land Management, is not in the public interest, (2) where the public interest will be served by the issuance of a lease or permit having a term of not to exceed one year, or (3) where the public interest will be served by the issuance of a lease under the regulations of Subpart 2232.

(b) Leases and permits issued under paragraph (a)(2) of this section, will be renewable in the discretion of the authorized officer of the Bureau of Land Management for periods not exceeding one year for each renewal.

(c) The authorized officer of the Bureau of Land Management, in his discretion, may specify the terms and conditions of leases and permits issued under paragraphs (a)(1) and (2) of this section consistent with the policies and procedures of the Department of the Interior.

(d) Except for applications to lease under the regulations of part 2740, no particular form of application is required. The applicant, however, must

describe the lands desired and the purpose for which he desires them. Every application must be accompanied by a filing fee of $10 which will not be returnable.

§ 2781.3 Deeds; disposition of minerals.

(a) All deeds for lands disposed of under the act of August 3, 1955 (69 Stat. 445), will contain a reservation to the United States of all its rights to mineral deposits in the lands, together with the right to prospect for, mine, and remove them. Any minerals subject to the public land leasing laws so reserved to the United States may be disposed of to any qualified person under applicable laws and regulations, subject to such conditions as the authorized officer of the Bureau of Land Management deems necessary for the protection of the surface and other nonmineral values of the lands. Until rules and regulations are issued, reserved minerals other than those subject to the public land leasing laws are not subject to disposition or, except by an authorized Federal agency, to prospecting.

(b) All minerals in the Choctaw-Chickasaw lands, subject to the exception and qualifications in paragraph (a) of this section, are subject to the applicable public land mining and mineral leasing laws and the regulations thereunder (see Groups 3100 and 3800 of this chapter).

(c) Deeds for Choctaw-Chickasaw lands disposed of under the regulations in this part will contain any provision the authorized officer of the Bureau of Land Management deems necessary in order to protect the rights of the holders of existing interests in the lands, or to permit access to any of the lands in which the Federal Government retains an interest.

§ 2781.4 Disposal of materials.

Materials on the Choctaw-Chickasaw lands, other than minerals subject to disposal under the public land mining and mineral leasing laws, are subject to disposal under the regulations of Parts 3600 and 5510 of this chapter.

§ 2781.5 Rights-of-way.

Easements and permits for rights-of-way over the Choctaw-Chickasaw lands may be secured under the regulations of Group 2800.

§ 2781.6 Contributions and donations of money, services, and property.

(a) Section 6 of the act authorizes the Secretary of the Interior to accept contributions or donations of money, services, and property to further the provisions of the act.

(b) Contributions and donations may be offered to the Manager of the Land Office at Santa Fe, New Mexico.

(c) Amounts of money contributed in excess of their appropriate share of expenses as determined by the authorized officer of the Bureau of Land Management, will be refunded to contributors.

Subpart 2783—State Irrigation Districts

AUTHORITY: The provisions of this Subpart 2783 issued under R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

§ 2783.03 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 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.

§ 2783.1 Procedures.

§ 2783.1–1 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.

(g) All applications by State irrigation districts for approval under the act of August 11, 1916, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2783.1–2 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.

§ 2783.1–3 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.

§ 2783.1–4 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 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.

§ 2783.1–5 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.

§ 2783.1–6 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.

§ 2783.1–7 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. (See Appendix A.) They should also bear the statement of the district's chief engineer, in accordance with Form No. 2. (See Appendix A.) This certificate and statement should be inscribed upon the maps in India ink.

§ 2783.1–8 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.

§ 2783.2 Lands included.

§ 2783.2–1 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.

§ 2783.2–2 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).

§ 2783.3 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 approval 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 approved 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.

§ 2783.4 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.

§ 2783.5 Status of lands.

§ 2783.5–1 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.

§ 2783.5–2 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.

§ 2783.5–3 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.

§ 2783.6 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.

§ 2783.7 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)

§ 2783.8 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 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.

§ 2783.9 Application to purchase.

(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, 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 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.

APPENDIX A

FORM 1

I, ----------, the duly elected, qualified, and acting ---------- (designation of office) of the ---------- irrigation district, duly organized under the laws of the State of ---------- as found at page ------ of ----------,[1] do hereby certify that the plan of irrigation and survey herewith is submitted under authority of the said district granted by resolution of the board of directors (or trustees) of said district, adopted on the ------ day of ----------, 19--, a copy of which said resolution, duly verified by the secretary of said district, is submitted with, and by this reference made a part of, this certificate; and application is hereby made for the designation, under the act of August 11, 1916 (39 Stat. 506), of the tracts marked hereon "b" or "e"; that the said tracts are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States and that the majority acreage in the said irrigation district is not unentered land.

(Name)

(Official title)

Of the ---------- *Irrigation District.*

Attest:
[SEAL]

(*Secretary (or other title of recording officer*)

[1] Give citation to act or acts under which the district is organized.

FORM 2

STATE OF ----------
County of ----------, *ss:*

----------, being duly sworn, says that he is the chief engineer of the ---------- irrigation district; that the tracts shown hereon to be designated under the act of August 11, 1916 (39 Stat. 506), are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States;[2] that he has personally examined the same; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor, within such limits, any placer, nor cement, gravel, salt spring, or deposit of salt, nor any other valuable mineral deposit (if necessary insert: except mineral deposits within the purview of the acts of March 3, 1909 (35 Stat. 844), and June 22, 1910 (36 Stat. 583), or of the act of July 17, 1914 (38 Stat. 509), as the facts may warrant); that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land (exception as above if necessary); that none of the unentered lands contain springs or water holes (see withdrawal of April 17, 1926, also Circular No. 1066, approved May 25, 1926, 51 L.D. 457); that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, as is shown in the accompanying report; that at least one-eighth of each smallest legal subdivision for which designation is sought is susceptible of reclamation from the irrigation system or (where less than one-eighth the irrigable portion of such tract) will be of more value when reclaimed than the entire tract in its native state; that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes; and that the limits of said irrigation district are correctly shown hereon.

Subscribed and sworn to before me this ------ day of ----------, 19—.

[SEAL] ----------,
(Notary Public)

My commission expires ----------.

[2] If the chief engineer has not made a personal examination of the land sufficiently in detail to enable him to make that part of the affidavit bracketed, it should be omitted herefrom and a separate affidavit should be made on the map as to such facts by some person who has made such examination.

Subpart 2784—Arkansas Drainage

AUTHORITY: The provisions of this Subpart 2784 issued under R.S. 2478; 43 U.S.C. 1201.

§ 2784.0–3 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 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 E., 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 Group 2450 of this chapter.

§ 2784.0–8 Land subject to State drainage laws.

(a) *Public lands in certain townships made subject to State drainage laws.* All unentered, unreserved public lands in the townships described in § 2784.0–3, 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 §§ 2784.7–1 to 2784.9 in which lands of like character held in private ownership are or may be subject to said laws.

(b) *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, improvement, 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.

§ 2784.1 Qualification of purchasers; tracts purchased need not be contiguous.

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.

§ 2784.2 State charges; enforcement.

§ 2784.2–1 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 assesed 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.

§ 2784.2–2 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.

§ 2784.2–3 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 proper land office (see § 1821.2–1 of this chapter).

§ 2784.2–4 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 a patent for not more than 160 acres of said lands.

§ 2784.2–5 Procedure when payment is made to effect subrogation.

When payment is made to effect subrogation as provided in § 2784.2–4, 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.

§ 2784.2–6 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.

§ 2784.3 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 2784.2-4 and 2784.2-5 should be observed in allowing purchases of entered land.

§ 2784.4 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.

§ 2784.5 Excess charges to be deposited in U.S. 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.

§ 2784.6 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.

§ 2784.7 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.

§ 2784.8 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.

§ 2784.9 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.

Subpart 2785—Sale of Unintentional Trespass Lands

§ 2785.0-1 Purpose.

These regulations implement the Act of September 26, 1968 (82 Stat. 870). This act authorizes the sale of certain land that was affected by unintentional trepass on or before September 26, 1968.

§ 2785.0-2 Objectives.

The program of the Secretary of the Interior in the administration of the act is to take into consideration the criteria set out in Part 2410 and to sell at public auction for not less than their appraised fair marke value on an orderly basis public lands subject to the act which are not needed for a public purpose. To conform with the specific purposes of the act, lands will be sold in the smallest aliquot parts practicable in each situation.

§ 2785.0-3 Authority.

The Act of September 26, 1968 (82 Stat. 870) authorizes the Secretary of the Interior to sell at public auction any tract of public lands not exceeding 120 acres that was affected by unintentional trespass by the owner or user of contiguous lands on or prior to September 26, 1968, and which contains some land that has been or can be put to cultivation but which is insufficient because of climatic, topographic, ecologic, soil, or other factors to justify a classification as proper for disposal under the homestead or desert land laws. The act permits sales only if the Secretary of the Interior finds the land is not needed for a public purpose. The act limits the amount of land any person may acquire under its terms to 120 acres. The authority to make such sales expires on September 26, 1971, except that sales for which application has been made prior to September 26, 1971, may be completed after that date.

§ 2785.0-8 Lands subject to sale.

(a) The act authorizes the Secretary of the Interior on his own motion or upon application of any person who owns contiguous lands to order into market and sell at public auction for not less than the appraised fair market value any tract of public lands not exceeding 120 acres which on or before September 26, 1968, was affected by unintentional trespass by the owner or user of contiguous lands and which he finds is not needed for public purposes and contains some land that has been or can be put to cultivation.

(b) The Secretary of the Interior has full discretion to determine whether land should be ordered into market under the regulations of this part. Factors that will be taken into consideration in making these determinations are described in Subpart 2410 of this chapter. Lands which are valuable for minerals will not be sold unless the minerals can be reserved to the United States under existing law. (See 30 U.S.C. section 21.)

(c) Only tracts of public land that are classified by the authorized officer under the criteria and procedures in Part 2410 of this chapter can be sold pursuant to the regulations in this section.

§ 2785.1 Procedures.

The provisions of Subpart 2710 apply to sales under this section except that the owner of contiguous lands who wishes to assert his preference right must offer to purchase the lands at the highest bid received. A credit, determined by the authorized officer, will be given to a preference right purchaser for any value added to the land by him or his predecessors in interest during any period of unintentional trespass.

§ 2785.2 Trespass charges.

Purchase of lands in accordance with the act and these regulations shall not relieve any person from liability for unauthorized use of the lands while title was in the United States.

Group 2800—Use, Rights-of-Way

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2800—Rights-of-Way: General

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Subpart 2800—Rights-of-way, General

AUTHORITY: The provisions of this Subpart 2800 issued under R.S. 161, 453, 2478; 5 U.S.C. 22, 43 U.S.C. 2, 1201, unless otherwise noted.

§ 2800.0–1 Purpose.

(a) This part applies to all rights-of-way covered by §§ 2800.0–1 and 2800.0–5, subparts 2801 and 2802, §§ 2810.0–3, 2810.0–5, subparts 2811, 2821, 2881, 2882, and parts 2850, 2860, 2870, and 2890.

(b) This 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.

(c) All general right-of-way laws, and the regulations thereunder contained in this subpart, are applicable to Alaska. (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.)

§ 2800.0–5 Definitions.

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, Bureau of Land Management.

(c) "State Director" means State Director of the Bureau of Land Management, or his authorized representative.

(d) "Manager" means manager of the land office for the district in which the lands applied for are situated (see § 1821.2–1 of this chapter).

(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".

Subpart 2801—Nature of Interest

§ 2801.1 Nature of interest granted; settlement on right-of-way; rights of ingress and egress.

§ 2801.1–1 In form of easement, license, or permit.

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.

§ 2801.1–2 Disposals subject to right-of-way.

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.

§ 2801.1–3 Right of ingress and egress to a primary right-of-way.

In order to facilitate the use of a right-of-way granted or applied for under the regulations of this part, the authorized officer may grant to the holder of or applicant for such right-of-way an additional right-of-way for ingress and egress to the primary right-of-way, including the right to construct, operate, and maintain such facilities as may be necessary for ingress and egress. The holder or applicant may obtain such additional right-of-way only over lands for which the authorized officer has authority to grant a right-of-way of the type represented by the primary right-of-way held or requested by the applicant. He must comply with the same provisions of the regulations applicable to his primary right-of-way with respect to the form of and place of filing his application for an additional right-of-way, the filing of maps and other information, and the payment of rental charges for the use of the additional right-of-way. He must also present satisfactory evidence that the additional right-of-way is reasonably necessary for the use, operation, or maintenance of the primary right-of-way.

§ 2801.1–4 Right to occupy land and commence construction.

(a) *Advance permission.* (1) Permission to commence construction work over and through lands under the jurisdiction of the Department of the Interior or of its agencies and to use and occupy such lands 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 § 2802.1 to § 2802.1–4 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 § 2802.1.

(2) 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.

(b) *Unauthorized occupancy.* 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.

§ 2801.1–5 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.

§ 2801.1–6 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.

§ 2801.1–7 Areas of National Park System.

(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, 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) Pursuant to any statute, including those listed in this subpart, applicable to reservation lands administered by the National Park Service, rights-of-way over or through such lands will be issued by the Director of the National Park Service, or his delegate, under the regulations of this subpart.

§ 2801.1–8 Oregon and California Railroad and Coos Bay Wagon Road grant lands.

(a) 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).

(b) 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).

Subpart 2802—Procedures

§ 2802.1 Application.

§ 2802.1–1 Form.

The application shall be prepared and submitted in accordance with the requirements of this section. It 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 accordance with the provisions of § 1821.2 of this chapter, except that applications for rights-of-way over or through reservation lands administered by the National Park Service shall be filed with the Director of the National Park Service, Washington, D.C. 20240. 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.

§ 2802.1–2 Service fees.

All applications filed pursuant to this part in the name of individuals, corporations or associations must be accompanied by an application service fee of $10 except where the right of way will authorize use and occupancy of the lands exclusively for the purposes stated in § 2802.1–6(c). The service fee will not be returnable. No application service fee will be required of States or agencies or instrumentalities thereof or of Government agencies.

§ 2802.1–3 Showing as to organizations 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 bylaws 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.

§ 2802.1–4 Showing as to citizenship required.

(a) *Individuals.* 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) *Association of Individuals.* 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.

§ 2802.1–5 Documents which must accompany application.

(a) *Maps.* Each application, other than a reservoir declaratory statement under § 2872.1(a), or an appropriation for Federal-aid highway purposes under Title 23, United States Code, section 317, must be accompanied by a map prepared on tracing linen, or on tracing paper having a 100 percent rag content, 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 (Appendix B) 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.

(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. 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.

§ 2802.1–6 Indian lands.

The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and 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 161.

§ 2802.1–7 Payment required; exceptions; default; revision of charges.

(a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: *Provided*, That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than $25. The amount to be so returned will be the difference between the total payments made and

the value of the expired portion of the term calculated on the same basis as the original payments.

(b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than $25 per five-year period for any permit, right-of-way, or easement issued.

(c) No charge will be made for the use and occupancy of lands under the regulations of this part:

(1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or nonprofit or Rural Electrification Administration projects, or where the use is by a Federal governmental agency.

(2) Where the permit, right-of-way, or easement is granted under the regulations in §§ 2821, 2822, 2842, 2871, 2872.

(d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way or easement. After default has occurred, no structures, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer.

(e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of 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 charge year.

(f) 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.

§ 2802.2 Approval of right-of-way.

§ 2802.2–1 Completed application and reports.

(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.

(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.

(c) 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.

§ 2802.2–2 Use of right-of-way.

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, Appendix B, which should be modified so as to be appropriate to the act and to the nature of the project. 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 § 2802.1–5(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.

§ 2802.2–3 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.

§ 2802.3 Revocation or cancellation.

§ 2802.3–1 Order of cancellation.

All rights-of-way approved pursuant to this part, except those granted for pipelines 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.

§ 2802.3–2 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.

§ 2802.4 Transfer of right-of-way.

§ 2802.4–1 Method of filing.

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 § 2802.1 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.

§ 2802.4–2 Service fee.

All filings of transfers, by assignment, lease, operating agreement, or otherwise, made pursuant to this section, except by States or agencies or instrumentalities thereof, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2802.5 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.

PART 2810—TRAMROADS AND LOGGING ROADS

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Subpart 2811—Public Lands

§ 2811.0–3 Authority.

(a) 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 subpart to execute the same type of right-of-way and road use agreements for the connecting road system as may be required under subpart 2812 with appropriate modifications to meet local conditions: *Provided*, That where the land over which the right-of-way is requested 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 a form provided by the Director, 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 §§ 2800.0–3 to 2802.4 and paragraph (a) and (b) of this section. The arbitration procedures involved in the stipulations shall be in accordance 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.

(b) In the 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.

§ 2811.0–5 Definitions.

(a) *Tramroads.* 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.

§ 2811.1 Application.

An application pursuant to paragraph 2800.0–3(a) for a temporary right-of-way to be used for a period of not more than six months may be filed with the officer in charge of any local office of the Bureau of Land Management having jurisdiction over the lands. No special form for such an application is required but it should state whether the applicant or applicants are citizens of the United States and if a corporation, whether it is qualified under State law to acquire the right-of-way applied for and be accompanied by three copies of a map or sketch which shows the location of the right-of-way with a degree of accuracy sufficient for its position on the ground in relation to the lines and corners of the public land surveys or in relation to some prominent topographic feature, to be readily determined. Such a map or sketch or statement as to citizenship or qualification may be accepted as the basis for a permit for a temporary right-of-way even though it does not meet the requirements of other regulations in this part, if in the opinion of the authorized officer it would be in the public interest to do so. Within the discretion of the issuing officer, the holder of a temporary permit may be granted a single extension of the permit for a period of not more than six months. Notwithstanding the provisions of §2802.1–6 the charge for use and occupancy of public lands for such temporary rights-of-way shall be at the rate of 50 cents per mile or fraction thereof per month or fraction thereof, with a minimum rental charge of $5 per right-of-way: *Provided*, That no rental charge shall be made for the use and occupancy of public lands for such temporary rights-of-way to be used for the purpose of removing mine or quarry products, timber, or timber products which have been acquired from the United States under contract or permit.

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

§ 2812.0–3 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 centerline 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.

§ 2812.0–5 Definitions.

Except as the context may otherwise indicate, as the terms are used in this paragraph:

(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) "State Director" means the State Director, Bureau of Land Management, or his authorized representative.

(d) "Authorized Officer" means an employee of the Bureau of Land Management to whom has been delegated the authority to take action.

(e) "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.

(f) "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.

(g) "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.

(h) "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.

(i) "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 this paragraph.

(j) "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.

§ 2812.0–6 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 (*a*) rights-of-way across lands controlled directly or indirectly by him; (*b*) the right to use, to the extent indicated in §§ 2812.3–5 and 2812.3–6, 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; (*c*) the right to extend such road system across the operator's lands to reach federal roads or timber; and (*d*) in addition, in the limited circumstances set forth in § 2812.3–2 of this subpart 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 §§ 2812.3–7 to 2812.4–4.

(f) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under subpart 2812 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 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 §§ 2812.3–1 and 2812.3–3 of this paragraph 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 §§ 2812.3–5 and 2812.3–6 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.

§ 2812.0–7 Cross Reference.

For disposal of timber or material to a trespasser, see § 9239.0–9 of this chapter.

§ 2812.1 Application procedures.

§ 2812.1–1 Filing.

(a) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on a form prescribed by the Director and filed in the appropriate district office. 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.

§ 2812.1–2 Contents.

(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 § 1811 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 as approved by the Director.

(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 paragraph 2800.0–5(k), the portions thereof which the applicant indirectly controls within the meaning of paragraph 2800.0–5(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 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.

§ 2812.1–3 Trespass.

The mere filing of an application under this paragraph 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 Director 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 § 9239.0–9 of this chapter.

§ 2812.2 Nature of permit.

§ 2812.2–1 Nonexclusive license.

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 §§ 2812.6–2 and 2812.8–3, 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 § 2812.8.

§ 2812.2–2 Right of permittee to authorize use by third parties.

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 §§ 2812.4–1, 2812.4–3 and 2812.4–4 of this subpart.

§ 2812.2–3 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 this paragraph. Advance construction will not be authorized unless and until applicant has complied with §§ 2812.1–1, 2812.1–2, 2812.3–1 and 2812.5–1.

§ 2812.3 Right-of-way and road use agreement.

§ 2812.3–1 Rights over lands controlled by applicant.

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0–6, he may require the applicant, as a condition precedent to the issuance of the permit:

(a) 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.

(b) 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 this paragraph 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.

§ 2812.3–2 Other roads and rights-of-way controlled by applicant.

In addition to the private road systems and rights-of-way described in § 2812.3–1 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 this paragraph such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

§ 2812.3–3 Form of grant to the United States, recordation.

Any grant of rights to the United States under this section shall be executed on a form prescribed by the Director 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 manager.

§ 2812.3–4 Where no road use agreement is required.

Where, in the judgment of the authorized officer, it is consistent with the policy set forth in subpart 2811 he may issue a permit without requesting the applicant to grant any rights to the United States under this subparagraph.

§ 2812.3–5 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 §§ 2812.3–7 and 2812.4–3.

§ 2812.3–6 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 § 2812.6, subject to the provisions of § 2812.7, 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.

§ 2812.3–7 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 cost; provisions for road maintenance; the use in addition to the uses set forth in § 2812.3–5 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 § 2812.4 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 2812.4 Arbitration and agreements.

§ 2812.4–1 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 § 2812.3–7 of this subpart, 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 § 2812.4–4. During the pendency of such arbitration proceedings the licensee shall be entitled to use the road, right-of-way, or lands involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and upon the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the authorized officer 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 might accrue by reason of the licensee's use of the road, as the authorized officer may prescribe.

(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 § 2812.3–5. 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.

§ 2812.4–2 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 § 2812.3–7 covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State Director, who shall base his determination upon the same standards established by this paragraph 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 Director.

§ 2812.4–3 Agreements and arbitration between permittee and licensee respecting adjustment of road use.

(a) When the United States exercises the right received under this paragraph 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 § 2812.3–7 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 § 2812.4–4.

(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 extent to which the United States or its licensees have enlarged the road capacity.

§ 2812.4–4 Arbitration procedure.

Within 10 days after the delivery of a written request for arbitration under §§ 2812.4–1 or 2812.4–3 of this subpart 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.

(b) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 2812.4–1 and 2812.4–3.

(c) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 2812.4–1 and 2812.4–3, 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 director or the State Director, 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 matter as may appear relevant to the arbitrators.

§ 2812.5 Payment to the United States, bond.

§ 2812.5–1 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.

§ 2812.5–2 Payment to the United States for road use.

(a) A permittee shall pay a basic fee of $5 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. If the term of the permit is for 5 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 5 years, the basic fee for each 5-year period or for the remainder of the last period, if less than 5 years, must be paid in advance at 5-year intervals: *Provided, however,* That in those cases where the permittee has executed under §§ 2312.3–1 to 2812.3–5 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under § 2812.3–1(b).

(b) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer 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 the case of federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreational or other authorized uses shall be deducted from the replacement costs of the road before the amortization item is computed. A similar allowance and deduction shall be made in cases involving roads constructed as a part of a timber sale contract when, and if, subsequent to completion of such contract any such road becomes subject to recreational or other authorized uses. 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: *Provided, however,* That this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under this subpart 2812: *Provided further,* That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and paragraph 2812.4–1(b), as may be applicable.

(c) If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit which provides that as to such road the applicant's road use payments shall be determined in accordance with paragraph (b) of this section except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States: *Provided, however,* That if the application is for use of a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with §§ 2812.3–1 to 2812.3–5 to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber therefrom.

§ 2812.5–3 Bonds in connection with existing roads.

An applicant for permit or a permittee desiring to use an existing road owned or controlled by the United States, shall prior to such use post a bond on a form prescribed by the Director. The amount of the bond shall be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof. The bond shall be executed by an approved corporate surety, or the permittee may deposit an

equivalent amount in cash or negotiable securities of the United States and the bond shall be conditioned upon compliance with subpart 2812 and the terms and conditions of the permit.

§ 2812.6 Approval and terms of permit.

§ 2812.6–1 Approval.

(a) Upon the applicant's compliance with the appropriate provisions of this paragraph 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 a form prescribed by the Director.

(b) The authorized officer may waive the requirements of paragraphs 2812.1–2 (c) and (e) and § 2812.5–3 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.

§ 2812.6–2 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 §§ 2812.3–1 to 2812.3–5 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 authorized officer and making payment therefor.

(3) To take adequate precaution to prevent forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way on which a road is being used or constructed by the permittee or any fire caused by the permittee; to do no burning on or near the right-of-way without State permit during the seasons that permits are required and in no event to set 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 §§ 2812.4–1, 2812.4–3, and 2812.4–4.

(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 §§ 2812.3–1 to 2812.3–5 of this paragraph 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 this paragraph 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.

(10) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under §§ 2812.1–3 to 2812.1–5.

(11) To grant to the United States, upon request of an authorized officer in lieu of the rights-of-way across legal subdivisions granted pursuant to §§ 2812.1–3 to 2812.1–5, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: *Provided,* That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the rights-of-way across such legal subdivisions previously granted: *Provided further,* That if the United States builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with § 2812.4–2. The authorized officer shall waive the requirement under this subparagraph, however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success.

(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.

§ 2812.7 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 §§ 2812.1–2 and 2812.3–1 to 2812.3–5, 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.

§ 2812.8 Cause for termination of permittee's rights.

§ 2812.8–1 Notice of termination.

(a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph 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 this paragraph, knowing 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 this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in the performance or obligation 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 this paragraph, 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 this paragraph, to submit to and be bound by arbitration pursuant to §§ 2812.4–1, 2812.4–3, and 2812.4–4.

§ 2812.8–2 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 this paragraph, 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 § 2812.9 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permttee 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.

§ 2812.8–3 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 6 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 improvments shall become the property of the United States.

§ 2812.9 Appeals.

An appeal pursuant to Parts 1840 and 1850 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 2820—ROADS AND HIGHWAYS

Subpart 2821—Under Title 23, U.S.C. (Interstate and Defense Highway System)

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Subpart 2821—Under Title 23, U.S.C. (Interstate and Defense Highway System)

§ 2821.03 Authority.

(a) Title 23, United States Code, section 107, paragraph (d), provides that whenever rights-of-way, including control of access, on the National System of Interstate and Defense Highways are required over lands or interests in lands owned by the United States, the Secretary of Commerce may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands. It directs any such agency to cooperate with the Secretary of Commerce in this connection.

(b) Title 23, United States Code, section 317, provides that:

(1) If the Secretary of Commerce determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway constructed on the Federal-aid primary system, the Federal-aid secondary system and the National System of Interstate and Defense Highways, or under Title 23, United States Code, Chapter 2, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary of Commerce shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(2) If within a period of 4 months after such filing the Secretary of such department shall not have certified to the Secretary of Commerce that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such lands 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 lands and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified.

§2821.1 Extent of grant.

By decision of the Secretary, Nevada Department of Highways, A.24151, September 1945, it was held that the law 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.

§ 2821.2 Termination of right-of-way no longer needed.

If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Commerce and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated. Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau which granted the rights.

§ 2821.3 Applications.

§ 2821.3–1 General.

Except where an application involves lands wholly within an Indian reservation applications for rights-of-way and material sites under title 23, United States Code, for lands under the jurisdiction of the Department of the Interior, together with four copies of a durable and legible map shall be filed by the appropriate State highway department in the manner prescribed by § 2802.1. Maps should accurately describe the land or interest in land desired, 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 requirements of § 2802.1–5(a). Applications for lands wholly within an Indian reservation shall be filed in the office of the superintendent of the Bureau of Indian Affairs agency which has jurisdiction over the lands, or for lands for which there is no agency, in the office of the Area Director who has jurisdiction over the lands. Applications for lands administered by the National Park shall be filed with the Director of the National Park Service, Washington, D.C. 20240, who, notwithstanding the provisions of §§ 2821.4 and 2821.5, shall process such applications and issue grants of rights-of-way in accordance with the regulations of this subpart. Applications for lands outside of the jurisdiction of the Department of the Interior shall be filed pursuant to the rules or regulations of the Department or agency having jurisdiction over the lands.

§ 2821.3–2 Consultation with local Bureau officials, program values.

When the lands involved are under the jurisdiction of the Department of the Interior an applicant will be expected, at the earliest possible date prior to the filing of an application, to consult with the local officials of the Bureau or Office having jurisdiction over the lands to ascertain whether or not the use of appropriation of the lands for right-of-way purposes is consistent with the management program and to agree to such measures as may be necessary to maintain program values. Failure to do so may lead to an unresolvable conflict of interest and necessitate disallowance of the application.

§ 2821.3–3 Concurrence by Bureau of Public Roads.

The appropriate state highway department will forward a copy of each application and map filed with the Department of the Interior to the authorized officer of the Bureau of Public Roads for a determination whether the lands and interests in lands are necessary for the purposes of Title 23, United States Code.

§ 2821.4 Approval.

After receipt of such determination that the lands or interests in lands under application are reasonably necessary for the purposes of Title 23, United States Code, the authorized officer of the Bureau of Land Management will notify the applicant and the authorized officer of the Bureau of Public Roads either (1) that the approval of the application would be contrary to the public interest or inconsistent with the purposes for which the lands or materials have been reserved or (2) that he proposes to grant the right-of-way under the regulations of this part, subject to said regulations and to such conditions which he indicates in his notice.

§ 2821.5 Terms and conditions of allowance.

Grants of rights-of-way under Title 23, United States Code, by the authorized officer of the Bureau of Land Management will be made to the appropriate State highway department or to its nominee and based upon considerations of adequate protection and utilization of Federal lands and interests in lands will be subject to (1) all the pertinent regulations of this part except those which the authorized officer, upon formal request of the applicant may modify or dispense with, in whole or in part, upon a finding that it is in the public interest and in conformity with the purposes of Title 23, United States Code, and (2) any conditions which he deems necessary. Grants of highway rights-of-way under this subpart may include an appropriation and release to the State or its nominee of all rights of the United States, as owner of underlying and abutting lands, to cross over or gain access to the highway from its lands crossed by or abutting the right-of-way, subject to such terms and conditions and for such duration as the authorized officer of the Bureau of Land Management deems appropriate.

§ 2821.6 Additional rights-of-way within highway rights-of-way.

§ 2821.6–1 General.

No application under the regulations of this part is required for a right-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, for facilities usual to a highway, except (a) where terms of the grant or a provision of law specifically requires the filing of an application for a right-of-way, (b) where the right-of-way is for electric transmission facilities which are designed for operation at a nominal voltage of 33 KV or above or for conversion to such operation or (c) where the right-of-way is for oil or gas pipelines which are part of a pipeline crossing other public lands, or if not part of such a pipeline, which are more than two miles long. When an application is not required under the provisions of this subparagraph, qualified persons may appropriate rights-of-way for such usual highway facilities with the consent of the holder of the highway right-of-way, which holder will be responsible for compliance with § 2801.1–5, in connection with the construction and maintenance of such facilities.

§ 2821.6–2 Terms of grant.

Except as modified by § 2821.6–1 of this subpart, rights-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, and applications for such rights-of-way, are subject to all the regulations of this part pertaining to such rights-of-way.

(43 U.S.C. 1371)

Subpart 2822—Roads Over Public Lands Under R.S. 2477

§ 2822.0–3 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.

§ 2822.1 Applications.

§ 2822.1–1 For unreserved public lands.

No application should be filed under R.S. 2477, as no action on the part of the Government is necessary.

§ 2822.1–2 Procedure when reserved land is involved; rights-of-way over revested and reconveyed lands.

(a) *Showing Required.* 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, and when a right-of-way is desired for the construction of a highway under R.S. 2477 over the Revested and Reconveyed Lands, an application should be made in accordance with § 2802.1. 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.

(b) *Revocation or modification of withdrawal.* Where reserved lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application, unless and until the reservation shall have been revoked or modified so as to permit 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.

(c) *Revested and Reconveyed Lands.* Where Revested and Reconveyed Lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application unless and until the authorized officer of the Bureau of Land Management shall grant permission to construct the highway, subject to such terms and conditions as he deems necessary for the adequate protection and utilization of the lands, and for the maintenance of the objectives of the act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a).

§ 2822.2 Nature of interest.

§ 2822.2–1 Effective date of grant.

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.

§ 2822.2–2 Extent of grant.

(a) *Consent of grantee to additional facilities within right-of-way.* 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. When the holder of such 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 2 miles long and are not part of any other pipe line crossing public lands. Applications shall be made under Subpart 2851, with respect to any right-of-way for an electric transmission facility subject to this exception, and under Subpart 2881 inclusive, for pipe line facilities subject to this exception.

(b) *Terms of grant.* Holders of grants under R.S. 2477 shall be subject to the terms and conditions of § 2801.1–5, (c), (d), (e), (i), and (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 subparagraph § 2801.1–5 in connection with the construction and maintenance of such facilities.

PART 2840—RAILROADS, STATION GROUNDS, WAGON ROADS

Subpart 2841—Railroads, Wagon Roads and Tramways in Alaska

Sec.

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Subpart 2841—Railroads, Wagon Roads and Tramways in Alaska

§ 2841.0–3 Authority.

The rights-of-way for railroads, wagon roads, and tramways in the State of Alaska, granted by sections 2 to 9 inclusive, of the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411–419).

§ 2841.0–7 Cross reference.

For forms 1 to 8 inclusive, referred to in this subpart, see appendix C of this subchapter.

§ 2841.1 Nature of interest.

(a) The act 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.

(b) 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.

(c) 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.

§ 2841.2 Procedures.

§ 2841.2–1 Applications.

(a) *Incorporated companies.* (1) Any incorporated company desiring to obtain the benefits of this part is required to file the following papers and maps:

(i) 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 where organized.

(ii) A copy of the State law under which the company was organized, with the certificate of the governor or secretary of the State that the same is the existing law.

(iii) 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.

(iv) A certificate from the Secretary of the State of Alaska showing that the Company has complied with the State law.

(v) 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, Appendix C).

(vi) 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, Appendix C).

(vii) 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, a company organized in such State or Territory may file, in lieu of the requirements of subdivision *b* of this paragraph, a certificate of the governor or Secretary of the State that no change has been made since a given date, not later than that of the laws last forwarded.

(viii) Maps, field notes, and other papers as hereinafter required.

(2) No forms are prescribed for the proofs required in subparagraph (1) (i) to (iv) as each case must be governed to some extent by the laws of the State.

(b) *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.

(c) *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.

(d) *Data required on maps.* (1) 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.

(2) 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.

§ 2841.2–2 Survey.

(a) *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; 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.

(b) *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.

(c) *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.

(d) *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.

(e) *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, Appendix C), should each show these connections.

(f) *Statement and certificates required.* The engineer's certificate and applicant's certificate must be written on the map, and must both designate by termini (as in the preceding subparagraph) and length in miles and decimals the line of route for which right of way application is made. (See Forms 3 and 4, Appendix C.) Station, terminal, or junction grounds must be described by initial point (as in the preceding subparagraph) and area in acres (Forms 7 and 8, Appendix C) 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.

(g) *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.

(h) *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 subpart 2841 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.

(i) *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, and should be so selected as to avoid making maps inconveniently large for handling. No other scales may be used. 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.

(j) *Plats of station, terminal, and junction grounds.* Plats of station, terminal, and junction grounds must be prepared in accordance with the direction 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.

(k) *Showing required in application.* (1) 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.

(2) All applications must be accompanied by an application service fee of $10 which will not be returnable.

§ 2841.3 Evidence of construction.

§ 2841.3–1 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, Appendix C) should be filed in the proper 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 relinquish-

ment to take effect when the map of amended definite location is approved by the manager.

§ 2841.3–2 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.

§ 2841.4 Charges for transportation of passengers and freight.

§ 2841.4–1 Required showings, consent.

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.

§ 2841.4–2 Schedules to be filed with Interstate Commerce Commission.

Schedules of passenger and freight rates on railroads should be filed with the Interstate Commerce Commission.

Subpart 2842—Railroads and Station Grounds Outside of Alaska

§ 2842.0–3 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."

§ 2842.1 Nature of grant.

(a) *Generally.* 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.

(b) *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).

§ 2842.2 Procedures.

§ 2842.2–1 Applications.

(a) *Locaton—(1) 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.

(2) *Proposed national forest; construction through forests.* (i) 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.

(ii) 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.

(iii) All rights-of-way applications for railroads and station grounds within national forests must be accompanied by a service fee of $10 which will not be returnable.

(b) *Material to be filed.* (1) 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:

(i) 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.

(ii) A citation of the law of the State or Territory under which the company was organized, and any amendments thereof.

(iii) If the law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territory 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.

(iv) 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.

(v) 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, Appendix A.)

(vi) 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, Appendix A.)

(2) No forms are prescribed for the proofs required in subparagraph (1)(i)-(iv) of this paragraph, as each case must be governed to some extent by the laws of the State or Territory.

(c) *Maps—(1) Maps of alignment.* (i) 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.

(ii) The maps should show any other road crossed, or with which connection is made, and whenever possible the station number on the survey therof 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 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 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.

(2) *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.

(3) *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.

(4) *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.

(5) *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, Appendix A), 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 (Appendix A), 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.

(6) *Connections on unsurveyed lands.* 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, Appendix A). The notes and all data for the computation of the traverse must be given.

(7) *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, Appendix A), must state the connections. These monuments are of great importance.

(8) *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 (Appendix A) 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 (Appendix A).

(c) Lines or 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.

(9) *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 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 paragraph (c) (6) and (7) of this section.

(10) *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.

(11) *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, Appendix A.) Station grounds must be described by initial point and area in acres (see Forms 7 and 8, Appendix A), 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.

(12) *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.

(13) *Notations on maps and records.* 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 unpatented 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. Any valid 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.

§ 2842.2–2 Evidence of construction.

When the railroad is constructed, a statement of the engineer and certificate of the president (Forms 5 and 6, Appendix A) must be filed in the 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 2850—POWER TRANSMISSION LINES

Subpart 2850—Power Transmission Lines, General

Sec.

2850.0–3 Statutory authority.
2850.0–5 Definitions.
2850.0–8 Lands subject to grant.

Subpart 2851—Principals and Procedures, Power Transmission Lines

2851.1 Nature of interest.
2851.1–1 Terms and conditions.
2851.2 Procedures.
2851.2–1 Applications.
2851.3 Boulder Canyon Project.

Subpart 2850—Power Transmission Lines, General

§ 2850.0–3 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.

(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.

§ 2850.0–5 Definitions.

(a) 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.

§ 2850.0–8 Lands subject to grant.

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.

Subpart 2851—Principals and Procedures, Power Transmission Lines

§ 2851.1 Nature of interest.

§ 2851.1–1 Terms and conditions.

(a) 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 § 2801.1–5.

(1) 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.

(2) 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.

(3) Each application for authority to survey, locate, commence construction work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 33 kilovolts or higher under this subpart shall be referred by the authorized officer to the Secretary of the Interior to determine the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(4) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive or conductive interference.

(5) An applicant for a right-of-way for a transmission facility having a voltage of 33 kilovolts or more must, in addition to the requirements of § 2802, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(i) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(ii) The Department of the Interior shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as "holder") for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(*a*) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish to the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(*b*) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt

of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(c) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(d) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(e) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may by mutual consent open any switch where necessary or desirable for maintenance, repair or construction.

(f) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner, as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(g) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the application for a grant, other than statutory preference customers including agencies of the Federal Government.

(h) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy, the payment to be an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined in accordance with the system of accounts prescribed by the Federal Power Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(i) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(j) If the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(k) As used in this section, the term "transmission facility" includes (a) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (b) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(l) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

(b) 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 § 2802.1, 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.

(31 Stat. 790, 36 Stat. 1253; 43 U.S.C. 959, 961)

§ 2851.2 Procedures.

§ 2851.2–1 Applications.

(a) *Applications filed.* 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 reseravtions must be filed and approved before any rights can be claimed thereunder.

(b) *Applications for lands in national forests and other reservations.* (1) Applications under the act of February 15, 1901, 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 section 2802.1. (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(2) 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. (See 29 Op. Atty. Gen. 303.)

(c) *Required showings.* (1) 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.

(2) 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).

(3) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the centerline unless sufficient justification is furnished for a greater width and it is otherwise authorized by law.

(4) If the line is to have a nominal voltage of 33 kilovolts or over, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure

drawings of proposed line showing construction dimensions and list of materials.

(5) 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.

§ 2851.3 Boulder Canyon Project.

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.

PART 2860—COMMUNICATIONS

Subpart 2861—Radio and Television Sites

Sec.
2861.0–3 Authority.
2861.0–5 Definitions.
2861.1 Procedures.

Subpart 2862—Telephone and Telegraph Lines

2862.0–3 Authority.
2862.0–5 Definitions.
2862.1 Procedures.

Subpart 2861—Radio and Television Sites

§ 2861.0–3 Authority.

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.

§ 2861.0–5 Definitions.

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.

§ 2861.1 Procedures.

(a) Applications under the act of February 15, 1901, 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 § 2802.1. (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(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. (See 29 Op. Atty. Gen. 303.)

(c) 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.

(d) 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, Appendix B 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 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 survey.

Subpart 2862—Telephone and Telegraph Lines

§ 2862.0–3 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 400 feet by 400 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.

§ 2862.0–5 Definitions.

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.

2862.1 Procedures.

(a) Applications under the act of February 15, 1901, 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 § 2802.1. (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(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. (See 29 Op. Atty. Gen. 303.)

(c) 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.

PART 2870—WATER FACILITIES

Subpart 2871—Irrigation

Sec.
2871.0–3 Authority.
2871.0–8 Lands subject to grant.
2871.1 Procedures.

Subpart 2872—Watering Livestock

Sec.
2872.0–3 Authority.
2872.1 Procedures.
2872.2 Time for construction.
2872.3 Map of constructed reservoir.
2872.4 Approval of constructed project.
2872.5 Procedure when unsurveyed land is involved.
2872.6 Application to fence reservoir; plat required.

Subpart 2873—Water Plants

2873.0–3 Authority.
2873.0–5 Definitions.
2873.1 Procedures.

Subpart 2871—Irrigation

§ 2871.0–3 Authority.

(a)(1) Act of March 3, 1891, as amended. 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.

(2) 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 record and thereafter all lands affected by such right-of-way shall be disposed of subject to such right-of-way.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(b) 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.

(c) 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.

(d) 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.

§ 2871.0–8 Lands subject to grant.

(a) In *Hugh S. Ritter, Thomas M. Bunn* (A–30415), decided February 24, 1965, the Under Secretary of the Interior ruled that "it would be contrary to the public interest at this time to increase the pressure on the inadequate water supply available for use in California from the Colorado River by classifying * * * public lands as available for disposition under the desert land law." The lands referred to were in Imperial and Riverside Counties, Calif.

(b) For the reasons stated in the Ritter-Bunn decision, supra, it is contrary to the public interest to permit the use of federally owned lands within Imperial and Riverside Counties for the construction of canals and ditches in order to effect agricultural reclamation with water from the Colorado River of desert lands in those counties. Therefore, no applications for rights-of-way for this purpose under the provisions of the Act of March 3, 1891, as amended, will be allowed or permitted on federally owned lands within Imperial and Riverside Counties, Calif., unless the applicant shows that the water to be carried is from a source other than the Colorado River.

§ 2871.1 Procedures.

(a) When unsurveyed land is involved: (1) 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.

(2) 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.

(b) 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).

(c) The act of February 26, 1897 (29 Stat. 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 2872—Watering Livestock

§ 2872.0–3 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 4110 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.

§ 2872.1 Procedures.

(a) *Declaratory statement—Form of application.* To apply for a reservoir site under this section, the applicant must file with the manager a declaratory statement drawn in accordance with Form 7, Appendix B together with a nonrefundable application service fee of $10. No other application is necessary.

(b) *Action on declaratory statements; size, location, and number of reservoir sites.* In acting upon these statements the following general rules will be applied:

(1) 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 a 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.

(2) Not more than 160 acres shall be reserved for this purpose in any section.

(3) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(4) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(5) 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.

(6) 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.

§ 2872.2 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.

§ 2872.3 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 § 2802.1–5 and be filed with the manager and must bear Forms 8 and 9, Appendix B.

§ 2872.4 Approval of constructed project.

(a) *Adjudication and notation of records.* 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.

(b) *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 Appendix B 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.

§ 2872.5 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 bear 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. (See § 2872.3.)

(b) Any reservation made pursuant to the act of January 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 this section 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 this section shall preclude the Bureau of Land Management from requiring additional information in any case where that information is deemed proper or necessary.

§ 2872.6 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 § 2801.1, an application, duly corroborated by at least two disinterested witnesses, setting forth 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 2873—Water plants

§ 2873.0–3 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 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.

§ 2873.0–5 Definitions.

(a) 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.

§ 2873.1 Procedures.

(a) *Applications for lands in national forests and other reservations.* Applications under the act of February 15, 1901, 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 section 2801.1. (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(b) *Applications which may be submitted under the acts of February 15, 1901, and March 4, 1911.* (1) 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.

(2) 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 (43 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 § 4115.2–5(a) of this chapter.

(c) *Plant sites; buildings to be platted on maps.* (1) 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, Appendix B 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 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 survey.

(2) If the application is for a powerplant site it must also contain a statement giving a description of the proposed powerplant 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 powerplant 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.

PART 2880—FOR MINERAL LEASING PURPOSES

Subpart 2881—For Oil and Natural Gas Pipe Lines and Pumping Plant Sites Under the Mineral Leasing Act

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Subpart 2881—For Oil and Natural Gas Pipe Lines and Pumping Plant Sites Under the Mineral Leasing Act

§ 2881.03 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, 1930, 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 Interor may, after a full hearing, with due notice thereof to the interested parties, and a proper finding of facts, determine to be reasonable.

(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.

§ 2881.0–8 Land subject to grant.

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 purchase or acquired lands as they are not considered public lands within the meaning of the act.

§ 2881.1 Applications.

(a) *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 paragraph 2881.0–3 (b) of this section, 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.

(b) *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:

(1) 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.

(2) In case of pipelines engaged solely in intrastate transportation, a change may be made by the grantee in the use of 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.

§ 2881.2 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.

§ 2881.3 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 sections (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, Appendix B 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.

(Sec. 28, 49 Stat. 678, as amended; 30 U.S.C. 185)

Subpart 2882—Over Lands Subject to Mineral Lease

§ 2882.0–3 Authority.

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 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 §§ 2800.0–1 to 2802.5 inclusive.

Subpart 2883—For Pipe Lines on the Outer Continental Shelf (Act of August 7, 1953)

§ 2883.0–3 Authority.

Section 5(c) of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 464), authorizes the Secretary of the Interior to grant rights-of-way for pipeline purposes for the transportation of oil and gas. The purpose of the regulations in this part is to set forth the rules governing the granting and administration of such rights-of-way. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands or to rights-of-way thereon are applicable to the submerged lands of the Outer Continental Shelf.

Compliance with the regulations of this part does not obviate the necessity of compliance with requirements and regulations of the Department of the Army and the Coast Guard with respect to prevention of obstruction to navigation, lights, and warning devices, and other matters relating to safety of life and property, as authorized by section 4 of the act.

§ 2883.0–5 Definitions.

"Right-of-way" includes the site on which the pipe line and associated structures are situated which shall not

exceed 200 feet in width for pipe lines and be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage, or treating of the production from a lease or leases. The construction of gathering lines may be approved by the Oil and Gas Supervisor in accordance with the provisions of 30 CFR 250.18 and 250.68.

§ 2883.1 Nature of grant.

(a) *Terms and conditions.* An applicant by accepting a right-of-way grant, agrees and consents to comply with and be bound by the following terms and conditions, accepting those which the Secretary may waive in a particular case:

(1) To comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf and the protection of correlative rights therein.

(2) To pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and to indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation and use of the area covered by the right-of-way.

(3) To keep the Director informed at all times of his address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. 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 in all subcontracts.

(4) That the allowance of the right-of-way shall be subject to the express condition that the rights granted will not prevent or interfere in any way with the management, administration of, or the granting either prior or subsequent to the right-of-way grant of other rights by the United States in the submerged lands affected thereby, and that he agrees and consents to the occupancy and use by the United States or its lessees or other right-of-way holders of any part of the right-of-way not actually occupied or necessarily incident to its use for any necessary operations involved in such management, administration or the enjoyment of such other granted rights.

(5) To pay for the first calendar year or fraction thereof, and thereafter annually in advance an annual rental of $5 for each mile or fraction thereof traversed by the right-of-way and $50 for each area applied for as the site for a pumping station or other accessory to the right-of-way. Payments required herein may be annual, for a 5-year period or for multiples of such period.

(6) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing by the Manager, he shall, so far as reasonably possible, restore the area of the right-of-way to its original condition.

(b) *Penalty for failure to comply.* As provided in the act, failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the application therefor and the survey, location and width thereof and upon the express condition that such oil or gas pipe lines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipe line in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things conservation and the prevention of waste, be grounds for forfeiture of the grant in an appropriate, judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 4(b) of the act. Upon relinquishment of any right-of-way or forfeiture of the grant, the right-of-way owner will be required to remove his improvements within one year from the effective date of such relinquishment or forfeiture unless otherwise provided by law or in the decree of forfeiture.

(c) *Term of grant.* Any right-of-way granted hereunder shall be for so long as the pipe line is maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Cessation of use temporarily shall not terminate the grant, but if the purpose of the grant ceases to exist or use of the pipe line is permanently discontinued for any reason the grant shall be subject to forfeiture.

§ 2883.2 Procedures.

§ 2883.2–1 Applications.

(a) *Form and content.* No special form of application is required. The application should be filed in duplicate and should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the act and these regulations and that applicant agrees that the right-of-way if approved will be subject to the terms and conditions of the regulations in this part. It should also state the primary purpose for which the right-of-way is to be used. The application must be filed in duplicate at the office of the Manager. If the right-of-way has been utilized prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date applicant obtained control of the improvements. A filing fee of $10 and the rental required herein under subparagraph 2883.3(a)(5), must accompany the application.

(b) *Map showing survey.* Each copy of the application must be accompanied by a map, showing the center line of the right-of-way, properly identified so that the right-of-way may be accurately located by a competent engineer. The map should comply with the following requirements:

(1) The scale shall be at least 1:160,000.

(2) Courses and distances of the center line of the right-of-way shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipe line specified.

(4) The initial and terminal points of the right-of-way shall be accurately located by latitude and longitude or by grid references.

(5) Each copy of the map shall bear upon its face a statement of the engineer who made the map that the right-of-way is accurately represented upon the map.

(c) *Persons qualified to acquire and hold rights-of-way.* (1) Applications may be filed by citizens of the United States, associations of such citizens, and by corporations organized under the laws of the United States or of any State or Territory thereof.

(2) An individual and each member of an association applying for a right-of-way must state in the application whether he is a native-born or naturalized citizen of the United States.

(3) (i) A private corporation must file a certified copy of its charter or articles of incorporation.

(ii) A corporation other than a private one must file a copy of the law under which it was organized and proof of its organization.

(iii) A copy of the resolution or by-laws of the corporation authorizing the filing of the application or a certificate of the Secretary or an assistant Secretary of the corporation under the corporate seal certifying that the officer executing the application has authority to do so, must be filed. If the application is filed by an attorney-in-fact a certified copy of the resolution of the Board of Directors authorizing his appointment and an executed copy of the power of attorney must be filed.

(iv) If the corporation has previously filed any or all of the papers required in (1), (2), and (3) of this paragraph specific reference to such filing giving date, place, and case number will be accepted as full compliance with such requirements.

(d) *Consent of or notice to lessee or right-of-way holder of area crossed or invaded by right-of-way.* An applicant must show the extent to which the right-of-way applied for invades or crosses mineral leases or rights-of-way other than his own and must submit with his application either the written consent of each lessee or right-of-way holder whose

lease or right-of-way is so affected or a statement that he has delivered to each lessee or right-of-way holder whose lease or right-of-way is so affected personally or by registered or certified mail a copy of the application and map. If the statement is filed no final action will be taken on the right-of-way application until 15 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to file protests against granting of the right-of-way.

§ 2883.2–2 Approval of right-of-way.

If the application and other required information are found to be in compliance with the law and regulations and the consents required by paragraph 2883.2–1(c) of this section have been obtained or any protests filed as therein provided have been rejected, the right-of-way will be granted. If the right-of-way as applied for would cross any area withdrawn from disposal or restricted from exploration and operation it will be rejected unless the Federal agency in charge of withdrawn or restricted area shall give its consent to the granting of the right-of-way, but in such case the applicant upon request filed within 30 days after receipt of the rejection notice will be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

§ 2883.2–3 Construction.

(a) *Proof of construction.* Failure to construct the pipe line within 5 years from the date of the grant shall be deemed to be an abandonment of the grant which will be forfeited by an appropriate proceeding. Proof of construction shall be submitted to the Manager. Such proof shall consist of a statement by the holder of the right-of-way that the pipe line has been laid and is in operation. If there is any deviation from the right-of-way as shown on the original map, the unused portion of the grant must be relinquished and maps in duplicate of the location of the right-of-way as constructed, prepared in accordance with section 2883.2–1 of this subpart must be furnished as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat will be at the risk of the right-of-way holder.

(b) *Advance permission to commence construction.* Upon a satisfactory showing of the need therefor, the Director may grant permission to commence construction of a pipe line in advance of any grant of the right-of-way but such permission is not a commitment that the right-of-way will be approved and all work done thereunder prior to the granting of the right-of-way will be at the applicant's risk. No advance permission will be granted for an area or areas not subject to a right-of-way grant.

§ 2883.2–4 Assignment of right-of-way.

Assignment may be made of a right-of-way in whole or as to any lineal segment thereof after construction subject to the approval of the Manager. Any such assignment must be filed in duplicate accompanied by an application for approval in which the assignee must make the showing required by § 2883.2–1(c) and agree to the terms and conditions prescribed in § 2883.1(a). No assignment shall be effective to transfer any rights until it is approved. A fee of $10 must accompany the application for the approval of an assignment.

PART 2890—MISCELLANEOUS RIGHTS-OF-WAY

Subpart 2891—Through National Forests (Act of February 1, 1905)

Sec.
2891.0–3 Authority.
2891.1 Procedures.
2891.1–1 When construction may commence.
2891.1–2 Water plant structures.
2891.1–3 Procedure when unsurveyed land is involved.

Subpart 2892—Easements on Real Property

2892.0–3 Authority.
2892.0–5 Definitions.
2892.0–6 Policy.
2892.0–8 Lands subject to grant.
2892.1 Applicability of regulations.
2892.2 Termination of easement.

Subpart 2893—Acquired Lands in Wildlife Refuges

2893.0–3 Authority.
2893.1 Applicability of regulations.
2800 Appendix A.
2800 Appendix B.
2800 Appendix C.

Subpart 2891—Through National Forests (Act of February 1, 1905)

§ 2891.0–3 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.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2891.1 Procedures.

§ 2891.1–1 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 §§ 2800.01 to 2802.5 and this subpart 2991 and has been approved, or unless permission for construction in advance of the right-of-way grant has been specifically given.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2891.1–2 Water plant structures.

When application is made for a right-of-way for water plants, § 2861.1(d) should be followed, with appropriate changes in the prescribed forms.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2891.1–3 Procedure when 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.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

Subpart 2892—Easements on Real Property

§ 2892.03 Authority.

The act of October 23, 1962 (76 Stat. 1129), authorizes executive agencies to grant easements for rights-of-way or other purposes in, over, or upon real property of the United States under the control of such agencies, to a State or political subdivision or agency thereof, or to any person. The authority conferred by this act is in addition to, does not affect, nor is it subject to, any other law under which an executive agency may grant easements.

§ 2892.0–5 Definitions.

As used in this section of the regulations:

(a) The word "State" means any of the States of the Union.

(b) The word "person" includes any corporation, partnership, firm, association, trust, estate, or other entity.

(c) The term "real property of the United States" excludes the public lands (including minerals, vegetative, and other resources) in the United States, including lands reserved or dedicated for national forest purposes, lands administered or supervised by the Secretary of the Interior in accordance with the act of August 25, 1916 (39 Stat. 535), as amended and supplemented, Indian-owned trust and restricted lands, and lands acquired by the United States primarily for fish and wildlife conservation purposes and administered by the Secretary of the Interior, lands withdrawn from the public domain primarily under the jurisdiction of the Secretary of the Interior, and lands acquired for national forest purposes.

§ 2892.0–6 Policy.

Easements shall not be granted under this section if they can be granted under any other section of this subpart.

§ 2892.0–8 Lands subject to grant.

The regulations of this section do not apply to any public domain lands, nor to any acquired lands which are administered by the National Park Service, the Fish and Wildlife Service, and the Bureau of Indian Affairs. They are applicable to other acquired lands administered by the Department of the Interior in the States.

§ 2892.1 Applicability of regulations.

In addition to meeting the requirements of this section, easements granted under this section shall meet all other requirements in Group 2800 relating to the use applied for, unless waived by the authorized officer.

§ 2892.2 Termination of easement.

(a) All easements granted under this section shall provide for the termination of the easement in whole or in part upon written notice from the authorized officer, to the grantee, or its successors or assigns, if there has been—

(1) A failure to comply with any term or condition of the grant, or

(2) A nonuse of the easement for a consecutive two-year period for the purpose for which granted, or

(3) An abandonment of the easement.

(b) The termination shall be effective as of the date of such notice.

Subpart 2893—Acquired Lands in Wildlife Refuges

§ 2893.0–3 Authority.

Section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s), provides that, subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, the grant of privileges on wildlife refuges may be made upon such terms and conditions as the Secretary shall determine to be for the best interests of government.

§ 2893.1 Applicability of regulations.

(a) All the general right-of-way regulations contained in Group 2800 are applicable to rights-of-way issued under this section, to the extent they are consistent with regulations issued under the Federal Property and Administrative Services Act of 1949.

(b) Easements shall not be granted under this section if they can be granted under any other section of this group.

(c) In addition to meeting the requirements of this section, easements granted under this section shall meet all other requirements in this group relating to the use applied for, unless waived by the authorized officer.

2800 Appendix A

FORMS FOR DUE PROOFS, AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR RAILROADS

(Form 1)

I, _____, secretary (or president) of the _____ company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction according to the existing laws of the State (or Territory) of _____; and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company.

[SEAL OF COMPANY]

_____ *of the*
(_____ *Company*)

(Form 2)

STATE OF _____
County of _____, *ss:*

I, _____ do certify that I am the president of the _____ company, and that the following is a true list of the officers of the said company, with the full name and official designation of such, to wit: (here insert the full name and official designation of each officer.)

[SEAL OF COMPANY]

_____
(*President of Company*)

(Form 3)

STATE OF _____
County of _____, *ss:*

_____, Being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the said company's line of railroad described as follows: (here describe the line of route as required by section 10), a length of _____ miles, was made by him (or under his direction) as chief engineer of (or as surveyor employed by) the company and under its authority, commencing on the _____ day of _____, 19--, and ending on the _____ day of _____, 19--; and that the survey of the said line is accurately represented on this map and by the accompanying field notes.

_____
_____

Sworn and subscribed to before me this _____ day of _____ 19--.

[SEAL] _____
(*Notary Public*)

(Form 4)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said railroad, as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said railroad upon the location shown upon this map; that the said survey as represented on this map and by said field notes was adopted by resolution of its board of directors on the _____ day of _____, 19--, as the definite location of the said railroad described as follows: (describe as in Form 3); and that this map has been prepared to be filed in order to obtain the benefits of the act of Congress approved March 8, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States." I further certify that the said railroad is to be operated as a common carrier of passengers and freight.

_____
(*President of the _____ Company*)

Attest:
[SEAL OF COMPANY]

_____
(*Secretary*)

(Form 5)

STATE OF _____
County of _____, *ss:*

_____, being duly sworn, says that he is the chief engineer of (or was employed to construct) the railroad of the _____ company; that said railroad has been constructed under his supervision as follows: (describe as in section 10), a total length of -- miles; that construction was commenced on the _____ day of _____, 19--, and completed on the _____ day of _____, 19--; and that the constructed railroad conforms to the map and field notes which received the approval of the Secretary of the Interior on the _____ day of _____, 19--.

_____
_____

Sworn and subscribed to before me this _____ day of _____, 19--.

[SEAL] _____
(*Notary Public*)

(Form 6)

I, _____, do hereby certify that I am the president of the _____ company; that the railroad described as follows: (describe as in Form 5) was actually constructed as set forth in the accompanying affidavit of _____, chief engineer (or the person employed by the company in the premises); that the location of the constructed railroad conforms to the map and field notes approved by the Secretary of the Interior on the _____ day of _____, 19--; and that the company has in all things complied with the requirements of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

_____
(*President of the _____ Company*)

Attest:
[SEAL OF COMPANY]

_____
(*Secretary*)

(Form 7)

STATE OF _____,
County of _____, *ss:*

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the tract described as follows: (here describe as required by section 10) an area of -- acres, and no more, was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company), and under its authority, commencing on the _____ day of _____, 19--, and ending on the _____ day of _____, 19—; that the survey of the said tract is accurately represented on this plat and by the accompanying field notes; that the company has occupied no other grounds for similar purposes upon public lands within the section of 10 miles, from the -- mile to the -- mile, for which this selection is made; that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

_____
_____

Subscribed and sworn to before me this _____ day of _____, 19--.

[SEAL] _____
(*Notary Public*)

(Form 8)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the tract described as follows: (here describe as in Form 7) an area of -- acres, and no more, was made under authority of the company; that

the said survey, as represented on this map and by said field notes, was adopted by resolution of its board on the _____ day of _____, 19__, as the definite location of said tract for station grounds; that the company has occupied no other grounds for similar purposes upon public lands within the section of 10 miles, from the _____ mile to the _____ mile, for which this selection is made; that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

[SEAL OF COMPANY]
Attest:

_____
(*President of the _____ Company*)

_____
(*Secretary*)

2800 Appendix B

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.

FORM

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 § 2802.1-5(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)
_____
(Company)

Attest:
_____

FORMS FOR PLANT SITES ONLY

See §§ 2861.1(d), 2873.1(c), and 2881.3.

(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. 2872.1(b); 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. 2872.1(a) 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 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 2802.2.

(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, laterals, and reservoirs) were actually constructed as set forth in the accompanying statement of _____, chief engineer (or the person employed by the company in the premises), 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 § 2872.1(a).
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)

---

[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 breed or grazed; whether within an enclosure or upon unenclosed lands; and the points from which and to which they are being driven or transported.

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 § 2872.3.

_____ 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

(Described as required by § 2872.3)

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 § 2872.3.

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 purposes and in the manner prescribed by the said act of January, provisions of which have been and will be complied with in all respects.

[SEAL] _____

(Signature of applicant)

_____

(Title)

_____

(Company)

Attest:

_____

(Form 10)

See § 2872.4(b).

_____ 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 January 13, 1897 (29 Stat. 484; 43 U.S.C. 952).

[SEAL] _____

(Signature of applicant)

_____

(Title)

_____

(Company)

Attest:

_____

2800 Appendix C

FORMS FOR DUE PROOFS AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR RAILROADS, TRAMWAYS, WAGON ROADS, ETC.

---

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

(Form 1)

I, _____, secretary (or president) of the _____ company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction according to the existing laws of the State (or Territory) of _____; and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior under the act of May 14, 1898 (30 Stat. 409), is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company.

[SEAL OF COMPANY] _____

(_____ of the _____ Company)

(Form 2)

STATE OF _____,

County of _____, ss:

I, _____, do certify that I am the president of the _____ Company, and that the following is a true list of the officers of the said company, with the full name and official designation of each to wit: (Here insert the full name and official designation of each officer).

[SEAL OF COMPANY] _____

(President of Company)

(Form 3)

STATE OF _____

County of _____, ss:

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the said company's line of (railroad, tramway, or wagon road) described as follows: (Here describe the line of route as required by paragraph 12), a length of _____ miles, was made by him (or under his direction) as chief engineer of (or as surveyor employed by) the company and under its authority commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; that the survey of the said land is accurately represented on this map and by the accompanying field notes; and that this proposed right of way does not lie within 4 rods of the shore of any navigable waters, except as shown on this map. (In the case of a tramway or wagon road, add the following: The said line of road does not lie upon nor cross any road or trail in common use for public travel except as shown on this map.)

_____

_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL] _____

(Notary Public)

(Form 4)

I, _____ do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said (railroad, tramway, or wagon road), as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said (railroad, tramway, or wagon road) upon the location shown upon this map; that the said survey as represented on this map and by said field

notes was adopted by resolution of its board of directors on the _____ day of _____, 19__, as the definite location of the said (railroad, tramway, or wagon road) described as follows: (Describe as in Form 3); that this proposed right of way does not lie within 4 rods of the shore of any navigable waters, except as shown on this map, and that this map has been prepared to be filed in order to obtain the benefits of sections 2 to 9, inclusive, of the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes."[3] I further certify that the said (railroad or tramway) is to be used as a common carrier of freight and passengers.

_____
(*President of the _____ Company*)

_____
(*Secretary*)

ATTEST:
[SEAL OF COMPANY]

(Form 5)

STATE OF _____,
County of _____, *ss:*

_____, being duly sworn, says that he is the chief engineer of (or was employed to construct the railroad, tramway, or wagon road of) the _____ company; that said (railroad, tramway, or wagon road) has been constructed under his supervision, as follows: (describe as in paragraph 12) a total length of _____ miles; that construction was commenced on the _____ day of _____, 19__, and completed on the _____ day of _____, 19__; that the constructed (railroad, tramway, or wagon road) conforms to the map and field notes which received the approval of the Secretary of the Interior on the _____ day of _____, 19__.

_____
_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL]

_____
(*Notary Public*)

(Form 6)

I, _____, do hereby certify that I am the president of the _____ company, that the (railroad, tramway, or wagon road) described as follows: (describe as in Form 5), was actually constructed as set forth in the accompanying affidavit of _____, chief engineer (or the person employed by the company in the process); that the location of the constructed (railroad, tramway, or wagon road) conforms to the map and field notes approved by the Secretary of the Interior on the _____ day of _____, 19__, and that the company has in all things complied with the requirements of sections 2 to 9, inclusive of the act of Congress approved May 24, 1808, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes."

_____
(*President of the _____ Company*)

_____
(*Secretary*)

Attest:
[SEAL OF COMPANY]

[3] The last sentence to be omitted from applications for wagon-road right of way.

(Form 7)

STATE OF _____,
County of _____, *ss:*

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the tract described as follows: (here describe as required by paragraph 12) an area of _____ acres, and no more, was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company), and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; that the survey of the said tract is accurately represented on this plat and by the accompanying field notes; (that the company has occupied no other grounds for similar purposes upon public lands within the section of [5 or 10] miles, from the _____ mile to the _____ mile, for which this selection is made);[4] that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes"; that the said tract does not lie within 4 rods of the shore of any navigable waters except as shown on this map, and that to the best of my knowledge and belief there is no settlement or other claim along the shore of any navigable waters upon land within 80 rods of any point of this tract except as shown on this map.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL]

_____
(Notary Public)

(Form 8)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the tract described as follows: (here describe as in Form 7) an area of _____ acres, and no more, was made by him as chief engineer of (or as surveyor employed to make the survey by) the said company; that the said survey, as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the said survey, as represented on this map and by said field notes, was adopted by resolution of its board on the _____ day of _____, 19__, as the definite location of said tract for (station, terminal, or junction grounds), (that the company has occupied no other grounds for similar purposes upon public lands within the section of [5 or 10] miles, from the _____ miles to the _____ mile, for which this selection is made); that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes"; that the said tract does not lie within 4 rods of the shore of any navigable waters except as shown on this map; and that, to the best of my knowledge and belief, there is no settlement or other claim along the shore of any navigable waters upon land within 80 rods of any point of this tract except as shown on this map.

_____
(*President of the _____ Company*)

Attest:
[SEAL OF COMPANY]

_____
(*Secretary*)

[4] This clause is to be omitted in applications for terminal or junction grounds

Group 2900—Use—Leases and Permits

PART 2910—LEASES

Subpart 2911—Airport

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CROSS REFERENCE: 43 CFR Part 9.

Subpart 2911—Airport

§ 2911.0–3 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.

§ 2911.0–8 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.

§ 2911.1 Nature of interest and terms.

§ 2911.1–1 Prior valid rights.

All leases will be subject to valid existing rights initiated prior to the date the application for lease is filed.

§ 2911.1–2 Terms and conditions.

(a) *Report by lessee.* The lessee shall, within 6 months from the date of the lease, equip the airport as required by the Administrator, Federal Aviation Agency, and file a report thereof in the land office.

(b) *Inspection by Federal Aviation Agency; report.* At any time during the term of the lease the Administrator, Federal Aviation Agency, may have an inspection made of the airport, and if it does not comply with the ratings set by the Federal Aviation Agency that fact, with a statement as to wherein it fails, will be referred to the Bureau of Land Management for appropriate action.

(c) *Cancellation of lease.* 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 Federal Aviation Agency, or shall fail to comply with the regulations in this part or the terms of the lease.

(d) *Period of lease; renewal.* 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.

(e) *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.

(f) *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.

(g) *Regulations governing use of the airport.* The lessee will submit to the Administrator, Federal Aviation Agency, for his approval, regulations to govern the use of the airport.

§ 2911.1–3 Beacon lights.

Government department 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 in § 2911.1–2. However, no rental will be charged. Lands for beacon lights and other navigation facilities may be withdrawn in accordance with the provisions of Group 2300 and Subpart 2317 of this chapter.

§ 2911.2 Procedures.

§ 2911.2–1 Applications.

(a) Applications under the Act may be made by: Any citizen of the United States; any group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; any State or any political subdivision or instrumentality thereof, including counties and municipalities.

(b) No specific form of application is required.

(c) Each application must clearly describe the land applied for, must be signed by the applicant or by a duly authorized agent or officer.

(d) Each application must be accompanied by a non-refundable service fee of $10. However, no service fee will be required from a State or political subdivision or instrumentality thereof.

§ 2911.2–2 Report by Administrator, Federal Aviation Administration; execution of lease.

Upon receipt of the application one copy will be referred to the Administrator, Federal Aviation Agency, for consideration as to what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that department. After the Administrator, Federal Aviation Agency, has reported, a lease on a form approved by the Director will be prepared and sent to the applicant for execution.

§ 2911.2–3 Segregation of lands.

The filing in the proper land office of an application for a lease of lands under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, shall segregate the lands described in the application from all appropriation.

(R.S. 2478, sec. 1, 45 Stat. 728, as amended; 43 U.S.C. 1201, 49 U.S.C. 211)

Subpart 2912—Recreation and Public Purposes Act

§ 2912.0–7 Cross reference.

The general requirements of law and regulation and procedures under the Recreation and Public Purposes Act are contained in Part 2740 of this chapter.

§ 2912.1 Nature of interest.

§ 2912.1–1 Terms and conditions of lease.

(a) The term of leases under the act will be fixed by the authorized official but will not exceed 25 years. Leases will be renewable at the discretion of such official.

(b) Leases will be issued on a form approved by the Director 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.

(f) A lessee under the act will not be permitted to cut timber from the leased lands without prior permission from the appropriate officer.

(g) 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.

§ 2912.2 Renewal of leases.

(a) 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.

(b) Section 2 of the Act of June 20, 1966, authorizes the issuance of new leases in lieu of leases which were in force on June 20, 1966. Applications for new leases must be accompanied by consent of the lessee to cancellation of the existing lease upon the issuance of the new lease and by three copies of a statement showing (i) the need for a new lease and (ii) any changes in the terms and conditions of the lease which the applicant may desire.

Subpart 2913—Small Tract Act

§ 2913.0–7 Cross reference.

The general requirements of law, regulations and procedures under the Small Tract Act are contained in part 2730 of this chapter.

§ 2913.1 Terms and conditions of lease.

(a) The term of lease will be specified in the classification order and will not exceed three years for lands classified for lease and sale and will not exceed twenty years for lands classified for lease only.

(b) The amount of rental will be specified in the appropriate order. The rental for community sites will take into consideration the purpose for which the land will be used. Rental for other types of sites will equal the fair market rental of the lands, provided, however, the minimum rental will be $100 per year for business sites and $25 per year for other sites.

(c) Leases issued for periods in excess of five years will provide for the construction of improvements, satisfactory for the purpose for which the lease issued, during the first five years of the lease period. Failure to comply with this requirement will result in cancellation of the lease except where the lessee can demonstrate that such failure was due to unavoidable and unforeseen circumstances.

(d) Provisions relating to the improvement and occupancy of leased tracts are contained in the application form. Special provisions implementing the general provisions on the form may be indicated in the order of classification.

(e) A lessee will not be permitted to cut timber from the leased lands without first obtaining permission from the appropriate office mentioned in § 2731.3–1.

§ 2913.2 Assignment; subleasing.

(a) No assignment of a lease will be recognized unless and until approved by the Bureau of Land Management. Approval of assignments will be discretionary but in no case will an assignment be approved until suitable improvements are constructed on the land, except where the lessee can demonstrate that his failure to construct such improvements was caused by unforeseen and unavoidable circumstances.

(b) Proposed assignments of leases must be submitted within 90 days from the date of execution in duplicate on a form approved by the Director to the appropriate office mentioned in § 1821.2 and must be accompanied by the filing fee as required in § 2731.4.

(c) Subleasing of a tract, in whole or in part, will not be approved.

§ 2913.3 With option to purchase; sale; patent.

(a) Leases for lands classified for lease and sale will contain an option to purchase clause. The option to purchase clause will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at any time within the term of the lease, provided the improvements required by the lease have been made and all other terms and conditions of the lease complied with. The net purchase price of the land will be the appraised fair market value of the unimproved land as of the date of the lease minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of an allowable application to purchase.

(b) An application to purchase must be filed with the office mentioned in § 1821.2 on a form approved by the Director in duplicate, together with (1) a statement as to the cost, type and character of the improvements constructed on the land, (2) one or more photographs showing clearly such improvements, and (3) the filing fee as required in § 2731.4.

(c) If a sale is authorized, the applicant will be allowed 60 days from service of notice thereof to pay the net purchase price.

§ 2913.4 Renewal.

(a) An application for renewal of a lease must be filed on a form approved by the Director in duplicate with the office mentioned in § 2731.3–1(a) prior to the expiration of the lease. A renewal in the form of a new lease will be granted only if it is determined that a new lease should issue and that the requirements of paragraph (b) or (c) of this section have been met. The term of the lease and any special conditions will be established by the officer who signs it. The application must be accompanied by a filing fee in compliance with § 2731.4.

(b) Where the land has been classified for lease only, renewals will be approved only if 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.

(c) Where the land has been classified for lease and sale, renewals will be approved only upon a satisfactory showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee.

§ 2913.5 Termination or cancellation; removal of improvements.

(a) The lessee may terminate the lease, if he is not in default thereunder, by filing a notice of relinquishment of the lease in the proper land office. Any lease may be canceled 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 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. If the improvements are disposed of to a person other than a subsequent lessee they must be removed from the land within the 90-day period, otherwise the improvements will become the property of the United States.

Subpart 2914—Mining Claim Occupancy Act

§ 2914.0–3 Authority.

The Act of October 23, 1962, as amended (76 Stat. 1127; 30 U.S.C. 701–709) provides that any conveyance of less than a fee made under the Act shall include provision for removal from the tract of any improvements or other property of the applicant at the close of the period for which the conveyance is made, or if it be an interest terminating on the death of the applicant, within one year thereafter.

§ 2914.0–7 Cross reference.

The general requirements of law, regulation and procedure under the Mining Claim Occupancy Act are contained in Part 2550 of this chapter.

Subpart 2916—Alaska Fur Farm

§ 2916.0–3 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.

§ 2916.0–6 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.

§ 2916.0–8 Area subject to lease.

(a) *Acreage limitation and exceptions.* (1) 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.

(2) 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.

(b) *Lands subject to lease.* (1) Vacant, unreserved, and unappropriated public lands are subject to lease.

(2) 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.

§ 2916.1 Terms and conditions.

§ 2916.1–1 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.

§ 2916.1–2 Rights reserved; protection of improvements and roads.

Nothing in this part or any lease issued under this part shall interfere with or prevent:

(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 State Director.

(d) The acquisition or granting of rights-of-way or easements under applicable laws and regulations.

(e) Hunting and fishing under applicable Federal and State 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.

§ 2916.2 Procedures.

§ 2916.2–1 Applications.

(a) *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 thereof, authorized to conduct business in Alaska may file an application.

(b) *Contents of application.* 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:

(1) Applicant's full name, post office address, the general nature of his present business, and the principal place of business.

(2) (i) 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.

(ii) A corporation shall file a certified copy of its articles of incorporation, evidence that it is authorized to transact business in Alaska, and a copy of the corporate minutes or resolutions authorizing the filing of the application and the execution of the lease.

(3) 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.

(4) A statement as to the applicant's experience in and knowledge of fur farming.

(5) 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 of any lease which may be issued, the applicant will procure from the appropriate State game agency whatever licenses are required under Alaska law.

(6) 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.

(7) 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.

(8) 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.

(9) If beavers are to be raised, a statement as to whether a beaver colony exists on the land, and whether salmon streams or lakes are on or adjacent to the land proposed to be leased.

(10) A statement that the applicant is acting solely on his own account and not under any agreement or understanding with another.

(11) 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.

(12) The showing as to hot or medicinal springs required by § 2311.2(a) of this chapter.

(13) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Form of lease; rental and royalty; report of annual operations.* (1) Leases will be issued on a form approved by the Director.

(2) 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.

(3) Within 60 days after the end of each lease year the lessee shall file with the land office a report on a form approved by the Director, 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.

§ 2916.2–2 Assignments and subleases.

A proposed assignment on 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 § 2916.2–1(b) (1), (2), (4), (5), (10), and (11). No assignment or sublease will be recognized unless and until approved by the manager.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2916.2–3 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.

§ 2916.2–4 Termination of lease; cancellation.

(a) *Action by manager.* (1) 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.

(2) 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.

(b) *Removal of improvements and personal property.* (1) 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 subparagraph (2) of this paragraph, 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.

(2) 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.

PART 2920—SPECIAL LAND USE PERMITS

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2924.2 Additional requirements.
2924.3 Terms and conditions of permits.

AUTHORITY: The provisions of this Subpart 2920 issued under secs. 446, 453, 2478, Revised Statutes (1875), as amended; 43 U.S.C. secs. 1, 2, 1201 (1964); Act of Sept. 19, 1964 (78 Stat. 986; 43 U.S.C. secs. 1411–1418 (1964)); Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. secs. 1361–1364 (1964)).

Subpart 2920—Principles and Procedures—General

§ 2920.0–2 Objectives.

(a) *General.* It is the policy of the Secretary of the Interior, in the administration of the lands under the jurisdiction of the Bureau of Land Management, to permit the beneficial use thereof, where practical, for special purposes not specifically provided for by existing law. Permits for such special use will not be issued, however, in any case where the provisions of any law may be invoked. Permits will not be issued where such issuance would be inconsistent with the objectives of the regulations in this chapter or would be in conflict with any Federal or State laws.

§ 2920.0–3 Authority.

Pursuant to sections 446, 453 and 2478 of the Revised Statutes (1875), as amended, 43 U.S.C. secs. 1, 2, 1201 (1964); the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. secs. 1411–1418 (1964)); the Act of July 14, 1960 (70 Stat. 506; 43 U.S.C. secs. 1361–1364 (1964)) and other authority, the Director of the Bureau of Land Management is authorized to perform, under the direction of the Secretary of the Interior, all executive duties relating to the public lands and other lands administered by the Secretary of the Interior through the Bureau of Land Management.

§ 2920.0–5 Definitions.

For the purposes of the regulations in this subpart,

(a) The term "advertising displays" means any signs or other devices erected or maintained for outdoor advertising or for outdoor public information purposes, except signs erected and maintained by Federal, State, or local highway authorities within highway rights-of-way.

(b) The word "highway" is used in its general sense to include all routes of public surface travel.

(c) The word "lands" means lands administered by the Secretary of the Interior through the Bureau of Land Management.

(d) The term "commercial facilities and services" means accommodations, equipment, and other related supplies and services provided by a private entrepreneur, whether an individual, group, association or qualified corporation, to facilitate public use of outdoor recreation resources. These facilities and services may include but are not limited to: Resorts, hotels, motels, trailer camps, restaurants, stores, automotive and transportation services, guide and outfitter services, marinas, and ski slopes including lifts and tows.

(e) The term "sports events, races and rallies" means any outdoor sports event, including motorized vehicular events.

§ 2920.1 Application.

(a) *Qualification of applicants.* Applications pursuant to this subpart may be filed by any of the following: (1) Any person 21 years of age, or over, who is a citizen of the United States, or who has declared his intention to become a citizen, (2) any group or association composed of such persons, (3) any corporation organized under the laws of the United States or of any State thereof, authorized to conduct business in the State in which the land involved is situated, (4) any agency of the Federal Government, or (5) any State or political subdivision thereof.

(b) *Form to be used.* Applications must be executed on a form approved by the Director.

(c) *Filing.* The application may be filed in any office of the Bureau of Land Management having jurisdiction over the lands.

§ 2920.2 Fees.

Each application for a special land-use permit or a renewal thereof must be accompanied by a nonrefundable application service fee of $10. However, no charges will be made for applications by agencies of the Federal Government or agencies of the States and political subdivisions thereof.

§ 2920.3 Terms.

(a) *General.* (1) A special land-use permit 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, or the conditions of the permit have been breached.

(2) A special land-use permit will not be issued for a larger area than the authorized officer determines is necessary for the contemplated use. The land may be surveyed or unsurveyed.

(b) *Stipulations.* A special land-use permit shall contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general.

(c) *Renewals.* Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will, upon the filing of an application for renewal, be 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. Renewal, if granted, will be in the form of a new permit.

(d) *Liability.* The applicant shall agree and stipulate that the Federal Government, Department of the Interior and the Bureau of Land Management and its representatives shall not be responsible for damage or injury to persons and property which may occur during the permitted use period or as a result of such use.

§ 2920.4 Rental charges.

(a) Each permittee will be required to pay to the Bureau of Land Management, in advance, a rental determined by the authorized officer as the fair market value of the privileges granted. The authorized officer will determine whether payments will be annual or otherwise; he may adjust the rental at the end of each payment period. In no case will the minimum rental charge be fixed at less than $10 per payment.

(b) No rental charges will be made for special land-use permits to agencies of the Federal Government and agencies of States and political subdivisions thereof.

(c) No refunds 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 granted 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.

§ 2920.5 Rights of applicants and permittees.

(a) *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 under this or other applicable regulation, or any use thereafter except in accordance with the terms of the permit, is unauthorized, and constitutes a trespass (see Subpart 9239 of this chapter).

(b) *Timber and other materials.* A special land-use permit will not entitle an applicant to cut and remove timber or remove any other materials from the land. If he wishes permission to do so, he must make application for such permission in accordance with the governing laws and regulations.

(c) *Assignment of permit.* (1) A permittee may not assign a permit or any interest therein without the approval of the authorized officer. Proposed assignments must be accompanied 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 § 2920.1(a).

(2) All applications for assignment of special land-use permits must be accompanied by a nonrefundable application service fee of $10.

(d) *Removal of improvements.* After the revocation or expiration of a permit, the permittee may, within the time specified by the authorized officer, remove all structures which have been placed upon the premises by him or his assignor, provided all rental charges due the Government have been paid. 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.

§ 2920.6 Segregative effect.

The lands embraced within special land-use permits will be subject to valid adverse claims theretofore or thereafter acquired and to the filing of applications and the acquisition of rights by others, including:

(a) Applications and selections under nonmineral laws, subject to the revocation of the permit.

(b) Prospecting, location, developing, mining, entering, leasing, or patenting of minerals under the applicable general mining laws or mineral leasing laws.

(c) Permits 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 acquisition by grant or permit of rights-of-way under existing laws.

Subpart 2921—Advertising Displays

§ 2921.0–7 Cross reference.

All the general provisions of § 2920.1 to § 2920.5(d) not inconsistent with the special provisions relating to permits for advertising displays are applicable to such permits.

§ 2921.1 Applications.

In addition to the requirements of Subpart 2920, an application for a special land-use permit for an advertising display shall contain sufficient information concerning the nature, design, and lighting effect, if any, of the display to enable its construction from the description. A sketch or photograph showing the display, and a photograph showing the location on which it is to be placed, must be furnished. The application must identify the highway along which it is proposed to erect the display and must give the distance and direction of the site, measured by highway travel to the nearest cities or towns.

§ 2921.2 Additional requirements.

In addition to the requirements of § 2920.0–2:

(a) *Lands along interstate and primary highway systems.* For lands within rights-of-way, and within 660 feet of the edge of the rights-of-way of the National System of Interstate and Defense Highways (Interstate System) and the primary system (Title 23, United States Code), no permit for the erection and maintenance of advertising signs will be issued until national standards for such displays are promulgated by the Secretary of Transportation in accordance with the Beautification Act of 1965. When such standards are promulgated, permits may, in the discretion of the authorized officer, be issued, consistent with such standards and such additional standards as may be established by the Secretary of the Interior.

(b) *Other lands.* For lands adjacent to any other highway or more than 660 feet from the edge of the rights-of-way of the Interstate System and the primary system, the authorized officer may establish public service advertising zones and safety rest areas. The authorized officer may issue permits for the erection and maintenance of advertising displays in such areas. He may also authorize signs advertising activities on the property on which the activities are located, and official signs and notices.

(1) In establishing public service advertising zones and safety rest areas and in the issuance or denial of permits, the authorized officer will follow standards designed to protect the public investment in the highway or in the adjacent lands, to preserve for the public the significant scenic or other recreational values in the lands, to prevent the destruction and to insure the preservation of nature and natural beauty adjacent to the highways, to promote the safety, convenience, and enjoyment of public travel, or otherwise to protect the public interest. He will give due consideration to the need for directional and other official signs; the desirability of permitting, where alternative sites are not readily available, signs advertising legitimate activities being conducted at a location within a reasonable distance thereof; and the interest of the traveling public in, and its need for, specific types of information.

(c) *Natural beauty.* Notwithstanding any other provision of thus subpart, no permit will be issued for the erection and maintenance of any advertising display which would be inconsistent with national programs for the preservation of natural beauty.

(d) *Identification of displays.* Each advertising display erected or maintained under a permit issued pursuant to

the regulations of this subpart, must, for convenient identification, have the serial number of such permit marked or painted thereon.

Subpart 2922—Water Wells

§ 2922.0–7 Cross reference.

All of the general provisions of § 2920.1 to § 2920.5(d) not inconsistent with the special provisions relating to permits for drilling water wells are applicable to such permits.

§ 2922.1 Terms of permit.

(a) The authorized officer may include in the permit provisions for testing of wells and for examination of records.

(b) Permits for exploratory wells shall provide that if and when the permittee abandons a well:

(i) He will notify the authorized officer of the Bureau of Land Management of the abandonment or proposed abandonment. The authorized officer will allow the permittee a reasonable time to cap or plug the well and restore the site to the satisfaction of the authorized officer. Unless the authorized officer purchases them, the permittee will be permitted to remove his improvements to the extent that such removal does not prevent restoration of the site to the satisfaction of the authorized officer.

(c) The authorized officer may require a surety bond as a condition precedent to the issuance of a well permit, to insure proper capping or plugging of the well and restoration of the site.

(d) Renewals may be granted only if, before the expiration of his prior permit, the applicant has:

(1) Actually initiated well drilling on the land, with a firm commitment to have the well completed without delay; or

(2) Encountered unforeseeable difficulty, and although no drilling has been initiated, has made a firm commitment to have the well completed without delay.

Subpart 2923—Commercial Facilities and Services

§ 2923.1 Applicability of general regulations.

All of the general provisions of § 2920.1 to 2920.5(d) not inconsistent with the special provisions relating to permits for the provision of commercial facilities and services are applicable to such permits.

§ 2923.2 Applications.

In addition to the requirements of Subpart 2920, each application for a special land use permit to provide commercial facilities and services to the public must be accompanied by three copies of a statement describing (1) the proposed use of the lands, (2) public services to be provided, (3) estimated capital investment, and (4) a showing that the application involves an established or definitely proposed project. The application shall include sufficient detail concerning the plan of development to describe the facilities and/or services and their purpose adequately.

§ 2923.3 Additional requirements.

Rental charges: Rental payments to the Government for permits shall provide a fair return to the United States.

§ 2923.4 Terms and conditions of permits.

§ 2923.4–1 Protection.

Each permit issued by the authorized officer will contain provisions deemed necessary to protect the public health and safety, and will provide for periodic inspections for compliance.

§ 2923.4–2 Stipulations.

Each permit to provide commercial facilities and services shall contain stipulations requiring conformance with reasonable public service rules, schedules, or charges, and any other provisions necessary to protect the public interest and the public values in the lands, as may be determined by the authorized officer.

Subpart 2924—Sports Events, Races and Rallies

§ 2924.1 Applicability of general regulations.

All of the general provisions of 2920.1 to 2920.5(d) not inconsistent with the special provisions relating to permits for sports events, races, and rallies are applicable to such benefits.

§ 2924.2 Additional requirements.

In addition to the requirements of Subpart 2920 each application for a special land use permit for a sports event, race, rally, meet, or other contest or event shall be accompanied by three copies of:

(a) A map or diagram of the proposed route of the event in sufficient detail for an on-the-ground inspection of the proposed route or location of the event.

(b) A description of the purpose of the event and estimated number of persons participating.

(c) A description, if motorized vehicles are involved, of the type and estimated number of vehicles participating.

§ 2924.3 Terms and conditions of permits.

(a) Notwithstanding any other provision of this subpart, the authorized officer may reject any application for any activity which he considers will constitute undue hazard to participants and spectators or will irreparably impair scenic and other values.

(b) The authorized officer may require a surety bond before issuing a permit under this section. This bond shall insure:

(1) Cleanup of litter and removal of all markers or other temporary installations.

(2) Repair of any improvements damaged as a result of the permitted use.

(3) Restoration of any lands requiring stabilization as a result of the event.

(c) The authorized officer is authorized to release a permittee from the bond, when all terms and conditions are met.

SUBCHAPTER C—MINERALS MANAGEMENT

Group 3000—Minerals Management

PART 3000—MINERALS MANAGEMENT; GENERAL

Subpart 3000—General

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§ 3000.0–5 Definitions.

(a) *Leasable minerals.* (1) Oil and gas. (i) Gas, any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(ii) Oil, crude oil, any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(b) *Other leasable.* (1) Coal, chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium; sulphur in the States of Louisiana and New Mexico; phosphate; and native asphalt, solid and semisolid bitumen and bituminous rock (including oil impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried).

(2) Solid (hardrock) minerals; minerals in acquired lands which would be subject to location under the U.S. mining laws if located in the public domain lands.

(c) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(d) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(e) *State Director.* The director of a Bureau of Land Management State office.

(f) *Land Office Manager.* The manager in charge of a land office.

(g) *Land Office (place of filing).* The land office of the Bureau of Land Management for the State or part of a State in which the lands covered by a permit, lease, application, or entry, or application for such, are situated.

(h) *Public domain lands.* Original public domain lands which have never left Federal ownership; also, lands in Federal ownership which were obtained by the Government in exchange for public lands or for timber on such lands; also original public domain lands which have

reverted to Federal ownership through operation of the public land laws.

(i) *Acquired lands.* Lands which the United States obtains by deed through purchase or gift, or through condemnation proceedings. They are distinguished from public domain lands in that acquired may or may not have been originally owned by the Government. If originally owned by the Government such lands have been disposed of (patented) under the public land laws and thereafter reacquired by the United States.

(j) *Other lands*—(1) *Withdrawn lands.* Lands which have been withdrawn and dedicated to public purposes.

(2) *Reserved lands.* Lands which have been withdrawn from disposal and dedicated to a specific public purpose.

(3) *Segregated lands.* Lands included in a withdrawal or in an application or entry which segregates them from operation of the public land laws.

§ 3000.0–7 Cross-references.

36 CFR Chap. II.
41 CFR Part 60.
43 CFR Part 7.
43 CFR Part 17.
43 CFR Subpart 1840 and Subpart 1850.
43 CFR Subparts 2311, 2312, and 2315.
43 CFR Part 9230.

§ 3000.1 Civil Rights Act.

§ 3000.1–1 Nondiscrimination.

(See 43 CFR Part 17.)

§ 3000.1–2 Nonsegregated facilities.

(See 41 CFR Part 60.)

§ 3000.2 False statements.

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.

§ 3000.3 Unlawful interests.

(Officer, agent, or employee of the Department—See 43 CFR Part 7) (Member of Congress—See R.S. 3741; 41 U.S.C. sec. 22; and 18 U.S.C. secs. 431, 432, and 433.)

§ 3000.4 Appeals and contests.

Any person adversely affected by any official action or decision of any subordinate official may appeal therefrom to the Director and from the Director's decision to the Secretary. All appeals shall be governed by the rules of practice in Parts 1840 and 1850 of this chapter. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

§ 3000.5 Place of filing.

§ 3000.5–1 Documents.

Documents must be filed in the proper land office. A document will be considered filed when it is received in the proper office during business hours.

§ 3000.5–2 Location of Offices.

See § 1821.2–1 for Land Office location and area of jurisdiction.

§ 3000.6 Simultaneous applications or offers for lease.

§ 3000.6–1 Priority.

(a) 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.

(b) The priorities of all applications or offers to lease made and filed in accordance with the provisions of § 3112.2–1 whether or not they are in conflict, will be determined by public drawing in the manner provided in § 1821.2–3 of this chapter.

PART 3040—ENVIRONMENT AND SAFETY

Subpart 3045—Geophysical Exploration Operations (Oil and Gas)

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3045.0–5 Definitions.
3045.0–7 Cross references.
3045.1 Notice of intent to conduct oil and gas operations.
3045.1–1 Application.
3045.2 Completion of operations.
3045.3 Bond requirements.

§ 3045.0–1 Purposes.

The purpose of the regulations in this Subpart 3045 is to establish procedures to be followed in conducting exploration of the public land for oil and gas. For exploratory operations for other leasable minerals, the lease or permit required by the appropriate regulations must be secured. The regulations in this subpart are not applicable to exploration operations conducted pursuant to oil and gas lease, and also are not applicable to the exploration of public domain lands for minerals subject to location under the U.S. mining laws.

§ 3045.0–5 Definitions.

For the purpose of the regulations in this subpart:

(a) "Oil and gas exploration" means any activity relating to the search for evidence of oil and gas which requires physical presence upon the land and which may result in damage to public lands or resources thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails, and cross-country transit by vehicle over public domain. It does not include the casual use of public lands for oil and gas exploration. It does not include core drilling for subsurface geologic information or drilling for oil and gas; these activities will only be authorized by the issuance of an oil and gas lease. The regulations in this subpart, however, are not intended to prevent drilling operations necessary for placing explosive charges for seismic exploration, nor do they affect the exclusive right to "drill" for oil and gas by a lessee upon his leased premises.

(b) "Public lands" means lands owned by the United States and administered by the Bureau of Land Management. It does not include retained mineral interest in lands, title to which has passed from the United States.

(c) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources, and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are "casual use."

§ 3045.0–7 Cross-references.

43 CFR 3104.9.
43 CFR 3104.15.

§ 3045.1 Notice of intent to conduct oil and gas operations.

§ 3045.1–1 Application.

(a) *Forms and where filed.* Any person desiring to conduct oil and gas exploration operations under the regulations of this subpart shall, prior to entry upon the lands, file with the District Manager of the Bureau of Land Management for the district in which the public lands are located a "Notice of Intent to Conduct Oil and Gas Exploration Operations," on a form approved by the Director.

(b) *Requirements.* The "Notice of Intent to Conduct Oil and Gas Exploration Operations" will contain the following:

(1) The name and address, including zip code, both of the person, association, or corporation for whom the operations will be conducted and of the person who will be in charge of the actual exploration activities.

(2) A statement that the signers agree that exploration operations will be conducted pursuant to the terms and conditions listed on the approved form.

(3) A brief description of the type of operations which will be undertaken.

(4) A description of the lands to be explored, by township and range.

(5) Approximate date of commencement of operations.

§ 3045.2 Completion of operations.

Upon completion of the exploratory operations, there shall be filed with the District Manager a "Notice of Completion of Oil and Gas Exploration Operations". Within 90 days after the filing of such "Notice of Completion", the District Manager shall notify the party who had conducted the operations whether all of the terms and conditions set out by the regulations in this subpart and in the "Notice of Intent to Conduct Oil and Gas Exploration Operations" have been complied with, or whether any additional measures must be taken to rectify any damage to the land, specifying the nature and extent thereof.

§ 3045.3 Bond requirements.

(a) Amount of bond and when filed (see 3104.9).

(b) Termination of period of liability (see 3104.9–5).

Group 3100—Oil and Gas Leasing

PART 3100—OIL AND GAS LEASING

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Subpart 3100—Oil and Gas Leasing

§ 3100.0–3 Authority.

(a) *Public domain.* (1) The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.).

(2) 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.

(b) *Acquired lands.* The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359). 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) except as to leases or permits outstanding on August 7, 1947.

(c) *Withdrawn, reserved and segregated lands*—(1) *Protective leasing.* Issuance of protective leases authorized under sec. 441, Revised Statutes; 5 U.S.C. 485; see also Attorney General's Opinion of April 2, 1941 (Vol. 40 Op. Atty. Gen. 41).

(d) *Special Acts*—(1) *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.

(2) *Nevada.* The act of May 9, 1942 (56 Stat. 273) as amended by the act of October 25, 1949 (63 Stat. 886).

(3) *Lands patented to State of California.* 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).

(4) *National Forest Lands in Minnesota.* The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(5) *Lake Mead Recreation Area.* The act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(6) *National Forest Wilderness.* Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(7) *Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the act of November 8, 1965 (Public Law 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture within the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

§ 3100.0–5 Definitions.

(a) *Known geologic structure.* A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

(b) *Sole party in interest.* A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

(c) *Regional oil and gas supervisor.* The Regional Oil and Gas Supervisor of the Geological Survey for the region in which lands under lease are situated.

(d) *Rule of approximation.* Where an application embraces an acreage in excess of the acreage limitation, it may be allowed for the excess acreage if exclusion of the smallest legal subdivision involved would result in a deficiency which would be greater than the excess resulting from the inclusion of such subdivision.

§ 3100.0–7 Cross-reference.

43 CFR 16.

§ 3100.0–9 Limitation on time to institute suit to contest a Secretary's decision.

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3100.1 Helium.

§ 3100.1–1 Ownership and rights.

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. (See 43 CFR Part 16.)

§ 3100.2 Minerals subject to leasing.

§ 3100.2–1 Oil and gas.

§ 3100.3 Drainage.

§ 3100.3–1 Compensation 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.

§ 3100.3–2 Drilling or payment of compensatory royalty.

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.

§ 3100.3–3 Protective leasing.

Where jurisdiction over disposition of mineral deposits in land set apart for other Government agencies has been transferred to the Department of the Interior because of drainage of its oil or gas content, such land must be offered for lease by competitive bidding. Protective leases may cover public domain lands which have been withdrawn from oil or gas leasing or acquired lands not subject to leasing under the Acquired Lands Leasing Act.

§ 3100.4 Multiple development.

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 leased lands with a reservation of the mineral deposits to the United States.

§ 3100.5 Options.

§ 3100.5–1 Enforceability.

(a) *Approval of Secretary required.* No option to acquire any interests in an oil and gas lease shall be enforceable if entered into for a period of more than 3 years (inclusive of any renewal period, if provided for in the option) without the prior approval of the Secretary.

(b) *Notice required.* No option or renewal thereof executed after September, 1960, shall be enforceable until notice thereof has been filed in the appropriate land office. No such notice shall be required for options or renewals executed prior to September 2, 1960. Each such notice shall include (i) the names and addresses of the parties thereto; (ii) the serial number of the lease or application for lease to which the option is applicable; (iii) a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto; and (iv) the interest to be conveyed and retained on exercise of the option. Such notice shall be subscribed by all parties to the option or their duly authorized agents. The filing of an executed copy of the option containing the above information shall satisfy the foregoing requirement. In addition, the notice of option must contain or be accompanied by a signed statement, by the holder of the option, that he is the sole party in interest in the option; if not, he shall set forth the names and nature and extent of the interest therein of the other interested parties, the nature of the agreement between them if oral, and a copy of such agreement, if written.

§ 3100.5–2 Chargeable acreage.

(a) *How charged.* The acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. If the option covers only a part of the optionor's interest in the acreage included in a lease, the acreage to which the option is applicable shall be fully charged to the optionor, and a share thereof shall also be charged to the optionee as his interest may appear. Upon the exercise of the option, the acreage shall be charged to the parties pro rata as their interests may appear. An unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the appropriate land office.

(b) *When charged.* 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.

§ 3100.5–3 Period of option.

An option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and 3 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 with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

§ 3100.5–4 Acreage in cooperative or unit plan.

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 § 3105.1) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the three-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.

§ 3100.5–5 Option statements.

Each holder of an option must file in the appropriate land office within 90 days after June 30 and December 31 of each year duplicate statements showing as of the prior June 30 and December 31, respectively (1) his name and the name and address of each grantor of an option held by him, the serial number of every lease, application or offer for lease subject to option; (2) date and expiration date of each option; (3) number of acres covered by each option; (4) aggregate number of options held in each State, and total acreage thereof; and (5) a statement of his interest and obligation under each option; provided, that the statement of his interest and obligation with respect to any option shall not be required where such interests and obligations have been set forth in the notice required under § 3100.5–1(b) of this section and there have been no changes in such interests and obligations since such filing. Option statements covering lands in the State of California shall be filed in the land office at Sacramento, California. The failure of the holder of an option to file such statement shall render the option unenforceable by him, but this shall not diminish the acreage deemed to be held under option by the optionee in computing the amount chargeable and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. 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.

§ 3100.6 Leases within unit areas.

§ 3100.6–1 Joinder evidence required.

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.

§ 3100.6–2 Separate leases to issue.

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.

§ 3100.7 Boundaries of known geologic structures.

§ 3100.7–1 Determination by Geological Survey.

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.

§ 3100.7–2 Notice of determination.

Determinations of "structures defined" will be followed, as soon as practicable, by the filing in the appropriate land office of maps or diagrams showing the structure boundaries, and by publication in the FEDERAL REGISTER of notices that the determinations have been made. Because determinations of "structures undefined" are usually of a more temporary nature, maps or diagrams thereof will not be filed and notices thereof will not be published; however, a memorandum of each such determination will be filed in the appropriate land office and will be available for public inspection. Additional information concerning the procedures used in making the determinations may be obtained from the Geological Survey, Washington, D.C. 20240.

§ 3100.7–3 Date of determinative of rights.

In accordance with long-standing rulings of the Department, if the producing character of a structure underlying a tract of land is actually known prior to the date of the Department's official pronouncement on that subject, it is the date of the ascertainment of the fact, and not the date of the pronouncement, that is determinative of rights which depend upon whether the land is or is not situated within a known geologic structure of a producing oil or gas field. Ernest A. Hanson, A–26375 (May 29, 1952), and cases cited therein. All determinations are subject to change at any time upon receipt of further information through the drilling of wells and other sources. Accordingly, lessees or applicants for leases should not rely upon the maps, diagrams, determinations or notices thereof, as currently controlling documents.

§ 3100.7–4 Request for determination.

Any lessee or his operator may apply to the Director of the Geological Survey for a determination whether the land in his lease is inside or outside the productive limits of a producing oil or gas deposit as such limits existed on August 8, 1946.

Subpart 3101—Lands Subject to Leasing

§ 3101.1 Public Domain.

§ 3101.1–1 Classes and terms.

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 land is within the known geologic structure of a producing oil or gas field prior to the actual issuance of a lease, it may be leased only by competitive bidding and in units of not more than 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ percent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width measured in cardinal directions, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent.

(a) Exceptions: (1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves.

(5) 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.

(6) Lands within 1 mile of naval petroleum or helium reserves. No oil and gas lease will be issued for land within 1 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.

§ 3101.1–2 Lands in entries or claims not impressed with 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 notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in the event that reclassification is denied, or to appeal. If he does neither, or he is unsuccessful, the entry or settlement rights and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States. In such circumstances a lease will be granted to the offeror, all else being regular, unless the entryman or settler has a preference right.

§ 3101.1–3 Unsurveyed lands.

(a) *Showing required.* 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.

(b) *Survey for leasing (competitive).* The survey of unsurveyed lands for a competitive lease for oil and gas will be made at the expense of the Government prior to the issuance of a lease of the lands.

§ 3101.1–4 Description of lands in offer.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range.

(b) *Unsurveyed lands.* If the lands have not been so surveyed, each offer must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(c) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska.* In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impracticable to furnish a metes and bounds description, as required in paragraph (b) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3101.1–5 and the maximum or minimum area to be included in a lease pursuant to § 3111.1 The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or

such other map as will adequately identify the lands described.

(d) *Protracted surveys.* (1) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, must, except as provided below, include only entire sections described according to the section, township, and range shown on the approved protracted surveys.

(2) An offer may include less than an entire protracted section where only a portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as provided in paragraph (a) of this section for officially surveyed lands. If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease.

(e) *Conforming land descriptions.* The descriptions in leases issued pursuant to offers filed after the effective date of this section will be conformed to the subdivisions of the approved protracted surveys if and when such surveys have been adopted for the area; and the description and acreage of leases issued pursuant to offers filed after May 22, 1959, will be adjusted to the official public land surveys when such surveys have been extended over the leased area.

§ 3101.1–5 Acreage limitations.

(a) *Maximum holdings.* No person, association, or corporation shall take hold, own, or control at one time oil and gas leases (including options for such leases or interests therein) whether directly through ownership of leases or interests in leases and applications, or offers therefor or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding leases or interests therein and applications or offers therefor for more than 246,080 acres in any one State, of which no more than 200,000 acres may be held under option.

(1) *Exception.* (i) In the State of Alaska the acreage limitation is 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the two leasing districts.

(ii) The boundary between the two leasing districts in the State of Alaska is the left limit of the Tanana River from the boundary between the United States and Canada to the confluence of the Tanana River and Yukon River and the left limit of the Yukon River from said confluence to its principal southern mouth.

(b) *Excepted acreage.* Leases or offers or applications for leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases or offers or applications for leases subject to an operating, drilling or development contract approved by the Secretary of the Interior pursuant to section 17(j) of the act, other than communization agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(c) *Excess acreage.* (1) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contraction or elimination in which to reduce his holdings to the prescribed limitation and to file proof of such reduction in the proper land office.

(2) If any person holding or controlling only leases or interests in leases or options or interests in options is found to hold accountable acreage in violation of the provisions of this section and of the act, the last lease or leases or interest or interests acquired by him which with the options or interests in options created the excess acreage holdings shall be canceled or forfeited in their entirely, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director of the Bureau of Land Management that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be canceled only to the extent of the excess acreage.

(3) Any person holding or controlling leases or interests in leases only, or applications or offers for leases only, or both leases or interest in leases and applications or offers or options or interests in options below the acreage limitation provided in this section, shall be subject to these rules:

(i) If he files an application or offer or option or interest in option which causes him to exceed the acreage limitation, that application or offer will be rejected.

(ii) For tracts not subject to the simultaneous filing procedures of subpart 3112, if he files a group of applications or options or offers or interests in options at the same time, any one of which causes him to exceed the acreage limitations the entire group applications, offers, options, or interests in options will be rejected.

(iii) If he files an offer for inclusion in the drawing procedures under subpart 3112, he shall be charged with the acreage thereof only if his offer is successfully drawn so that his offer has first priority. If that offer causes him to exceed the acreage limitation, the offer will be rejected. If he files at the same time a group of offers for tracts subject to the drawing procedures under subpart 3112, any offer which is successfully drawn after he reaches the acreage limitation shall be rejected.

(iv) An optionee is chargeable only for that acreage for which the optionor is chargeable.

(4) If any person holding or controlling both leases or interests in leases and applications or offers for leases, or options or interests in options or only applications or offers for leases below the acreage limitation provided in this section, acquires a lease or leases, or an option or options or interests therein; which cause him to exceed the acreage limitation, his most recently filed application or offer for lease or applications or offers for lease then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this subparagraph, time of filing shall be determined by the time of filing marked on the application or offer or, if the same time is marked on two or more applications or offers, by the serial number of the applications or offers.

(5) The provisions of this paragraph shall not limit any action which the Department may take with respect to excess acreage holdings in cases not otherwise covered by this paragraph.

(6) 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.

(d) *Computation.* 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, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation. An option held by a corporation or an association on September 2, 1960, shall not, for a period of 3 years, be charged to any stockholder of the corporation or member of the association so long as it is so held. 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.

(e) *Showing required.* No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the offeror, transferee, or operator is entitled to hold the acreage or obtain the operating rights. At any time upon request by the authorized officer of the Bureau of Land Management, the record title holder of any lease or a lease operator or a lease offeror or the holder of any lease option may be required to file in the appropriate land office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, or for which he holds

an option, and each application or offer for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any oil and gas lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

§ 3101.1–6 Effect of Multiple Mineral Development Act of August 13, 1954.

If any oil and gas lease issued under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. sec. 226), includes an area with respect to which a verified statement is filed by a mining claimant under section 7(c) of the Multiple Mineral Development Act of 1954 (68 Stat. 708), as amended, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted the payment of rentals and the running of time under such lease shall be suspended as to the lands in conflict from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

§ 3101.2 Acquired lands.

§ 3101.2–1 Lands to which the Act does not apply.

(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.

§ 3101.2–2 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.

§ 3101.2–3 Description of lands in offer.

(a) *Surveyed lands.* If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b)(1) *Lands not surveyed under the rectangular survey system.* If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(2) Each offer or application must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(3) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by subparagraph (2) of this paragraph.

(c) *Accreted lands.* Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

§ 3101.2–4 Acreage limitation.

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.

§ 3101.2–5 Present interest.

(a) *Full and fractional.* Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3101.2–6 Future interest.

(a) *Full or fractional.* 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 operator holding such rights.

§ 3101.2–7 Exchange of leases.

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 5 years and so long thereafter as oil or gas is produced in paying quantities, and shall be dated to be effective 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 § 3103.3–2, 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 per acre per annum, and the royalty requirements shall be the same as those stipulated in the lease offered in exchange.

§ 3101.3 Withdrawn, reserved, and segregated lands.

§ 3101.3–1 Drainage.

In instances where it is determined by the Geological Survey that any of the lands mentioned in § 3101.3–3 of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the U.S. Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

§ 3101.3–2 Requirements.

(a) *Publication and filing of agreements.* The agreements referred to in § 3101.3–3 of this section shall be published in the FEDERAL REGISTER and shall contain a description of the lands affected thereby which are not subject to

oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the appropriate land offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose.

(b) *Filing of lease offers.* Lease offers for such lands will not be accepted for filing until the 10th day after the agreements and supplemental maps or plats are noted on the land office records.

(c) *Suspension of pending applications.* (1) All pending offers or applications heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in § 3101.3–2 of this section shall have been completed.

(2) *Proposed withdrawals.* All existing offers or applications for oil and gas leases covering lands included in request for withdrawals for wildlife refuges, game ranges, coordination lands or Alaska wildlife areas, as defined herein, shall be suspended until after the consummation of the withdrawal, and thereafter such offers shall be considered in accordance with the provisions of this section.

(d) *Special stipulations.* For inclusion in oil and gas leases entered into pursuant to this section relating to oil and gas leases in wildlife refuge, game range, and coordination lands.

Instructions. (1) The following stipulations will be made a part of Interior Department lease forms. These stipulations will be made applicable as terms and conditions of performance by lessees under all oil and gas leases entered into under authority vested in the Secretary of the Interior over game range, coordination or Alaska Wildlife lands pursuant to the order of the Secretary of the Interior published in 23 F.R. 227, January 11, 1958.

(2) Should compliance with one or more of these terms and conditions be considered unduly burdensome and unnecessary to the protection of wildlife resources, the lessee may request waiver thereof by letter addressed to the Secretary of the Interior setting forth, in full, the reasons why a waiver is considered necessary. The authority to grant such waivers shall be discretionary and may be exercised only by the Secretary or the Under Secretary of the Interior.

(3) The authorized officer shall (a) approve no plan of operation that contains provisions inconsistent with the stipulations hereinafter set forth; (b) waive no term or condition in a lease; or (c) exercise no discretion vested in him unless he is satisfied the exercise of that discretion will not damage any wildlife resource.

(4) Drilling and production operations under the lease shall be under the direction of the Geological Survey.

Terms and conditions. (1) as used herein:

(a) The term "lessee" includes the lessee, heirs and assigns of the lessee and persons operating on behalf of the lessee;

(b) The term "wildlife resources" includes fish and wildlife resources and concentrations, fish and wildlife management operations and range improvements and facilities;

(c) The term "authorized officer" means the State Director of the Bureau of Land Management in the State in which the land is located, and, in Alaska, the Refuge Manager of the Bureau of Sport Fisheries and Wildlife;

(2) The lessee shall:

(a) Comply with all the rules and regulations of the Secretary of the Interior;

(b) Prior to the beginning of operations, appoint and maintain at all times during the term of the lease a local agent upon whom may be served written orders or notices respecting matters contained in these stipulations and to inform the authorized officer in writing of the name and address of such agent. If a substitute agent is appointed, the lessee shall immediately inform the said representative;

(c) Conduct all authorized activities in a manner satisfactory to the authorized officer with due regard for good land management and avoid damage to improvements, timber, crops, and wildlife cover, and fill all sump holes, ditches, and other excavations or cover all debris, and so far as reasonably possible, restore the surface of the leased lands to their former condition and when required to bury all pipelines below plow depth. The authorized officer shall have the right to enter all the premises at any time to inspect both the installation and operational activities of the lessee;

(d) Take such steps as may be necessary to prevent damage to wildlife;

(e) Do all in his power to prevent and suppress forest, brush, or grass fires and to require his employees, contractors, subcontractors and employees of contractors or subcontractors to do likewise;

(f) Install adequate blow-out prevention equipment;

(g) Construct ring dikes and sump pits to confine drilling mud and other pollutants and make safe disposition of salt water by use of injection wells or such other method as may be approved in the plan of operation;

(h) Cover flare pits in areas of wildlife concentration;

(i) Remove derricks, dikes, equipment, and structures not required in producing operations within 60 days after the completion of drilling;

(j) Comply with and see to it that his agents and employees comply with all Federal, State, or Territorial laws relating to hunting, fishing, and trapping;

(k) Commit the lease to any unit plan required in the interest of conservation of oil or gas resources or for the protection of wildlife;

(l) Prior to the conduct of geological, geophysical, or core drilling operations or construction of any facilities, or prior to operations to drill or produce, submit in triplicate for approval in writing by the authorized officer a plan of operation that will include detailed statements indicating the manner in which the lessee will comply with these stipulations together with a statement that the lessee agrees that compliance with these stipulations and with the approved plan of operations are conditions of performance under this lease and that failure to comply with these provisions (unless they are waived by the Secretary or the Under Secretary of the Interior) will be grounds for cancellation of the lease by the United States. Notwithstanding other provisions in these stipulations, the lessee shall include in any plan of operation specific provisions relating to: The time, place, depth and strength of seismographic shots, maps showing the location of his leases included in the plan, actual and proposed access roads, bunkhouses, proposed well locations, storage and utility facilities, water storage, pipelines and pumping stations; the type of safety equipment that will be employed; the methods to be used to assure the disposition of drilling mud, pollutants, and other debris; the location of facilities in relation to flood levels; and such other specific matters as the authorized officer may require. The plan of operation shall be kept current in all respects and all revisions and amendments submitted to the authorized officer for written approval;

(m) Do all things reasonably necessary to prevent or reduce to the fullest extent scarring and erosion of the land, pollution of the water resources and any damage to the watershed. Where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resource, the lessee agrees to repair such damage, including reseeding and to take such corrective measures to prevent further pollution or damage to the watershed as are deemed necessary by the authorized officer;

(n) File the bond required by section 2a (4) of the lease before conducting any operations on the leasehold, and file any additional bond required by the authorized officer to pay for damages to wildlife habitat, including trees and shrubs, or wildlife improvements;

(o) Agree to respect and comply with any new requirements imposed by the Secretary of the Interior, or the authorized officer, on the operating program as operating experience proves necessary in order to give complete protection to wildlife populations and wildlife habitat on the areas leased.

(3) The lessee shall not:

(a) Construct roads, pipelines, utility lines, and attendant facilities that are either unnecessary or which might interfere with wildlife habitat or resources or with drainage;

(b) Modify or change the character of streams, lakes, ponds, water holes, seeps, and marshes, except by advance approval in writing by the authorized officer, nor shall he in any way pollute such streams, lakes, ponds, water holes, seeps, or marshes;

(c) Conduct operations at such times as will interfere with wildlife concentrations;

(d) Conduct geological or geophysical explorations that might damage any wildlife resource and such operations shall be conducted only in accordance with advance approval in writing by the authorized officer as to the time, manner of travel and disturbances of surfaces and the facilities required for the protection of wildlife;

(e) Use explosives in fish spawning or rearing areas, nesting areas, lambing grounds, or other areas of wildlife concentration during periods of intense activity or at any other time or in any manner that might damage any wildlife resources; the pattern, size, and depth of seismographic shots shall be submitted to the authorized officer for advance approval in writing and immediately following the detonation of any seismographic charge, the hole shall be filled or plugged and any surface damage repaired to the satisfaction of the authorized officer;

(f) Without advance approval in writing, use any water or water source controlled or developed by the United States;

(g) Use mobile equipment under such conditions as to permanently damage surface resources, cause scarring and erosion, or interfere with wildlife concentration;

(h) Conduct geological, or geophysical, or core drilling operations or construct roads, bunkhouses or any facilities or drill or produce under a lease until the submittal and approval in writing of a plan of operation pursuant to section (2) (m) supra or deviate therefrom until any revisions or amendments of said plan have been approved in writing by the authorized officer;

(i) Burn rubbish, trash, or other inflammable materials or use explosives in a manner or at a time that would constitute a fire hazard.

§ 3101.3–3 Reserved and segregated lands.

(a) *Wildlife refuge lands.* Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(1) *Leasing.* No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3–1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director.

(b) *Game range lands and Alaska wildlife areas.* Game ranges created by a withdrawal of public lands and reserved for dual purposes, namely, protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources, are under the joint jurisdiction of the Bureau of Land Management and the U.S. Fish and Wildlife Service. Alaska wildlife areas are areas in Alaska created by a withdrawal of public lands for the management of natural wildlife resources and administered by the U.S. Fish and Wildlife Service.

(1) *Leasing.* As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the U.S. Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the U.S. Fish and Wildlife Service and the Bureau of Land Management.

(c) *Coordination lands.* These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the U.S. Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10, 1934 (48 Stat. 401), as amended by the act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the U.S. Fish and Wildlife Service as the custodial agency of the Government.

(1) *Leasing.* As to coordination lands, representatives of the Bureau of Land Management and the U.S. Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the U.S. Fish and Wildlife Service, and the Bureau of Land Management.

§ 3101.4 Special leasing acts (areas).

§ 3101.4–1 Rights-of-way.

Lands in and under railroad and other rights-of-way acquired under any law of the United States.

(a) *Acreage limitations.* No statutory or regulatory limitations.

§ 3101.4–2 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.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–3 Lands patented to the State of California.

The regulations in this subpart apply to the lands patented to the State of California for park purposes.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–4 National Forest lands in Minnesota.

Public domain lands, including lands received in exchange for public domain lands, or for timber on such lands pursuant to Part 2240 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, and for the development and utilization of which no other authority exists.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–5 Lake Mead Recreation Area.

The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA–LM–7060–B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–6 National Forest Wilderness.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest land designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–7 Whiskeytown-Shasta-Trinity National Recreation Area.

The area subject to the regulations in this subpart is that shown in drawing numbered BOR–WEST 1004, dated July 1963, entitled "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," which is on file and available for public inspection in the office of the Director of the Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C. 20240.

(a) *Acreage limitations.* See Secs. 3101.1–5 and 3101.2–4.

Subpart 3102—Qualifications of Lessees

§ 3102.1 General.

A statement over the offeror's signature setting forth whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor and options exceed 246,080 acres in the same State of which no more than 200,000 acres are under option, or exceed 300,000 acres in each of the northern and southern leasing districts of Alaska, of which no more than 200,000 acres are held under option in each of said leasing districts is required.

§ 3102.1–1 Who may hold interests.

Mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interests by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; or (d) municipalities. As used in this group, "association" includes "partnership."

(a) *Aliens.* Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable

percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

(b) *Minors.* A mineral lease 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.

§ 3102.1–2 Bona fide purchasers.

(a) *Provisions of statute.* The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86–705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) *Sale of underlying interests.* If in any proceeding to cancel or forfeit a lease, interest in a lease, option to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) *Right of dismissal.* Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(d) *Suspension.* If during any such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3102.2 Individuals.

§ 3102.2–1 Statement of citizenship.

A statement over the offeror's signature setting forth his citizenship shall accompany each offer when first filed.

§ 3102.2–2 Preference right of patentee or entryman.

(a) *Requirements.* 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) *Notice required.* 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.

§ 3102.3 Associations including partnerships.

§ 3102.3–1 Statements.

If the offeror is an association which meets the requirements of § 3102.1–1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (i) that it is authorized to hold oil and gas leases; (ii) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (iii) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall 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.

(a) *Exception.* If the offer is made by an association which does not meet the requirements of § 3102.1–1 of this chapter, the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

§ 3102.4 Corporations.

§ 3102.4–1 Statements.

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 more than 10 percent of the stock of the corporation. Where 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 statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings 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.

§ 3102.5 Guardian or trustee.

§ 3102.5-1 Statements.

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 statements 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.

§ 3102.5–2 Evidence previously filed.

Where evidence of the authority to act as a guardian, trustee, an executor or administrator, or where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3102.6 Attorney-in-fact.

§ 3102.6–1 Statements.

(a) *Evidence required.* (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3–1), or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see § 3102.4–1),

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. Where such evidence has previously been filed in the same land office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by 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 oral 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 any 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. 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 agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1–5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. 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.

(3) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations.

§ 3102.7 Showing as to sole party in interest.

A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled.

§ 3102.8 Heirs and devisees (estates).

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:

(a) Where probate of the estate has not been completed:

(1) 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.

(2) A statement over the signature of each heir or devisee, similar to that required of an offeror under § 3102.1 and 3102.2–1 concerning citizenship and holdings.

(3) 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.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) 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.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under § 3102.1 and § 3102.2–1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3102.9 Municipalities.

A municipality must submit evidence of: (a) The manner in which it is organized; (b) that it is authorized to hold a permit or lease; and (c) that the action proposed has been duly authorized by its governing body. 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.

Subpart 3103—Fees, Rentals and Royalty

§ 3103.0–3 Authorities.

(a) *Fees.* Act of August 31, 1951 (5 U.S.C. 140).

(b) *Rentals.* See § 3100.0–3.

§ 3103.1 Payments.

§ 3103.1–1 Form of remittance.

Cash, money order, check, certified check, bank draft, and bank cashier's check.

§ 3103.1–2 Where submitted.

(a) *Proper land office.* 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 appropriate land office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) *Geological Survey.* (1) All rentals and royalties on producing oil and gas leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable, and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Regional Oil and Gas Supervisor of the U.S. Geological Survey.

(2) Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the U.S. Geological Survey.

§ 3103.1–3 When submitted.

Each offer, when first filed, shall be accompanied by a filing fee of $10 which will be retained as a service charge, even though the offer should be rejected or withdrawn in whole or in part. See also §§ 3103.3–1 and 3103.3–2.

§ 3103.2 Fees.

§ 3103.2–1 General statement.

(a) *Offers and applications.* Offers for noncompetitive oil and gas leases 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.

(b) *Transfers.* An application for approval of any instrument of transfer of a lease or interest therein or a filing of

any such instrument under § 3106.4 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.

§ 3103.3 Rentals and royalties.

§ 3103.3–1 Rental requirement.

Each offer, when first filed, shall be accompanied by 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. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

§ 3103.3–2 Advance rental payments.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after September 2, 1960, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of 50 cents per acre or fraction thereof for each lease year.

(1) For the sixth and each succeeding year of a lease which issued prior to September 2, 1960, and in the State of Alaska of any lease whose initial term expired on or after July 3, 1958, rental shall be payable at the rate of 50 cents per acre or fraction thereof.

(2) For each year of the primary term of a lease which issued prior to September 2, 1960, rental shall be payable at the rate set forth in the lease.

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and 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 $2 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.

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of $2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is unitized, such rental shall be payable on the nonparticipating acreage only, and royalty as provided in the lease and elsewhere in this Part shall be payable on the participating acreage.

(c) On leases issued in any other way, an annual rental of $1 per acre or fraction thereof.

(d) A lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The "anniversary date" of a lease means the same day and month in succeeding years as that on which the lease first became effective. The anniversary date of a lease does not change.

(e) If on the anniversary date of the lease less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(f) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year. (30 U.S.C. 189; 41 Stat. 437.) If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

§ 3103.3–3 Fractional interests.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in §§ 3103.3, 3103.3–4, and 3103.3–5, respectively, of this part, as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3103.3–4 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 which issued and was outstanding prior to May 3, 1958, 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.

§ 3103.3–5 Minimum royalties.

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.

§ 3103.3–6 Limitation of overriding royalties.

An agreement creating overriding royalties or payments out of the production of oil which, when added to overriding royalties or payments out of production of oil 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 of oil shall be suspended when the average production of oil per well per day averaged on the monthly basis is 15 barrels or less. The limitation on overriding royalties or payments out of production is not applicable to the production of gas. The limitation in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

§ 3103.3–7 Waiver, suspension or reduction of rental or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of oil or gas 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. 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.

(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 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 to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3103.3–8 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. 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. 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 of 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 shall be deemed to expire by reason of a suspension of either operations or 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 suspension of operations or production remains in effect.

(f) The relief authorized under this section may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

Subpart 3104—Bonds

§ 3104.0–5 Definitions.

(a) General lease bond.

§ 3104.1 Types of bonds.

Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties may be furnished for the protection of the entryman or owner of surface rights.

(a) *General lease or drilling bond.* All leases shall provide that where a $10,000 bond is not already being maintained a general lease bond in the penal sum of $10,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations.

(b) *Known structure or competitive lease bond.* 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 $2 per acre annual rental but in no case less than $1,000 nor more than $10,000 conditioned on compliance with all the terms of the lease, and such a bond also must 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.

(c) *Bond for protection of surface owner.* Until a general lease bond is filed, a noncompetitive lessee will be required prior to entry on the leased lands 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.

§ 3104.1–1 Where filed and copies.

(a) Proper land office, in single copy.

§ 3104.1–2 When filed.

(a) Prior to commencement of drilling operations.

(b) After notice that lands have been included within the limits of a known geologic structure.

(c) Prior to entry on surface of patented lands.

(d) Prior to issuance of a competitive lease.

§ 3104.1–3 Form of bonds.

The bonds furnished will be on forms approved by the Director.

§ 3104.2 Operator's bond.

§ 3104.2–1 Compliance.

An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $10,000 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 bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold.

§ 3104.2–2 Approval.

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.

§ 3104.2–3 Default.

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.

§ 3104.3 Individual sureties.

§ 3104.3–1 Protection.

(a) Entry to leased lands.

(b) Bonds with individual sureties may be furnished for the protection of the entrymen or owner of surface rights.

§ 3104.3–2 Net worth statement.

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 U.S. Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located.

§ 3104.3–3 Certificate required.

There also must be furnished a certificate by a judge or clerk of a court of record, a U.S. Attorney, a U.S. Commissioner, or a U.S. Postmaster, as to the identity, signature, and financial competency of the sureties.

§ 3104.3–4 Requirements.

All bonds furnished with individual sureties will be examined every 2 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.

§ 3104.3–5 Terms.

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.

§ 3104.3–6 Forms.

The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

§ 3104.4 Personal bond or corporate bond.

§ 3104.4–1 Amount.

(a) *Personal bond.* 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.

(b) *Corporate bond.*

§ 3104.4–2 Deposit of securities.

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.

§ 3104.4–3 Qualified sureties.

(U.S. Treasury list.)

§ 3104.5 Nationwide bond.

§ 3104.5–1 Amount.

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 nationwide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 913; 30 U.S.C. 351–369).

§ 3104.6 Statewide bond.

§ 3104.6–1 Amount.

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 at the rate of $25,000 for each unit of coverage.

§ 3104.6–2 Unit of coverage.

A unit of coverage shall be all the lands in any one State 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 constitutes two units.

§ 3104.7 Default.

§ 3104.7–1 Payment by surety.

Where upon a default the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3104.7–2 Penalty.

Thereafter, upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $150,000 or a unit bond, as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix.

§ 3104.7–3 Relief.

However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3104.7–4 Applicability of provisions to existing bonds.

The provisions hereof may be made applicable to any nationwide or statewide bond in force at the time of the approval of the amendment of this paragraph by filing in the appropriate land office a written consent to that effect and

an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ 3104.8 Unit bond form.

(See 30 CFR § 226.15.)

§ 3104.9 Exploration bond.

(a) *Individual.* Simultaneously with the filing of the Notice of Intent to Conduct Oil and Gas Exploration Operations, and before entry is made on the land, the party or parties filing the "Notice of Intent to Conduct Oil and Gas Exploration Operations" must file with the District Manager a surety company bond in the amount of $5,000, conditioned upon the full and faithful compliance, for each oil and gas exploration operation, with all of the terms and conditions of the regulations in this subpart and of that notice.

(b) *Nationwide.* A $50,000 nationwide bond.

(c) *Statewide.* A statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State.

§ 3104.9–1 Riders to existing bond forms.

(a) *Nationwide and statewide bonds.* Holders of nationwide and statewide oil and gas lease bonds shall be permitted to amend their bonds to include exploration activities in lieu of furnishing additional bonds.

§ 3104.9–5 Termination of period of liability.

The District Manager will not give his consent to the cancellation of the bond if an individual bond was submitted, or to the termination of liability if a State or nationwide bond was submitted, unless and until all of the terms and conditions of the "Notice of Intent to Conduct Oil and Gas Exploration Operations" have been complied with. Should the District Manager or any other authorized officer of the Bureau of Land Management fail to notify the party within 90 days from the filing of "Notice of Completion" that all terms and conditions have been complied with or that additional corrective measures must be taken to rehabilitate the land, liability under an individual bond or liability for a particular oil and gas exploration operation under a state or nationwide bond shall automatically terminate on the 91st day.

Subpart 3105—Cooperative Conservation Provisions

§ 3105.0–7 Cross-references.

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".

§ 3105.1 Cooperative or unit plans.

§ 3105.1–1 Where filed.

All applications to unitize and all documents incident thereto shall be filed in the office of the Oil and Gas Supervisor, Geological Survey in the region in which the unit area is situated.

§ 3105.1–2 Purpose.

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.

§ 3105.1–3 Protection of 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.

§ 3105.1–4 Acreage chargeability.

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. For the extension of leases committed to a unit plan, see section 3107.4.

§ 3105.1–5 Requirements.

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).

§ 3105.2 Communitization or drilling agreements.

§ 3105.2–1 Where filed.

(a) *Preliminary request.* Preliminary requests to communitize separate tracts shall be filed in triplicate with the Oil and Gas Supervisor.

(b) *Executed agreements.* Executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

§ 3105.2–2 Purpose.

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.

§ 3105.2–3 Requirements.

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 interests 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.

§ 3105.3 Operating, drilling, or development contracts.

§ 3105.3–1 Where filed.

A contract submittted 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 five copies by the Department after approval.

§ 3105.3–2 Purpose.

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 pipeline 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.

§ 3105.3–3 Requirements.

The contract 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.

§ 3105.4 Combination for joint operations or for transportation of oil.

§ 3105.4–1 Where filed.

An application under this section together with enough copies to permit retention of five copies by the Department after approval should be filed with the Director, Bureau of Land Management.

§ 3105.4–2 Purpose.

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.

§ 3105.4–3 Requirements.

The application must show a reasonable need for the combination and that it will not result in any concentra-

tion of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.

§ 3105.4–4 Rights-of-way.

Rights-of-way for oil and gas pipe lines may be granted as provided for in Group 2800 of this chapter.

§ 3105.5 Subsurface storage of oil and gas.

§ 3105.5–1 Where filed.

(a) *Application.* Applications for subsurface storage shall be filed in triplicate with the Oil and Gas Supervisor.

(b) *Final agreement.* 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 five copies by the Department after approval.

§ 3105.5–2 Purpose.

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.

§ 3105.5–3 Requirements.

The final agreement 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.

§ 3105.5–4 Extension of lease term.

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.

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved if it is determined that there is sufficient justification. Each application will be considered on its own merits. Ordinarily, leases to different lessees for different terms, rental, and royalty rates as well as those containing provisions of law which cannot be reconciled, will not be considered for consolidation. The effective date of the consolidated lease will be that of the oldest lease involved.

Subpart 3106—Assignment or Transfers and Subleases

§ 3106.1 Qualifications.

§ 3106.1–1 Who may file.

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.

(a) *Minors*—(1) *Exception.* 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.

§ 3106.1–2 Failure to qualify.

No assignment will be approved if the assignee or sublessee or any other parties in interest are not qualified to take and hold a lease or if their bond is insufficient or if they fail to file the statement of interest required by section 3106.1–4.

§ 3106.1–3 Number of copies required.

A single copy of any additional information relating to citizenship and qualifications of corporations will be sufficient. Except for assignments of royalty interests all instruments of transfer of a lease or of an interest therein, including assignments of working interests, operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and, except for record title assignments, must contain all of the terms and conditions agreed upon by the parties thereto, together with similar evidence and statements as that required of an offeror under subpart 3102.

§ 3106.1–4 Sole party in interest.

The assignment or sublease must be accompanied by a signed statement by the assignee or sublessee that he is the sole party in interest in the assignment or sublease; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the assignment or sublease, a separate statement must be signed by them and by the assignee or sublessee setting forth the nature and extent of the interest of each, the nature of the agreement between them, if oral, and a copy of the agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the assignment or sublease.

§ 3106.1–5 Attorney-in-fact.

Where an attorney-in-fact or agent, in behalf of the assignor or assignee, signs the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished. Where such evidence has previously been filed in the same land office where the assignment is filed, a reference to the serial number of the record in which it has been filed will be accepted. In those cases where the application for approval of an assignment is signed by an attorney-in-fact or agent there must also be submitted similar statements and evidence from the principal and the agent or attorney-in-fact to that required by § 3102.6.

§ 3106.1–6 Heirs and devisees.

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 § 3102.8.

§ 3106.2 Requirements.

§ 3106.2–1 Where filed and filing fee.

An application for approval of any instrument of transfer of a lease of interest therein or a filing of any such instrument under § 3106.4 must be filed in the proper land office and accompanied by a fee of $10. 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.

§ 3106.2–2 Forms and statements.

(a) *Record title; copies required.* Assignments of record title interests must be filed in triplicate.

(1) *Approved form.* A form approved by the Director, 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 the official form 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. The official form, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office in behalf of the United States.

(2) *Separate instruments required.* 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.

(b) *Other than record title; copies required.* A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

§ 3106.2–3 Bonds.

(a) *Coverage.* 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 nationwide or statewide bond, no additional showing is necessary by such party as to the bond requirement.

(b) *Continuing responsibility.* 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.

§ 3106.2–4 Royalty and production payments.

(a) *Royalty.* 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.

(b) *Production payments.* 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. A single copy of any additional information relating to citizenship and qualifications of corporations, will be sufficient.

§ 3106.2–5 Lease account status.

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 canceled as provided in subpart 3108.

§ 3106.2–6 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the lease or in the manner required by § 3101.1–4.

(a) *Effect of assignment.* An assignment of a definitely described portion of the lands in a lease segregates the assigned and the retained portions into separate and distinct leases. An assignment of an undivided interest either in the entire leasehold or in any definitely described portion thereof shall not segregate or have the effect of segregating the lease into separate or distinct leases.

§ 3106.3 Approval.

§ 3106.3–1 Approval.

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.

§ 3106.3–2 Separate zones.

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 convicing evidence.

§ 3106.3–3 Effective date.

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 this subpart.

§ 3106.3–4 Transfer of offer.

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.

§ 3106.4 Royalty interests.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests should be filed for record purposes within 90 days from the date of execution, but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 3101.1–5 and by the statement as to overriding royalties required by § 3103.3–6. If any portion of this statement is found to be false the assignment shall be invalid.

§ 3106.5 Extensions.

See § 3107.6.

Subpart 3107—Continuation, Extension or Renewals

§ 3107.1 Single extensions.

§ 3107.1–1 Requirements.

(a) *Who may apply.* Under the conditions set out in the following paragraphs of this section, the record title holder of any noncompetitive lease maintained in accordance with the statutory requirements and the regulations in this part which issued prior to September 2, 1960, shall be entitled, to a single extension of the lease at the expiration of the initial five-year term unless then otherwise provided by law. An application for such extension may be filed by the record title holder of the lease, by an assignee whose assignment has been filed for approval, or by an operator whose operating agreement has been filed for approval.

(b) *Application.* The application for extension must be filed, within ninety days before the expiration date of the lease, on a form approved by the Director, "Application for Extension of Oil and Gas Lease", or unofficial copies of that form in current use and must be accompanied by a filing fee of $10 which will be retained as a service charge even though the application is later withdrawn or rejected and, unless previously paid, the sixth year's rental: *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 or advertising. The official form or a valid reproduction of the official form, will also constitute approval of the extension when signed by an authorized officer.

§ 3107.1–2 Effect of withdrawal of lands.

Where, upon the expiration of the initial 5-year lease term, the leased lands or any part thereof, have been withdrawn from leasing, the lease will not be extended as to such lands, except that, a withdrawal shall not affect the right to an extension if drilling operations were actually commenced on the withdrawn lands prior to the effective date of the withdrawal and such operations were being diligently prosecuted on the expiration date of the lease, or if notice of the withdrawal has not been sent by registered mail to each lessee to be affected thereby, at least 90 days prior to the termination date of the lease.

§ 3107.1–3 Term of extension.

Upon compliance with, and in accordance with, the provisions of this section, the lease will be extended, subject to the rules and regulations in force at the expiration of the initial term, (1) as to the lands not within the known geologic structure of a producing oil or gas field, for a period of 5 years, and so long thereafter as oil or gas is produced in paying quantities, and (2) as to lands within the known geologic structure of a producing oil or gas field, for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.1–4 Segregative effect of application.

The timely filing of an application for extension shall have the effect of segregating the leased lands until the final action taken on the application is noted on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Prior to such notation, the lands are not available to the filing of offers to lease. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

§ 3107.1–5 Rejection.

If during the 90-day period prior to the expiration date of the lease, the record title holder, assignee or operator 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.

§ 3107.1–6 Expiration by operation of law.

Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands covered by such expired lease will be subject to the filing of new lease offers only as provided in subpart 3112.

§ 3107.2 Continuation by drilling.

§ 3107.2–1 Terms defined.

(a) *Actual drilling operations.* As used in this section "actual drilling operations" shall include not only the physical drilling of a well but the testing, completing or equipping of such well for the production of oil or gas.

(b) *Primary term.* "Primary term" means all periods in the life of the lease prior to its extension by reason of production of oil or gas in paying quantities.

§ 3107.2–2 Diligent operations.

Actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts.

§ 3107.2–3 Period of extension.

Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.3 Continuation of lease on termination of production.

§ 3107.3–1 Cessation of production.

A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

§ 3107.3–2 Nonproduction from lease capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so: *Provided*, That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

§ 3107.4 Extension for terms of cooperative or unit plan.

§ 3107.4–1 20-year lease or any renewal thereof.

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.

§ 3107.4–2 Other leases committed to plan.

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*, That production of oil or gas is had in paying quantities under the plan prior to the expiration date of such lease, whether it be in its primary term or its extended term.

§ 3107.4–3 Segregation of leases committed in part.

Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases: one covering the lands committeed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.5 Extension by elimination.

Any lease 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 2 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.

§ 3107.6 Extension of leases segregated by assignment.

§ 3107.6–1 Extension after discovery on other segregated portions.

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.

§ 3107.6–2 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities, provided the parent lease was issued prior to September 2, 1960.

§ 3107.6–3 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.7 Exchange leases.

§ 3107.7–1 20-year leases.

(a) *Requirements and terms.* 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 §§ 3103.3–2, 3103.3–4, and 3103.3–5. 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, must show full compliance by the applicant with the terms of the lease and applicable regulations, and must be accompanied by a nonrefundable filing fee of $10.

§ 3107.8 Renewal leases.

§ 3107.8–1 Requirements.

(a) 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 percent 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.

§ 3107.8–2 Terms.

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 §§ 3103.3–2, 3103.3–4 and 3103.3–5. An application to renew should be filed in triplicate, in the proper office as prescribed in § 3000.5 at least 90 days, but not more than 6 months, prior to the expiration of its term, and must be accompanied by a nonrefundable filing fee of $10.

§ 3107.8–3 Approval.

(a) *Acceptable application.* If the outstanding obligations in excess of 5 percent 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 cost 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 percent 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.

(b) *Unacceptable application.* 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 affected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 3107.8–4 Form of lease.

Renewal and exchange leases will be issued on a form approved by the Director. The rentals and royalties payable thereunder will be set out on such schedule as may be appropriate.

§ 3107.9 Other types.

§ 3107.9–1 Payment of compensatory royalty.

The payment of compensatory royalty shall extend the primary or extended term of any lease for the period during which such compensatory royalty is paid, and for a period of 1 year from the discontinuance of such payments, and for so long thereafter as oil or gas is produced in paying quantities.

§ 3107.9–2 Proceedings under Multiple Mineral Development Act of August 13, 1954.

See § 3101.1–6.

Subpart 3108—Terminations and Expirations

§ 3108.1 Relinquishments.

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 payments 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.

§ 3108.2 Operation of law.

§ 3108.2–1 Nonpayment of rental.

Any lease issued after July 29, 1954, or any lease which is extended after that date pursuant to § 3107.1 on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the appropriate Land Office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in subpart 3112.

§ 3108.2–2 Expiration.

§ 3108.2–3 Noncompliance with leasing act or lease terms.

Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be canceled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may, at any time prior to the anniversary date of such lease and the accrual of rental, elect to subject his lease to the automatic termination provisions of this section by notifying, in writing, the manager of the appropriate land office to that effect.

§ 3108.3 Judicial proceedings.

Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

Subpart 3109—Surface Management Requirements

§ 3109.1 General.

§ 3109.1–1 Surface, natural resources, and improvements.

§ 3109.1–2 Antiquities and objects of historical value.

§ 3109.2 Public domain.

§ 3109.2–1 Bureau of Land Management stipulations.

The Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any permit or lease.

(See Montana Power Decision A 30310 December 3, 1965, I.M. No. 65–560 December 23, 1965)

§ 3109.3 Acquired lands.

§ 3109.3–1 Consent of agency.

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.

§ 3109.4 Reserved, withdrawn, or segregated lands.

§ 3109.4–1 Requirements.

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.

§ 3109.4–2 Special stipulations.

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 a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

§ 3109.5 Special acts.

§ 3109.5–1 Requirements.

§ 3109.5–2 Special stipulations.

(a) Rights-of-way.

(b) Nevada.

(c) Lands patented to the State of California.

(d) National forest lands in Minnesota. 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.

(e) Lake Mead recreation area.

(f) National Forest Wilderness. (1) All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands wtihin National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(2) All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

(g) Whiskeytown-Shasta-Trinity national recreation area. Any lease or permit respecting minerals in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe.

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

Sec.

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Subpart 3110—Noncompetitive Leases

§ 3110.1–1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities.

(a) *Special acts*—(1) *Rights-of-way.* The term of the lease will be for a period of not more than 20 years and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

§ 3110.1–2 Dating of leases.

All 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.

§ 3110.1–3 Acreage limitation.

(a) *Public domain.* An offer may be made by a legal guardian or trustee in his name for the benefit of a nonalien minor or minors but an offer may not be filed by a minor. An offer may not include more than 2,560 acres except where the rule of approximation applies. The lands in the offer must be entirely within an area of 6 miles square or within an area not exceeding six surveyed sections in length or width. No offer may be made for less than 640 acres except 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, or where the land is surrounded by lands not available for leasing under the act.

(b) *Acquired lands.* An offer may not include more than 2,560 acres except where the rule of approximation applies. That portion of § 3110.1–3(a) providing that an offer may not be made for less than 640 acres is not applicable to acquired lands lease offers.

§ 3110.1–4 Withwdrawal of offer.

(a) *Regular filings.* 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, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(b) *Simultaneous filings.* An applicant may withdraw his simultaneous offer drawing card prior to the drawing.

§ 3110.1–5 Amendment to lease.

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, the land office receives a withdrawal of the offer with respect 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 the required form 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 § 3110.1–2.

§ 3110.1–6 Determination of priorities.

(a) *Regular filing.* No lease shall be issued before final action has been taken on (*a*) any prior offer to lease the land, (*b*) any subsequent offer to lease the land that is based upon an alleged preferential right and (*c*) 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 offeror or petitioner is found to be qualified and entitled to receive a lease on the land. Offers to lease which cover lands subject to regular filings and which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously and priority to the extent of the conflicts between them will be determined by a public drawing.

(b) *Simultaneous filings.* If more than one offer to lease all or any part of the acreage covered by an expired, canceled, relinquished, or terminated lease is filed during the period provided for in subpart 3112, their priorities will be determined by a public drawing.

§ 3110.1–7 Land description.

(a) *Variation in land description.* If there is any variation in the land descriptions among the five copies of the official forms, the copy showing the date and time of receipt in the land office will control.

§ 3110.1–8 Rejections.

If, after the filing of an offer for a noncompetitive lease and before the issuance of a lease pursuant to that offer, the land embraced in the offer becomes within a known geological structure of a producing oil or gas field, the offer will be rejected and will afford the offeror no priority.

Subpart 3111—Regular Offers

§ 3111.1 Requirements.

§ 3111.1–1 Public domain.

(a) Application—(1) *Forms.* Except as provided in subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, "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. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 3000.5 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(b) *Qualifications.* Compliance with subpart 3102 is required.

(c) *Approval.* 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.

(d) *Rejection.* Except as provided in this section an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

(e) *Curable defects.* An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(1) 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.

(2) 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.

(3) An offer completed in pencil or script.

(4) An offer on a lease form not currently in use.

(5) An offer on 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.

§ 3111.1–2 Acquired lands.

(a) *Application*—(1) *Forms.* Except as provided in subpart 3112, to obtain a noncompetitive oil and gas lease of an existing mineral interest whether the Government's interest be whole or fractional, an offer to lease must be made on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or 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. An official form approved by the Director, or a valid reproduction, will also constitute the lease, when signed by the authorized signing officer of the Bureau of Land Management. Seven copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 3000.5). For the purposes of this part an offer will be considered filed when it is received in the proper office during business hours.

(2) *Qualifications.* Compliance with subpart 3102 is required.

(3) *Approval.* 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.

(4) *Rejection.* Except as provided in subpart 3112 an offer which is not filed in accordance with the applicable regulations in subpart 3110 or this part will be rejected and will afford the applicant no priority.

(5) *Surface jurisdiction*—(i) *Showing required.* 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.

(ii) *Transfer of surface control.* Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

(6) *Acreage holdings.* Each offer or application for a lease or permit must contain a statement that applicant's interest, direct or indirect, in leases, permits, or applications for similar minerals does not exceed the maximum chargeable acreage permitted to be held for that mineral in federally owned acquired lands in the same State.

(7) *Other regulations applicable.* Except as otherwise specifically provided in this part the regulations prescribed under the mineral leasing laws, and contained in subpart 3110 and § 3111.1 shall govern the disposal and development of minerals under the act.

§ 3111.1–3 Special acts.

(a) *Rights-of-way*—(1) *Application.* No particular form of application for lease of land in a right-of-way will be required. Applications shall be filed in the appropriate land office. 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. 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.

(2) *Compensatory royalty.* 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.

(3) *Award of lease or compensatory royalty agreement.* 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.

(4) *Forms*—(i) *Compensatory royalty agreement.* 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 on a form approved by the Director.

(ii) *Lease.* The lease issued to the owner of the right-of-way or assignee of such owner will be on a form approved by the Director, modified to conform to the requirements of the law and these regulations.

(iii) *Bond.* The bond required under section 2(a) of the lease and by the contractor under agreement to pay compensatory royalty, should be on a form approved by the Director.

(5) *Royalty charge.* 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.

(6) *Duration.* The term of the lease will be for a period of not more than 20 years, and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

(b) *Nevada*—(1) *Applicability of regulations.* Deposits of oil and gas 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.

(c) *Lands patented to the State of California*—(1) *Minerals to be leased.* All disposal of minerals within the reserved areas covered by this section shall be by lease.

(2) *Applicability of other regulations.* The regulations contained in subparts 3110 and 3111 to the extent that they are applicable and not inconsistent with this section shall govern oil and gas leases issued under this section.

(3) *Notice of application.* 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.

(4) *Terms and conditions*—(i) *Protection of surface.* All leases issued 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 this section. 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.

(ii) *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.

(iii) *Form of lease.* Oil and gas leases will be issued on forms approved by the Director, with such changes in language as may be required.

(5) *Operating regulations.* All lessees will be required to operate under the applicable operating regulations of this Department. The operating regulations are contained in 30 CFR Chapter II Part 221.

(d) *National forest lands in Minnesota*—(1) *Minerals to be leased.* All disposal of mineral resources covered by this regulation shall be by lease or permit.

(2) *Consent of Secretary of Agriculture.* 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.

(3) *Regulations applicable.* See subparts 3110 and 3111. Any lease issued under this subpart shall state that it is subject to the terms and provisions of the act of June 30, 1950.

(e) *Lake Mead Recreation Area*—(1) *Authority to lease.* The Act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n) provides for mineral leasing within the Lake Mead Recreation Area, subject to such limitations, conditions, or regulations as the Secretary may prescribe, and to such extent as will not be inconsistent with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes.

(2) *Regulations applicable.* Mineral deposits of oil and gas shall be governed by regulations issued under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181), as amended.

(3) *Area subject to lease.* The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA–LM–7060–B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the Superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

(4) *Excepted areas.* Mineral deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(i) All lands within 200 feet of the center line of any public road, or within 200 feet of any public utility including, but not limited to, electric transmission lines, telephone lines, pipe lines, and railroads.

(ii) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one-quarter of a mile thereof on unsurveyed public land.

(iii) All land within 300 feet of Lake Mead or Lake Mohave, measured horizontally from the shore line at maximum water surface elevation and all lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams as shown on the map of the Lake Mead National Recreation Area (NRA—L.M. 2291).

(iv) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map (NRA—L.M. 2297), of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

(f) *National Forest Wilderness*—(1) *Applicability of laws and regulations.* Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(2) *Stipulations required.* All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of

the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(3) *Applicable regulations of Secretary of Agriculture.* All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

(4) *Withdrawal from mineral leasing.* Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from leasing by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

(g) *Whiskeytown-Shasta-Trinity National Recreation Area.* Applicability of regulations. Mineral deposits of oil and gas shall be governed by the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181–263), as amended.

Subpart 3112—Simultaneous Offers

§ 3112.1–1 Availability of lands.

(a) Lands in canceled or relinquished leases or in leases which terminate by operation of law for non-payment of rental pursuant to 30 U.S.C. sec. 188, which are not withdrawn from leasing nor on a known geological structure of a producing oil and gas field shall be subject to the filing of new lease offers only after notation on the official record of the cancellation, relinquishment, or termination of such lease and only in accordance with the provisions of this section. All lands covered by leases which expire by operation of law at the end of their primary or extended terms shall likewise be subject to the filing of new lease offers only in accordance with the provisions of this section except that notation of such expiration of the leases need not be made on the official records.

(b) If no offers to lease all or any portion of the lands in the expired, canceled, relinquished or terminated leases are received during the period provided for in § 3112.1–2, the lands for which no offers are received will thereafter become subject to lease in accordance with regulations in this part.

§ 3112.1–2 Posting of notice.

On the third Monday of each month, or the first working day thereafter, if the land office is not officially open on the third Monday, there will be posted on the bulletin board in each land office a list of the lands in leases which expired, were canceled, were relinquished in whole or in part, or which terminated, together with a notice stating that such lands will become subject to the simultaneous filings of lease offers, from the time of such posting until 10 a.m. on the fifth working day thereafter. The posted list will describe the lands by leasing units identified by parcel numbers, which will be supplemented by a description of the lands in accordance with § 3101.1–4, by subdivision, section, township and range if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds.

§ 3112.2 Forms.

§ 3112.2–1 Offer to lease.

(a) *Entry Card.* Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. The entry card will constitute the applicant's offer to lease the numbered leasing unit by participating in the drawing to determine the successful drawee.

(1) Only one complete leasing unit, identified by parcel number, may be included in one entry card. Lands not on the posted list may not be included therein.

(2) The entry card must be accompanied by separate remittances covering the filing fee of $10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check.

(3) Only one entry card will be drawn for each numbered leasing unit.

§ 3112.3 Qualifications.

§ 3112.3–1 Compliance with subpart 3102 is required.

§ 3112.4 Approval.

By signing and submitting the entry card, the applicant agrees that he will be bound to a lease on a current form approved by the Director for the described parcel if such a lease is issued to him as a result of the drawing.

§ 3112.4–1 Rental retained.

Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be earned and deposited in the U.S. Treasury upon execution of the lease in behalf of the United States.

§ 3112.5 Rejection.

§ 3112.5–1 Unqualified offeror.

If the successful drawee is unqualified to receive the lease, the lands in the numbered leasing unit for which such entry card was submitted, shall be included in a simultaneous filing drawing procedure to be held during the next or a following month thereafter.

§ 3112.5–2 Multiple filings.

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1–6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected. In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bona fide purchaser as provided for in § 3102.1–2 intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

§ 3112.5–3 Rental returned.

(a) If an applicant withdraws his entry card prior to the drawing or if his offer to lease is rejected, the advance rental will be returned to him.

(b) Unsuccessful drawees will be notified accordingly by the return of their respective entry cards.

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

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3120.1	Terms.
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Subpart 3120—Competitive Leases

§ 3120.1 Terms.

§ 3120.1–1 Duration of lease.

All competitive leases shall be for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3120.1–2 Dating of leases.

All competitive 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.

§ 3120.1–3 Acreage limitation.

(a) *Maximum lease size.* 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.

(b) *Consolidation of units.* 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.

§ 3120.1–4 Qualifications.

(a) *Compliance with subpart 3102 is required.*—(1) Statement required. Each bidder must submit with his bid a statement over the bidder's own signature with respect to citizenship and interests held. If the successful bidder is a corporation, it must also file a statement similar to that required by § 3102.4–1.

(b) *Deposit required.* 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.

§ 3120.2 Notice of lease sale.

§ 3120.2–1 Initiation of offer.

§ 3120.2–2 Publication of notice.

Notice of the offer of lands 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 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 of the Bureau of Land Management may authorize.

§ 3120.2–3 Contents of notice.

The notice published in a newspaper of general circulation in the county will contain a statement that the successful bidder will be required, prior to the issuance of a lease to pay his proportionate share of the total cost of publication of that notice which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The notice will also state the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale.

§ 3120.3 Approval.

§ 3120.3–1 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.

§ 3120.3–2 Compliance with award notice.

If the lease be awarded, three copies of the lease on a form approved by the Director, with rental and royalty schedules made a part thereof, 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 subpart 3104. 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.

§ 3120.4 Rejection.

§ 3120.4–1 Failure to comply with award notice.

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.

§ 3120.4–2 Deposits on rejected bids.

If any bid be rejected, the deposit will be returned.

PART 3130—FRACTIONAL OR FUTURE INTEREST LEASES AND PERMITS

Subpart 3130—Fractional or Future Interest Leases and Permits

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3130.4–1 General statement.
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3130.4–4 Fractional present interests.
3130.4–5 Future and fractional interest offers.

Subpart 3130—Fractional or Future Interest Leases and Permits

§ 3130.1 Competitive and noncompetitive.

Competitive and noncompetitive oil and gas leases for lands in which the United States owns an undivided fractional oil and gas interest may be issued pursuant to the regulations in this part and subpart 3120.

§ 3130.2 Rental and royalties.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in subpart 3103 as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3130.3 Public domain.

§ 3130.3–1 Fractional interest offers.

(a) Application. An offer for a fractional interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with subpart 3111. The offer must be accompanied by a statment showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a noncompetitive fractional interest oil and gas lease to one who, upon such issuance, would own less than 50 percent 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.

§ 3130.4 Acquired lands.

§ 3130.4–1 General statement.

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. Applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by §§ 3101.2–3, 3111.1–2 and this section. The terms and conditions 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 § 3100.3–1 covering future or fractional interests, will be established on an individual case basis.

§ 3130.4–2 Consent of agency and stipulations required.

All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a 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. Leases to which such consent is necessary will not be issued until lessee executes such stipulations as may be required by the consenting agency.

§ 3130.4–3 Forms.

All oil and gas leases for existing interest on acquired lands whether the Government's interest be full or fractional shall be issued on a form approved by the Director. Leases of future interest and fractional future interest shall be issued on a form approved by the Director.

§ 3130.4–4 Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily,

the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3130.4–5 Future and future fractional interest offers.

(a) *Application.* 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. An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at that time will automatically lapse and thereafter only offers for a present interest lease will be considered. There is no required form for an application or offer to lease a whole or fractional future interest. The application or offer therefor should, however, to the extent applicable, conform to and include the information required by §§ 3101.2–3, 3111.1–2, and this section, 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.

(b) *Effective date of lease.* Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the Government's title to the minerals are different for different tracts, separate leases covering each of such different tracts will be issued.

(c) *Supplemental agreement.* 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 an agreement for approval by the Director. 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 terms 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) *Approval.* Leases for a whole or fractional interest will be issued on a form approved by the Director. Such leases will be sent to the 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.

Group 3300—Outer Continental Shelf Leasing

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

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Subpart 3300—Outer Continental Shelf Mineral Deposits; General

§ 3300.0–3 Purpose and authority.

The Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462; 43 U.S.C. § 1331 et seq.), 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. Subject to the supervisory authority of the Secretary, the regulations in this part shall be administered by the Director, Bureau of Land Management, hereinafter referred to in this part as the Director.

§ 3300.0–4 Applicability of public land laws.

The laws and regulations pertaining to the public lands of the United States are not applicable to the submerged lands of the Outer Continental Shelf. Mineral deposits in the submerged lands of the Outer Continental Shelf are subject to disposition only in accordance with the provisions of the act and the regulations promulgated by the Secretary thereunder.

§ 3300.1 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.

§ 3300.3 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.

§ 3300.4 Payments of filing charges, bonuses, rentals and royalties.

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, except that payments of filing charges, bonuses and first year's rental shall be made to the manager of the appropriate field office, Bureau of Land Management, unless otherwise directed by the Secretary. All payments should be made by check, bank draft, or money order payable to the United States Geological Survey, if the payments are made to the Geological Survey, or to the Bureau of Land Management, if the payments are made to that Bureau.

Subpart 3301—Leasing Areas

§ 3301.1 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.

§ 3301.2 Resources evaluation.

From time to time the Director may announce tentative schedules of lease sales of Outer Continental Shelf areas. At such time as an area is initially considered for mineral leasing, or as the need arises, the Director shall request the Director, Geological Survey, to prepare a summary report describing the general geology and potential mineral resources of the area and shall request other interested Federal agencies to prepare reports describing to the extent known any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment.

§ 3301.3 Nominations of tracts.

In selecting tracts for oil and gas, sulphur, or other mineral leasing, the Director will receive and consider nominations of tracts or requests describing areas and expressing an interest in leasing of minerals, or, from time to time, upon his own motion, upon approval of the Secretary, may issue calls for nominations of tracts for the leasing of minerals in specified areas. Nominations of tracts should be addressed to the Director, with copies to the appropriate Bureau of Land Management field office and the appropriate oil and gas supervisor of the Geological Survey. The Director, Geological Survey, shall submit recommendations to the Director on tract selections and lease terms and conditions.

§ 3301.4 Selection of tracts.

The Director, prior to the final selection of tracts for leasing, either selected on his own motion or nominated pursuant to § 3301.3 of this subpart, shall evaluate fully the potential effect of the leasing program on the total environment, aquatic resources, aesthetics, recreation, and other resources in the entire area during exploration, development and operational phases. To aid him in his evaluation and determinations he shall request and consider the views and recommendations of appropriate Federal agencies, may hold public hearings after appropriate notice, and may consult with State agencies, organizations, industries, and individuals. The Director shall develop special leasing stipulations and conditions when necessary to protect the environment and all other resources, and such special stipulations and conditions shall be contained in the proposed notice of lease offer. The proposed notice of lease offer, together with all views and recommendations received and the Director's findings or actions thereon, shall be submitted to the Secretary for final approval.

§ 3301.5 Notice of lease offer.

Upon approval of the Secretary, the Director shall publish the notice of lease offer at the expense of the United States in the FEDERAL REGISTER, as the official publication, and in other publications as may be desirable. The publication in the FEDERAL REGISTER shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids will be filed, and the place, date, and hour at which bids will be opened. The notice shall contain any special stipulations or conditions which will become a part of any lease issued pursuant to such notice, including stipulations or conditions for the protection of the environment, aquatic life and other resources.

§ 3301.6 Tracts subject to drainage.

Upon direction of the Secretary, the Director, after obtaining the recommendation of the Director, Geological Survey, is authorized to publish on his own motion notices of lease offer of tracts which have been determined by the Director, Geological Survey, to be subject to drainage of their oil and gas deposits from wells on other tracts. The Director may request and consider the views and recommendations of appropriate Federal and State agencies prior to publishing the notice of lease offer. The notice shall be published in accordance with section 3301.5 of this subpart.

Subpart 3302—Issuance of Leases

§ 3302.1 General.

Tracts will be offered for lease by competitive sealed bidding under conditions specified in the notice of lease offer. Each oil and gas lease issued pursuant to section 8 of the act shall cover a compact area not exceeding 5,760 acres.

§ 3302.2 Term.

(a) All oil and gas leases shall be issued for a term of 5 years and so long

thereafter as oil or gas may be produced from the leasehold in paying quantities, or drilling or well reworking operations, as approved by the Secretary under § 3305a.1 of this part, are conducted thereon.

(b) All sulphur leases shall be issued for a term of 10 years and so long thereafter as sulphur may be produced from the leasehold 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.

(c) Other mineral leases shall be issued for such terms as may be prescribed at the time of offering the leases in the notice of lease offer.

§ 3302.4 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

§ 3302.5 Award of lease.

Sealed bids received in response to the notice of lease offer shall be opened at the place, date and hour specified in the notice. The opening of bids is for the sole purpose of publicly announcing and recording the bids received and no bids will be accepted or rejected at that time. In accordance with section 8 of the act, leases will be awarded only to the highest responsible qualified bidder. The United States reserves the right and discretion to reject any and all bids received for any tract, regardless of the amount offered. Awards of leases will be made only by written notice from the authorized officer. Such notices shall transmit the lease forms for execution. 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 § 3304.1. 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.

§ 3302.6 Form.

Oil and gas leases and leases for sulphur will be issued on forms approved by the Director. Other mineral leases will be issued on such forms as may be prescribed by the Secretary.

§ 3302.7 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.

Subpart 3303—Rentals and Royalties

§ 3303.1 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.

§ 3303.2 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 of value of the sulphur at the wellhead.

§ 3303.3 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.

§ 3303.5 Effect of suspensions on royalty and rental.

(a) In the event that under the provisions of 30 CFR 250.12(c) or (d)(1) the regional oil and gas supervisor of the Geological Survey with respect to any lease directs the suspension of both operations and production, or with respect to a lease on which there is no producible well directs the suspension of operations, no payment of rental or minimum royalty will be required for or during the period of the suspension. In the event that under the provisions of 30 CFR 250.12(d)(1) the supervisor approves, at the request of a lessee, the suspension of operations or production, or both, or under the provisions of 30 CFR 250.12 (d)(3) suspends any operation including production, the lessee will not be relieved of the obligation to pay rental, minimum royalty or royalty for or during the period of suspension.

(b) In the event the anniversary date of a lease falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a), of this section, the prorated rentals or minimum royalties, if any are due and payable as of the date the suspension period terminates, shall be computed and notice thereof given the lessee. Payment of the amount due shall be made by the lessee within 30 days after receipt of such notice. The anniversary date of a lease will not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

Subpart 3304—Bonds

§ 3304.1 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 $50,000 conditioned on compliance with all of the terms of the lease, unless he already maintains or furnishes a bond in the sum of $300,000

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. Where upon a default, the surety on an Outer Continental Shelf Mineral Lease Bond makes payment to the Government of any indebtedness under a lease secured thereby, the face amount of such bond and the surety's liability thereunder shall be reduced by the amount of such payment. Thereafter, upon penalty of cancellation of all of the leases covered by such bond, the principal shall post a new bond, on a form approved by the Director, in the amount of $300,000 within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease. The provisions hereof may be made applicable to any bond in force at the time of the approval of the amendment of this section by filing in the local office of the Bureau of Land Management, a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this section.

§ 3304.2 Form of bond.

Bonds furnished by lessee or operator for a single lease will be on forms approved by the Director. The $300,000 bond will be on a form approved by the Director.

Subpart 3305—Assignments or Transfers

§ 3305.1 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 § 3380.1 to take and a 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 appropriate office of the Bureau of Land Management, 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.

§ 3305.2 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 § 3302.4.

(c) Where an assignment creates a segregated lease a bond must be furnished in the amount prescribed in § 3304.1. 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 § 3302.4. 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.

§ 3305.3 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.

§ 3305.4 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.

Subpart 3305a—Extension of Leases

§ 3305a.1 Extension of leases by drilling or well reworking operations.

(a) The Secretary shall be deemed to have approved, within the meaning of section 8(b)(2) of the Outer Continental Shelf Lands Act, drilling or well reworking operations, conducted on the leased area in the following instances:

(1) If, any discovery of oil or gas in paying quantities has been made on the leasehold, and within 90 days prior to expiration of the 5-year term or any extension thereof, or thereafter, the production thereof shall cease at any time, or from time to time, from any cause and production is restored or drilling or well reworking operations are commenced within 90 days thereafter, and such drilling or well reworking operations (whether on the same or different wells) are prosecuted diligently until production is restored in paying quantities.

(2) If, within 90 days prior to expiration of the 5-year term or any extension thereof, or thereafter, at any time, or from time to time, lessee is engaged in drilling or well reworking operations on the leasehold and there is no well on the leasehold capable of producing in paying quantities and the lessee diligently prosecutes such operations (whether on the same or different wells) with no cessation of more than 90 days.

(b) The Secretary may approve such other operations for drilling or reworking upon application of lessee.

(c) Nothing in this section obviates the necessity of obtaining the Oil and Gas Supervisor's approval of a plan or notice of intention to drill or of complying with the other provisions of 30 CFR Part 250.

§ 3305a.2 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.

§ 3305a.3 Compensatory payments.

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.

§ 3305a.4 Effect of suspensions on lease term.

In the event that under the provisions of 30 CFR 250.12 (c) or (d)(1), the regional oil and gas supervisor of the Geological Survey directs the suspension of either operations or production, or both, with respect to any lease, the term of the lease will be extended by a period equivalent to the period of the suspension. In the event that under the provisions of 30 CFR 250.12(c) or (d)(1), the supervisor approves the suspension of either opreations or production, or both, with respect to any lease, the term of the lease will not be deemed to expire so long as the suspension remains in effect.

Subpart 3306—Termination of Leases

§ 3306.1 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 appropriate office of the Bureau of Land Management. 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.

§ 3306.2 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.

Subpart 3307—Mineral Deposits Affected by Section 6 of Outer Continental Shelf Lands Act

§ 3307.1 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.

(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. 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.

§ 3307.2 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.

§ 3307.3 Obligations of lessee.

§ 3307.3–1 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 § 3304.1.

§ 3307.3–2 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.

§ 3307.3–3 Inspection.

The lessee shall keep open at all reasonable times for the inspection of any duly autorized 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.

§ 3307.3–4 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.

§ 3307.3–5 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.

§ 3307.3–6 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.

§ 3307.4 Exploration and operations.

§ 3307.4–1 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.

§ 3307.4–2 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.

§ 3307.4–3 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 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.

§ 3307.4–4 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.

§ 3307.4–5 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.

§ 3307.5 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.

§ 3307.6 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.

Group 3500—Leasing of Minerals Other Than Oil and Gas

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

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Subpart 3500—Introduction—General

§ 3500.0–3 Authorities.

The statutory authority for leasing the minerals in this part is contained in the cited acts.

(a) *Public Domain.* The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.), 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 all leasing act minerals.

(1) *Coal.* 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.

(2) *Potassium.* Sections 1 to 7 of the act of February 7, 1927, as amended (44 Stat. 1057, 30 U.S.C. secs. 281–287).

(3) *Sodium.* Sections 23 through 25 of the act of February 25, 1920 (41 Stat. 447; 30 U.S.C. sec. 189, 261–263).

(4) *Phosphate.* Sections 9 to 12, inclusive of the act of February 25, 1920 (41 Stat. 440, 441, 30 U.S.C. 211–214) as amended.

(5) *Sulphur.* Sections 1 to 7 of the Act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271–276).

(6) *Asphalt.* The Act of February 25, 1920 (41 Stat. 437; 30 U.S.C., sec. 181), as amended by the Act of September 2, 1960 (74 Stat. 781; 30 U.S.C. sec. 181, 241).

(b) *Acquired lands*—(1) *Leasable.* (i) The Mineral Leasing Act for acquired lands; enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359).

(ii) 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), except as to leases or permits outstanding on August 7, 1947.

(2) *Solid (hardrock) minerals.* (i) Section 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099) 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.

(ii) Section 3 of the act of September 1, 1949 (63 Stat. 683) 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).

(iii) Section 3 of the act of June 23, 1952 (66 Stat. 285), authorized the Secretary of the Interior to administer, in the manner prescribed by section 402 of Reorganization Plan No. 3 of 1946, mineral deposits other than those subject to the provisions of the Mineral Leasing Act for Acquired Lands, in that part of the Juan Jose Lobato Grant Numbered 164, which lies northerly of the Chama River (North Lobato tract) and in part of the Anton Chica Grant Numbered 29 (El Pueblo tract) as more particularly described in section 1 of the act of June 28, 1952.

(c) *Special acts.* (1) Gold and silver in confirmed private land grants. The act of Congress approved June 8, 1926 (44 Stat. 710; 30 U.S.C. 291–293).

(2) Asphalt in Oklahoma. The act of June 28, 1944 (58 Stat. 483–485).

(3) Silica sands and other nonmetallic minerals in certain lands in Nevada. The act of May 9, 1942 (56 Stat. 273) as amended by the act of October 25, 1949 (63 Stat. 886).

(i) Act of February 27, 1927 (44 Stat. 1057).

(ii) Leasable. Mineral Leasing Act of February 25, 1920 (41 Stat. 437) as amended.

(4) Leases of sand and gravel in certain lands patented to the State of Nevada. The act of June 8, 1926 (44 Stat. 708).

(5) Reserved minerals in lands patented to the State of California for park or other purposes. 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).

(6) Certain National Forest lands in Minnesota. (i) The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(ii) Leasable. Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended.

(7) Leases for minerals in lands withdrawn for reclamation purposes within the Lake Mead Recreation Area. The act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(8) Prospecting and mineral leasing within National Forest Wilderness. National Forest Wilderness Act of September 3, 1964. (78 Stat. 890; 16 U.S.C. 1131–1136; 43 U.S.C. 1201.)

(9) Development of minerals in lands within Whiskeytown-Shasta-Trinity National Recreation Area. Section 6 of the act of November 8, 1965 (Public Law 89–336; 79 Stat. 1295). (i) Solid (Hardrock) minerals. (*a*) Section 10 of the act of August 4, 1939 as amended (53 Stat. 1196; 43 U.S.C. 387).

(*b*) Section 3 of the Act of September 1, 1949, (63 Stat. 683, 30 U.S.C. 192c).

(ii) Leasable. (*a*) Mineral Leasing Act of February 25, 1920 as amended (30 U.S.C. 181 et seq.).

(*b*) Acquired Lands Mineral Leasing Act of August 7, 1947, (30 U.S.C. 351–359).

§ 3500.0–5 Definitions.

(a) *Sole party in interest.* A sole party in interest in a lease or permit or an application for a lease or a permit is a party who is and will be vested with all legal and equitable rights under the lease or permit. No one is, or shall be deemed to be, a sole party in interest with respect to a lease or permit in which any other party has any of the interests described in this section. This requirement of disclosure in an application for lease or permit of an applicant's or other parties' interest in a lease or permit, if issued, is predicated on the departmental policy that all applicants and other parties having an interest in simultaneously filed applications for permits shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease or permit includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease or permit, and any participation or any defined or undefined share in any increments, issues, or which may be derived from or which may accrue in any manner from the lease or permit based upon or pursuant to any agreement or understanding existing at the time when the application is filed, is deemed to constitute an "interest" in such lease or permit.

(b) *Regional mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

(c) *Rule of approximation.* The rule of approximation applies where an application embraces an acreage in excess of the acreage limitation; it may be allowed for the excess acreage if exclusion of the smallest legal subdivision involved would result in a deficiency which would be greater than the excess resulting from the inclusion of such subdivision.

§ 3500.1 Minerals subject to leasing.

§ 3500.1–1 Public domain and acquired minerals.

The Mineral Leasing Act, as amended, the Acquired Lands Leasing Act and the Reorganization Act provide for the leasing of deposits of coal; chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium; phosphate; native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried; sulphur in the States of Louisiana and New Mexico; minerals in acquired lands which would be subject to location under the United States mining laws if located in public domain lands; and for the development of sodium, magnesium, aluminum, or calcium deposits, in any of the forms described and associated with the potassium deposits.

§ 3500.1–2 Reports required.

All reports concerning operations shall be filed with the Mining Supervisor.

§ 3500.1–3 Special acts.

(a) Gold and Silver in Confirmed Private Land Grants.

(b) Asphalt in Oklahoma.

(c) Asphalt—(1) Nevada. Silica sands and other nonmetallics, deposits of phosphate, coal, sodium and potash in lands withdrawn by Executive Order No. 5105 of May 3, 1929.

(2) Sand and gravel in certain lands patented to the State.

(d) Reserved minerals in lands patented to the State of California for park and other public purpose.

(e) Certain National Forest lands in Minnesota. Permits the prospecting, development, and utilization of those mineral resources which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws, and for the development and utilization for which no other authority exists.

(f) Lake Mead Recreation Area. All minerals subject to the general mining laws and mineral deposits of coal, phosphate, potassium, and sodium.

(g) National Forest Wilderness. All leasing act minerals remain subject to leasing until midnight December 31, 1983.

(h) Whiskeytown-Shasta-Trinity National Recreation Area. Permits the leasing of nonleasable and leasable minerals in the area.

§ 3500.2 Multiple Development.

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 leased lands with a reservation of the mineral deposits to the United States.

Subpart 3501—Lands Subject to Leasing

§ 3501.1 Public Domain.

§ 3501.1–1 Protection of preexisting rights.

(a) *Potassium.* (1) Section 6 of the act of February 7, 1927, supra, which repealed the act of October 2, 1917 (40 Stat. 297), excepts 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.

(2) 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.

(b) *Sodium.* Mining claims for deposits described in part 3500 which were valid on February 25, 1920, or on lands in San Bernardino County, Calif., on December 11, 1928, if duly maintained, may be patented under the law under which they were initiated. Otherwise such deposits may be secured only under the Mineral Leasing Act.

(c) *Phosphate.* Mining claims for deposits described in part 3500 which were valid on February 25, 1920, if duly maintained, may be patented under the law under which they were initiated. Otherwise such deposits may be secured only under the Mineral Leasing Act.

(d) *Sulphur.* Mining claims for sulphur deposits on lands such as specified in part 3500 situated in Louisiana which were valid on April 17, 1926, or on such lands in New Mexico, on July 16, 1932, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271–276).

§ 3501.1–2 Unsurveyed lands, General.

(a) All prospecting permits may be issued either by metes and bounds description or approved protraction surveys. All leases, preference right or competitive, must be surveyed prior to issuance of a lease.

(b) When protracted surveys have been approved and the effective date

thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(1) *Survey for leasing—Applicant's expense.* (a) Prior to the issuance of a lease based upon discovery of valuable deposits of potassium, sodium or sulphur, the survey for unsurveyed lands will be at the expense of the applicant.

(b) A deposit of the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management will be required. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivision of such survey.

(2) *Government expense.* Prior to issuance of a lease based upon discovery of coal and on all competitive leases, the survey of unsurveyed lands will be at the expense of the Government.

§ 3501.1–3 Description of lands in offer.

A complete and accurate description of the lands for which the lease is desired is required. The lands in the lease or permit shall be in reasonably compact form entirely within an area of 6 miles square or within an area not exceeding six surveyed or protracted sections in length or width; except for coal cases where noncontiguous tracts can be efficiently worked as a single mine or unit.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township and range.

(b) *Protracted surveys.* When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(c) *Unsurveyed lands.* If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(d) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and Alaska.* In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impractical to furnish a metes and bounds description, as required in paragraph (c) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high watermark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations § 3100.1–5 and the maximum or minimum area to be included in the lease pursuant to § 3110.1–3. The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

§ 3501.1–4 Acreage limitations.

(a) *Computing acreage holdings.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be such party's proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation, unless he is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(b) *Allowable acreage.* Except as hereinafter stated, no person, association, or corporation may hold at any one time leases or permits exceeding the acreage as stated below in any one state, except for phosphate in the United States, whether directly through the ownership of such leases and permits, or interest therein, and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such leases and permits, or interest therein, and applications therefor. The rule of approximation applies to all applications for permits and leases.

(1) *Coal.* (i) A permit may not exceed 5,120 acres. Holdings in permits and leases shall not exceed 46,080 acres.

(ii) There is no statutory limitation on the acreage that may be included in any one leasing tract. However, the authorized officer after consultation with the mining supervisor of the Geological Survey, will determine the amount of acreage to be included in each leasing tract, taking into consideration the area required for plant facilities and such other data as may be pertinent.

(2) *Potassium.* A lease or permit may not exceed 2,560 acres. Holdings in permits shall not exceed 51,200 acres. Holdings in leases may not exceed 25,600 acres in one or more mining units.

(3) *Sodium.* A lease or permit may not include more than 2,560 acres. Holdings in permits and leases shall not exceed 5,120 acres.

(4) *Phosphate.* A lease or permit may not exceed 2,560 acres. Holdings in leases and permits shall not exceed 20,480 acres in the United States.

(5) *Sulphur.* A lease or permit may not include more than 640 acres. Holdings may not include more than three permits or leases.

(6) *Asphalt.* A lease may not include more than 2,560 acres. Holdings may not include more than 7,680 acres in any one State irrespective of the number of leases.

§ 3501.1–5 Exceptions.

(a) National parks and monuments.

(b) Indian reservations.

(c) Incorporated cities, towns, and villages.

(d) Naval petroleum and oil shale reserves.

(e) 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.

§ 3501.1–6 Rejections.

Applications for permits or leases which are filed for lands not available for prospecting or leasing, or which do not comply with the regulations in this part as to acreage limitations and land descriptions will be rejected.

§ 3501.2 Acquired lands.

§ 3501.2–1 Lands and deposits not subject to leasing.

(a) Lands acquired for the development of their mineral deposits.

(b) Lands acquired by forclosure or otherwise for resale.

(c) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.).

(d) Lands in incorporated cities, towns, and villages.

(e) Lands in national parks and monuments.

(f) Lands set apart for military or naval purposes, including lands within the naval petroleum and oil shale reserves.

(g) Lands 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.

§ 3501.2–2 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.

§ 3501.2–3 Outstanding permits and leases.

(a) *Acquired lands*—(1) *Leasable minerals.* 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.

(2) *Solid (hardrock) minerals.* Prospecting permits and leases, heretofore issued by the Department of Agriculture will be continued to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

§ 3501.2–4 Description of lands in application.

(a) *Surveyed lands.* If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b) *Lands not surveyed under rectangular survey.* (1) If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(2) If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

(3) In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundry of the desired tract, the description in the offer must be expanded to include such courses and distances.

(4) Application or offer must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(5) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted in such offer or application.

(c) *Accreted lands.* Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundry of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

§ 3501.2–5 Acreage limitations.

(a) *Restrictions 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 interchangeable. 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.

(b) *Allowable acreage*—(1) *Leasable minerals.* See sec. 3501.1–4(b).

(2) *Locatable minerals.* (*Minerals* other than those subject to the 1920 Act as amended.) (i) No applicant may hold more than 20,480 acres under prospecting permit and lease of which not more than 10,240 acres may be held under lease, provided, however, that the Secretary may authorize a lessee to hold under lease an additional 10,240 acres of land if he finds, upon a satisfactory showing submitted by the lessee that such additional acreage is necessary to promote the orderly development of mineral resources and does not result in undue control of the mineral to be mined, removed and marketed, but in no event shall a lessee hold in excess of 10,240 acres of leased land for the mining of any dominant single mineral, nor shall any person at any one time hold more than 20,480 acres under permit and lease in any one State.

(ii) A prospecting permit may not include more than 2,560 acres, and will be issued to the first qualified applicant. The lands in the permit must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. An application for a prospecting permit which covers lands that are not located entirely within an area of six miles square or an area of six surveyed sections in length or width will be rejected in its entirety.

§ 3501.2–6 Consent of administering agency.

(a) *Jurisdiction of lands.* 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. Such consent to prospecting shall not be deemed to vest in the prospector an exclusive right to exploration or a preference right to a lease under this part.

(b) *Jurisdiction of surface.* Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

(c) *Identification of administering agency.* All applications and offers for permits or leases should name if practicable, the Government agency from which consent to 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.

(d) *Right to stipulate.* Lands under jurisdiction of the Department of Agriculture. The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired or are being administered. An application will be rejected if the Secretary of Agriculture does not give his consent. Any lease permit, or other instrument granting the right to mine or remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. All matters relating to the surface of the land and its protection, including responsibility for securing compliance with all applicable regulations and procedures of the Department of Agriculture, the terms of the lease relating to the surface and surface resources, and the stipulations specified for the protection of the land, are functions of the Department of Agriculture. Lessees and permittees will comply with the applicable regulations of the Secretary of Agriculture and will consult with the authorized representative of the Secretary of Agriculture as to matters relating to the surface.

§ 3501.2–7 Lands subject to leasing.

(a) 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).

(b) In acquired lands, except Indian lands and lands in national parks and monuments, under the jurisdiction of the bureaus of the Department of the Interior where authorized by law.

(c) 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.

(d) In those portions of the Juan Jose Lobato Grant (North Lobato tract) and of the Anton Chica Grant (El Pueblo tract) in New Mexico, mentioned in paragraph (c) of this section.

§ 3501.3 Withdrawn, reserved or segregated.

§ 3501.3–1 Lands and deposits not subject to leasing.

See §§ 3501.1–5 and 3501.2–1.

§ 3501.3–2 Consent of administrator.

(a) *Requirements when lands are in a withdrawal.* Where any part of the lands embraced in an application for lease, permit or license is within a withdrawal which does not preclude disposition of the 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 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.

(b) *Requirements when lands are reserved or segregated.* (1) General statement. 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.

(2) Lands disposed of with a reservation of minerals. Where the lands included in a permit, lease or license have been or may be disposed of with reservation of the deposits, a permittee, lessee or licensee must make full compliance with the law under which reservation was made.

(i) *Coal.* 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. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 377); and other laws authorizing such reservation.

(ii) *Potassium.* See the acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(iii) *Sodium.* See the Acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(iv) *Sulphur.* Where lands included in a permit or lease have been disposed of with reservation of sulphur deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the Acts of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(v) *Asphalt in Oklahoma.* See the Act of February 19, 1912 (37 Stat. 67), and the Act of August 3, 1955 (69 Stat. 445), and the regulations thereunder in Subpart 2781 of this chapter.

(c) *Special Stipulations.* 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 a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

§ 3501.3–3 Transfer of surface control.

Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

§ 3501.4 Special leasing acts.

§ 3501.4–1 Lands and deposits subject to prospecting and leases.

See subpart 3560.

§ 3501.4–2 Consent of administrator.

See subpart 3560.

Subpart 3502—Qualification Requirements

§ 3502.1 General.

Every applicant for a 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 the acreage limitation in § 3501.1–4.

§ 3502.1–1 Who may hold interests.

Mineral prospecting permits and mineral leases may be issued only to (a)

citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interests by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; including a company or corporation operating a common-carrier railroad, and to municipalities. (a) *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. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

(b) *Minors.* A mineral lease or permit will not be issued to a minor but leases or permits may be issued to a legal guardian or trustee in his behalf. See § 3502.8.

(c) *Common carrier railroad.* 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.

§ 3502.1–2 Bona fide purchasers.

(a) *Provisions of statute.* The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86–705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) *Sale of underlying interests.* If in any proceeding to cancel or forfeit a lease, interest in a lease, option to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) *Right to dismissal.* Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(d) *Suspension.* If during any such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3502.1–3 Where filed.

(a) *Land office.* All applicants must file their statements of qualification and evidence thereto in the proper land office unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendments, will be accepted.

(b) *Exception.* If applicant is an individual he must submit with each application a statement of his citizenship. See § 3502.2–1.

§ 3502.2 Individuals.

§ 3502.2–1 Statement of citizenship.

If applicant is an individual, he must submit with each application for permit or lease a statement over his own signature setting forth the applicant's citizenship.

§ 3502.2–2 Equitable rights affecting certain coal lands in Oklahoma.

(a) *Requirements.* Prior to the act of February 25, 1920 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.

(b) *Preference right.* 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.

§ 3502.3 Associations including partnerships.

§ 3502.3–1 Statements.

(a) If an applicant for a permit or lease is an association (including a partnership), it must submit a certified copy of the articles of association and a statement as to their citizenship and holdings as required of an individual.

(b)(1) If the offeror is an association which meets the requirements of § 3502.-1–1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (i) that it is authorized to hold leases; (ii) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (iii) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall also be furnished.

(2) If the offer is made by an association which does not meet the requirements of § 3502.1–1 of this chapter the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

§ 3502.3–2 Evidence previously filed.

Where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3502.4 Corporations.

§ 3502.4–1 Statements.

(a) If the applicant is a corporation, it must submit statements showing (1) the state in which it is incorporated; (2) that it is authorized to hold leases for mineral deposits, (3) names of the officers

authorized to act in such matters in behalf of the corporation; (4) the precentage of the corporation voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and (5) the name, addresses, citizenship, and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, 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.

(b) Exceptions.

(1) Requirements for alien interests or persons having addresses outside of the United States. Regulations for potassium, sodium, sulphur and asphalt in Oklahoma state that if more than 10 percent of the stock is owned or controlled by or on behalf of aliens or persons who have addresses outside of the United States, additional qualifications may be required.

§ 3502.5 Guardian or trustee.

§ 3502.5–1 Statements.

(a) Where there is a legal guardian or trustee: A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3502.8.

§ 3502.5–2 Evidence previously filed.

Where evidence of the authority to act of a guardian, trustee, an executor or administrator, have previously been filed pursuant to the regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3502.6 Attorney-in-fact.

§ 3502.6–1 Statements.

(a) *Evidence required.* (1) All 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 unless the power of attorney specifically authorized and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations.

(2) Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument.

(3) Except in a case where an officer of a corporation signs an application on behalf of the corporation, as to which see § 3502.4 evidence of the authority of the attorney in fact to sign the application and permit, if the application is signed by such attorney on behalf of the applicant.

§ 3502.6–2 Evidence previously filed.

Where such power of attorney has been filed in the same land office where the application is filed reference thereto by serial number of the record in which it has been filed may be made upon the filing of subsequent applications.

§ 3502.7 Showing as to sole party in interest.

Every applicant for lease or permit must submit at the time of filing a signed statement that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other interested parties in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

§ 3502.8 Heirs and devisees (estates).

§ 3502.8–1 General.

If an applicant for a permit, an applicant for a preference right lease, or a successful bidder to a competitive lease dies before the permit or lease is issued, the permit or 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, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(a) *Probate not completed.* Where probate of the estate has not been completed:

(1) *Evidence to sign.* Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(2) *Evidence of heirship.* Evidence that the heirs or devisees are the heirs or devisees of the deceased permittees and are the only heirs or devisees of the deceased.

(3) *Evidence as to citizenship and holdings.* A statement over the signature of each heir or devisee concerning citzenship and holdings similar to that required by §§ 3502.1 and 3502.2–1.

(b) *Probate proceedings not required.* Where the executor or administrator has been discharged or no probate proceedings are required.

(1) Evidence of will or decree of distrbiuton. 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 permittees and citing the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by §§ 3502.1 and 3502.2–1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3502.9 Municipality.

§ 3502.9–1 Coal.

(a) Evidence required. A municipality must submit evidence of: (1) The manner in which it is organized; (2) that it is authorized to hold a permit or lease; and (3) that the action proposed has been duly authorized by its governing body. 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.

Subpart 3503—Fees, Rentals, and Royalties

§ 3503.0–3 Authorities.

Fees—Act of August 31, 1951 (5 U.S.C. 140). Rentals see § 3500.0–3.

§ 3503.1 Payments.

§ 3503.1–1 Form of remittance.

Remittances must be submitted as cash, money order, check, certified check, bank draft or bank cashier's check.

§ 3503.1–2 Where remitted.

(a) *Proper land office.* Unless otherwise directed by the Secretary, rentals under all leases and permits issued under the act shall be paid to the Manager of the appropriate Land Office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) *Geological Survey.* Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the U.S. Geological Survey.

§ 3503.1–3 When remitted.

First year rental must be remitted at the time of filing applications for prospecting permits and preference right leases. First year rental for competitive leases will be required by decision. Thereafter, rental for all prospecting permits and leases will be required in accordance with permit and lease provisions. Applications for extension of permits must be accompanied by annual rental payment.

§ 3503.2 Fees.

§ 3503.2–1 General statement.

Applications for prospecting permits, leases or licenses, extension of permits, renewals, modifications, and for approval of any instrument transferring a lease or permit or interest therein, must be accompanied by a filing fee of $10 for each application. Such a fee will be retained as a service charge even though

an application should be rejected or withdrawn in whole or in part. An application not accompanied by the filing fee will not be accepted.

§ 3503.2–2 Exceptions.

(a) No filing fee required for coal licenses to relief agencies.

(b) Preference right lease applications.

§ 3503.3 Rentals and royalties.

§ 3503.3–1 General statement rentals.

(a) *Permits (Prospecting).* A prospecting permit application must be accompanied by full payment of the first year's rental at the rate of 25 cents per acre or fraction thereof, but no less than $20 per year, 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 subdivision. Thereafter, payment of the annual rental shall be made on or before the anniversary date of the permit.

(b) *Leases.* Annual rental is 25 cents per acre or fraction thereof for the first year; 50 cents for the second, third, fourth, and fifth years; $1 for the sixth and each succeeding year during the continuance of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which rental was paid. An application for preference right lease must be accompanied by the rental for the first year of the lease, which shall be 25 cents for each acre or fraction thereof.

(1) *Exceptions*—(i) *Certain coal lands in Oklahoma.* In the case of an award of a lease to a qualified person the rents will be established at rates not less than the minimum provided for leases under the act.

(ii) *Potassium and sodium.* Rental is 25 cents per acre or fraction thereof for the first calendar year or fraction thereof. Rental for succeeding years is payable on or before January 1, the beginning of the calendar year.

(iii) *Sulphur.* Leases shall provide for payment in advance, of an annual rental of 50 cents for each acre or part thereof covered by the lease, beginning with the date of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid. An application for a preference right lease must be accompanied by the first year's lease rental at the rate of 50 cents per acre or fraction thereof.

(iv) *Asphalt.* The annual rental will be 50 cents per acre or fraction thereof payable annually in advance.

(v) *Solid (hardrock) minerals.* An application for preference right lease must be accompanied by a rental payment of $1 for each acre or fraction thereof included in the application, but not less than $20. In no event shall the first year's rental on any lease be less than $20.

(c) *Use permits.* The annual rental for a sodium or phosphate use permit will be not less than $1 per acre or fraction thereof.

(d) *Licenses.* No rental payment required.

§ 3503.3–2 General statement royalties.

(a) *Royalty on production.* Royalty rates will be determined on an individual case basis prior to lease issuanue. Such rates will be set out in the notice of competitive lease offer.

(1) *Exceptions*—(i) *Sulphur.* Leases based upon discovery of valuable sulphur deposits under a sulphur permit shall provide for a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market. Leases for lands known to contain valuable deposits of sulphur and not covered by sulphur permits or leases shall provide for such royalty as will be determined prior to the issuance of the lease, but in no case shall the royalty be less than 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

(ii) *Solid (hardrock) minerals.* The terms and conditions of the lease, including the royalty rates, will be established on an individual case basis. If minerals other than that specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate will be established by the lessor for such mineral.

(b) *Minimum royalty*—(1) Coal. Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the sixth 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 (see sec. 3503.3–2(e)). 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.

(i) *Exception. (a) Certain coal lands in Oklahoma.* In the case of an award of a lease to a qualified person the royalties will be established at rates not less than the minimum provided for leases under the act.

(2) *Potassium, sodium and sulphur.* Leases will require the payment of a royalty on a minimum annual production beginning with the sixth full calendar lease year, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(3) *Phosphate.* (i) *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.

(ii) *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 processing of the phosphate rock and associated or related minerals, (e) the estimated rate of its extraction and (f) possible absorption in the markets. Within 6 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.

(c) *Limitation of overriding royalties.* (1) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it 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 in order (1) to prevent premature abandonment, or (2) to make possible the ecenomic mining of marginal or low grade deposits. 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 argeement, in the inverse order of the dates of creation of such interests.

(2) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will 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 (1) 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

(3) *Exceptions.* (i) *Coal.* 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 had made substantial investments for improvements on the land covered by the assignment.

(ii) *Phosphate.* An overriding royalty interest shall not be created by assignment or otherwise exceeding one percent 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, 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 authorized officer that he has made substantial investments for improvements on the land covered by the assignment.

(d) *Waiver, suspension, or reduction of rental or minimum royalty.* (1) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, 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.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the mining supervisor for coal, phosphate, potassium, sodium, 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.

(i) Each application involving coal, phosphate, potassium, sodium 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.

(ii) 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 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.

(iii) 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 aggregate not in excess of one-half the Government royalties.

(e) *Suspension of operations and production.* (1) 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 Mining Supervisor for all leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the Regional Mining Supervisor is 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.

(2) 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.

(3) 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.

(4) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(5) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, 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.

(6) *Exceptions.* (i) *Solid (hardrock) minerals.* (*a*) Upon a showing of the need and upon application therefor, filed in triplicate in the office of the Regional Mining Supervisor and a copy filed in the proper land office, the lessee may be granted a suspension of the operating and/or producing requirements of the lease. A rental in lieu of royalty of not less than $1 per acre shall be paid annually during the period of suspension. The period of suspension shall be specified in an appropriate order of the Secretary or his authorized representative.

(*b*) Notwithstanding the provisions of the preceding paragraph, the Secretary, in the interest of conservation of natural resources, may suspend all operating and producing requirements and waive, suspend, or reduce the rental or minimum royalty.

Subpart 3504—Bonds

§ 3504.1 General.

§ 3504.1–1 Statement.

Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 3504.3 may be furnished for the protection of the entryman or owner of surface rights.

§ 3504.1–2 Special acts.

(a) *Gold and silver in confirmed private land grants.* 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.

(b) *Asphalt in Oklahoma.* A compliance bond in no event less than $1,000 will be required prior to issuance of the lease and compliance with § 3504.2–1(b).

(c) *Nevada*—(1) *Silica sands and other nonmetallic minerals in certain areas in Nevada.* 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.

(2) *Sand and gravel in certain lands patented to the State.* The applicant will be required prior to 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.

(d) *Reserved minerals in lands patented to the State of California for park or other public purposes.* 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.

(e) *Certain national forest lands in Minnesota.* There must be filed a bond in compliance with § 3504.2–1(a)(1) for permits; and § 3504.2–1(b) for leases.

(f) *Lease for minerals on lands withdrawn for reclamation purposes within Lake Mead Recreation area.* There must be filed a bond in compliance with § 3504.2–1(b) for leases.

(g) *Prospecting and mineral leasing within National Forest Wilderness.* There must be filed a bond in compliance with § 3504.2–1(a)(1) for permits; and § 3504.2–1(b) for leases.

(h) *Development of minerals in lands within Whiskeytown-Shasta-Trinity national recreation area.* There must be filed a bond in compliance with § 3504.2–1(a)(1) for permits; and § 3504.2–1(b) for leases.

§ 3504.2 Type of bond.

§ 3504.2–1 Compliance bonds.

(a) *Permit bond—(1) Amount.* The applicant must furnish a bond conditioned upon compliance with all terms of the prospecting permit on all permits issued pursuant to applications filed under this section. The bond shall be in the amount determined by the authorized officer, but not for less than $1,000.

(2) *Exception—(i) Solid (Hardrock) minerals.* The permittee may also be required, as condition precedent to the issuance of a permit, to furnish a permit bond.

(b) *Lease bond—(1) Amount.* A bond conditioned upon compliance with all the provisions of the lease must be furnished on all leases issued. The bond shall be in the amount determined by the authorized officer but in no event less than $5,000 for potassium, sodium, phosphate and sulphur leases; not less than $1,000 for coal leases; and not less than $500 for solid (hardrock) mineral leases. The right is reserved to increase the amount of the bond when deemed proper by the authorized officer.

§ 3504.2–2 Where filed and copies.

Bonds must be filed in the proper land office in a single original copy.

§ 3504.2–3 When filed.

Permit bonds may be filed with an application which will expedite action thereon; or bonds may be filed within 30 days after receipt of notice by the applicant of the bond requirement.

§ 3504.2–4 Form of bond.

Bonds will be furnished on a form approved by the Director.

§ 3504.2–5 Termination of period of liability.

The period of liability of any bond will not be terminated until all terms and conditions in the permit or lease have been fulfilled.

§ 3504.3 Individual sureties.

§ 3504.3–1 Net worth statement.

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 U.S. Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located.

§ 3504.3–2 Certificate required.

There also must be furnished a certificate by a judge or clerk of a court of record, a U.S. Attorney, a U.S. Commissioner, or a U.S. Postmaster, as to the identity, signature, and financial competency of the sureties.

§ 3504.3–3 Requirements.

All bonds furnished with individual sureties will be examined every 2 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.

§ 3504.3–4 Terms.

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.

§ 3504.3–5 Forms.

The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

§ 3504.4 Corporate bond or personal bond.

§ 3504.4–1 Amount.

To be determined by the authorized officer after consultation with the Mining Supervisor.

(a) Compliance with § 3504.2–1(a)(1) for permits.

(b) Compliance with § 3504.2–1(b) for leases.

(1) *Corporate surety bond.* (i) A corporate surety bond may be filed for a prospecting permit or lease.

(2) *Personal bond—(i) Type of bond.* In lieu of a corporate surety bond, a personal prospecting permit or lease bond may be filed.

(ii) *Deposit of securities.* Personal prospecting permit or lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required surety bond, together with a power of attorney may be executed on a form approved by the Director.

§ 3504.4–2 Qualified sureties.

(a) *Treasury lists.* A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of Congress, approved July 30, 1947 (6 U.S.C. 6–13) as acceptable sureties on Federal bonds is published in the FEDERAL REGISTER annually.

§ 3504.5 Nationwide bonds.

§ 3504.5–1 Amount.

Lessee may furnish for coal, potassium, sodium, or phosphate a separate bond in the amount of $75,000 for full nationwide coverage of all leases and permits issued for the respective mineral pursuant to the Mineral Leasing Acts, and also pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351–359).

§ 3504.6 Statewide bond.

§ 3504.6–1 Amount.

Lessee may furnish for coal, potassium, sodium, or phosphate for each state in which the lessee holds leases or permits separate statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part in that State for the respective mineral.

§ 3504.7 Collective bond.

§ 3504.7–1 Amount.

Lessee may furnish for coal, potassium, sodium, or phosphate a collective bond in an amount not less than the total minimum coverage required if separate bonds on each lease were furnished.

§ 3504.8 Default.

§ 3504.8–1 Payment of surety.

Where upon a default, the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3504.8–2 Penalty.

Thereafter upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $75,000, a new statewide bond in the amount of $25,000 or a new collective bond as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix.

§ 3504.8–3 Relief.

However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3504.8–4 Applicability of provisions to existing bonds.

The provisions hereof may be made applicable to any nationwide, statewide or collective bond in force at the time of the approval of the amendment of this paragraph by filing in the appropriate land office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ 3504.9 Exploration bond.

§ 3504.9–1 See 43 CFR Part 23.

Subpart 3505—Cooperative Conservation Provisions

§ 3505.1 General.

§ 3505.1–1 Coal fields or prospective areas.

To conserve the natural resources of any coal field or prospective coal area, or any part or zone thereof, and to permit an orderly, efficient and economic development of such coal fields, the act authorizes the Secretary of the Interior to approve cooperative agreements among lessees or permittees and their representatives if such agreements or contracts are certified by the Secretary to be necessary or advisable in the public interest. It also permits him to enter into a development contract with a single lessee and to consolidate the leases or permits of one or more lessees or permittees.

§ 3505.1–2 Solid (hardrock) minerals.

The Secretary of the Interior or his authorized representative may approve operating or development contracts or

processing or milling arrangements for the conservation of natural products or whenever in his discretion, the public convenience or necessity may require it or the interests of the United States may be best served thereby.

§ 3505.2 Coal.

§ 3505.2–1 Types of contracts.

(a) *Collective contracts.* The Secretary may approve collective contracts of lessees and permittees and their representatives and others, for prospecting, development or operation of coal fields or prospective coal areas, or any part or zone thereof.

(b) *Development contracts.* The Secretary may enter into a development contract with a single lessee or permittee embracing his leases or permits.

(c) *Consolidation of leases and permits.* The Secretary may consolidate separate Federal permits or leases of one or more lessees or permittees into a lesser number of permits or leases, or into a single permit or lease.

§ 3505.2–2 Application.

(a) *Where filed and copies.* A contract submitted for approval must be filed in the proper land office with enough copies to permit retention of five copies after approval.

(b) *Showing required.* The application must 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 must 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 to prescribe the conditions on which approval of the contracts is made.

(c) *Common carrier railroads.* Any company or corporation operating a common-carrier railroad which may be a party to a collective contract or development contract with a Federal lessee under this subpart, to develop its own lands, excluding Federal lands leased by the railroad, in connection with or in cooperation with a Federal lessee or lessees shall not be deemed to be given or hold a lease by virtue of any such arrangement between the working interest owners.

§ 3505.2–3 Special provisions.

(a) *Production and royalties.* A contract approved hereunder shall not provide for an apportionment of production or royalties among the separate tracts comprising the contract area, but may provide for the commingling of production with appropriate allocation to the tracts from which produced. In connection with any contract approved or executed or with any consolidation accomplished under this subpart, the authorized officer may, with the consent of the party or parties involved, establish, alter, change, or revoke mining, producing, rental, minimum royalty, and royalty requirements of such leases or permits or contracts.

(b) *Working interest contracts.* In the case of any contract between lessees or their representatives, or between them and others for collective development or operation of any coal field or coal area, or any part or zone thereof, such arrangement as the working interest owners may enter into for the sharing or division of production among them shall not be deemed to be an apportionment of production or royalties among the separate tracts comprising the contract area.

§ 3505.2–4 Approval.

(a) *Approval of contract.* A contract pursuant to the provisions of this section will be approved or executed by the Secretary.

(b) *Exemption from acreage limitations.* Coal leases and permits operated under a contract pursuant to the provisions of this section may be excepted from acreage limitations or maximum holdings or control imposed by the Act, if it is determined that such exception is required to permit economic development of the resources and is otherwise consistent with the public interest.

§ 3505.3 Solid (Hardrock) minerals.

§ 3503.3–1 Types of contracts.

(a) *Operating or development contract.* The Secretary of the Interior or his authorized representative may approve operating or development contracts, or processing or milling arrangements, made by one or more lessees with one or more persons, associations, or corporations, to justify operations on a large scale for the discovery, development, production or transportation of ores.

§ 3503.3–2 Application.

(a) *Where filed and copies.* An application must be filed in the proper land office in three executed copies, and a duplicate original must be filed with the Regional Mining Supervisor of the Geological Survey. All of the contracts held by the same contractor, in the area, should be submitted at the same time and full disclosure of the project made.

(b) *Showing required.* The contract must be accompanied by a statement showing all of the interests held by the contractor designated in the contract in the area, and also the agreed or the proposed plan of operation or development of the leased lands.

§ 3505.3–3 Approval.

(a) *Approval of contract.* Contracts may, by and with concurrence of the Geological Survey and on such conditions as may be subscribed, be approved by the Secretary or his authorized representative.

(b) *Exemption from acreage limitations.* Operating or development contracts may be approved regardless of acreage limitations provided in § 3501.2–5.

Subpart 3506—Assignments or Transfers and Subleases

§ 3506.1 Qualifications.

§ 3506.1–1 Who may file.

Permits and leases may be transferred in whole or in part to any person, association, or corporation qualified to hold such leases and permits.

(a) *Minors.* A minor is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(1) *Exception.* An assignment in behalf of a minor heir or devisee of a permittee or lessee to his legal guardian or trustee may be approved.

§ 3506.1–2 Failure to qualify.

No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient.

§ 3506.1–3 Number of copies required.

A single executed copy of qualifications is sufficient.

§ 3506.1–4 Sole party in interest.

Compliance with § 3502.7.

§ 3506.1–5 Attorney-in-fact.

Compliance with § 3502.6.

§ 3506.1–6 Heirs and devisees.

In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3502.8.

§ 3506.2 Requirements.

§ 3506.2–1 Where filed.

An application for approval of an assignment or transfer must be filed in the proper land office as specified in § 3000.5–1.

§ 3506.2–2 Forms and statements.

(a) *Record title; copies required.* Assignments or transfers of record title interest must be filed in triplicate.

(1) *Approved form.* There is no specific form which must be used for assignment transfers or requests for approval thereof. The application must contain evidence of qualifications of the assignee or transferee consisting of the same showing required of a lease or permit applicant as set forth in qualifications subpart 3502.

(2) *Separate instruments required.* A separate instrument of assignment or transfer must be filed for each permit or lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one permit or lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee or transferee will be sufficient.

(b) *Other than record; title; copies required.* A single executed copy of all other instruments of transfer is sufficient.

§ 3506.2–3 Bonds.

(a) *Coverage.* If a bond is necessary it must be furnished before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or

lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred.

(b) *Continuing responsibility.* 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.

§ 3506.2–4 Permit or lease account status.

The account under the permit or lease must be in good standing before approval of a transfer will be given.

§ 3506.2–5 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the permit or lease or in the manner required by § 3501.1–3.

(a) *Effect of assignments.* The approval of transfer of only a 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.

§ 3506.3 Approval.

§ 3506.3–1 Application.

Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval within 30 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 subpart 3502.

§ 3506.3–2 Effective date.

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.

§ 3506.4 Royalty interests.

Transfer of royalty interests must be filed 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 subpart 3502.

§ 3506.5 Extensions.

The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease.

Subpart 3509—Surface Management

§ 3509 Surface management.

§ 3509.1 See 43 CFR Part 23.

PART 3510—PROSPECTING PERMITS

Subpart 3510—Prospecting Permits, General

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3510.1 General.
3510.1–1 Character of lands.
3510.1–2 Rights conferred.

Subpart 3511—Prospecting Permits

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3511.1–1 Duration of permits.
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3511.1–3 Acreage of limitations.
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3511.4–1 Relinquishments.
3511.4–2 Operation of law.
3511.4–3 Default.
3511.4–4 Cancellations.

Subpart 3510—Prospecting Permits; General

§ 3510.0–3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to issue permits to prospect unclaimed and undeveloped land areas subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0–3. The Secretary is further authorized to issue permits for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium.

§ 3510.1 General.

§ 3510.1–1 Character of lands.

The Secretary of the Interior is authorized to issue permits to qualified applicants to prospect unclaimed and undeveloped areas of mineral lands and mineral deposits in public and acquired lands or in public and acquired lands disposed of with a reservation of deposits to the United States.

(a) *Exceptions.* (1) *Sulphur.* The Secretary of the Interior is authorized to issue permits to prospect for sulphur in public lands or in public lands disposed of with a reservation of such deposits to the United Saates in the States of Louisiana and New Mexico.

§ 3510.1–2 Rights conferred.

A permit will grant the permittee the exclusive right to prospect on and explore the lands involved to determine the existence of, or workability of, and commercial value of the mineral deposits therein. Only such material may be removed from the lands as is necessary for experimental work or the demonstration of the existence of such deposits in commercial quantities.

Subpart 3511—Prospecting Permits

§ 3511.1 Terms.

§ 3511.1–1 Duration of permits.

Prospecting permits are issued for a term of 2 years.

§ 3511.1–2 Dating of permits.

The permit will be dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

§ 3511.1–3 Acreage limitations.

(a) For public domain, compliance with § 3501.1–4(b).

(b) For acquired lands, compliance with § 3501.1–4(b) is required.

(c) For solid (hardrock) minerals, compliance with § 3501.2–5(b) is required.

§ 3511.1–4 Withdrawal of application.

An application for permit may be withdrawn in whole or in part prior to its execution on behalf of the United States. The filing fee will be retained as service charge. The advance rental covering the acreage withdrawn will be refunded.

§ 3511.1–5 Amendment to the application.

An amendment to an application for prospecting permit to include additional lands receives priority for such additional lands from the date of filing of the amended application. The amended application must be accompanied by the additional rental required.

§ 3511.1–6 Determination of priorities.

(a) *Regular filings.* Priority of applications will be determined in accordance with time of filing.

(b) *Simultaneous filings.* 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. All applications filed in the manner specified in § 1821.2–3 of this chapter, will be deemed simultaneously filed.

§ 3511.1–7 Land description.

Compliance with §§ 3501.1–3 and 3501.2–4 is required.

§ 3511.2 Application.

§ 3511.2–1 Forms.

(a) *Application for permit; issuance of permit.* To obtain a prospecting permit, an application must be filed on a form approved by the Director or an exact reproduction thereof. Each application should be filled in on a typewriter or printed plainly in ink by the applicant or the applicant's duly authorized attorney in fact.

(b) *Exceptions*—(1) *Coal-additional showing required.* The application for a

permit should be accompanied by a proposed plan and method for conducting prospecting or exploratory operations on the land setting forth the estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

(2) *Acquired lands—additional showing required.* Specify the dominant mineral or minerals for which the lease or permit is sought;

(c) *Where filed and copies.* Applications must be filed in the proper land office and filed in quintuplicate.

(1) *Exceptions*—(i) *Acquired and solid (hardrock) minerals.* Seven copies of the application must be filed.

§ 3511.2–2 Qualifications.

(a) Compliance with Subpart 3502 is required.

§ 3511.2–3 Approval.

(a) The United States will indicate its acceptance of the application, in whole or in part, and the issuance of the permit by the signature of the authorized officer in the space provided therefor. An executed copy of the permit will be mailed to the applicant at the address of record.

(b) An application for permit on a form not correctly reproduced, but which contains the statement that the applicant agrees to be bound by the terms and conditions of the form in effect at the date of filing, will be approved by the authorized officer provided all other requirements are met.

§ 3511.2–4 Rejection.

(a) Except as provided in § 3511.2–3 an application will be rejected if:

(1) The land description does not conform with the requirements of § 3501.1–3, or the land is not in reasonably compact form as specified in § 3501.1–3.

(2) The total acreage exceeds the allowable acreage specified in § 3501.1–4(b) except where the rule of approximation applies (see § 3500.0–5(c)).

(3) The full amount of the filing fee and the first year's rental do not accompany the application, 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.

(4) The application is signed by an attorney-in-fact on behalf of the applicant and is not accompanied by the evidence and statement required by § 3502.6–1.

(5) The application is signed by a guardian or trustee on behalf of a minor and is not accompanied by the evidence specified § 3502.5.

(6) Less than five copies of the application are filed.

(7) There is noncompliance with the requirements specified in subpart 3502.

(b) Curable defects. If an application is defective to the extent set out in paragraph § 3511.2–4(a) of this section, the applicant will be given an opportunity to file a new application within 30 days from service of the rejection, and the fee and rental payments on the old application will be applied to the new application if the new application shows the serial number of the old application. The advance rental will be returned unless within the 30-day period another application is filed.

§ 3511.3 Extensions.

§ 3511.3–1 Terms.

(a) *Duration.* Permits may be extended by an authorized officer of the Bureau of Land Management for a period of 2 years. (1) *Exceptions*—(i) *Sodium and sulphur.* No extension of term will be granted.

(ii) *Phosphate.* Phosphate permits may be extended by an authorized officer of the Bureau of Land Management for an additional period not in excess of 4 years.

(b) *Requirements.* A permit may be extended, in the discretion of the Secretary and after consultation with the Mining Supervisor of the Geological Survey, if:

(1) The permittee has been unable with reasonable diligence to determine the existence or workability of the deposits covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such extension.

(2) The permittee has drilled at least one adequate test well on the permit area or performed other comparable prospecting prescribed in the permit. This requirement may be waived upon a satisfactory showing that the failure of permittee was directly attributable to the shortage of equipment or labor essential to the prescribed prospecting.

(3) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his control.

§ 3511.3–2 Application—

(a) *Where and when filed; and copies.* Application for extension must be filed in quintuplicate in the proper land office within 90 days prior to expiration of the permit.

(b) *Showing required.* The application for extension:

(1) Must disclose the reasons additional time is considered necessary to complete prospecting work.

(2) Should consist of copies of timely correspondence or other evidence demonstrating the unsuccessful efforts to obtain the material or labor.

(3) Should state why the permittee's failure to perform diligent prospecting activities was due to conditions beyond his control.

(4) Must show how much additional time is necessary to complete prospecting work.

§ 3511.3–3 Approval.

Extension will be limited to such period, not to exceed the 2 years, as may be determined to be allowable under the circumstances in each particular case.

§ 3511.3–4 Rejection.

(a) *Failure to perform.* Failure of the permittee to perform prospecting or exploration work as required without adequate justification.

(b) *Failure to file.* If an application for extension is not filed within the specified period, the permit will expire without notice to the permittee and the lands if otherwise available shall be subject to filing of new applications for permits.

§ 3511.4 Terminations, expirations, and cancellations.

§ 3511.4–1 Relinquishments.

The permittee may surrender the entire prospecting permit or any legal subdivision thereof. If the lands are not described by legal subdivisions, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof.

(a) *Where filed and copies.* A relinquishment must be filed in the proper land office and filed in triplicate.

(b) *Acceptance.* Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

§ 3511.4–2 Operation of law.

(a) *Expiration.* If an application for extension is not filed within the specifid period, the permit will expire without notice to the permittee and the lands if otherwise available shall be subject to filing of new applications for prospecting permits.

(1) *Exceptions*—(i) *Sodium and sulphur.* Unless a lease application is filed pursuant to subpart 3520 the permit will expire at the end of its period without notice to permittee.

(ii) *Solid (hardrock) minerals.* Upon failure of the permittee to file an application for extension within the specified period, the permit will expire 30 days after the end of its primary term without notice to the permittee and the lands will thereupon become subject to new application for prospecting permits.

(b) *Terminations and expirations for nonpayment of rental.* (1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay the rental must be noted on the official records of the proper land office. Until such notation is made, the lands covered by the permit shall not be available for filing of any other permit applications. Applications for such permits filed prior to such notation will be rejected.

(3) Where lands embraced in a canceled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquish-

ment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ 3511.4–3 Default.

(a) *Noncompliance with terms of permit.* Except as provided for in § 3511.4–2(b)(1), if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any of the terms or stipulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government, the permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

§ 3511.4–4 Cancellations.

(a) *Coal.* A permit issued pursuant to § 3524.1 may be canceled by the authorized officer, if the cancellation is in the public interest or the coal deposits in the lands covered thereby are no longer necessary for the lessee or permittee to carry on business economically or if the lessee or permittee has divested himself of all or any part of the original 46,080 acres or no longer has facilities for the exploitation of the deposits under lease or permit. However, such lessee or permittee will be given notice of the proposed cancellation and afforded an opportunity of submitting evidence showing why the lease or permit should not be canceled.

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Subpart 3520—Preference Right and Competitive Leases, General

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Subpart 3522—Continuation of Lease Terms

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Subpart 3523—Relinquishments and Cancellations

3523.1 Reliquishments.
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Subpart 3524—Special Rights

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3524.2 Modifications.
3524.2–1 Coal.
3524.3 Use of other minerals.
3524.3–1 Phosphate.

Subpart 3520—Preference Right and Competitive Leases; General

§ 3520.0–3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to divide into leasing units and award leases of mineral lands and mineral deposits owned by the United States as set forth in § 3500.1–1 subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0–3.

§ 3520.1 General.

§ 3520.1–1 Preference right leases.

A permittee who discovers valuable mineral deposits in the land before his permit expires is entitled to a preference right lease of all or part of the lands in the permit in a reasonably compact form.

(a) *Exceptions*—(1) *Coal.* Showing is required that the land in his permit contains coal in commercial quantities.

(2) *Sulphur.* Showing required that valuable deposits have been discovered in the permit and that the land is chiefly valuable therefor.

(3) *Solid (hardrock) minerals.* A permittee who discovers any valuable deposits of minerals shall be entitled to a preference right lease for the mineral in any or all of the lands in the permit except as provided in § 3501.2–7.

§ 3520.1–2 Competitive leases.

(a) The Secretary is authorized to lease competitively those lands as set forth in Subpart 3501, containing valuable mineral deposits as set forth in § 3500.1. (1) 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.

(2) 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.

(3) Leasing units may include, in whole or in part, unsurveyed land. If the lands are unsurveyed, they must be described in accordance with approved protracted surveys or, in the absence of such protracted surveys, by metes and bounds.

(b) Potassium. Potash lands and deposits in or adjacent to Searls Lake, Calif., are subject only to lease by competitive bidding, except as to potash mining rights included in sodium permits and leases issued under subparts 3511 and 3520.

§ 3520.2 Terms.

§ 3520.2–1 Duration of leases.

Leases shall be issued for indeterminate periods subject to readjustment or renewal at the end of the first 20-year period upon such terms and conditions as may be incorporated in each lease or prescribed in general regulations theretofore issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development and minimum production. (a) *Exceptions*—(1) *Asphalt.* Asphalt leases are issued for 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

(2) *Solid (hardrock) minerals.* The lease will be issued for a period not exceeding 20 years the term to be determined upon the advice of the agency having jurisdiction over the surface and the U.S. Geological Survey.

§ 3520.2–2 Dating of leases.

(a) *Preference right leases.* The lease will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, except that upon the applicant's request, the lease will be dated the first day of the month following the date the application is filed.

(b) *Competitive leases.* 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.

§ 3520.2–3 Acreage limitations.

(a) *Consolidation of prospecting permits into preference right leases after discovery.* After discovery, prospecting permits may be consolidated into preference right leases not to exceed the allowable acreage as set forth in § 3501.1–4(b) if, after consulation with the Mining Supervisor, it is determined to be justified and the interests of the United States are protected.

(b) *Consolidation of competitive leases.* Competitive leases may be consolidated not to exceed the allowable acreage as set forth in § 3501.1–4(b) if, after consultation with the mining supervisor of the Geological Survey, if it is justifiable and the interests of the United States are protected.

(c) *Size of competitive lease.* (1) Compliance with § 3501.1–4(b) is required.

(2) Preference right leases; acquired lands. Should the issuance of the preference right lease, for the acreage applied for, increase the permittee's leased acreage beyond 10,240 acres, such preference right lease will not issue unless the permittee, within the time allowed by the signing officer, relinquishes sufficient of his leased lands to reduce the area of his leaseholds, including the area to be included in the preference right lease, to 10,240 acres except as provided for in § 3501.2–5.

§ 3520.2–4 Land description.

(a) Compliance with § 3501.1–3 is required.

Subpart 3521—Designation of Lands for Lease and Offer of Lands for Lease

§ 3521.1 Preference right lease application.

§ 3521.1–1 Forms.

(a) *Where and when filed; copies.* An application for preference right lease shall be filed in duplicate in the proper land office not later than 30 days after the permit expires. (1) *Exception*—(i) *Coal.* An application for a preference right lease must be filed in duplicate promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited.

(b) *Requirements*—(1) *Showing required.* The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as disclosed by the prospecting work, and show that valuable deposits of the mineral covered by the permit were discovered before the permit expired.

(2) *Exceptions*—(i) *Coal.* Showing that coal was discovered in commercial quantities.

(ii) *Solid (hardrock) minerals.* The application must describe the lands for which the lease is desired; must contain a statement of permittee's interests, direct or indirect, in acquired lands mineral leases except leases covering oil, gas, oil shale, coal, phosphate, potassium, sodium, and sulphur; must disclose any change in the information contained in the application for the permit specify fully the extent the mode of occurrence of the mineral deposit disclosed by the prospecting, and show that a valuable deposit of minerals was discovered before the expiration of the permit.

(3) *Rental to be submitted.* The application must be accompanied by the first years rental at the rate of 25 cents per acre or fraction thereof.

(4) *Exceptions*—(i) *Sulphur.* The application must be accompanied by the first year's rental at the rate of 50 cents per acre or fraction thereof.

(ii) *Solid (hardrock) minerals.* The application must be accompanied by a payment of $1 for each acre or fraction thereof included in the application, but not less than $20. In no event shall the first year's rental on any lease be less than $20.

§ 3521.1–2 Qualifications.

(a) Compliance with subpart 3502 required.

§ 3521.1–3 Special requirements.

(a) *Sodium and sulphur.* An application for sodium or sulphur preference right lease must show that the land is chiefly valuable for that mineral.

§ 3521.2 Initiation of offer for competitive lease.

§ 3521.2–1 Application or Bureau motion.

(a) Application. (1) Forms. (i) Where filed and copies. An application for a lease must be filed in duplicate in the proper land office. No specific form is required. The application should include the information set forth in (ii) to (v) of this subparagraph.

(ii) The applicant's name and address.

(iii) Statement of citizenship and qualifications.

(iv) A complete and accurate description of the lands for which the lease is desired. See § 3501.1–3.

(v) Evidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit.

(2) Additional statements required (i) Coal.

(ii) A statement of interests, direct or indirect, in other identified Federal coal leases, permits or applications therefor in the same State. Such total interests may not exceed 46,080 acres, except that if applicant is a railroad or corporation operating a common carrier such total interests may not exceed 10,240 acres.

(iii) 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.

(3) The contemplated investment for the development and equipment of a producing mine of a stated average daily output. (i) Phosphate. 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.

(4) Evidence showing in sufficient detail that:

(i) 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.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations 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.

§ 3521.2–2 Qualifications.

(a) Compliance with subpart 3502 is required.

(b) Bureau motion. (1) Bureau of Land Management responsibility.

(2) Geological Survey responsibility.

(c) Leasing units. (1) *Coal.* 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.

(2) *Phosphate.* If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer 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 lease offer.

(3) *Solid (hardrock) minerals.* Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical leasing unit.

(i) Exception.

(*a*) *Phosphate.* In a notice for a phosphate lease, the detailed statement will set forth that the terms of minimum production will not be reduced or waived at the lessee's request except as provided in § 3503.3–2(b)(3), (d), (e), or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss § 3503.3–2(b)(3), (d), (e).

(*b*) *Asphalt.* All leases will be issued through competitive bidding only in the

same manner as that provided for in subpart 3120.

(c) *Publication.* Notice of offer of lands or deposits for lease by competitive bidding will be 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 are situated.

§ 3521.2–3 Notice of lease offer.

(a) *Contents.* (1) The notice will show the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained.

(2) It will also contain a statement that sealed bids may not be modified or withdrawn unless the modification or withdrawals are received prior to the time fixed for opening of the bids.

(3) The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared.

(4) The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(5) The detailed statement will specify that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned.

§ 3521.2–4 Qualifications of successful bidder.

(a) Compliance with subpart 3502 is required as well as the bid deposit and statement of citizenship and holdings.

(1) 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 lease offer. The successful bidder at a sale by public auction must on the day of sale deposit with the Manager or other officer conducting the sale and each bidder at a sale by sealed bid must submit with his bid, the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in subpart 3502.

§ 3125.2–5 Award of lease (competitive).

(a) *Notification of award.* Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly.

(b) *Unsurveyed lands.* If the land is unsurveyed, the successful bidder will not be required to comply with the requirements for lease issuance until the land has been surveyed. See § 3501.1–2.

§ 3521.3 Approval.

§ 3521.3–1 Preference right lease and competitive lease.

(a) *Form of lease.* Lease shall be on a form approved by the Director.

(1) *Exception*—(i) *Asphalt.* The form of lease will be substantially the same as that set forth in 47 L.D. 426–429. The right is reserved to insert in the lease such other terms and conditions as may be deemed necessary for the protection of the surface of the land, its resources and any other lessees of the lands.

(b) *Unsurveyed lands.* Compliance with § 3501.1–2 is required.

§ 3521.3–2 Compliance with notice of competitive lease offer.

(a) *Action by successful bidder.* Four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3521.2–3 and file a bond as required by subpart 3504.

(b) *Death of bidder.* If the bidder dies before the lease is issued there must be compliance with § 3502.8.

§ 3521.4 Rejection.

§ 3521.4–1 Preference right lease.

(a) *Penalty.* If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(1) *Exception*—(i) *Solid (hardrock) minerals.* If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate (12½ percent) and such mining will not constitute a trespass. The permittee shall be liable for and pay to the United States a royalty of 12½ percent of the gross value of the minerals mined at the point of shipment to market during the period prior to the effective date of the preference right lease, but no mining operations shall be carried on prior to the effective date of such lease except with the written consent of the agency having jurisdiction over the surface of the land and subject to such conditions as the authorized representatives of the agency shall prescribe.

§ 3521.4–2 Competitive lease.

(a) *Failure to comply with requirements*—(1) *Penalty.* 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 the Mineral Leasing Act.

(i) *Exception*—(a) *Asphalt in Oklahoma.* 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 deposited in the general fund of the Treasury of the United States. (See act of June 28, 1944 (53 Stat. 463, 485)).

Subpart 3522—Continuation of Lease Terms

§ 3522.1 Renewal of leases.

§ 3522.1–1 Application.

An application for renewal of sodium, sulphur or solid (hardrock) minerals lease must be filed in the appropriate land office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a new bond as prescribed in Subpart 3504.

§ 3522.1–2 Terms.

(a) *Sodium.* Sodium leases are issued with preferential right to renew the lease for successive periods of 10 years.

(b) *Sulphur.* Sulphur leases are issued with the preferential right to renew the lease for successive periods of 20 years.

(c) *Solid (hardrock) minerals.* The lessee will be granted a right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover.

(d) *Exceptions*—(1) *Solid (hardrock) minerals.* Upon failure of the lessee to file an application for an extension within the specified period the lease will expire 30 days after the end of its primary term without notice to the lessee and the lands will thereupon become subject to new application for leasing permits.

§ 3522.2 Renegotiation of lease terms.

§ 3522.2–1 Terms and conditions.

Coal, potassium, and phosphate leases are issued subject to readjustment of the terms and conditions of the lease at the end of each 20-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 20-year period.

Subpart 3523—Relinquishments and Cancellations

§ 3523.1 Relinquishments.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. If the lands are not described by legal subdivision, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof.

§ 3523.1–1 Where filed and copies.

A relinquishment must be filed in the proper land office and filed in triplicate.

§ 3523.1–2 Acceptance.

Upon its acceptance it shall be effective as of 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 provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3523.2 Cancellations.

§ 3523.2–1 Judicial proceedings.

(a) 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 § 3522.2 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 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.

(b) *Exceptions.* (1) *Coal.* A lease issued pursuant to § 3524.1–1 may be canceled by the authorized officer, if the cancellation is in the public interest or the coal deposits in the lands covered thereby are no longer necessary for the lessee to carry on business economically or if the lessee has divested himself of all or any part of the original 10,240 acres or no longer has facilities for the exploitation of the deposits under lease. However, such lessee will be given notice of the proposed cancellation and afforded an opportunity of submitting evidence showing why the lease should not be canceled.

(2) *Solid (hardrock) minerals.* (i) *Default.* Except as provided in § 3511.4, if a lessee fails to comply with the general regulations in force at the date of the lease, or, as to a lease at the effective date of any readjustment of the terms and conditions thereof, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the Government then the lease may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the lease for any other cause, or for the same cause occurring at any other time. Until such cancellation is noted on the appropriate records of the Land Office, the lands will not be open to further application for lease.

§ 3523.3 Termination.

Any lease shall terminate automatically if the lessee fails to pay the rental on or before the anniversary date of the lease. However if time for payment falls upon any day on which the proper land office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the proper land office. Until such notation is made, the lands included in such lease are not subject to issuance of any other lease.

Subpart 3524—Special Rights

§ 3524.1 Leasing of additional deposits.

§ 3524.1–1 Coal.

(a) A person, association, or corporation may file with the appropriate land office an application or applications for coal leases or permits for acreage in addition to the 46,080 acres which application or applications shall be in multiples of 40 acres, not exceeding a total of 5,120 additional acres in any one State, and shall contain: (1) A statement showing that the granting of a lease or permit for such additional lands is necessary to carry on business economically and is in the public interest, and (2) a statement of direct or indirect interests in other Federal and non-Federal coal leases and permits in the State, identifying the Federal leases by serial numbers, and (3) a statement of estimated reserve of coal that applicant has from any other source within the State.

(b) *Availability.* (1) Upon the filing of an application for additional lands as specified in paragraph (a) of this section, the coal deposits in the lands covered thereby shall be temporarily set aside and withdrawn from all forms of disposal under the Act.

(2) Notice of all applications filed for additional lands as specified in paragraph (a) of this section shall be posted in the appropriate land office, and the authorized officer shall conduct public hearings thereon. The authorized officer will thereafter determine the amount of additional acreage to be granted under this section taking into consideration the area required for plant facilities and such other data as may be pertinent.

(c) *Terms and conditions.* A lease or permit may be issued, subject to such terms and conditions as may be prescribed by the Secretary of the Interior. Such terms and conditions may require the payment either of cash bonus per acre or fraction thereof or a rental and royalty rate different from that required by the original leases or permits, or both.

(d) *Approval.* Thereafter and to the extent necessary for the applicant to carry on business economically, the authorized officer may issue coal leases or permits to the applicant for additional acreage of not more than 5,120 acres.

§ 3524.1–2 Potassium.

(a) *Character of the lands*—(1) *Availability.* Lands determined to be available for leasing may be offered competitively in the manner specified in subpart 3521 except that if the Manager, after consulting with the Mining Supervisor, determines that the potassium deposits in the lands applied for extend into an active mining unit held by the applicant, are a normal part of such mining unit, are lacking in sufficient reserves to warrant independent development as a single mining unit, and are not of competitive interest to holders of other active mining units in the area, he may, in the interest of conservation of natural resources, grant to such applicant a lease to mine and remove such adjoining deposits without competitive bidding.

(2) *Terms and conditions.* A noncompetitive lease granted under this subsection shall provide for a royalty on production equal to the highest rate of royalty in any Federal lease in the applicant's adjoining mining unit but not less than 5 percent of the gross value thereof at the point of shipment to market, and at the option of the applicant to be exercised at the time of filing of his application, either a cash bonus of $15 per acre or fraction thereof or a production payment of 1 cent per mine run ton in addition to the royalty specified in the lease. Acreage bonuses must be paid at the time of filing of application. Production payments will be prescribed on the lease form.

(3) *Exceptions.* Potash lands and deposits in or adjacent to Searles Lake, Calif., are subject only to lease by competitive bidding, except as to potash mining rights included in sodium permits and leases issued under subparts 3510 and 3520.

§ 3524.1–3 Sodium.

(a) *Character of lands*—(1) *Availability.* Where necessary in order to secure the economic mining of sodium compounds, the authorized officer may, in his discretion and after consultation with the Mining Supervisor, permit a person, association, or corporation to hold up to 15,360 acres in any one State, upon submittal of but not necessarily limited to the following information and evidence as proof that the additional acreage is necessary for such purpose:

(b) *Application*—(1) *Requirements.* (i) Whether such person, association, or corporation holds sodium leases and permits covering fee, railroad and State lands within the same area of its public land holdings under sodium leases and permits, and if so, the description of those lands and the amount of acreage involved.

(ii) The reasons why the additional public lands covering acreage in excess of 5,120 acres are actually necessary to secure an economic mining unit.

(iii) A log of all wells drilled for sodium deposits on the lands which such person, association, or corporation holds under sodium lease or permit, together with an analysis of the ore discovered therein.

(c) *Non-chargeable fringe acreage*—(1) *Availability.* Any person, association, or corporation holding acreage approximating 25,600 acres of Federal land, upon a showing that the leased deposits extend into adjoining or adjacent Federal lands and that the lands containing such reserves are a necessary and normal part of a mining unit may file an application with the Manager to have such adjoining or adjacent Federal land (including lands under lease, permit lands subject to lease, or unleased lands) designated a fringe-acreage that will not be chargeable under § 3501.1–4(b)(3) as to leasehold acreage holdings of the applicant.

(2) *Approval.* If the Manager shall determine, after consultation with the Mining Supervisor, that the application meets the above requirements and that such designation will result in conservation of natural resources and will provide for economical and efficient recovery as a part of the mining unit, he may designate specific tracts by legal subdivisions not to exceed 2,560 acres in all as nonchargeable to the applicant, under § 3501.1–4(b)(3). The intent of this provision is that fringe area deposits not to exceed 2,560 acres may be held without acreage charge upon acquisition of mining rights therein by the applicant. A designation of fringe-acreage under this section shall not constitute a determination that the deposits therein shall be mined only by the applicant.

§ 3524.1–4 Phosphate.

(a) *Character of lands*—(1) *Availability.* 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 § 3501.1–4(b)(4) a lease for additional acreage, if the authorized officer of the Bureau of Land Management, after consultation with the Mining Supervisor of the Geological Survey 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.

(2) *Approval; terms and conditions*—(i) *Noncompetitive leases.* 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 without publication 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 an acre, a minimum royalty, and such other terms and conditions, as may be determined at the time the lease offer is made.

(ii) *Competitive leases.* 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 authorized officer of the Bureau of Land Management determines that there is competitive interest therein, the lands will be offered competitively as provided by Subpart 3520.

§ 3524.2 Modifications.

§ 3524.2–1 Coal.

(a) *Under section 3 of the Act*—(1) *Application.* 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. 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.

(2) *Availability*—(i) *Noncompetitive.* Upon determination by the authorized officer that the modification is justified and that 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.

(ii) *Competitive.* 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 will be offered as provided in subpart 3520.

(b) *Under section 4 of the Act*—(1) *Application.* 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 3 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.

(2) *Availability.* If the lands or coal deposits of any part thereof are found to constitute an acceptable leasing unit, they will be offered for leasing as provided in subpart 3520. 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.

(c) *Terms and conditions.* 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.

§ 3524.3 Use of other minerals.

§ 3524.3–1 Phosphate.

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.

PART 3530—LICENSE TO MINE COAL

Subpart 3530—License to Mine Coal

Sec.

3530.0–1 Purpose.
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3530.1–3 Renewal.
3530.2 Qualifications.
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3530.2–3 Municipalities.

§ 3530.0–1 Purposes.

Coal licenses may be issued for a period of 2 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.

§ 3530.0–3 Authorities.

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 issue limited licenses or permits to prospect for, mine, and take for use, coal from public lands.

§ 3530.1 Terms.

§ 3530.1–1 Forms.

(a) *Where to file copies.* Application for a limited license to mine coal for domestic needs must be filed in quadruplicate on a form approved by the Director or its substantial equivalent in the appropriate land office and be accompanied by a $10 filing fee.

(1) Exception. (i) Relief agencies. (*a*) No filing fee required.

§ 3530.1–2 Area and duration of license.

(a) *Private.* 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) *Local relief agencies.* (1) 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.

(2) 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.

(3) 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.

(4) 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.

(c) *Municipalities.* 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.

§ 3530.1–3 Renewal.

An application for renewal of a license must be accompanied by a filing fee of $10, which will be retained as service charge even though the application is later withdrawn or rejected.

§ 3530.2 Qualifications.

§ 3530.2–1 Private.

§ 3530.2–2 Local relief agencies.

Recognized established relief agency.

§ 3530.2–3 Municipalities.

Compliance with § 3502.9 is required.

PART 3540—USE PERMITS

Subpart 3540—Use Permits

Sec.

3540.0–1 Purpose.
3540.1 Terms.
3540.1–1 Forms.
3540.1–2 Rental.
3540.1–3 Additional requirements.
3540.2 Approval.

§ 3540.0–1 Purpose.

(a) *Sodium.* A permittee or lessee may be granted a right to use, during the life of the permit or lease, the surface of not exceeding 40 acres of unoccupied nonmineral public land not included within the boundaries of a national forest 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.

(b) *Phosphate.* A lessee or permittee 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.

§ 3540.1 Terms.

§ 3540.1–1 Forms.

(a) *Where to file copies.* Applications for permits to use additional land shall be filed in duplicate in the appropriate land office. Each application must be accompanied by a filing fee of $10 which is not returnable and the first year's rental in the amount specified in § 3540.1–2.

§ 3540.1–2 Rental.

(a) The annual rental charge for use of such land will not be less than $1 an acre or fraction thereof. Payment of the rental shall be made on or before the anniversary date of the permit and will also be required on all use permits issued prior to the effective date of this section, as amended.

(b) *Penalty for nonpayment.* Any use permit shall terminate automatically if the permittee or lessee fails to pay the rental.

§ 3540.1–3 Additional requirements.

(a) *Sodium.* The applications must contain a description of the land as specified in § 3501.1–3 and set forth the reasons why the additional land is necessary to the permittee or lessee for the use named, and whether it is unoccupied and nonmineral.

(b) *Phosphate.* Such applications must set forth the specific reasons why the additional land is necessary to the permittee or lessee for the use named, describe the land desired in accordance with § 3501.1–3 and also set forth the reasons why the land is desirable and adapted to the use 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.

§ 3540.2 Approval.

A use permit will be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

PART 3550—FRACTIONAL AND FUTURE INTEREST LEASES AND PERMITS

Subpart 3550—Fractional and Future Interest Leases and Permits

Sec.

3550.1 General.
3550.1–1 Applications for permits and leases.
3550.1–2 Qualifications.
3550.2 Present interest.
3550.2–1 Fractional interest.
3550.3 Future interest.
3550.3–1 Full or fractional interest.
3550.3–2 Effective date of future interest leases.
3550.3–3 Rejection and termination of application.

§ 3550.1 General.

(a) *Leases.* 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.

(b) *Prospecting permits.* A prospecting permit for a fractional interest in mineral deposits or a lease for a fractional or future interest in mineral deposits acquired by the Government may be issued in the discretion of the authorized officer.

§ 3550.1–1 Applications for permits and leases.

(a) *Forms*—(1) *Leasable minerals other than oil and gas.*

(i) *Noncompetitive.* Permits or leases of future interest and fractional future interest shall be issued on a form approved by the Director.

(ii) *Competitive.* Applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by § 3501.2 and this section.

(2) *Solid (hardrock) minerals.* No specific form of application for such permits or leases is required, but the application should contain the information required by § 3501.2 as well as the information required by this section where applicable.

(b) *Terms and conditions.* The terms and conditions of such permits and leases will be established on an individual case basis.

(c) *Consent of agency or bureau required.* A prospecting permit for a fractional interest in mineral deposits or a lease for a fractional or future interest in mineral deposits acquired by the Government may be issued in the discretion of the authorized officer, by and with the consent of the appropriate Government bureau or agency having jurisdiction over the land in which such deposits are located.

(d) *Where filed and filing fee.* The application must be filed in triplicate in the proper land office accompanied by a filing fee of $10 which is not returnable.

§ 3550.1–2 Qualifications.

(a) Compliance with subpart 3502 is required.

§ 3550.2 Present interest.

§ 3550.2–1 Fractional interest.

An application for a present fractional interest prospecting permit or lease must show whether the applicant owns all of the fractional mineral interest not owned by the United States or all of operating rights thereto. An applicant for such a permit or lease must have a present interest in the minerals. If applicant does not own all of such mineral interests or all of the operating rights thereto, the extent of the applicant's rights thereto must be shown as well as the names of the other owners of such rights.

§ 3550.3 Future interest.

§ 3550.3–1 Full or fractional interest.

An applicant for a full future interest or future fractional interest prospecting permit or lease must submit, with his application, title evidence of his present interest in the mineral deposits. This may be accomplished by a certified abstract of title or a certificate of title. If applicant is the owner of the operating rights to the minerals and acquired such rights under a lease from or contract with the owner of such minerals, the application should also be accompanied by three copies of such lease or contract. A whole or fractional future interest lease or a prospecting permit for a fractional interest will be issued only to an applicant who owns all or substantially all of the present operating rights to the minerals as fee owner, lessee, or operator holding such rights.

§ 3550.3–2 Effective date of future interest lease.

Future interest leases will become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3550.3–3 Rejection and termination of application.

(a) An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at the time will automatically lapse and thereafter only offers for a present interest lease will be considered.

(b) Since the issuance of a permit or lease to one who, upon such issuance, would have less than a majority interest in the minerals or the operating rights thereto is not regarded as being in the Government's interest, an application for a permit or lease, the granting of which would lead to such result, will be rejected.

PART 3560—SPECIAL LEASING ACTS

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Subpart 3561—Gold and Silver in Confirmed Private Land Grants

§ 3561.1 Who may file.

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.

§ 3561.2 Application.

§ 3561.2–1 Form and contents.

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, esti-

mated 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.

§ 3561.2–2 Abstract of title required.

The applicant must also file with his application a duly authenticated abstract of title showing present ownership of the lands or a certificate of the county recorder of deeds that the record title stands in the applicant's name.

§ 3561.3 Requirements for lease.

§ 3561.3–1 Form of lease.

Leases will be issued in accordance with the form prescribed in 52 L.D. 21.

§ 3561.3–2 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.

§ 3561.3–3 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.

§ 3561.3–4 Execution by applicant.

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.

Subpart 3562—Asphalt in Oklahoma

§ 3562.1 Lands to which applicable.

The lands or asphalt deposits subject to the regulations in this part are those situated in Oklahoma which were (a) sold to the United States under the terms of a contract executed October 8, 1947, by and between the Secretary of the Interior and officials of the Choctaw and Chickasaw Nations of Indians in Oklahoma, which contract was ratified by the act of June 24, 1948 (62 Stat. 596), and (b) acquired when the purchase price provided in the contract was appropriated by the act of May 24, 1949 (63 Stat. 76, 84).

§ 3562.2 Area and limitation on holdings.

Except where the rule of approximation applies, a lease may not include over 640 acres in reasonably compact form. No person, association or corporation may hold, either directly or indirectly, leases for an area that exceeds in the aggregate 2,560 acres.

§ 3562.3 Lease requirements.

§ 3562.3–1 Qualifications of applicant.

(a) Leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file with the Manager statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and where it is filed, together with a statement as to any amendment, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit 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.

(3) A corporation must submit a statement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold leases for asphalt deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock, of all the stock owned by aliens and of all the stock owned by those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation. That holdings do not exceed the acreage limitations specified in § 3562.2.

§ 3562.3–2 Leases for lands disposed of with reservation of asphalt deposits.

Where lands included in a lease have been or may be disposed of with reservation of the asphalt deposits, rights of surface use are subject to the provisions of the law under which such reservation was made. See the act of February 19, 1912 (37 Stat. 67), and the act of August 3, 1955 (69 Stat. 445), and the regulations thereunder in Subpart 2781 of this chapter.

§ 3562.3–3 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for asphalt lease is within a withdrawal which does not preclude disposition of the asphalt 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 an asphalt lease. Where he recommends that a special stipulation be required to protect the interest of the United States, an appropriate stipulation may be included in the lease.

§ 3562.3–4 Form of lease.

Leases shall be issued on a form approved by the Director. A copy of this, as well as of every other form mentioned in this part, may be obtained from the appropriate land office (see § 3000.5).

§ 3562.3–5 Bond.

A compliance bond in no event less than $1,000, will be required prior to issuance of the lease. 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 Bureau of Land Management deems it proper to do so.

§ 3562.3–6 Royalty and rental.

(a) *Royalty.* The rate of royalty shall be fixed prior to the issuance of the lease but in no event shall it be less than 25 cents per ton of 2,000 pounds of marketable production.

(b) *Rental.* Beginning with the date of the lease, annual rental payment in advance for each acre or part thereof covered by the lease shall be 25 cents for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth calendar years, respectively, and $1 for each calendar year thereafter during the continuance of the lease, such rental for any year to be credited against royalties accruing under the lease during the year for which the rental was paid.

§ 3562.3–7 Minimum production.

(a) Each lease will provide for the mining of asphalt deposits from the lands involved and the payment of royalty thereon to a value of not less than $1 an acre or fraction thereof each year, beginning with the sixth full calendar lease year, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee or unless operations are suspended upon a showing that the lease can not be operated except at a loss because of unfavorable market conditions.

(b) Applications by lessees for relief from the production requirement of leases shall be filed, in triplicate, with the Mining Supervisor, who is authorized to grant such relief. A copy of each application shall be filed in the land office. Complete information must be furnished showing the necessity for such relief.

§ 3562.4 Competitive leasing.

§ 3562.4–1 Application.

(a) An application for lease must be filed in duplicate in the land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to

lease lands shown on such protracted surveys filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(3) Evidence that the land is valuable for its asphalt content, with a statement as to the character, extent, and mode of occurrence of the asphalt deposits.

(b) The application must be signed by applicant, or by his attorney-in-fact, supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

§ 3562.4–2 Notice of lease offer.

Notice of offer of lands or deposits for lease will be by publication once a week for four consecutive weeks or for such other period as may be determined, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will state the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the lands and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared, and (b) that the Government reserves the right to reject any and all bids. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding, is unlawful. See 18 U.S.C. 1860.

§ 3562.4–3 Bid deposits.

The sucessful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids, must submit with his bid, certified check, cashier's check, bank draft, money order, or cash for one-fifth of the amount of the bid, and evidence of qualifications as required by § 3562.3–1.

§ 3562.4–4 Award of lease.

(a) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required, within 30 days from receipt thereof, to execute them, pay the balance of the bonus bids, the first year's rental, and the cost of publication of the notice of lease offer as specified in this section, and file a bond as required by § 3562.3–5. 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 deposited in the general fund of the Treasury of the United States. (See act of June 28, 1944, 58 Stat. 463, 485.) 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.

(b) If the bidder 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, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased lessee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by §§ 3562.2 and 3562.3–1.

(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 lessee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holding similar to that required by §§ 3562.2 and 3562.3–1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee: (i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holding of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by §§ 3562.2 and 3562.3–1.

§ 3562.5 Modification and leasing of additional lands or asphalt deposits.

A lessee may obtain modification of his lease to include asphalt lands or asphalt deposits contiguous to those embraced in his lease if the Manager shall determine, after consultation with the Mining Supervisor, 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 640 acres, except where the rule of approximation applies. The lessee must file his application for modification in duplicate in the land office describing the additional land desired, the reasons for and the advantage to the lessee of such modification. Upon determination by the Manager 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 § 3562.4–2. Each application for modification must be accompanied by a filing fee of $10 which will not be returnable.

§ 3562.6 Renewal leases.

An application for a renewal lease must be filed in duplicate in the land office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a satisfactory bond as prescribed in § 3562.3–5. Each application for renewal must be accompanied by a filing fee of $10 which will not be returnable.

§ 3562.7 Termination of leases.

§ 3562.7–1 Relinquishment.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rental and royalties and provide for the preservation of any mines or productive works or permanent improvements on the lands relinquished in accordance with the regulations and terms of the lease.

§ 3562.7–2 Cancellation.

If the lessee fails to comply with the general regulations in force at the date of the lease, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

§ 3562.8 Transfers.

§ 3562.8–1 Transfers, including subleases.

(a) Lease may be transferred in whole or in part. The approval of a transfer of part of the land in a lease will create a new lease for the transferred portion. The approval of a transfer will not extend the renewal periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the lease, as required by § 3562.3–1 must be usbmitted simultaneously. Before a transfer of a lease will be approved, the transferee must submit a new bond, or the consent of the surety on the lease bond to the substitution of the transferee as principal thereon, and the lease account must be in good standing. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. A transfer will take effect the first day of the month following its approval, or if the transferee requests, in writing, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee 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 lease, is not qualified to hold a lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a 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 § 3562.4–4.

(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.

§ 3562.8–2 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, 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.

Subpart 3563—Nevada

§ 3563.1 Silica sands and other nonmetallic minerals.

§ 3563.1–1 Applicability of other regulations.

Deposits of phosphate, coal, and sodium 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.

§ 3563.1–2 Lands to which applicable.

The act applies to 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.

§ 3563.1–3 Application.

(a) *Form and contents.* (1) No specific form of application is required, but it should cover, in substance, the following points, namely:

(i) Applicant's name and address.

(ii) 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.

(iii) 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.

(iv) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(v) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such exploration will be prosecuted.

(vi) Statement of the applicant's experience in operations of this nature, together with reference as to his character, reputation, and business experience.

(vii) 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.

(b) *Showing as to acreage holdings.* 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.

(c) *Filing fee required.* Application must be accompanied by a filing fee of $10 and filed in the proper land office.

§ 3563.1–4 Lease terms and conditions.

(a) *Qualifications.* Leases may be issued to (1) citizens of the United States,

(2) associations of such citizens, or (3) corporations organized under the laws of the United States or any State or territory thereof.

(b) *Form of lease.* Leases issued pursuant to this part shall be on a form approved by the Director.

(c) *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.

(d) *Royalty or rental.* 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.

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.

(e) *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.

(f) *Duration 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. An application for renewal of a lease must be filed in duplicate in the appropriate land office within 90 days prior to the expiration of the lease term and be accompanied by a filing fee of $10, which will be retained as a service charge even though the application should be rejected or withdrawn in whole or in part. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the renewal of a lease, the lessee will be required to submit a new bond as prescribed in § 3563.1–4(c).

§ 3563.1–5 Transfer of leases.

Leases may be transferred in whole or in part. To the extent applicable, the regulations in § 3562.8 shall govern all transfers of such leases.

§ 3563.2 Leases of sand and gravel in certain lands patented to the State.

§ 3563.2–1 Authority and regulations.

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. The regulations in this § 3563.2–1 are promulgated for the purpose of permitting the disposal of valuable deposits of sand and gravel in such lands.

§ 3563.2–2 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. 23, 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. 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, NE¼SW¼ SW¼NE¼, W½SE¼, lots 2, 3.

Containing 25,499.47 acres.

§ 3563.2–3 Application.

(a) *Form and contents.* No specific form of application is required, but it should cover, in substance, the following points, namely:

(1) Applicant's name and address.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Statement of the applicant's experience in operations of this nature, together with reference as to his character, reputation, and business experience

(b) *Filing fee required.* Application must be accompanied by a filing fee of $10 and filed in the proper land office.

§ 3563.2–4 Lease terms and conditions.

(a) *Qualifications.* Leases may be issued to (1) citizen of the United States, (2) associations of such citizens, or (3) corporations organized under the laws of the United States or of any State or territory thereof.

(b) *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.

(c) *Acreage limitations.* In no case shall more than 2,560 acres be leased to any one person, association, or corporation. Every applicant for a lease must show that, with the area applied for, his

or its direct or indirect interests in such leases and other application therefor, will not exceed in the aggregate 2,560 acres.

(d) *Form of lease.* Leases will be issued on a form approved by the Director.

(e) *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 provisions of the lease, and for the protection of the owner of the surface estate from damages resulting from the operation of such lessee.

(f) *Royalty and rentals.* 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. 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.

(g) *Duration of lease.* Leases will be issued for a period of 5 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 expiration thereof for additional periods of 5 years each, on such reasonable terms as he may prescribe at the time of such renewal. An application for renewal of a lease must be filed in duplicate in the appropriate land office within 90 days prior to the expiration of the lease term and be accompanied by a filing fee of $10, which will be retained as a service charge even though the application should be rejected or withdrawn in whole or in part. Thereafter the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the renewal of a lease, the lessee will be required to submit a new bond.

§ 3563.2–5 Transfer of leases.

Leases may be transferred in whole or in part. To the extent applicable, the regulations in § 3562.8 shall govern all transfers of such leases.

Subpart 3564—Reserved Minerals in Lands Patented to the State of California for Park or Other Public Purposes

§ 3564.1 Applicability of other regulations.

The regulations in Subpart 3501, 3502, and 3503 so far as applicable, shall govern the leasing of all coal, potassium, sodium, and phosphate within the area.

§ 3564.2 Lands to which applicable.

The regulations in this subpart apply to the lands patented to the State of California for park purposes.

§ 3564.3 Minerals to be leased.

All disposal of minerals within the reserved areas covered by this section shall be by lease.

§ 3564.4 Notice of application.

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.

§ 3564.5 Terms and conditions.

§ 3564.5–1 Protection of surface.

All leases issued pursuant to this section 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 this section. 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.

§ 3564.5–2 Bonds.

Each lessee will be required to furnish a bond in such sum as may be deemed 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.

§ 3564.5–3 Form of lease.

Leases for minerals other than oil and gas 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.

§ 3564.6 Operating regulations.

All leases will be required to operate under the applicable operating regulations of this Department. The operating regulations are contained in 30 CFR Chapter II: Those applicable to coal in Part 211 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.

§ 3564.7 Minerals other than oil, gas, coal, potassium, sodium, and phosphate.

§ 3564.7–1 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.

§ 3564.7–2 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 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.

§ 3564.7–3 Royalty and rentals.

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 2 per centum of the quantity or gross value of the output of the leased mineral at the point of shipment to market. 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.

§ 3564.7–4 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.

§ 3564.7–5 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.

§ 3564.7–6 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 this section, 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.

§ 3564.7–7 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 for additional periods of five years each, on such reasonable terms as he may prescribe at the time of such renewal.

§ 3564.7–8 Form of lease.

Leases will be issued on a form approved by the Director.

Subpart 3565—National Forest Lands In Minnesota

§ 3565.0–3 Authority.

The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 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 Group 2200 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, and for the development and utilization of which no other authority exists. The Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended provides for the leasing of coal, phosphate, sodium, and potassium deposits in public domain lands, including such lands generally in national forests. See Group 3100 of this chapter.

§ 3565.1 Minerals to be leased.

All disposal of mineral resources covered by this regulation shall be by lease or permit.

§ 3565.2 Consent of Secretary of Agriculture.

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.

§ 3565.3 Regulations applicable.

To the extent that they are applicable and not inconsistent herewith, the leasing of minerals under the act of June 30, 1950, shall be governed by § 3501.2, Subparts 3510 and 3520. Any lease or permit issued under this subpart shall state that it is subject to the terms and provisions of the act of June 30, 1950.

Subpart 3566—Lake Mead Recreation Area

§ 3566.0–3 Authority.

The Act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n) provides for mineral leasing within the Lake Mead Recreation Area, subject to such limitations, conditions, or regulations as the Secretary may prescribe, and to such extent as will not be inconsistent with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes.

§ 3566.1 Lands to which applicable.

The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA–LM–7060–B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

§ 3566.1–1 Excepted areas.

Mineral deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(a) All lands within 200 feet of the center line of any public road, or within 200 feet of any public utility including, but not limited to, electric transmission lines, telephone lines, pipelines, and railroads.

(b) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one-quarter of a mile thereof on unsurveyed public land.

(c) All land within 300 feet of Lake Mead or Lake Mohave, measured horizontally from the shore line at maximum water surface elevation and all lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams as shown on the map of the Lake Mead National Recreation Area (NRA—L M. 2291).

(d) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map (NRA—L.M. 2297), of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

§ 3566.2 Regulations applicable.

Except as otherwise specifically provided in this section regulations in Subparts 3501, 3502 and 3521 and in 30 CFR Part 211 shall govern the leasing of mineral deposits which are presently subject to location under the general mining laws. However, mineral deposits of coal, oil, gas, phosphate, potassium, and sodium shall be governed by regulations issued under the Acts of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181), as amended, and February 27, 1927 (44 Stat. 1057; 30 U.S.C. 281), as amended.

§ 3566.3 Application.

§ 3566.3–1 Form and contents.

An applicant must give his name and address and citizenship qualifications in the manner prescribed in Subpart 3502, describe the land for which a lease is desired in terms of legal subdivisions if surveyed, otherwise by metes and bounds and state the kind of mineral for which a lease is desired. The applicant must also give the reasons why he believes the mineral sought to be leased can be developed in the land in paying quantities and furnish such facts as are available to him respecting the known occurrence of the mineral in the land, the character of such occurrence and its probable worth as evidencing the existence of a workable deposit of such mineral. Each application must be accompanied by a filing fee of $10 which will not be returnable.

§ 3566.4 Leases.

§ 3566.4–1 Qualifications.

Leases may issue to (a) citizens of the United States, (b) associations of such citizens and (c) corporations organized under the laws of the United States or of any State or Territory thereof.

§ 3566.4–2 Leasing units.

Leasing units may not exceed 640 acres consisting of legal subdivisions of the lands if surveyed, in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area 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 survey by courses and distances. The officer issuing any lease may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for an economic mining operation.

§ 3566.4–3 Royalties, rentals and minimum royalties.

(a) *Royalties.* The rate of royalty shall be fixed prior to the issuance of the lease but in no event shall it be less than 2 percent of the amount or value of the minerals mined.

(b) *Rentals.* Rentals shall not be less than 25 cents per acre payable annually until production is obtained.

(c) *Minimum royalties.* After production is obtained the lessee must pay a minimum royalty of $1 per acre.

§ 3566.4–4 Terms and conditions.

Each lease will contain provisions for the following: Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions; occupation and use of the surface of the claim shall be restricted to such as is reasonably necessary to the exploration, development and extraction of the leased minerals. No vegetation will be destroyed or disturbed except where necessary to mine and remove the minerals; lessee shall not conduct operations in such a manner as to contaminate the waters of Lake Mead or Lake Mohave through dumping, drainage or otherwise. Lessee shall not erect any structures or open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his successor. The right is reserved to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 3566.4–5 Duration of lease.

Leases will be issued for a period of 5 years and any lease in good standing will be subject to renewal for successive 5-year terms on such reasonable terms as may be prescribed by the Secretary of the Interior at the time of any such renewal upon application filed within 90 days prior to the termination of the lease term for which renewal is sought unless otherwise provided by law or unless the land has been restored from the withdrawal at the expiration of such term.

§ 3566.5 Lease by competitive bidding.

The right is reserved to offer competitively a lease for any land applied for under this part if, in the judgment of the State Director, there is evidence of a competitive interest in the land, or if the Geological Survey finds that the land contains a deposit in paying quantities of the mineral to be leased.

§ 3566.6 Disposal of materials.

Materials within the public lands covered by the regulations in this part which are not subject to lease hereunder shall be subject to disposal under the Materials Act of July 31, 1947 (61 Stat. 681; 43 U.S.C. 1185), as amended, subject to the conditions and limitations on occupancy and operations prescribed for leases in this part.

Subpart 3567—National Forest Wilderness

§ 3567.0–1 Scope and purpose.

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral leases, licenses, and permits within National Forest Wilderness.

§ 3567.0–5 Definition.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest land designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

§ 3567.1 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

§ 3567.1–1 Requirements for preservation.

The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with applications for mineral leases, licenses, or permits on lands which may be open to such applications, attention is directed to the fact that no such applications will be granted after December 31, 1983.

§ 3567.1–2 Regulations of the Secretary of Agriculture.

All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

§ 3567.2 Mineral leases, licenses, and permits.

§ 3567.2–1 Applicability of laws and regulations.

Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

§ 3567.2–2 Stipulations required.

All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

§ 3567.2–3 Applicable regulations of Secretary of Agriculture.

All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

§ 3567.3 Withdrawal from mineral leasing.

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from leasing by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

Subpart 3568—Whiskeytown-Shasta-Trinity National Recreation Area

§ 3568.0–3 Authority.

Section 6 of the Act of November 8, 1965 (P.L. 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture within the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

§ 3568.1 Lands to which applicable.

The area subject to the regulations in this subpart is that shown in drawing numbered BOR–WEST 1004, dated July 1963, entitled "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," which is on file and available for public inspection in the office of the Director of the Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C.

§ 3568.1–1 Consent of Secretary of Agriculture.

Any lease or permit respecting minerals in lands administered by the Secretary of Agriculture shall be issued

only with his consent and subject to such conditions as he may prescribe.

§ 3568.2 Regulations applicable.

§ 3568.2–1 Locatable minerals.

Except as otherwise specifically provided in this section, the regulations in Subparts 3501, 3502, and 3521 and in 30 CFR Part 231 shall govern the leasing of mineral deposits which are presently subject to location under the general mining laws.

§ 3568.2–2 Leasable minerals other than oil and gas.

Mineral deposits of coal, phosphate, potassium, and sodium shall be governed by regulations issued under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181–263), as amended, and February 27, 1927 (44 Stat. 1057; 30 U.S.C. 281–287), as amended.

§ 3568.3 Application.

§ 3568.3–1 Form and contents.

An applicant must give his address and citizenship qualifications in the manner prescribed in this subchapter, describe the land in terms of legal subdivisions if surveyed, otherwise by metes and bounds, and disclose the mineral for which the lease is desired. The applicant must state whether the mineral applied for can be developed in paying quantities stating the reasons therefor and must furnish such facts as are available to him respecting the known occurrence of the mineral, the character of such occurrence and its probable value as evidencing the existence of a workable deposit of such mineral. Each application must be accompanied by a filing fee of $10 which will not be returnable.

§ 3568.4 Leases.

§ 3568.4–1 Qualifications.

Leases may issue to (a) citizens of the United States, (b) associations of such citizens, and (c) corporations organized under the laws of the United States or of any State thereof.

§ 3568.4–2 Leasing units.

Leasing units may not exceed 640 acres consisting, if the lands are surveyed, of legal subdivisions in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area 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 survey by courses and distances. The authorized officer of the Bureau of Land Management may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for an economic mining operation.

§ 3568.4–3 Royalties, rentals and minimum royalties.

Rentals and royalties will be determined on the basis of the fair market value. In no event shall the rentals or royalties be less than:

(a) Fifty cents per acre payable annually in advance until production is obtained.

(b) One dollar per acre after production is obtained as a minimum royalty payable annually in advance.

(c) Two percent of the amount or value of the minerals mined, the exact amount of royalty to be fixed prior to the issuance of the lease.

§ 3568.4–4 Terms and conditions.

Each lease will contain provisions for the following:

(a) Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions;

(b) Occupation and use of the surface of the claim shall be restricted to such as is reasonably necessary to the exploration, development and extraction of the leased minerals and subject to any special rules to protect the values of the recreation area;

(c) No vegetation will be destroyed or disturbed except where necessary to mine and remove the minerals;

(d) Lessee shall not conduct operations in such a manner as to adversely affect the purpose of the Central Valley project through dumping, drainage, or otherwise;

(e) Lessee shall not erect any structure or open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his successor;

(f) The right is reserved to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 3568.4–5 Duration of lease.

Leases will be issued for a period of 5 years. Any lease in good standing upon which production in paying quantities has been obtained will be subject to renewal for successive 5 year terms on such reasonable terms as may be prescribed by the Secretary of the Interior. Application for renewal must be filed within 90 days prior to the termination of the lease term for which renewal is sought unless land has been withdrawn from the recreation area at the expiration of such term.

§ 3568.5 Lease by competitive bidding.

Leases may be offered competitively for any land applied for under this part without regard to the quantity or quality of the mineral deposit that may be present therein.

§ 3568.6 Disposal of materials.

Materials within the public lands covered by the regulations in this part which are not subject to the provisions of §§ 3568.2–1 and 3568.2–2 of this section, shall be subject to disposal under the Materials Act of July 31, 1947 (61 Stat. 681; 43 U.S.C. 1185), as amended, subject to the conditions and limitations on occupancy and operations prescribed for leases in this part.

Group 3600—Mineral Materials Disposal

PART 3600—MINERAL MATERIALS DISPOSAL; GENERAL

Subpart 3600—General

Sec.
3600.0–3 Authority.
3600.0–5 Definition.

Subpart 3601—Limitations; Disposal of Mineral Materials

3601.1 Disposal when valid claims exist under public land laws or when certain unpatented mining claims exist.
3601.2 Damage to lands or to other resources.
3601.3 Appropriation subject to material sale.

Subpart 3602—Trespass

3602.1 Unauthorized removal of mineral materials.

Subpart 3604—Community Pits

3604.1 Nonexclusive disposals.

CROSS REFERENCE: Lands subject to mineral material disposal: See § 3600.0–3.

§ 3600.0–3 Authority.

(a) The Materials Act of July 31, 1947, amended by the acts of July 23, 1955 and September 25, 1962 (30 U.S.C. 601, 602), authorizes the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public land of the United States (including the O&C lands as described in § 5040.0–3 of this chapter), if the disposal of such materials (1) is not otherwise expressly authorized by law, including, but not limited to the act of June 28, 1934, as amended (43 U.S.C. 315), and the United States mining laws, and (2) is not expressly prohibited by the laws of the United States, and (3) would not be detrimental to the public interest. Disposals of pumicite, within certain areas of the Katmai National Monument, Alaska, may also be made under this act, however, under appropriate contract conditions for the protection of the monument. Act of April 15, 1954 (68 Stat. 53).

(b) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this part only, with the consent of such Federal department or agency or of such State or local governmental unit. The act provides that the Secretary of Agriculture shall dispose of materials from lands administered by him for national forest purposes or for purposes of title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for any other function of the Department of Agriculture. See 36 CFR, Part 251 for Forest Service regulations relative to

the disposal of materials in the national forests.

(c) Disposal of mineral materials under the act may not be made from any lands in any national park or national monument or from 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.

(d) The act authorizes the Secretary of the Interior in his discretion to permit free use of mineral materials by any Federal or State governmental agency unit or subdivision, including municipalities, or any association or corporation not organized for profit for use other than for commercial or industrial purposes or resale.

§ 3600.0–5 Definitions.

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized officer" means the Government official who has been duly authorized to sign a contract for the sale of mineral materials from public lands or to supervise operations and take action under such contract.

(d) "Mineral materials" include, but are not limited to "common varieties" of sand, stone, gravel, pumice, pumicite, cinders, clay and other mineral materials, and petrified wood.

(e) The word "act" when used in this part refers to the act of July 31, 1947, as amended.

Subpart 3601—Limitations; Disposal of Mineral Materials

§ 3601.1 Disposal when valid claims exist under public land laws or when certain unpatented mining claims exist.

Mineral material disposals may not be made under the act from public lands on which: (1) There are valid, existing claims to the land by reason of settlement, entry, or similar rights obtained under the public land laws; (2) there are any unpatented mining claims located either before or after July 23, 1955, which have not been cancelled by appropriate legal proceedings; (3) there are valid unpatented mining claims located on or after July 23, 1955, for valuable minerals that are not a "common variety", occurring in, or associated with "common variety" minerals.

§ 3601.2 Damage to lands or to other resources.

No sale of material shall be made under this part where the authorized officer determines that the aggregate damages to public lands and resources will exceed the benefits derived from such disposal. Sound conservation practices shall be exercised by all permittees or purchasers in the removal of materials under the provisions granted by this part.

§ 3601.3 Appropriation subject to material sale.

Any subsequent settlement, location, lease, sale, or other appropriation under the general land laws, including the mineral leasing and mining laws, of lands covered by a materials sale contract, shall be subject to the outstanding contract of sale. Unless otherwise provided by contract, the contract purchaser, notwithstanding any subsequent appropriation under other provisions of the general land laws, shall have the right to extract and remove the materials until the termination of the contract. During the term, the purchaser shall have the right to use and occupy so much of the described land as is reasonably incidental and necessary to the fulfillment of the contract. All contracts of sale shall be subject to the continuing rights of the United States to use the surface and to issue leases, permits, and licenses involving the use and occupancy of the surface, provided that such subsequently authorized use shall not endanger or materially interfere with the purchaser's production or removal of the materials under contract.

Subpart 3602—Trespass

§ 3602.1 Unauthorized removal of mineral materials.

The extraction, severance, injury, or removal of timber or mineral materials from public lands 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 prosecution for such unlawful acts. See Subpart 9239 of this chapter.

Subpart 3604—Community Pits

§ 3604.1 Non-exclusive disposals.

Non-exclusive disposals may be made under subparts 3610 and 3621 from the same deposit within areas designated by the State Director for this purpose. These pit sites are not to exceed 40 acres in size, except they may be enlarged as the initial 40-acre site is depleted. Such permits issued for sale or removal of material from established community pit sites will constitute a superior right to remove the material as against any subsequent claim or entry of the lands.

PART 3610—MINERAL MATERIALS SALES

Subpart 3610—Mineral Material Sales; General

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Subpart 3613—Contracts

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Subpart 3610—Mineral Material Sales; General

§ 3610.1 Request for sale.

Mineral materials may be sold upon the request of any interested party or upon the authorized officer's own initiative.

§ 3610.2 Appraisal and measurements.

(a) No materials, other than that designated in the contract or permit, shall be extracted unless designated in advance and written permission given by the authorized officer and payment made therefor.

(b) All materials to be sold shall be appraised and in no case shall it be sold at less than the appraised value.

(c) Such mineral material shall be measured by volume, weight, or truck tally, or combination of these methods, or such other form of measurement as the authorized officer determines to be in the public interest.

§ 3610.3 Qualifications of applicants.

A bidder or purchaser for the sale of mineral materials must be (a) an individual who is a citizen of the United States; (b) a partnership; (c) an unincorporated association composed wholly of such citizens; or (d) a corporation authorized to transact business in the States in which the mineral material is located. A bidder must also have submitted a deposit in advance of the sale as required by § 3612.4.

§ 3610.4 Payments.

(a) Mineral materials shall not be removed unless advance payment has been made as provided in the contract.

(b) For sales of not more than $2,000 the full amount shall be paid at the execution of the contract.

(c) Fixed unit prices in excess of $2,000 may be paid by installments. Installments shall be at least 10 percent of the total purchase price or $1,000, whichever is less. As provided in § 3612.4, the first installment must be paid as a deposit when the bid is submitted. The second installment must be paid prior to the commencement of removal operations. Remaining installments shall be due and payable without notice whenever the value of the material removed shall equal the sum of the second and subsequent installments paid by the purchaser. The total amount of the purchase price must be paid prior to 60

days before the expiration date of the contract. The purchaser shall not be entitled to a refund on a fixed unit sale even though the amount of material removed or designated for removal may be less than the estimated total volume shown in the contract.

(d) Sales for the duration of production or sale of all the mineral materials in a specified area which exceed $2,000 shall be conditioned on the following terms of payment.

(1) A first installment of not less than $500 shall be paid upon the execution of the contract. Remaining installments in amounts to be specified shall be due and payable without notice whenever the value of the material removed shall equal the sum of the first and subsequent installments. Mineral materials shall not be removed unless the advance installment has been made as provided in the contract.

(2) All contracts for sale of material under this subparagraph shall provide for periodic reappraisal of the mineral material. The frequency of the reappraisal shall be specified in the sale contract. If, upon termination, the total payments made under the contract exceed total value of the material removed, such excess shall be returned to the purchaser, except for payments made in lieu of minimum production pursuant to subparagraph (3) of this paragraph.

(3) Annual production shall be required in an amount sufficient to return to the United States a sum of money equal to the first installment. In lieu of such minimum production there shall be an annual payment in the amount of the first installment which will not be credited to future production. Payments for or in lieu of minimum annual production shall be due and payable and must be received by the authorized officer on or before the anniversary date of the execution of the contract, failing which the contract shall be considered breached and terminated, and all money paid pursuant to the contract shall be forfeited.

(e) The purchaser shall be required to make a report of operations under his contract with each installment payment, and to provide verification of the amount of material removed when called upon to do so by the authorized officer.

§ 3610.5 Performance bonds.

(a) A performance bond of not less than 20 percent of the total contract price will be required for contracts of $2,000 or more. When the total contract price is less than $2,000, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department and executed on an approved standard form; or

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States.

(b) Where the materials sale contract has required a bond in connection with construction of a road, the authorized officer may, upon satisfactory completion of the road construction, reduce the amount of the performance bond by the amount of all or a portion of the estimated road construction costs: *Provided, however*, That the total amount of the performance bond shall, in no event, be reduced below 20 percent of the total contract price.

§ 3610.6 Assignments.

(a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State in which the mineral material is located; (2) submits such information as is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by § 3610.5 or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

§ 3610.7 Extension of time.

If the purchaser shows that his delay in removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Such written request must be received not later than 30 days prior to the expiration date of the time for removal but not earlier than 90 days prior thereto. Additional extensions may be granted if the purchaser submits the same type of written request not later than 30 days prior to the expiration date of an extension but not earlier than 90 days prior thereto. No extension may be granted without reappraisal as provided in § 3610.8.

§ 3610.8 Reappraisals.

If an extension is granted as provided in § 3610.7 mineral materials remaining on the contract area, title to which has not passed to the purchaser, shall be reappraised by the authorized officer. Such reappraised prices shall become the new unit prices for the purpose of computing the reappraised total purchase price except that the new unit prices shall not be less than the unit prices that were in effect during the original time for removal or previous extension.

§ 3610.9 Time for removal.

Time for removing materials sold, except that sold under a duration of production contract or contract for the sale of all material within a specified area, shall not exceed a period of 2 years except that such time for removal may be extended as provided in § 3610.7.

Subpart 3611—Noncompetitive (Negotiated) Sales

§ 3611.1 Limitations in value.

When it is determined by the authorized officer to be in the public interest and where the sale is of property for which it is impracticable to obtain competition, he may sell at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $5,000 in value. Where it is impracticable to obtain competition and the materials are to be used in connection with the development of Federal lands under a mineral lease or leases issued by the United States, sales under this paragraph may be made in a sum not exceeding $10,000.

§ 3611.2 Need in government program.

The authorized officer may sell, at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $10,000 in value when it is in the public interest and the contract is for materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local governmental agency and the public exigency will not permit the delay incident to advertising.

§ 3611.3 Limitation in total sales.

The total aggregate of negotiated sales which may be made in any one State to or for the benefit of any one person, partnership, association or corporation in any period of twelve consecutive months shall not exceed $10,000.

Subpart 3612—Competitive Sales

§ 3612.1 Competitive sales; general.

All sales other than those specified in subpart 3611 shall be made after inviting competitive bids through publication and posting in conformance with this subpart. Sales shall not be held sooner than one week after the last advertisement. No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid.

§ 3612.2 Advertising.

(a) Material sales offered by competitive bidding shall be advertised in a newspaper of general circulation in the area where the material is located and notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks except that notice of sales amounting to $5,000 or less need be published only once.

(b) The advertisement of sale shall state the location by legal description of the tract or tracts on which the material is being offered, the kind of material, estimated quantities, the unit of measurement, appraised prices, time and place for receiving and opening of bids, minimum deposit required, the access situation, the method of bidding, the

office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

(c) Advertisement of materials appraised at $1,000 or less may be published or posted at the discretion of the authorized officer.

§ 3612.3 Conduct of sales.

(a) Bidding at competitive sales shall be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder shall be determined by oral auction among the high bidders. If no oral bid is made which is higher than the sealed bids, the highest bidder shall then be determined by lot. Except for the first bid, no oral bid will be considered or recorded which is not higher than the highest preceding bid. In oral auction sales the high bidder must confirm his bid in writing immediately upon being declared the high bidder.

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c) When it is in the interest of the Government to do so the authorized officer may reject any or all bids and may waive minor deficiences in the bids or the mineral material sale advertisment.

§ 3612.4 Bid deposits.

(a) For cash sales a bid deposit of not less than 10 percent of the appraised value of the mineral materials offered is required. The authorized officer may, at his discretion, require larger deposits.

(b) For installment sales, the bid deposit shall be not less than the amount of the first installment required under § 3610.4 and specified in the advertisement of the sale.

(c) Sealed bids must be accompanied by the deposit. For mineral materials offered at oral auction, bidders must make the deposit prior to the opening of the bidding.

(d) Deposits may be in the form of cash, money orders, bank drafts, cashier's or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the U.S. Treasury Department. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidder, shall be returned. The deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer. If the contract is not awarded to the high bidder his deposit will be returned, and the next successive high bidder will be called upon for a remittance of the full amount of the first installment.

Subpart 3613—Contracts

§ 3613.1 Award of contracts.

(a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to perform the obligations of the contract. The contract shall be awarded to the high bidder, unless he is not qualified or responsible or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond, the contract may be offered and awarded for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: *Provided*, That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period If the successful bidder fails to comply within the first 30-day period, his bid deposit shall be forfeited as liquidated damages.

§ 3613.2 Contract forms.

All sales shall be made on contract forms approved by the Director. The authorized officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, protection of improvements, and watersheds and recreational values. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

PART 3620—FREE USE

Subpart 3620—Free Use; General

Sec.
3620.03 Authority.

Subpart 3621—Free Use of Mineral Materials

3621.1 General.
3621.2 Permits to governmental units.
3621.3 Permits to non-profit organizations.
3621.4 Removal of materials and improvements.

Subpart 3622—Free Use of Petrified Wood

3622.0–3 Authority.
3622.1 Program.
3622.2 Procedures.
3622.3 Designation of areas.
3622.4 Collection rules.

Subpart 3620—Free Use; General

§ 3620.0–3 Authority.

Free use of mineral materials in general. Reference § 3600.0–3 for full citation of authority for free use disposal of mineral materials.

Subpart 3621—Free Use of Mineral Materials

§ 3621.1 General.

(a) *Applications.* An application for permit, in duplicate, must be made on Bureau approved forms and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit.

(b) *Term.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the authorized officer, such extension not to exceed one year. 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, not to exceed 10 years. The permittee must notify the officer in charge upon completion of removal.

(c) *Assignment.* A free-use permit issued under this section may not be assigned.

(d) *Conditions.* A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of the mineral materials. Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the mineral materials to meet his needs. The material applied for must be for the applicant's own use and may not be bartered or sold. No mineral materials shall be removed until the permit is issued.

(e) *Bond.* 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.

(f) *Cancellation.* The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or if the permit has been issued erroneously.

§ 3621.2 Permits to governmental units.

A free-use permit may be issued to any Federal or State agency, unit, or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the mineral materials to be 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 will 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.

§ 3621.3 Permits to non-profit organizations.

A free-use permit issued to a non-profit association or corporation may not provide for the disposition of mineral materials having an in-place value in excess of $100 during any one calendar year. 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 mineral material by purchase. However, the mineral materials may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, mining location or similar rights obtained under the public land laws.

§ 3621.4 Removal of materials and improvements.

(a) *Conservation practices.* All mineral materials disposed of under free-use shall be extracted or removed in accordance with approved conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources.

(b) *Removal by agent.* A free-use permittee may procure the mineral 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.

(c) *Removal of improvements.* Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property, and any improvements he has placed on the land, except roads, culverts, and bridges which are to be left in place and in good condition, and which will become the property of the United States upon expiration of the 90-day removal period.

Subpart 3622—Free Use of Petrified Wood

§ 3622.0–3 Authority; Free use of petrified wood by individuals.

Section 2 of the act of September 28, 1962 (76 Stat. 652) requires that the Secretary of the Interior shall provide by regulation that limited quantities of petrified wood may be removed without charge from those public lands which he shall specify. Section 2 of said act applies to the same public lands as the act of July 31, 1947, as amended (61 Stat. 681). Specifically excluded are lands in any national park, or national monument, or any Indian lands. The Secretary of the Interior has no authority under those statutes over lands under the jurisdiction of the Secretary of Agriculture.

§ 3622.1 Program; General.

To implement the policy of Congress, these regulations have been issued, authorizing the collection for noncommercial purposes of limited quantities of petrified wood by amateur collectors and by scientists, under terms and conditions which will be consistent with preservation of significant deposits as a public recreational resource for the enjoyment of the general public, maintenance of a source of materials for private and public collections, maintenance for the general public of areas for the pleasure of hunting for petrified wood specimens, and protection of other resources and projects on the lands. Subpart 3610 provides for purchase of petrified wood for commercial purposes.

§ 3622.2 Procedures; Permits.

No application or permit for free use is required except for specimens over 250 pounds in weight. Permits to individuals for the removal of such specimens which the applicant certifies will be displayed to the public in a museum or similar institution may be issued by the authorized officer under the terms of subpart 3621.

§ 3622.3 Designation of areas.

(a) All public lands administered by the Bureaus of Land Management and Reclamation, except those public lands at constructed Reclamation reservoirs, within the Department of the Interior are open for free use removal of petrified wood with the exception of specific areas which may be closed to such collections by public notice or are otherwise closed to public entry. Free use areas under the jurisdiction of said Bureaus may be modified or canceled by notices published in the FEDERAL REGISTER.

(b) The heads of other Bureaus in the Department of the Interior, or their delegates, may publish in the FEDERAL REGISTER designations, modifications, or cancellations of free use areas on lands under their jurisdiction.

(c) The Secretary of the Interior, or his delegate, may designate, modify, or cancel free use areas on public lands which are under the jurisdiction of other Federal departments or agencies other than the Department of Agriculture with the consent of the head of such other Federal department or agency concerned, upon publication of notice in the FEDERAL REGISTER.

(d) This section does not apply to lands under the jurisdiction of the Secretary of Agriculture

§ 3622.4 Collection rules.

(a) *General.* The following rules shall govern the removal without charge of specimens from public lands administered by the Department of the Interior:

(1) The maximum quantity of petrified wood that any one person is allowed to remove without charge per day is 25 pounds in weight plus one piece, provided that the maximum total amount that one person may remove in one calendar year shall not exceed 250 pounds. Pooling of quotas to obtain pieces larger than 250 pounds is not allowed.

(2) Except for the removal of museum pieces under permit issued pursuant to Subpart 3621, no explosives and no power equipment, including but not limited to tractors, bulldozers, plows, power-shovels, trucks or semi-trailers, may be used for the excavation or removal of petrified wood obtained under the free use privilege. However, light trucks, up to one ton capacity, used in connection with campers or trailers or as a principal means of transportation, may be used for hauling purposes.

(3) Petrified wood obtained under this section must be for personal use and may not be bartered or sold to commercial dealers.

(4) Collection of specimens under the authority of this act must be accomplished in a manner that avoids unnecessary soil erosion or needless damage to the land or resources.

(b) *Additional rules.* The head of the Bureau having jurisdiction over a free use area, or his delegate, may establish and publish additional rules for the free use of petrified wood for noncommercial purposes, to supplement those included in paragraph (a) of this section.

Group 3700—Multiple Use; Mining

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3710—Public Law 167; Act of July 23, 1955; General

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3710.0–3 Authority.

Subpart 3711—Common Varieties

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Subpart 3712—Proceedings Under the Act

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Subpart 3710—Public Law 167; Act of July 23, 1955; General

§ 3710.0–3 Authority.

The act of July 23, 1955 (69 Stat. 367, 30 U.S.C. sec. 601), was enacted "to amend the act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only sections 3 to 7, inclusive, of said act hereinafter more fully identified. The word "act" when used in this subpart refers to the act of July 23, 1955. Sections 1 and 2 thereof relate specifically to the Materials Act of July 31, 1947.

Subpart 3711—Common Varieties

§ 3711.1 Provisions of act.

(a) The act in section 3 provides: A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this act

does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

(b) "Common varieties" includes deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be "common varieties" if a particular deposit has distinct and special properties making it commercially valuable for use in a manufacturing, industrial, or processing operation. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation, requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities, and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not "common varieties." This subsection does not relieve a claimant from any requirements of the mining laws.

Subpart 3712—Proceedings Under the Act

§ 3712.1 Restriction on use of unpatented mining claims.

(a) The act in section 4 provides:

Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however*, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided, further*, That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided, further*, That nothing in this act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severence or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(b) The locator of an unpatented mining claim subject to the act is limited in his use of the claim to those uses specified in the act, namely prospecting, mining, or processing operations and uses reasonably incident thereto. He is forbidden to use it for any other purpose such, for example, as for filling stations, curio shops, cafes, tourist, or fishing and hunting camps. Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, or use it so as to block access to or egress from adjacent public land, or use Federal timber for purposes other than those permitted under the act, or block access to water needed in grazing use of the national forests or other public lands, or block access to recreational areas, or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on located and on adjacent lands.

(c) Mining claims located prior to the date of the act will be subject to the act where determination has been made pursuant to section 5 of the act, that the locator's surface rights are limited as provided in section 4 of the act, or where the owners have waived and relinquished all rights under section 6 of the act, which are contrary to or in conflict with the limitations and restrictions specified as to hereafter located unpatented mining claims in section 4 of the act. See § 3714.3 as to effect on existing rights.

(d) On mining claims subject to the provisions of the act, timber may be used by the claimants only for the purposes permitted under the act, and, except where timber is removed to provide clearance for operations or uses permitted under the act, such timber must be cut in accordance with sound principles of forest management. When timber on a mining claim is disposed of by the Government subsequent to the location of the claim, free use of timber by the mining claimant of like kind and quantity from the nearest timber administered by the disposing agency is provided for, but only when and to the extent that is required for their mining operations and only in kind and quantity substantially equivalent to the timber removed from the claim by the Government. Any such timber may be cut and removed only under the rules and regulations of the administering agency. Regulations governing applications and issuance of permits for the use of such timber on public lands administered by the Bureau of Land Management are contained in Part 5510 of this chapter.

§ 3712.2 Publication of notice.

§ 3712.2–1 Request for publication of notice to mining claimant.

(a) The act in the first paragraph of section 5(a) provides as follows:

The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The "request for publication of notice to mining claimants" authorized to be filed by the above-quoted portion of the act can be filed by the Federal department or agency which has the responsibility for administering surface resources of the lands to which the requested notice would relate. It must describe the land covered by the request by section, township, range, and meridian or, if the land is unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or by a metes and bounds description of such area with a tie to a United States mineral monument.

(b) A request for publication of notice under this subsection shall be filed with the land office of the Bureau of Land Management for the land district in which the lands are situated. No request for publication may include lands in more than one land district.

§ 3712.2–2 Evidence necessary to support a request for publication.

(a) The second and third paragraphs of section 5(a) of the act provide in detail for the filing by the head of a Federal department or agency of certain evidence in support of the request for

publication of the notice referred to in § 3712.2–1 as follows:

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons we e in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, setting fo th such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

(b) This part of the act requires the filing of an affidavit which may be made by any person or persons over twenty-one years of age who have examined the lands. It must show whether any person or persons were "in actual possession of or engaged in the working of such lands (the lands described in the request for publication of notice) or any part thereof" and, if they were, the name and address of each such person must be given if it can be learned by reasonable inquiry and if it cannot be so learned, the affidavit must show in detail what inquiry or inquiries were made to obtain each such name and address. No definition of the terms "in actual possession" or "engaged in the working of said lands" will be attempted here, but the affidavits should recite what evidences of occupancy or workings were found. The request for publication must also be accompanied by a certificate executed as provided in the third paragraph of section 5(a) and containing the information required by that paragraph to be furnished. If there are no tract indexes, as defined in the act, in the county office of record affecting the lands described in the request for publication, a certificate executed as provided in the said third paragraph of section 5(a) to that effect must be furnished.

§ 3712.2–3 Contents of published notice.

Section 5(a) of the act specifies in detail what the published notice shall contain, as follows:

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim: such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims.

§ 3712.2–4 Publication.

If the request for publication and the accompanying papers conform to the requirements of the act, the Manager or the Director, as may be appropriate, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated. If the notice is published in a daily newspaper it shall be published in the Wednesday issue for nine consecutive weeks, if in a weekly paper, in nine consecutive issues, or if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for nine consecutive weeks.

§ 3712.2–5 Proof of publication.

After the period of newspaper publication has expired, the department or agency requesting the publication shall obtain from the office of the newspaper or publication a sworn statement that the notice was published at the time and in accordance with the requirements under the regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3712.2–6 Service of notice.

The last paragraph of section 5(a) of the act provides with respect to service of the notice by personal delivery or by registered mail, as follows:

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

§ 3712.2–7 Service of copies; failure to comply.

If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5(a) of the act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3712.3 Failure of claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (See § 3712.2–4), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed except as otherwise provided in § 3712.2–7.

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

Subpart 3713—Hearings

§ 3713.1 Hearing; procedures.

The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall follow the appeals and contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

§ 3713.2 Hearing; time and place.

If any verified statement shall be filed by a mining claimant then the Examiner or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment. The Examiner shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such verified statement of the time and place of such hearing at least 30 days in advance thereof. The notice of hearing shall contain a statement specifying the issues upon which evidence will be submitted at the hearing. Such hearing shall be held in the county where the lands in question, or parts thereof, are located unless the mining claimant agrees otherwise.

§ 3713.3 Stipulation between parties.

Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with section 5(c) of the act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3713.4 Effect of decision affirming a mining claimant's rights.

(a) If the final decision rendered in any hearing held pursuant to section 5 of the act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim

Subpart 3714—Rights of Mining Claimants

§ 3714.1 Recording by mining claimant of request for copy of notice.

Section 5(d) of the act provides as follows:

Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3714.2 Waiver of rights by mining claimants.

Section 6 of the act provides as follows:

The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§ 3714.3 Protection of existing rights; exclusion of reservation in patents.

The act in section 7 provides as follows:

Nothing in this act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this act, or as a result of a waiver and relinquishment pursuant to section 6 of this act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the act are preserved and will continue unless: (a) Claimant fails, subject, however, to the provisions of § 3712.2–7, to file a verified statement in response to a published notice as provided in section 5(b) of the act and § 3712.2–9 (b), it is determined as a result of a hearing pursuant to section 5(c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, permittees, and licensees continue in full force and effect.

PART 3720—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIAL UPON PUBLIC LANDS VALUABLE FOR COAL

Subpart 3720—Public Law 357; General

Sec.

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3723.1 Reservations of leasable minerals.
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3724.1 Lodes do not include extralateral rights.
3724.2 Source material not in leasing minerals, right to remove lignite, filing of description.
3724.3 Entryman entitled to exclusive right to locate; exception.
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3724.5 Expiration of act; exception.

Subpart 3720—Public Law 357; General

§ 3720.0–1 Purpose.

The act of August 11, 1955 (69 Stat. 679, 30 U.S.C. 541 thru 541i), was enacted:

To provide for entry and location, on discovery of a valuable source material, upon public lands of the United States, classified as or known to be valuable for coal, and for other purposes.

The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior.

§ 3720.0–3 Authority.

The act in section 1 provides in part as follows:

That, subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, public lands of the United States classified as or known to be valuable for coal subject to disposition under the mineral leasing laws and which are open to location and entry subject to the conditions and provisions of the act of August 13, 1954 (68 Stat. 708), unless embraced within a coal prospecting permit or lease, shall also be open to location and entry under the mining laws of the United States upon the discovery of a valuable source material occurring within any seam, bed, or deposit of lignite in such lands.

§ 3720.0–5 Definitions.

(a) The act in section 6 provides in part as follows:

• • • "lignite" shall mean coal classified as ASTM designation: D 388–38, according to the standards established in the American Society for Testing Materials on Coal and Coke under standard specifications for Classification of coals by Rank, contained in public-land deposits considered as valuable under the coal-land classification standards established by the Secretary of the Interior and prescribed in section 30, Code of Federal Regulations, part 201; and "source material" shall mean uranium, thorium, or any other material which is determined by the Atomic Energy Commission pursuant to the provisions of section 61 of the Atomic Energy Act of 1954 to be source material.

(b) The act applies only to deposits of coal coming within the definition set out in the above quotation from the act, and other types of coal deposits are not subject to location under the act, even though found to contain source material.

Subpart 3721—Notice of Location

§ 3721.1 Recording.

(a) The act in section 1 provides in part as follows:

• • • a copy of the notice of any mining location made for source material occurring in any such bed, seam, or deposit, shall be filed for record in the land office of the Bureau of Land Management for the State in which the claim is situated within ninety days after the date of its location.

(b) The act in section 2 provides as to mining claims located prior to May 25, 1955:

That the locator or locators of such a mining claim shall, not later than one hundred and eighty days from and after the date of this Act, post on the claim and file for record in the office where the notice or certificate of location is of record, an amended notice of the mining location stating that such amended notice is filed pursuant to the provisions of this Act and for the purpose of obtaining the benefits thereof; and that a copy of said amended notice is, within the said one-hundred-and-eighty-day period, filed in the land office of the Bureau of Land Management for the State in which the mining location is situated • • •

(c) The act in section 3 provides in part as follows:

• • • upon filing in the land office designated in section 1 hereof, an adequate description of his claim or claims containing such lignite.

(d) Any location notice filed under the above-quoted sections should clearly state that the claim was located for uranium or other source material contained in a bed, seam, or deposit of lignite pursuant to the act of August 11, 1955 (69 Stat. 679). The notice should describe the lands included therein by subdivision, section, township and range, if covered by a public land survey, for a placer claim, and if unsurveyed, or if the location is a lode claim, by a metes and bounds description tied to a corner of the public land survey, or to a mineral monument.

Subpart 3722—Report to Geological Survey

§ 3722.1 Annual report and payment requirements.

(a) The act in section 1 provides in part as follows:

That the claimant to any such mining location shall report annually to the Mining Supervisor of the Geological Survey the amount of lignite mined or stripped in the recovery of such valuable source material during each calendar year and tender payment to him of 10 cents per ton thereon • • • subject to the recording and payment requirements • • •

(b) Payments shall be by check, draft or money order, payable to the United States Geological Survey, accompanied by a report of the tons of lignite mined or stripped, whether disposed of or not in recovering the source material. Each report should show the name of the claim, identify the location, the calendar year for which payment is made and address of claimant.

(c) Tonnage reports and remittances for claims in Montana, North Dakota, South Dakota, and Northern Wyoming should be sent to the Regional Mining Supervisor, U.S. Geological Survey, Billings, Montana. As to claims in other states, the address of the Regional Mining Supervisor may be obtained from the Director, U.S. Geological Survey, Washington, D.C. 20240.

Subpart 3723—Mineral Patents

§ 3723.1 Reservations of leasable minerals.

(a) The act in section 1 provides in part as follows:

Any mineral patents issued hereunder shall be made subject to the recording and payment requirements of this section and shall contain a reservation to the United States of all Leasing Act minerals owned by the United States other than lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of such material.

(b) Under this section, all debts due the United States on account of coal mined under the location must be paid, before a patent will issue.

§3723.2 Exception.

(a) The act in section 1 provides in part as follows:

Mining claims located and mineral patents issued under the provisions of this Act shall not include rights to lignite not containing valuable source material except to the extent it may be necessary to mine or strip such lignite in order to mine the source material • • •

(b) The reservation of leasing act minerals including lignite that do not contain valuable source material which will be inserted in every patent issued under the act, will be subject to the right of the patentee to remove such lignite when necessary to mine source material subject to the provisions of the act.

Subpart 3724—Other Provisions of Act

§ 3724.1 Lodes do not include extralateral rights.

(a) The act in section 1 provides in part as follows:

• • • lode claims, shall not include extralateral rights.

(b) The act in section 2 provides in part as follows.

That no extralateral rights shall attach to any mining location validated under this section.

(c) The right of all locators under the act are therefore limited to the extraction of unreserved minerals within the exterior boundaries of the claim extended vertically downward.

§ 3724.2 Source material not in leasing minerals, right to remove lignite, filing of description.

(a) The act in section 3 provides in part as follows:

SEC. 3. Subject to the provisos of section 2 of this act, any mining location made under

the mining laws of the United States, including the Act of August 13, 1954, on lands of the character described in section 1 of this Act, except locations made for lands within the exterior boundaries of a prior coal prospecting permit or lease, if based upon a discovery of valuable source material in deposits other than deposits of Leasing Act minerals, shall include the right to mine, remove, and dispose of lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of source material contained in lignite, subject to the reporting and payment requirements of section 1 of this Act, and subject to the provisions of the Atomic Energy Act of 1954 (68 Stat. 919), and upon filing in the land office designated in section 1 hereof, an adequate description of his claim or claims containing such lignite.

(b) The act in section 3 also provides in part as follows:

That nothing in this section shall be construed to limit or restrict the rights acquired by virtue of a mining claim heretofore or hereafter located, under the 1872 mining act, as amended, or to impose any additional obligation with respect to mining and removal of source material which does not occur within any seam, bed, or deposit of lignite.

(c) Under these provisions, as to locations which were made under the act of August 13, 1954, at a time when the land was known to contain lignite and was not then in a coal permit or lease, or application for permit or lease, the locator would have a right to mine the lignite containing source material and to mine other lignite only after he had complied with the reporting and payment provisions of section 1 of the act with respect thereto. The owner of such a location, who chooses not to comply with these payment and reporting requirements, may mine and remove any mining law minerals in the location, except such minerals contained in lignite, under authority of the act of August 13, 1954. If such a locator damages or destroys any lignite in connection with his mining operations his liability therefor to the United States will be determined under applicable laws. A location made solely under the 1872 Mining Act would not be subject to the provisions of either the August 13, 1954 Act, or of this act, but unless made upon land not then known to contain lignite it would be invalid.

§ 3724.3 Entryman entitled to exclusive right to locate; exception.

(a) The act in section 4 provides as follows:

The entryman or owner of any land or the assignee of rights therein, including lands granted to States, with respect to which the coal deposits have been reserved to the United States pursuant to the provisions of the act of March 3, 1909 (35 Stat. 844), or the act of June 22, 1910 (36 Stat. 583), excepting lands embraced within a coal prospecting permit or lease, upon the discovery of valuable source material in lignite situated within such entered, granted, or patented lands, who, except for the reservation of coal to the United States would have the right to mine and remove such source material, shall have the exclusive right to mine, remove, and dispose of lignite containing such source material and lignite necessary to be stripped or mined in the recovery of such material, subject to the reporting and payment requirements of section 1 of this act, and subject to the provisions of the Atomic Energy Act of 1954, upon filing in the land office designated in section 1 hereof, an adequate description sufficient to identify the land containing such lignite.

(b) The description under this section should be by the legal subdivision of the public land survey which contains the deposits.

§ 3724.4 Holder of coal lease entitled to exclusive right to locate source material; exception.

(a) The act in section 5 provides as follows:

The holder of coal leases issued under the provisions of the mineral leasing laws, including the Act of August 7, 1947 (61 Stat 913), prior to the date of this Act, or thereafter if based upon a prospecting permit issued prior to that date, upon the discovery during the term of such lease of valuable source material in any bed or deposit of lignite situated within the leased lands, shall have the exclusive right to locate such source material under the provisions of this Act but the mining and disposal of such source material shall be subject to the operating provisions of the lease and to the provisions of the Atomic Energy Act of 1954: *Provided*, That the provisions of this section shall not apply to coal prospecting permits or leases on lands embraced within entered granted, or patented lands described in section 4 of this Act.

(b) The coal lessee for lands not entered, granted or patented, who desires to obtain the benefits of this section must make a mining location and comply with the act and these regulations with respect thereto, and must also comply with the operating regulations (30 CFR Part 211).

§ 3724.5 Expiration of act; exception.

(a) The act in section 10 provides as follows:

Twenty years after the effective date of this act, all lands subject to the provisions of section 1 shall be withdrawn from all forms of entry under this act. All claims made pursuant to the provisions of this act shall expire at that time, except for (1) claims for which patent has already been issued, and (2) claims on which application for patent has already been made and on which patent is subsequently issued: *Provided*, That, if the President shall so provide by Executive Order, the provisions of this section shall not become effective until thirty years after the effective date of this act.

(b) Under this section, no location will be recognized on and after a date 20 years after the date of the act or the expiration of any extension of such period by the President, unless prior to that date an application for a patent has been filed and no patent will issue for any such claim in the absence of evidence of full compliance with the law made prior to that date.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS; GENERAL

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals; General

Sec.

3730.0–1 Purpose.
3730.0–3 Authority; lands opened.

Subpart 3731—Power Rights

3731.1 Power rights retained in the United States.

Subpart 3732—Withdrawals Other Than for Powersite Purposes

3732.1 Act ineffective as to other withdrawals.

Subpart 3733—Risk of Operation

3733.1 Financial risk of operation.
3733.2 Liability of United States.

Subpart 3734—Location and Assessment Work

3734.1 Owner of claim to file notice of location and assessment work.

Subpart 3735—Prior Existing Mining Locations

3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.
3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

Subpart 3736—Mining Operations

3736.1 Placer locator to conduct no mining operations for 60 days.
3736.2 Hearing; notice of protest.

Subpart 3737—Use

3737.1 Mining claim and mill site use.

Subpart 3738—Surface Protection Requirements

3738.1 Bond or deposit required.
3738.2 Restoration of surface condition.

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals; General

§ 3730.0–1 Purpose.

The act of August 11, 1955 (69 Stat. 681), was enacted "To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes". The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior. The expression "act" shall mean the act of August 11, 1955 (69 Stat. 681), cited in the act as the "Mining Claims Rights Restoration Act of 1955".

§ 3730.0–3 Authority; lands opened.

(a) The act in section 2 provides in part as follows:

All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes; * * * that nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

(b) The act in the second proviso thereof provides:

That locations made under the act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948 (62 Stat. 162).

Subpart 3731—Power Rights

§ 3731.1 Power rights retained in the United States.

(a) The act in the first proviso provides as follows:

That all power rights to such lands shall be retained by the United States.

(1) Under this proviso every patent issued for such a location must contain a reservation unto the United States, its permittees or licensees of the right to enter upon, occupy and use, any part of the lands for power purposes without any claim or right to compensation accruing to the locator or successor in interest from the occupation or use of any of the lands within the location, for such purposes. Furthermore, the patent will contain a provision that the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Subpart 3732—Withdrawals Other Than for Powersite Purposes

§ 3732.1 Act ineffective as to other withdrawals.

(a) The act in section 2(c) provides as follows:

Nothing in this act shall affect the validity of withdrawals or reservations for purposes other than power development.

(b) If the power site lands are also affected by any other type of withdrawal which prevents mining location in whole or in part, the provisions of the act apply only to the extent that the lands are otherwise open to location.

Subpart 3733—Risk of Operation

§ 3733.1 Financial risk of operation.

The act in section 3 provides in part as follows:

Prospecting and exploration for and the development and utilization of mineral resources authorized in this act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work.

§ 3733.2 Liability of United States.

The act in section 3 provides in part as follows:

Provided, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Subpart 3734—Location and Assessment Work

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The act in section 4 provides as follows:

The owner of any unpatented mining claim located on land described in section 2 of this act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days after the expiration of any annual assesment year, a statement as to any work done or improvements made during the previous assessment year.

(b) Neither section 4 nor any other provision of the act validates any mining location made prior to the act, which is invalid because made on lands after they were withdrawn or reserved for power purposes and before a favorable determination by the Federal Power Commission under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063; 1075), as amended (16 U.S.C. 792; 818) and the opening or restoration of the lands to location. Section 4 applies to unpatented locations for lands referred to in § 3730.0–3(a) only if:

(1) The location was made on or after August 11, 1955, or

(2) The location was made prior to August 11, 1955, and prior to the withdrawal or reservation of the lands for power purposes, or

(3) The location was made prior to August 11, 1955, on lands restored to location from a powersite reserve or withdrawal subject to section 24 of the Federal Power Act.

(c) The owner of an unpatented location coming under paragraph (b)(1) of this section, within sixty days from the date of location shall file in the United States land office for the district in which the lands lie, a copy of the notice or certificate of location and within sixty days after the expiration of each assessment year, a statement as to the assessment work done or improvements made during that assessment year. For identification purposes only, the copy of the location notice or certificate, filed in the land office under this subsection, should contain a notation that it was filed under the Act of August 11, 1955.

(d) The owner of an unpatented location coming under either paragraph (b)(2) or (3) of this section, before August 11, 1955 shall have filed in the United States land office for the district in which the lands lie a copy of the notice or certificate of location and within 60 days from the date of expiration of the assessment year which ended noon July 1, 1956 and within 60 days from the date of expiration of each succeeding assessment year, shall file a statement as to the assessment work done or improvements made during the previous assessment year.

Subpart 3735—Prior Existing Mining Locations

§ 3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.

(a) The act in section 5 provides:

Nothing in this act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided*, That nothing in this act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(b) Although the act does not limit or restrict the rights of owners of locations to which section 5 refers, such owners shall comply with section 4 by making the filings required either by paragraphs (c) or (d) of § 3734.1 whichever is applicable.

§ 3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

(a) Under section 5 of the act the rights to a location made prior to any future withdrawal or reservation for power development or one on which the locator was diligently working to make a discovery of valuable minerals are not limited or restricted.

Subpart 3736—Mining Operations

§ 3736.1 Placer locator to conduct no mining operations for 60 days.

(a) The act in section 2(b) provides in part as follows:

The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed, in compliance with the United States mining laws.

(b) Upon receipt of a notice of location of a placer claim filed in accordance

with § 3734.1 for land subject to location under the act, a determination will be made by the authorized officer of the Bureau of Land Management as to whether placer mining operations on the land may substantially interfere with other uses thereof. If it is determined that placer operations may substantially interfere with other uses, a notice of intention to hold a hearing will be sent to each of the locators by registered or certified mail within 60 days from date of filing of the location notice.

§ 3736.2 Hearing; notice of protest.

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will indicate the time and place of hearing. The procedures with respect to service of notice of hearing and conduct thereof shall follow the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title) in effect at the time the hearing is held. No publication of the notice will be required but a copy thereof shall be posted in the proper land office of the Bureau of Land Management for a period of not less than 30 days prior to the date set for the hearing. The manager shall give such publicity to the hearing as may be done without expense to the Government.

(b) Any party, other than a Federal agency, desiring to appear and testify at a hearing in protest to placer mining operations must file a written notice of protest in the land office wherein the notice of hearing is posted. Such notice, accompanied by a $10 filing fee, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. The manager shall forward a copy of each such notice that is filed to the mining locator prior to the hearing.

(c) Following the hearing, the examiner will render a decision, subject to the right of appeal by any person admitted as a party to the hearing in accordance with the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title). Each decision by an examiner, or upon appeal, shall provide for the issuance of an appropriate order as provided in section 2(b) of the act; but no such order shall issue until the decision, upon which it is based, becomes final. A certified copy of any order issued shall be filed in the same State or county office in which the location notice has been filed. Any such order permitting mining operations shall be filed at the expense of the mining locator.

Subpart 3737—Use

§ 3737.1 Mining claim and millsite use.

(a) The act in section 6 provides as follows:

Notwithstanding any other provisions of this act, all mining claims and mill sites or mineral rights located under the terms of this act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

(b) Under this section, a mining claim or mill site may not be used for purposes other than for legitimate mining and milling. The claimant, therefore, may not erect on the mining claim any facility or activity such as filling stations, curio shops, cafes, tourist or hunting and fishing lodges, or conduct such businesses thereon.

Subpart 3738—Surface Protection Requirements

§ 3738.1 Bond or deposit required.

Should a limited order be issued under section 2 (b) (2) of the act, the locator is required to furnish a bond in a sum determined by the Examiner. The bond must be either a corporate surety bond or a personal bond accompanied by cash or negotiable Federal securities equal at their par value to the amount of the penal sum of the bond, together with power-of-attorney to the Secretary of the Interior or his delegate.

§ 3738.2 Restoration of surface condition.

If the locator fails or refuses to restore the surface, appropriate action will be taken against him and his surety, including the appropriation of any money deposited on personal bonds, to be used for the purpose of restoring the surface of the claim involved. Any moneys on deposit or received from surety in excess of the amount needed for the restoration of the surface of the particular claim shall be refunded.

PART 3740—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Subpart 3740—Public Law 585, Multiple Mineral Development; General

Sec.
3740.0–1 Purpose.

Subpart 3741—Claims, Locations and Patents

3741.1 Validation of certain mining claims.
3741.2 Preference mining locations.
3741.3 Additional evidence required with application for patent.
3741.4 Reservation to United States of leasing act minerals.
3741.5 Mining claims and mill sites located on leasing act lands after August 3, 1954.
3741.6 Acquisition of leasing act minerals in lands covered by mining claims and mill sites.

Subpart 3742—Procedures Under the Act

3742.1 Procedure to determine claims to leasing act minerals under unpatented mining locations.
3742.2 Recordation of notice of application, offer, permit or lease.
3742.3 Publication of notice.
3742.3–1 Request for publication of notice of leasing act filing; supporting instruments.
3742.3–2 Contents of published notice.
3742.3–3 Publication.
3742.3–4 Proof of publication.
3742.3–5 Mailing of copies of published notice.
3742.3–6 Service of copies; failure to comply.
3742.4 Failure of mining claimant to file verified statement.

Subpart 3743—Hearings

3743.1 Hearing procedures.
3743.2 Hearing; time and place.
3743.3 Stipulation between parties.
3743.4 Effect of decision affirming a mining claimant's rights.

Subpart 3744—Claimant's Rights

3744.1 Recording by mining claimant of request for copy of notice.
3744.2 Relinquishment by mining claimant of leasing act minerals.

Subpart 3745—Helium

3745.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

Subpart 3746—Fissionable Source Materials

3746.1 Mining locations for fissionable source materials.

Subpart 3740—Public Law 585, Multiple Mineral Development; General

§ 3740.0–1 Purpose.

The act of August 13, 1954 (68 Stat. 708, 30 U.S.C. 521 et seq.), was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies. The expression "act" when used in this part means the act of August 13, 1954 (68 Stat. 708). The expression "Leasing Act", when used in this part, refers to the "mineral leasing laws" as defined in section 11 of the act of August 13, 1954 (68 Stat 708).

Subpart 3741—Claims; Locations and Patents

§ 3741.1 Validation of certain mining claims.

The act in section 1(a) provides as follows:

That (a) subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—

(1) Included in a permit or lease issued under the mineral leasing laws; or

(2) Covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) Known to be valuable for minerals subject to disposition under the mineral leasing laws, shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however*, That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of the act of August 12, 1953 (67 Stat. 539) [not later than December 10, 1953,] an amended notice of location as to

such mining claim, stating that such notice was filed pursuant to the provisions of said act of August 12, 1953, and for the purpose of obtaining the benefits thereof: *And provided further*, That, in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of this act, must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period, if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant thereto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

§ 3741.2 Preference mining locations.

The act in section 3 (a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this act, as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this act or which may acquire validity under the provisions of this act. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7 (c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 3741.3 Additional evidence required with application for patent.

All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this act, or the act of August 12, 1953, supra, in addition to matters required in Group 3800 of this chapter, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. If a mining claim was located on or after the date of this act a statement must be filed showing that on the date of location the lands affected were not covered by a uranium lease or an application for a uranium lease. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the act.

§ 3741.4 Reservation to United States of Leasing Act minerals.

Section 4 of the act provides that:

Every mining claim or millsite—

(1) Heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

(2) Located under the mining laws of the United States after the effective date of passage of this act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof) of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 3741.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.

Since enactment of the act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws: This is inclusive of lands in petroleum reserves, except Naval petroleum reserves;

to the same extent in all respects as if such lands were not so included or covered or known.

§ 3741.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the act or validated pursuant to the act may be acquired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites, or after the issuance of patent, if the patent contains a reservation of Leasing Act minerals to the United States as provided in section 4 of the act.

Subpart 3742—Procedures Under the Act

§ 3742.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.

Section 7 of the act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding regulations, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same.

§ 3742.2 Recordation of notice of application, offer, permit or lease.

Not less than 90 days prior to the filing of such request for publication, there must have been filed for record in the county office of record for each county in which lands covered thereby are situated, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant, offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either the section or sections which would

probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

§ 3742.3 Publication of notice.

§ 3742.3–1 Request for publication of notice of Leasing Act filing; supporting instruments.

(a) Having complied with the requirement of § 3742.2 the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the appropriate land office. No Request for Publication, or publication, may include lands in more than one Land District.

(b) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease setting forth the date of recordation thereof. The date of recordation shall be presumed to have been the date when the notice was filed for record unless the certified copy of the notice shows otherwise or is accompanied by an affidavit of the person filing the request for publication showing that the notice was filed for record on a date prior to the date of recordation.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, such affidavit or affidavits shall set forth the name and address of each such person unless the affiant shall have been unable, through reasonable inquiry, to obtain information as to the name and address of such person; in which event, the affidavit or affidavits shall set forth fully the nature and the results of such inquiry.

(3) The certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situate as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, together with the address of such person if disclosed by such instruments of record.

(4) A nonrefundable $10 remittance to cover service charge.

§ 3742.3–2 Contents of published notice.

The notice to be published as required by the preceding section, shall describe the lands covered by the application, offer, permit or lease in the same manner as is required under § 3742.2 Such published notice shall notify whomever it may concern, that if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the act of August 13, 1954, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such Request for Publication was filed (which office shall be specified in such notice), and within 150 days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim:

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

§ 3742.3–3 Publication.

(a) Upon receipt of a Request for Publication and accompanying instruments, if all is found regular, the Manager, or the Director, as may be appropriate, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Manager, or the Director, as may be appropriate, having general circulation in the county in which the lands involved are situated.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 3742.3–4 Proof of publication.

After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement[1] that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3742.3–5 Mailing of copies of published notice.

Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 3742.3–1.

(b) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the act (see § 3744.1);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 3742.3–1 and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs (a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

§ 3742.3–6 Service of copies; failure to comply.

If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7(a) of the act as to personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

[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.

§ 3742.4 Failure of mining claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to enactment of the act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in § 3742.3–6.

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

Subpart 3743—Hearings

§ 3743.1 Hearing procedures.

The procedures with respect to notice of such hearing and the conduct thereof, and in respect to appeals, shall follow the provisions of Appeals and Contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this chapter) relating to contests or protests affecting public lands of the United States.

§ 3743.2 Hearing; time and place.

If any verified statement shall be filed by a mining claimant then the Manager of the Land Office, or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands in question, or part thereof, are located, unless the mining claimant agrees otherwise.

§ 3743.3 Stipulation between parties.

If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3743.4 Effect of decision affirming a mining claimant's rights.

If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

Subpart 3744—Claimants Rights

§ 3744.1 Recording by mining claimant of request for copy of notice.

Section 7(d) of the act provides that:

Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided in subsection (a) of this section 7, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section 7 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 7, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3744.2 Relinquishment by mining claimant of Leasing Act minerals.

Section 8 of the act provides that:

The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 4 of this Act and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

Subpart 3745—Helium

§ 3745.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

(a) Section 9 of the act provides that:

Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive Orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act, will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided*, That the lands shall not become subject to entry, location, permit, or lease until such time as the Secretary designates in an order published in the FEDERAL REGISTER: *And provided further*, That the Secretary may at any time as a condition to continued mineral operations require the entrymen, locator, permittee, or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(b) No mining location made and no application for permit or lease filed as to Helium Reserve land prior to the time of opening specified in the notice of opening published in the FEDERAL REGISTER will confer any rights on the locator or applicant.

Subpart 3746—Fissionable Source Materials

§ 3746.1 Mining locations for fissionable source materials.

(a) In view of the amendment of section 5(b)(7) of the Atomic Energy Act of 1946 by section 10(c) of the act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said act of August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said act of August 13, 1954, section 10(d) of the act provides:

(d) Notwithstanding the provisions of the Atomic Energy Act, and particulary sec. 5(b)(7) thereof, prior to its amendment hereby, or the provisions of the act of August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral

deposit other than a fissionable source material.

(c) Elimination of fissionable source materials reservations.

(a) Any person who holds a patent, conveyance, lease, permit or other authorization issued by the Department of the Interior through the Bureau of Land Management, with a fissionable source material reservation to the United States pursuant to section 5(b)(7) of the Atomic Energy Act of 1946, prior to its amendment above referred to, and who is desirous of having such reservation eliminated from the patent, conveyance, lease, permit or other authorization, must file an application therefor in the appropriate land office.

Group 3800—Mining Claims Under the General Mining Laws

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

Subpart 3811—Lands Subject to Location and Purchase

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3811.1 Lands; general.
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Subpart 3812—Minerals Under the Mining Laws

3812.1 Minerals subject to location.

Subpart 3813—Disposal of Reserved Minerals Under the Act of July 17, 1914

3813.0-3 Authority.
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Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.
3814.2 Mineral reservations in patent; conditions to be noted on mineral applications.

Subpart 3815—Mineral Locations in Stock Driveway Withdrawals

3815.1 Mineral locations.
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3816.1 Mineral locations.
3816.2 Application to open lands to location.
3816.3 Recommendation of Bureau of Reclamation on application to open lands.
3816.4 Recommendations as to reservations and contract form.

Subpart 3811—Lands Subject to Location and Purchase

§ 3811.1 Lands; general.

Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase. 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 in the public land states, subject to location and entry under the general mining laws in the usual manner. Lands entered or patented under the stockraising homestead law (title to minerals and the use of the surface necessary for mining purposes can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably are open to location.

§ 3811.2 Lands; specific.

§ 3811.2-1 States where locations may be made.

(a) Mining locations may be made in the States of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(b) 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 right incident thereto, to the State, with certain further provisions with respect to the acquisition of claims thereunder.

(c) 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).

(d) By the act of May 4, 1934 (43 Stat. 663; 48 U.S.C. 381a) 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 State.

§ 3811.2-2 Lands in national parks and national monuments.

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 to the United States. See § 3826.3.

(b) 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. See § 3826.1.

(c) Regulations relative to mining in the Glacier Bay National Monument are contained in § 3826.4 of this chapter.

(d) Mining locations in the Olympic National Park, Washington, made prior to June 29, 1943, are governed by § 3826.2 of this chapter.

(e) Mining locations in the Organ Pipe Cactus National Monument may be made pursuant to § 3826.5 of this chapter.

§ 3811.2-3 Lands in Indian reservations.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation from June 18, 1943 to May 27, 1955. See § 3825 of this chapter.

§ 3811.2-4 Lands in national forests.

For mining claims in national forests, see subpart 3811.

§ 3811.2-5 O and C and Coos Bay Wagon Road lands.

Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, located in Oregon, are subject to mining locations in accordance with provisions of Subpart 3821 of this chapter.

§ 3811.2-6 Lands in powersite withdrawals.

Mining claims for fissionable source materials may be located on lands known to be valuable for coal under certain conditions. See Subpart 3730 of this chapter.

§ 3811.2-7 Fissionable source material on coal lands.

Mining claims may be located on power site withdrawals subject to the provisions of Subpart 3720 of this chapter.

§ 3811.2-8 Lands under Alaska Public Sale Act.

(f) 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 mineral appropriation under the provision of section 3 of that act for the development of the reserved minerals under applicable laws, 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. See Subpart 2770 and 3922 of this chapter.

§ 3811.2–9 Lands under Color of Title Act.

Lands patented under the Color of Title Act (43 U.S.C. 1068), by exchange under the Taylor Grazing Act (43 U.S.C. 415g) and by Forest Exchanges (16 U.S.C. 485) with mineral reservation to the United States, are subject to appropriation under the mining or mineral leasing laws for the reserved materials. See Group 2200 and subpart 2540 of this chapter. Minerals in acquired lands of the United States are not subject to mining location but the minerals therein may be acquired in accordance with the regulations contained in Subpart 3500.

Subpart 3812—Minerals Under the Mining Laws

§ 3812.1 Minerals subject to location.

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 oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried, the deposits of sulphur in Louisiana and New Mexico belonging to the United States can be acquired under the mineral leasing laws (see § 3100.0–3(a)(1)), and are not subject to location and purchase under the United States mining laws. The so-called "common variety" mineral materials and petrified wood on the public lands may be acquired under the Materials Act, as amended (see Part 3600).

Subpart 3813—Disposal of Reserved Minerals Under the Act of July 17, 1914

§ 3813.0–3 Authority.

The Act of July 20, 1956 (70 Stat. 592), which amended the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), was enacted to permit the disposal of certain reserved mineral deposits under the mining laws of the United States.

§ 3813.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location, entry and patenting.

The act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), as amended by the act of July 20, 1956 (70 Stat. 592), provides in part as follows:

* * * such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law: *Provided, however,* That all mineral deposits heretofore or hereafter reserved to the United States under this Act which are subject, at the time of application for patent to valid and subsisting rights acquired by discovery and location under the mining laws of the United States made prior to the date of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), shall hereafter be subject to disposal to the holders of those valid and subsisting rights by patent under the mining laws of the United States in force at the time of such disposal. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same 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 of the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom; and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages:

§ 3813.2 Minerals subject to disposition.

The Act of July 20, 1956, applies only to any mineral deposit discovered and located under the U.S. mining laws prior to February 25, 1920, and reserved to the United States under the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), and which, at the time of application for mineral patent, is subject to valid and subsisting rights under the said mining laws. Only that mineral deposit together with the right to use the surface to prospect for, mine, and remove the said deposit shall, on or after July 20, 1956, be subject to disposal to the holders of such valid and subsisting rights by patent under the mining laws in force at the time of such disposal. "Oil" reserved under the Act of 1914 has been held to include oil shale. See 52 L.D. 329.

§ 3813.3 Provisions of the mineral patent.

(a) Each patent issued under the Act of July 20, 1956, shall specifically name the discovered mineral deposit which had been reserved to the United States under the Act of July 17, 1914, and shall recite that, in accordance with the reservation in the land patent, the mineral patentee and its successors (or his heirs and assigns, if a person) shall have the right to prospect for, mine and remove the mineral deposit for which the patent is issued.

(b) If, when it is determined that mineral deposit is subject to patenting under the mining laws pursuant to the Act of July 20, 1956, there is a subsisting mineral lease or permit covering such deposit, the mineral patent shall be issued subject to the mineral lease or permit for so long as rights under the lease or permit shall exist, the patentee being substituted for the United States as lessor or permittor and the patentee being entitled to all revenues derived subsequent to the issuance of patent from any such lease or permit.

Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

§ 3814.1 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 3400–1 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, with 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 pre-

ferred 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 allowance, withdrawn or reserved from disposition.

§ 3814.2 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.

Subpart 3815—Mineral Locations in Stock Driveway Withdrawals

§ 3815.1 Mineral locations.

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.

§ 3815.2 Prospecting and mining.

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.

§ 3815.3 Surface limitation.

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.

§ 3815.4 Protection of stock.

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.

§ 3815.5 Access to stock watering places.

No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

§ 3815.6 Locations subject to mining laws.

Prospecting for minerals and the location of mining claims on lands in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

§ 3815.7 Mining claims subject to stock driveway withdrawals.

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 regulations in this section.

§ 3815.8 Notation required in application for patent; conditions required in patent.

(a) 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.

(b) 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, occupancy and use of the land as permitted to an entryman under said act.

Subpart 3816—Mineral Locations in Reclamation Withdrawals

§ 3816.1 Mineral locations.

The act of April 23, 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).

§ 3816.2 Application to open lands to location.

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. Each application shall be accompanied by a $10 nonrefundable service charge.

§ 3816.3 Recommendations of Bureau of Reclamation to open lands.

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.

§ 3816.4 Recommendations as to reservations and contract form.

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.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

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Subpart 3821—O and C Lands

§ 3821.1 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.

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

(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.

§ 3821.3 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 the district 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.

§ 3821.4 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.

§ 3821.5 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.

Subpart 3822—Lands Patented Under the Alaska Public Sale Act

§ 3822.1 Subject to mining location.

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 Group 3800 and to the additional conditions and requirements in § 2771.6–2 of this chapter.

§ 3822.2 Compensation to surface rights holder.

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 damages 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.

Subpart 3823—Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness

§ 3823.0–3 Purpose.

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral locations and mineral patents within National Forest Wilderness.

§ 3823.0–5 Definition.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest lands designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

§ 3823.1 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

(a) The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with the location of valuable mineral deposits which may be discovered through such activity and which may be open to such location, attention is directed to the fact that no claim may be located after midnight, December 31, 1983, and no valid discovery may be made after that time on any location purportedly made before that time.

(b) All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

§ 3823.2 Mineral locations within National Forest Wilderness.

(a) Until midnight, December 31, 1983, the mining laws of the United States and the regulations of this chapter pertaining thereto, including any amendments thereto effective during such period, shall to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(b) All mineral locations established after September 3, 1964, and lying within the National Forest Wilderness, shall be held and used solely for mining or processing operations and uses incident thereto, and such locations shall carry with them no rights in excess of those rights which may be patented under the provisions of § 3823.3 of this chapter.

(c) All persons wishing to carry on any activity under the mining laws on lands within National Forest Wilderness, on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing activities to be performed thereon in connection with the locations of mining claims.

§ 3823.3 Mineral patents within National Forest Wilderness.

(a) Each patent issued under the U.S. mining laws for mineral locations established after September 3, 1964, or validated by discovery of minerals occurring after September 3, 1964, and lying within National Forest Wilderness shall, in accordance with the provisions of section 4(d)(3) of the Wilderness Act:

(1) Convey title to the mineral deposits within the patented lands, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the National Forest rules and regulations;

(2) Reserve to the United States all title in or to the surface of the lands and products thereof; and

(3) Provide that no use of the surface of the patented lands or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as expressly provided in the Wilderness Act.

(b) Each patent to which the provisions of this section are applicable shall contain the express condition that the use of the patented lands shall be subject to regulations prescribed by the Secretary of Agriculture as referred to in § 3823.2 of this subpart and that the patented lands shall be held open for reasonable inspection by authorized officers of the U.S. Government for the purpose of observing compliance with the provisions thereof.

§ 3823.4 Withdrawal from operation of the mining laws.

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from the operation of the mining laws by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

Subpart 3824—City of Prescott, Arizona, Watershed

§ 3824.1 Mining locations.

(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.

Subpart 3825—Papago Indian Reservation, Arizona

§ 3825.0–3 Authority.

(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 regulations in this part apply to entries made prior to May 27, 1955. By virtue of the act of May 27, 1955 (69 Stat. 67; 25 U.S.C. 463) mineral entries may no longer be made within the Papago Indian Reservation.

§ 3825.1 Mining locations in Papago Indian Reservation in Arizona.

(a) 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 prescribed in this section.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

Subpart 3826—National Park Service Areas

§ 3826.1 Mount McKinley National Park Alaska.

§ 3826.1–1 Registration of prospectors and miners.

Before entering the Park for the purpose of prospecting or locating any mining claim under the public land mining laws on lands therein, or prior to engaging in exploration or mining on any mining claim theretofore located, all prospectors and miners shall register with the Superintendent, furnishing the information required on the registration form hereinafter set forth.

(a) *Registration form.* The aforesaid registration form shall be substantially as follows:

Form No. _____
(_____, _____)

REGISTRATION OF PROSPECTORS AND MINERS

UNITED STATES

DEPARTMENT OF THE INTERIOR

National Park Service

Mount McKinley National Park

Pursuant to the regulations of the Secretary of the Interior (36 CFR 7.44) governing the surface use of mineral claims located within the boundaries of the Mount McKinley National Park, Alaska, and to provide for the proper registration of prospectors and miners on lands within said Park, the following information is furnished:

1. Name and address of registrant: _____
_____
_____

NOTE: If registrant is an agent, this fact should be indicated and the name and address of his principal should be furnished in addition to registrant's name and address. If registrant is in charge of a party, then only the chief of the party need register; however, the names and addresses of all members of the party must be listed herein, or on a separate sheet of paper attached hereto.

2. Is registrant a citizen of the United States? _____ If registering for a party in which he is in direct charge, is each member of the party a citizen of the United States? _____ If registrant is an agent, is the principal a citizen of the United States? _____

3. If this registration is for the purpose of prospecting for minerals prior to the location of a mining claim, state the general area to be covered. _____
_____

4. If this registration is for the purpose of further prospecting, development, or mining on a mining claim heretofore located, describe the exact location of such claim or claims, furnishing evidence of filing. _____
_____

5. Type of mineral to be prospected for or mined. _____

6. Equipment to be used. _____

7. Date prospecting or mining will commence _____ and expected cessation of operations and departure from the Park. _____

The foregoing registration is made this _____ day of _____, 19____, with the understanding that it is good for one year only from the date hereof and must be renewed if activities are to be carried on within the Park after the said expiration date. A copy of this registration, duly accepted and recorded, shall be retained by the registrant at all times as evidence of his compliance with the said regulations of the Secretary of the Interior.

_____
(Signature of registrant)

Accepted and recorded:

_____
Superintendent,
Mount McKinley National Park

§ 3826.1–2 Surface use of mineral land locations.

(a) (1) The surface use of mining claims shall be restricted to purposes of mineral exploration and development

unless other uses of the surface are authorized, in writing, by the Regional Director.

(b) Prospectors and miners may open or construct roads or vehicle trails after first obtaining a permit therefor from the Regional Director. Applications for such permits may be made to the Superintendent. Each such application shall be accompanied by a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail.

(c) Timber may be cut and removed from a mining claim or access road with the prior permission of the Superintendent, who shall designate the timber which may be cut and removed. All slash, brush, or debris resulting from the cutting of timber shall be disposed of by the prospector or miner in such manner and at such times as may be designated by the Superintendent.

§ 3826.2 Olympic National Park.

(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, Williamette 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.

§ 3826.2–1 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 the regulations in this subpart.

§ 3826.2–2 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.

§ 3826.2–3 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.

§ 3826.2–4 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.

§ 3826.2–5 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 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.

§ 3826.2–6 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 under this act and this subpart.

§ 3826.3 Mining locations in Death Valley National Monument, California.

§ 3826.3–1 Mining.

Mining in Death Valley National Monument is subject to the following regulations, which are prescribed to govern the surface use of claims therein:

(a) The claim shall be occupied and used exclusively for mineral exploration and development and for no other purpose except that upon written permission of an authorized officer or employee of the National Park Service the surface of the 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.

(b) The owner of the claim and all persons holding under him shall conform to all rules and regulations governing occupancy of the lands within the National Monument.

(c) The use and occupancy of the surface of mining claims as prescribed in subparagraphs (a) and (b) of this paragraph shall apply to all such claims located after the date of the act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447), within the limits of the National Monument as fixed by Proclamation No. 2028 of February 11, 1933, and enlarged by Proclamation No. 2228 of March 26, 1937, and to all mining claims on lands hereafter included in the National Monument, located after such inclusion, so long as such claims are within the boundaries of said Monument.

(d) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. Applications for permits shall be accompanied by 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's maintaining the road or trail in a passable condition as long as it is used by the permittee or his successors.

(e) From and after the date of publication of this section, no construction, development, or dumping upon any location or entry, lying wholly or partly within the areas set forth in subdivisions

(1) to (3) of this subparagraph, shall be undertaken until the plans for such construction, development, and dumping, insofar as the surface is affected thereby, shall have been first submitted to and approved in writing by an authorized officer or employee of the National Park Service:

(1) All land within 200 feet of the center-line of any public road.

(2) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one quarter of a mile thereof on unsurveyed public land.

(3) All land within any site developed or approved for development by the National Park Service as a residential, administrative, or public campground site. Such sites shall include all land within the exterior boundaries thereof as conspicuously posted by the placing of an appropriate sign disclosing that the boundaries of the developed site are designated on a map of the site which will be available for inspection in the office of the Superintendent. If not so posted, such sites shall include all land within 1,000 feet of any Federally owned buildings, water and sewer systems, road loops, and camp tables and fireplaces set at designated camp sites.

§ 3826.3–2 Use of water.

No works or water system of any kind for the diversion, impoundment, appropriation, transmission, or other use of water shall be constructed on or across Monument lands, including mining claims, without a permit approved by an authorized officer or employee of the National Park Service. Application for such permit shall be accompanied by plans of the proposed construction. The permit shall contain the following conditions: (1) No diversion and use of the water shall conflict with the paramount general public need for such water; (2) such water systems shall include taps or spigots at points to be prescribed by the Superintendent, for the convenience of the public; and (3) all appropriations of water, in compliance with the State water laws, shall be made for public use in the name of the United States and in accordance with instructions to be supplied by an authorized officer or employee of the National Park Service.

§ 3826.3–3 Permits.

Application for any permit required by this section shall be made through the Superintendent of the Monument.

§ 3826.3–4 Filing of copies of mining locations.

From and after the publication of this paragraph, in order to facilitate the administration of the regulations in this part, copies of all mining locations filed in the Office of the County Recorder shall be furnished to the office of the Superintendent, Death Valley National Monument, by the person filing the mining location in his own behalf or on behalf of any other person.

§ 3826.4 Glacier Bay National Monument, Alaska.

§ 3826.4–1 Mining locations.

(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 wildlife 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.

§ 3826.5 Organ Pipe Cactus National Monument, Arizona.

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.

§ 3826.5–1 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.

§ 3826.5–2 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.

§ 3826.5–3 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.

§ 3826.5–4 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under the act should be noted "Oregon 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.

§ 3826.5–5 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.

§ 3826.5–6 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.

§ 3826.5–7 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.

PART 3830—LOCATION OF MINING CLAIMS

Subpart 3831—Rights to Mineral Lands

Sec.
3831.1 Manner of initiating rights under locations.

Subpart 3832—Who May Make Locations

Sec.
3832.1 Qualifications.

Subpart 3831—Rights to Mineral Lands

§ 3831.1 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, 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. 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.

Subpart 3832—Who May Make Locations

§ 3832.1 Qualifications.

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.

PART 3840—NATURE AND CLASSES OF MINING CLAIMS

Subpart 3840—Types of Claims

Sec.
3840.1 Classes of mining claims.

Subpart 3841—Lode Claims

3841.1 Lodes located previous to May 10, 1872.
3841.2 Lodes must not have been adversely claimed.
3841.3 Discovery.
3841.3–1 Discovery required before location.

Sec.
3841.3–2 Discovery work.
3841.4 Describing locations.
3841.4–1 Length of lode claims.
3841.4–2 Width of lode claims.
3841.4–3 Extent of surface ground.
3841.4–4 Defining of locations.
3841.4–5 Location notice; monumenting.
3841.4–6 Recording of location notice.

Subpart 3842—Placer Claims

3842.1 Placer claims; general.
3842.1–1 Discovery.
3842.1–2 Maximum allowable acreage.
3842.1–3 Locations authorized in 10-acre units.
3842.1–4 Manner of describing 10-acre units.
3842.1–5 Conformity of placer claims to the public land surveys.
3842.2 Building-stone placers.
3842.3 Saline placers.
3842.4 Petroleum placers.

Subpart 3843—Tunnel Sites

Sec.
3843.1 Possessory right of tunnel proprietor.
3843.2 Location of tunnel claims.
3843.3 Recording of notices.

Subpart 3844—Mill Sites

3844.0–3 Authority.
3844.1 Required use.

Subpart 3840—Types of Claims

§ 3840.1 Classes of mining claims.

Mining claims are of two distinct classes: lode claims and placers.

Subpart 3841—Lode Claims

§ 3841.1 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 2322 and 2328, R.S. (30 U.S.C. 26, 33), 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.

§ 3841.2 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 party so adversely claiming is in no way impaired by the act of that date.

§ 3841.3 Discovery.

§ 3841.3–1 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.

§ 3841.3–2 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.

§ 3841.4 Describing locations.

§ 3841.4–1 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.

§ 3841.4–2 Width of lode claims.

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.

§ 3841.4–3 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 cannot 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 cannot 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.

§ 3841.4–4 Defining of locations.

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." 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.

§ 3841.4–5 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 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. 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 R.S. 2327.

§ 3841.4–6 Recording of location notice.

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.

Subpart 3842—Placer Claims

§ 3842.1 Placer claims; general.

§ 3842.1–1 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.

§ 3842.1–2 Maximum allowable acreage.

(a) By R.S. 2330 (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) R.S. 2331 (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 it, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§ 3842.1–3 Locations authorized in 10 acre units.

By R.S. 2330 (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.

§ 3842.1–4 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.

§ 3842.1–5 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 survey 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.)

§ 3842.2 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.

(a) Common varieties of building stone are, since the act of July 23, 1955 (69 Stat. 367; 30 U.S.C. 611) no longer locatable under the mining laws.

(b) Uncommon varieties of building stone continue to be subject to the building stone placer supplement to the mining law, 30 U.S.C. 161.

§ 3842.3 Saline placers.

(a) Under the act approved January 31, 1901 (31 Stat. 745; 30 U.S.C. 162), extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States 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." The saline placer 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.

(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.

§ 3842.4 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. This act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

Subpart 3843—Tunnel Sites

§ 3843.1 Possessory right of tunnel proprietor.

The effect of R.S. 2323 (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 sections, is contrued 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. R.S. 2323 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."

§ 3843.2 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 appplicable 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.

§ 3843.3 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.

Subpart 3844—Millsites

§ 3844.0–3 Authority.

The location and patenting of lands for millsite purposes is authorized by R.S. 2337 as amended by the Act of March 18, 1960. The act, 30 U.S.C. 42, reads as follows:

Patents for nonmineral lands.

(a) Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced, and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21–24, 26–28, 29, 30, 33–48, 50–52, and 71–76 of this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

(b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode. (As amended Mar. 18, 1960, Pub. Law 86–390, 74 Stat. 7.)

§ 3844.1 Required use.

A millsite is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the lode or placer claim with which it is associated. A custom or independent millsite may be located for the erection and maintenance of a quartz mill or reduction works.

PART 3850—ASSESSMENT WORK

Subpart 3851—Assessment Work; General

Sec.
3851.1 Assessment work.
3851.1–1 Expenditures.
3851.2 Inclusion of surveys in assessment work.
3851.3 Failure to perform assessment work.
3851.4 Determination of right of possession between rival claimants.
3851.5 Failure of a co-owner to contribute to annual assessment work.
3851.6 Assessment work not required after patent certificate.

Subpart 3852—Deferment of Assessment Work

3852.0–3 Authority.
3852.1 Conditions under which deferment may be granted.
3852.2 Filing of petition for deferment; contents.
3852.3 Notice of action on petition to be recorded.
3852.4 Period for which deferment may be granted.
3852.5 When deferred assessment work is not to be done.

Subpart 3851—Assessment Work; General

§ 3851.1 Assessment work.

In order to hold the possessory right to a lode or placer location made after May 10, 1872, not less than $100 worth of labor must be performed or improvements made thereon annually. The period within which the work required to be done shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of each 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 on any one claim. Cornering locations are held not to be contiguous.

§ 3851.1–1 Expenditures.

The annual expenditure in the amount of $100, required by section R.S. 2324 (30 U.S.C. 28), must be made upon placer as well as lode locations.

§ 3851.2 Inclusion of surveys in assessment work.

(a) In addition to the several types of work that may fulfill the annual labor requirement, the requirement can also be satisfied by conducting geological, geochemical and geophysical surveys. P.L. 85–876, Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28–1–2). Such surveys must be conducted by qualified experts and verified by a detailed report filed in the county or recording district office in which the claim is located. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim.

(2) Nature, extent and cost of the work performed.

(3) The basic findings of the surveys.

(4) The name, address and professional background of the person or persons conducting the work.

Such surveys may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be nonrepetitive of any previous survey of the same claim. Such surveys will not apply toward the statutory provision requiring the expenditure of $500 for each claim for mineral patent.

(b) As used in this section—

(1) The term "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(2) The term "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) The term "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical difference between rock types or discontinuities in geological formations;

(4) The term "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

§ 3851.3 Failure to perform 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.

§ 3851.4 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), 44 L.D. 46, 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.

§ 3851.5 Failure of a co-owner to contribute to annual assessment work.

Upon the failure of any one of several co-owners to contribute his proportion 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 interest 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.

§ 3851.6 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.

Subpart 3852—Deferment of Assessment Work

§ 3852.0–3 Authority.

The act of June 21, 1949 (63 Stat. 214; 30 U.S.C. 28b–c), provides for the 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.

§ 3852.1 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.

§ 3852.2 Filing of petition for deferment, contests.

(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, 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. Each petition shall be accompanied by a $10 nonrefundable service charge.

(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.

§ 3852.3 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.

§ 3852.4 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.

§ 3852.5 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.

PART 3860—MINERAL PATENT APPLICATIONS

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Subpart 3861—Surveys and plats

§ 3861.1 Surveys of mining claims.

§ 3861.1–1 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. He is required to have a correct survey where patent is applied for and where the mining claim is in vein or lode formation, or covers lands not surveyed in accordance with the U.S. system of rectangular surveys, or where the mining claim fails to conform with the legal subdivisions of the federal surveys. Application for authorization of survey should be made to the appropriate land office (see § 1821.2–1 of this chapter).

[Circ. 2220, 31 F.R. 16785, Dec. 31, 1966]

§ 3861.1–2 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 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 cannot be substituted for that required by the statute, as above indicated. 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.

§ 3861.1–3 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.

§ 3861.2 Surveys; specific.

§ 3861.2–1 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	1.48

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the area 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.

§ 3861.2–2 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 incorporation 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.

§ 3861.2–3 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 and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim cannot be included in the estimate, but should be described and located in the notes and plat.

§ 3861.2–4 Supplemental proof of extitures 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.

§ 3861.2–5 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.

§ 3861.3 Mineral surveyors.

§ 3861.3–1 Extent of duties.

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 to 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.

§ 3861.3–2 Assistants.

The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

§ 3861.4 Contract for surveys.

§ 3861.4–1 Payment.

(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.

(b) The state director has no 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.

§ 3861.5 Appointment and employment of mineral surveyors.

§ 3861.5–1 Appointment.

Pursuant to section R.S. 2334 (30 U.S.C. 39), each state director 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 state director 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 state director 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 state director shall furnish each adjoining State with a copy of such register, and shall advise them of any changes therein.

§ 3861.5–2 Employment.

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.

§ 3861.6 Plats and notices.

§ 3861.6–1 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."

§ 3861.7 Posting.

§ 3861.7–1 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 of survey.

§ 3861.7–2 Proof of posting on the claim.

After posting the said plat and notice upon the premises the claimant will file with the proper manager two copies of such plat and the field notes of survey of the claim, accompanied by two copies of 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, and two copies of the notice so posted to be attached to and form a part of said statement.

Subpart 3862—Lode Mining Claim Patent Applications

§ 3862.1 Lode claim patent application; general.

§ 3862.1–1 Application for patent.

(a) At the time the proof of posting is filed the claimant must file in duplicate 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 or State 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.

(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 materials in the lands covered by his application.

(c) 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 § 1823.4(a) and 1861.2 of this chapter.

§ 3862.1–2 Service charge.

The service charge payable to the Bureau of Land Management for filing and acting upon applications for mineral-land patents is $25 to be paid by the applicant for patent at the time of filing. This charge is not refundable.

§ 3862.1–3 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 a form approved by the Director.

(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.

§ 3862.1–4 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.

§ 3862.1–5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.

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.

§ 3862.2 Citizenship.

§ 3862.2–1 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 of patent.

§ 3862.2–2 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.

§ 3862.2–3 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.

§ 3862.3 Possessory rights.

§ 3862.3–1 Right by occupancy.

(a) The provisions of R.S. 2332 (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, 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.

§ 3862.3–2 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 as aforesaid other than that which has been finally decided in favor of the claimant.

§ 3862.3–3 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.

§ 3862.4 Publication of notice.

§ 3862.4–1 Newspaper designation.

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.

§ 3862.4–2 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.

§ 3862.4–3 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.

§ 3862.4–4 Charges for publication.

(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 the several States for the publication of legal notices wherein the notice is published.

(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 569 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.

§ 3862.4–5 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.

§ 3862.4–6 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.

§ 3862.5 Entry and transfers.

§ 3862.5–1 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. 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.

§ 3862.6 Diligent prosecution.

§ 3862.6–1 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.

§ 3862.7 Application processing upon contest or protest.

§ 3862.7–1 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.

§ 3862.8 Patents for mining claims.

§ 3862.8–1 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.

Subpart 3863—Placer Mining Claim Patent Applications

§ 3863.1 Placer mining claim patent applications; general.

(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.

§ 3863.1–1 Application for patent.

§ 3863.1–2 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.

§ 3863.1–3 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 R.S. 2333 (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. The proof showing must be made in duplicate. See 51 L.D. 265 and 52 L.D. 190.

(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.

§ 3863.1–4 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 placer locations 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 witnessess.

Subpart 3864—Mill Site Patents

§ 3864.1 Mill site patents; general.

§ 3864.1–1 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. R.S. 2337 (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 R.S. 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.

(c) The act of March 18, 1960 (74 Stat. 7; 43 U.S.C. 42(b)), amends R.S. 2337 to allow the holders of possessory right in a placer claim to hold nonmineral land for mining, milling, processing beneficiation, or other operations in connection with the placer claim. Applications for patent for such mill sites are subject to the same requirements as to survey and notice as one applicable to placer mining claims. No one mill site may exceed five acres and payment will be $2.50 per acre or fraction thereof.

§ 3864.1–2 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 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.

§ 3864.1–3 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.

§ 3864.1–4 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.

PART 3870—ADVERSE CLAIMS, PROTESTS AND CONFLICTS

Subpart 3871—Adverse Claims

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3871.1 Filing of claim.
3871.2 Statement of claim.
3871.3 Action by manager.
3871.4 Patent proceedings stayed when adverse claim is filed; exception.
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Subpart 3872—Protests, Contests and Conflicts

Sec.
3872.1 Protest against mineral applications.
3872.2 Procedure in contest cases.
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Subpart 3873—Segregation

3873.1 Segregation of mineral from nonmineral land.
3873.2 Effect of decision that land is mineral.
3873.3 Nonmineral entry of residue of subdivisions invaded by mining claims.

Subpart 3871—Adverse Claims

§3871.1 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.

(d) A fee of $10 is payable by an adverse claimant at the time of filing his adverse claim. This charge is not refundable.

§ 3871.2 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.

§ 3871.3 Action by manager.

(a) 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.

(b) The Act of September 21, 1961 (P.L. 87–260; 75 Stat. 541) amends the Act of June 7, 1910 (36 Stat. 459; 48 U.S.C. 386), and provides that adverse suits against mineral entries in Alaska shall be instituted within the 60-day time limit set forth in R.S. 2325 and 2326, (30 U.S.C. 29, 30). The act further provides that where a mineral patent application was filed prior to the effective date of the act, the time in which to file adverse suits is governed by the Act of June 7, 1910. Where a mineral patent application was filed prior to September 21, 1961, the entry will not be allowed until after the expiration of eight months following the publication period.

§ 3871.4 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.

§ 3871.5 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 R.S. 2326 (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.

§ 3871.6 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.

Subpart 3872—Protests, Contests and Conflicts

§ 3872.1 Protest against mineral applications.

(a) 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 R.S. 2325 and 2326 (30 U.S.C. 29, 30). (See Turner v. Sawyer, 150 U.S. 578–586, 37 L. ed. 1189–1191.)

(b) Such protest filed by any party, other than a Federal agency, must be accompanied by a $10 nonrefundable service charge.

§ 3872.2 Procedure in contest cases.

Parts 1840 and 1850 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.

§ 3872.3 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.

§ 3872.4 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 requirement. 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.

§ 3872.5 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 thoroughly 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, 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.

Subpart 3873—Segregation

§ 3873.1 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. 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.

§ 3873.2 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.

§ 3873.3 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.

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

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AUTHORITY: The provisions of this Part 4110 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0-2 Objectives.

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 or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0-3 Authority.

(a) *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 § 4110.0-2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0-5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), 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, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "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.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k)(1) "Land dependent by use" means forage land other than Federal range 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 "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 of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed

with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter 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.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use 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. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, 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.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "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.

(p)(1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification 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.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall 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 when 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.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "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.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (§ 4110.0–5 (k)(1)) or water (§ 4110.0–5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if:

(a) He is engaged in the livestock business and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or:

(b) It is a group, or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all the members of which are qualified under paragraph (a) of this section; provided that the agreement or articles of association under which the association has

been formed are approved by the State Director, or:

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised; provided that the articles of incorporation have been approved by the State Director.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties 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.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *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 a livestock business, bona fide occupants 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 specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; 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:

(i) 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.

(ii) 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.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits 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 District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district 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), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, 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.

(2) Where public lands are restored from withdrawal and the District 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 a form approved by the Director obtainable from the District 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 District 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. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increases.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 Reductions.

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with Subpart 2450 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, 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.

(c) 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.

(d) 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.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating

to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, 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.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director 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 in the public interest. Upon a vacancy occurring in the office of the 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 District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director 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 Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided*, That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; 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. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 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.

§ 4114.4–2 Articles of incorporation; constitutions; 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 State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) 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 the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) 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.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Whenever the grazing capacity on Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, 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 and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such 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.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applica-

tions for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided*, That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. 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 recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, 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 District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction 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 action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3.

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on 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 grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–2 (c) and (d).

(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) 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.

(6) 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 to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under §§ 4111.4–3 (a)(3) and (c), and 9239.3–2(e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, 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 in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13)(i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily 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.

(j) *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 District Manager an application, in duplicate, setting 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 District 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 District 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 not to exceed 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, or otherwise, such temporary license shall terminate 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 District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the

Federal range will be considered 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 fees will be charged for livestock under 6 months of age. Range improvement fees 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 State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii) (a) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(b) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(c) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; modification in fees due.* No license or permit shall be issued or renewed until payment of all fees due the United States under these regulations has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in full in advance before grazing use is authorized. Grazing privileges may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make a change in authorized grazing use must file, in advance, a written request for such changes with the District Manager. If the District Manager approves the request he will issue an adjusted fee notice.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) 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 Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) 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 filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range

and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided*, That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part 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, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range* (1) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under 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 be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, 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 an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, not withstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an

amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit 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 licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

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AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a, R.S. 2478; 43 U.S.C. 1201.

Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

§ 4120.1 Authority.

(a) Section 15 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1275, as amended, 43 U.S.C. 315m) vests discretionary authority in the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands in the continental United States, exclusive of Alaska, which are not within established grazing districts.

(b) Section 4 of the O&C Act of August 28, 1937 (50 Stat. 875; 43 U.S.C. 1181d) vests in the Secretary of the Interior discretionary authority to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereafter referred to as O&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.

(c) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986 as amended; 43 U.S.C. 1411–1418) expressly authorizes the Secretary of the Interior to determine which of the lands exclusively administered by him through the Bureau of Land Management are suitable for retention and management under the principles of multiple use and sustained yield. Section 5 of the Act (78 Stat. 987; 43 U.S.C. 1415) defines multiple use and sustained yield.

§ 4120.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized agent.

(b) "Director" means the Director of the Bureau of Land Management or his authorized agent.

(c) "State Director" means the supervisory Bureau of Land Management official for the state in which the particular range lies, or his authorized agent.

(d) "Authorized Officer" means the Bureau of Land Management District Manager or Area Manager, to whom has been delegated the authority to take action.

(e) "District Office" means the Office of the Bureau of Land Management having direct management responsibility and administrative jurisdiction over the specific public lands involved.

(f) "Animal unit month" means the amount of forage necessary for the sustenance of one cow, or its equivalent for a period of 1 month.

(g) "Grazing capacity" means the total animal unit months of forage available from a tract or tracts of forage land during a given period.

(h) "Management area" means a designated tract or geographic area of land capable of being properly managed as a unit for multiple-use to ensure a sustained yield of forage without jeopardy to other resources or uses of the land. Such a management area may require joint use by two or more lessees.

(i) "Allotment management plan" means a program of action designed to reach specific management goals.

(j) "Grazing system" means a specified sequence of livestock grazing by designated area to accomplish management objectives.

(k) "Preference land" means the privately owned or controlled land upon which the issuance of a grazing lease is based.

(l) "Contiguous land" means land that borders upon or touches upon public land.

Subpart 4121—Awards of Grazing Leases

§ 4121.1 Qualifications of applicants.

§ 4121.1–1 Minimum qualification requirements.

An applicant for a grazing lease is qualified if:

(a) He is a person engaged in the livestock business, has a need for the grazing use of the land, and is a citizen of the United States[1] or;

(b) It is a group or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all members of which are qualified under paragraph (a) of this section, provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or;

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised: *Provided*, That the articles of incorporation have been approved by the Authorized Officer.

§ 4121.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in preference land by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding lease, or preclude the renewal of a lease based upon such land, for a period of 2 years after such acquisition. Upon the failure of such person to qualify within the 2-year period, the lease will be subject to cancellation in accordance with § 4125.1–1(h).

§ 4121.2 Adjudication of applications for grazing leases.

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land resource consideration.* The Authorized Officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, and other multiple uses.

(b) *Grazing capacity, seasons of use, and maximum annual period of use.* The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the leased land therein during any one year, except that where the leased land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, the Authorized Officer may establish the grazing capacity only.

(c) *Applicants.* Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. When the public land consists of an isolated or disconnected tract embracing 760 acres or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, upon terms and conditions prescribed by the Secretary: *Provided*, That the preference right must be asserted during a period of 90 days after such tract is offered for lease.

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

(d) *Conflicting applications.* (1) When more than one qualified applicant applies for the same public land and it appears that a division of the area may be made and will not result in improper land use, the Authorized Officer will allow the applicants an opportunity, within a specified time limit which he shall set, to agree to a division of the lands. A division of the lands may be made either by agreement between the conflicting applicants which is acceptable to the Authorized Officer, or by determination of the Authorized Officer where no acceptable agreement is reached. However, where it appears that a division of the land would result in improper land use, or where proper land use management will be advanced thereby, the Authorized Officer may require that joint use be made of the management area.

(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application[2] (where access is not presently available), and (vii) other land use requirements.

§ 4121.2–2 Leases of withdrawn or reserved lands, preference right leases for lands restored from withdrawal.

(a) The Authorized Officer may issue grazing leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[3] if the use of the land for grazing is consistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with subpart 2311 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 Authorized 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 public lands previously used by him. The preference right must be asserted by an application for a grazing lease (see § 4125.1–1(a)(1)), and must be filed within 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 grazing lease, license, permit or other authority upon which the superior preference claim is based.

§ 4121.3 Adjustments of grazing use.

§ 4121.3–2 Increases.

Increases in grazing capacity, when determined by the Authorized Officer, will be apportioned in a manner that will assist in the stabilization of the livestock operations after consideration of other land uses.

§ 4121.3–3 Decreases.

(a) Downward adjustments in authorized grazing use may be imposed during the term of a grazing lease where, for example, the lease erroneously includes lands not subject to lease, or authorizes use in excess of the grazing capacity of the leased land, or where a downward adjustment is required to facilitate other proper multiple uses on the area, or similar situations.

(b) Adjustments to balance authorized use with the proper stocking rate of the

[1] See 43 CFR 1811.1 regarding evidence of citizenship status.

[2] Where the United States obtains such a right-of-way, it will assume responsibility therefor to the full extent authorized by law.

[3] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of Feb. 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 Dec. 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 Feb. 28, 1945, will upon restoration from the reclamation withdrawal, become subject to the provisions of paragraph (b) of this section.

management area will be apportioned equitably or as agreed to among the lessees and the Authorized Officer. Such adjustments may be made by authorizing fewer livestock, or a shorter grazing season, or by both methods as determined by the Authorized Officer.

(c) The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any leased area. The notice will state the manner in which the adjustment is to be made and will allow 30 days from receipt thereof in which the lessee may file an appeal in accordance with § 4125.1–3. If no appeal is filed within the 30-day period, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the grazing season immediately following the effective date of the decision.

(d) Public lands under a grazing lease issued pursuant to this part are subject to classification, withdrawal, or other disposal under the Taylor Grazing Act, the O&C Act, or other applicable public land laws. Reasonable notice of a pending or proposed classification, withdrawal, or disposal which might result in a diminution of the area of the leased land will be given to the lessee, consistent with Subpart 2450 of this chapter and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 1840 of this chapter.

Subpart 4122—Management Practices

§ 4122.1 Management considerations.

§ 4122.1–1 Multiple use.

All use and management practices, include grazing and the issuance of grazing leases, shall be in conformance with the concepts of multiple use and sustained yield (see 43 CFR 2400.0–5 (o) and (p)). Any public lands leased under the regulations of this part which are suitable for multiple use shall be managed for multiple use to the fullest extent possible, including provision of adequate access for the various multiple users. The Authorized Officer will negotiate for such access with the appropriate applicant(s) or lessee(s), utilizing Department of the Interior easement or acquisition procedures. Should negotiations prove ineffective, the United States will acquire the necessary access by appropriate legal procedures.

§ 4122.1–2 Areas of limited multiple use values.

On areas of public land with limited multiple use values the Authorized Officer may issue leases based on grazing capacity of the area only, or may include livestock numbers and season and time of use. Grazing leases based on the criteria of this section are usually for isolated and fragmented tracts of public land. However, the multiple use values involved, not size of the public land area, will be the determining factor.

§ 4122.1–3 Areas of important multiple use values.

(a) On areas of public land with important multiple use values in addition to livestock grazing or where the primary use is for sustained livestock grazing, the Authorized Officer may, before the grazing lease is issued, or where an existing lease provides for the issuance of an allotment management plan, develop in cooperation with the lease applicant or lessee an allotment management plan. Such plan shall be incorporated into the lease as a part of the terms and conditions of the lease. The plan shall provide for the proper use and conservation of the public lands, at the same time providing for the lessee the maximum possible operations flexibility. The management plan will identify objectives for the allotment, a grazing system and procedures for evaluation of management.

(b) In the absence of mutual agreement between the lessee and the Authorized Officer on an allotment management plan, the Authorized Officer may, in lieu of such plan, stipulate as a condition of the lease grazing system requirements necessary to assure proper management of the public land and its resources. In such cases the Authorized Officer may issue short-term leases until such time as he determines that the grazing system requirements are adequate to assure proper multiple use management of the public land.

§ 4122.2 Designations of grazing areas for exclusive use by specified classes of animals.

When necessary for the proper use or orderly administration of a lease area, the Authorized Officer may designate certain areas for use exclusively by a certain kind or class of livestock or wildlife.

§ 4122.3 General rules of the range.

The acts prohibited and rules of fair range practice as detailed in § 4112.3–1 and § 4112.3–2 of this chapter shall apply to all leases issued under the regulations in Part 4120.

Subpart 4123—Supervision and Inspection

§ 4123.1 Procedures for enforcement of rules and regulations.

A grazing lease may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the grazing lease, or for a violation of the Taylor Grazing Act or of the O&C Act or of any of the provisions of this Part. (See § 9239.3–1 of this chapter for detailed regulations). The lease of public lands for livestock grazing under these regulations in no way limits the Bureau's authority to protect the lands against unauthorized use or occupancy.

Subpart 4124—Local Associations

§ 4124.1 Local associations of stockmen.

Grazing associations formed by lessees will be recognized in accordance with regulations detailed in § 4114.4.

Subpart 4125—Records and Administrative Procedures

§ 4125.1 Procedures.

§ 4125.1–1 Leasing procedures; requirements and conditions.

(a) *Filing and action on lease applications.* (1) An application for a grazing lease shall be executed on a form approved by the Director and filed in the District Office of the Bureau of Land Management having management responsibility over the public lands applied for in the application. Proof of ownership or control of contiguous lands may be required by the Authorized Officer where the applicant seeks to assert a preference right.

(2) A service fee of $10 will be charged for all applications to lease public lands including initial applications and those made pursuant to assignments and consolidations. However, no fee will be charged for consolidations requested by the Authorized Officer or for a regular renewal of an existing lease.

(3) Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the Authorized Officer as not timely filed. Applications for lands not under lease may be filed at any time.

(4) A timely filed application for renewal of an existing grazing lease does not confer on the lessee any right to a renewal but will authorize the continued grazing use of the lands by the lessee in accordance with the provisions of the existing lease pending final action on the application for renewal. The fee for such extended use shall be consistent with the then current fee schedule.

(5) An application for a grazing lease must describe the lands applied for by one of the following methods: (i) By legal subdivisions, or (ii) by metes and bounds description, or (iii) by designated management area.

(6) An application for a grazing lease may include O&C lands or public lands or combinations thereof.

(b) *No right is conferred by application prior to lease.* Since the issuance of a grazing lease is discretionary, the filing of an application for lands not then under lease does not create any right in the applicant to use the lands applied for pending the issuance of a grazing lease.

(c) *Action on defective and nonallowable applications.* (1) The Authorized Officer may require any defects in an application be corrected or additional information to be furnished. The Authorized Officer may reject any application if the applicant fails to correct defects in the application or fails to provide the additional information within the time allowed, which period shall not be less

than fifteen (15) days from the date of receipt by the applicant of notice of such defects or required information.

(2) The Authorized Officer shall reject the application if the land applied for (i) is in an allowed entry, (ii) is otherwise appropriated or reserved and not subject to lease under the Taylor Grazing Act or the O&C Act, (iii) is not public land, (iv) is under existing grazing lease, or (v) is of such character that livestock grazing would be detrimental to the resources or other uses of the land.

(d) *Consolidations.* A consolidation of leases held by a lessee may be requested by the lessee on a renewal application or may be required by the Authorized Officer on his own motion. The term of the consolidated lease shall be determined through negotiation between the lessee and the Authorized Officer.

(e) *Protests and appeals*—(1) *Protests.* A protest against the approval of an application for a lease should be filed in the same office where the application for a grazing lease was filed; it should describe the lands involved, contain a complete disclosure of all facts upon which the protest is based, and be accompanied by evidence of service on the applicant of a copy of the protest. The Authorized Officer will consider the protest, and will serve a copy of his decision on the affected parties in person or by certified mail, and in accordance with § 4125.1–3 will advise the protestant and other parties of their right to appeal to the Director.

(2) *Appeal by applicant.* The lease will be executed by the Authorized Officer and transmitted to the lessee only after final action action is taken on any protest or appeals which may have been filed. The applicant's signature to the lease shall constitute his acceptance of the lease as executed by the Authorized Officer. Nonacceptance of the lease does not prejudice the applicant's right to appeal.

(f) *Additional requirements and stipulations.* In addition to the provisions set forth in the standard Grazing Lease Form, the lease will provide for the multiple use requirements of the area, the number of livestock to be grazed, proper grazing seasons, allotment management plan, grazing system, reservation for authorized trailing, and any other conditions or requirements which the Authorized Officer may deem necessary and proper, except as provided under §§ 4121.2–1(b), 4122.1–2, and 4122.1–3.

(g) *Subleases.* No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

(h) *Cancellation or reduction of leases; show cause, appeal to Director.* Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations, or in any case that a lease confers use in excess of that properly allowable. In any such case the Authorized Officer will notify the lessee that the lease is being held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not be taken. The notice will fully set forth the reasons for the proposed action, specifically referring to the pertinent provisions of the regulations, and will be served on the lessee personally or by certified mail. The Authorized Officer will consider any cause shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee personally or by certified mail that the lease has been cancelled or reduced as the case may be. Such decision is subject to appeal to the Director in accordance with § 4125.1–3.

(i) *Terms and conditions.* The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

(1) A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with § 4121.2–1(b).

(2) Grazing leases will provide for the grazing of livestock on the leased land only during that part or parts of the year for which the area has been classified as proper for use, except as provided in § 4121.2–1(b).

(3) Upon the diminution of the public land used under any grazing lease due to withdrawal, appropriation, selection, or otherwise, the lease will be adjusted proportionately to the reduced grazing capacity and the grazing fee will be adjusted accordingly commencing with the ensuing lease year.

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

(5) The area of the leased land may be reduced if it is determined that the land is required for the protection of forest plantations or sources of community water supply; or for recreation facilities, wildlife habitat, stock driveways, roads, trails, townsites; or for other public purposes. When it is determined by the Authorized Officer that the leased land is excessive to the lessee's need or that the lessee is not making substantial use of the leased land, the Authorized Officer may cancel the lease, reduce the acreage of the grazing lease, or reduce the grazing use allowed in accordance with the provisions of § 4125.1–1(h). In the case of any such acreage reduction a proportionate fee adjustment will be made. If the entire grazing lease is cancelled, the Director may refund any portion of the grazing fees paid for the cancelled lease term.

(6) The Authorized Officer may establish the size and boundaries of a grazing lease area to facilitate the proper and effective management of the resources. In so doing, he will give consideration to seasons of use, topography, and establishment of systems of grazing and any other pertinent factors. He may determine that two or more applicants shall be authorized to use the public land within a management area.

(7) The Authorized Officer may make adjustments in grazing leases at any time when necessary to comply with these regulations for the public lands.

(8) If necessary to rehabilitate the vegetative resources on the public land, the Authorized Officer may temporarily close the leased land to grazing or reduce livestock use whenever vegetal cover is depleted due to drought, epidemic, fire or any other cause, or for rehabilitation of the area. Such action will not exclude the closed area from the grazing lease.

(9) Authorized grazing use of the leased land may be adjusted by the Authorized Officer to conform to needed refinements in the allotment management plan as a result of more accurate determinations of grazing capacity, season and area of use, class of livestock, etc. Proportionate adjustment will be made in the annual grazing fee for the subsequent grazing season.

(10) The issuance of a grazing lease does not alter or restrict the authorized public use of the leased land including, but not limited to, hunting, fishing, camping, or hiking 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 in any manner with the proper exercise of such rights. Neither shall the lessee maintain locked gates, signs, or other devices which prevent or interfere with public use of the leased land. Nor shall the lessee restrict or limit prospecting, locating, developing, mining, or patenting the mineral resources in the public land; miners, prospectors, and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased land for all lawful purposes.

(11) The Authorized Officer may require the lessee, as a condition to the granting and continued effectiveness of grazing leases, to fence or to contribute an equitable share to the cost of fencing the allotted areas and the maintenance of such fences.

(j) *Change in grazing seasons.* Any lessee who desires to use the leased land for a period or periods other than those authorized by his lease may, upon written approval of the Authorized Officer and prior to his annual billing notice, be allowed to use the amount of his authorized grazing use during any other period of time for which the lease area is classified as proper for use: *Provided:*

(1) Adjustment in season, time, or numbers does not result in an increase in the number of animal unit months utilized;

(2) Such use will not be detrimental to the resources of the leased area; and

(3) Such use will not adversely affect other lessees.

(k) *Interest of Members of Congress prohibited.* No Member of or delegate to Congress shall be admitted to any share or part of any grazing lease issued or to derive any benefit to arise therefrom (41 U.S.C. sec. 22; 18 U.S.C. sec. 431–433).

(l) *Exchange-of-use agreements.* The Authorized Officer may enter into an exchange-of-use agreement with any applicant having ownership or control of non-Federal land interspersed with and

normally grazed in conjunction with the surrounding public land. The grazing use authorized, will be without payment of fees, and will not exceed the grazing capacity of such non-Federal land.

(m) *Fees for grazing leases and crossing permits*—(1) *Lease rates.* Each holder of a grazing lease will be charged annual grazing fees for the animal unit months (AUM's) authorized by the grazing lease, at a rate per animal unit month (AUM). All grazing fee billings shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock six (6) months of age or over allowed on the leased area will be considered as a part of the total number for which a lease has been issued. No fees will be charged for livestock under 6 months of age.

(i) A minimum annual charge of $10 will be made on all leases.

(ii) The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the FEDERAL REGISTER. The rate or rates will become effective as of the date of such publication and will be applied to all billing notices issued thereafter.

(2) *Crossing permits.* Upon application filed with the Authorized Officer by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of 1 cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited that no substantial amount of forage will be consumed in transit.

(3) *Payment of rental fees and effect of failure to pay.* No grazing lease or renewal thereof shall be executed by the Authorized Officer until payment of all fees due the United States under the regulations in this part has been made. The first grazing fee payment must be made within 15 days of receipt of billing; if not paid within that time, the lease shall not be issued by the Authorized Officer. Upon timely payment of the first grazing fee payment, the lease will be executed and forwarded to the lessee. Subsequent annual grazing fee payments are due the United States upon receipt of the billing notice and are payable in advance of the first grazing period for the full amount as indicated on the fee notice. No lease shall be effective to authorize grazing use thereunder until such advance payment has been made. A lease may be canceled pursuant to § 4125.1–1 (h) for failure to make timely payment.

(4) *Refunds.* No refunds of grazing fees properly paid in accordance with the regulations in this part and the terms of the grazing lease will be made because of the lessee's failure to make full grazing use as authorized by the lease. However, during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of livestock disease during the life of the grazing lease, the Director on proper application may remit, refund, reduce in whole or in part, or postpone the payment of grazing fees for such period of depletion or general epidemic as he may determine. No part of the grazing fee paid will be refunded because of cancellation, relinquishment, or assignment, except as provided in § 4125.1–1(i) (3), (5), (8), and (9).

(n) *Period of lease.* A grazing lease or lease renewal may be issued for any period not in excess of 10 years and may be limited by the Authorized Officer to the term of a lease or control of lands that have been recognized as the basis for the grazing lease.

§ 4125.1–2 Assignment and relinquishment of grazing lease.

(a) *Assignment of grazing lease.* The lessee may assign a grazing lease only with the consent of the Authorized Officer; provided that the assignee has control of preference lands. The Authorized Officer will require the assignee to furnish proof of ownership or control of preference lands. The proposed assignment must be made on a form approved by the Director and must be filed with the Authorized Officer within 90 days from date of its execution. It must contain all the terms and conditions agreed upon between the parties and will be made effective only for the unexpired period of the assignor's lease. The assignment, properly executed and signed by the assignor, and the new application signed by the assignee will constitute the assignee's acceptance of the terms of the grazing lease. No assignment will be recognized or confer on the assignee any right to use the leased area until approved by the Authorized Officer. Advance grazing fees paid by the assignor may be credited to the assignee. All cooperative agreements and permits to construct or maintain range improvements on the leased land must be assigned at the time of the grazing lease assignment.

(b) *Relinquishment of grazing lease.* Upon written request, the Authorized Officer may accept a grazing lease relinquishment, in whole or in part, provided that all fees and charges then due have been paid.

§ 4125.1–3 Appeals.

Any applicant or lessee whose interest is adversely affected by a final decision of the Authorized Officer may appeal to the Director, and from the Director to the Secretary, in accordance with the procedure for appeals and contests set forth in Part 1840 of this chapter.

§ 4125.1–4 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the leased lands*—(1) *Qualifications of applicant for range improvement permit.* An applicant for a permit to construct or maintain range improvements, or to use and maintain range improvements constructed and owned by a prior occupant of the leased land, must be qualified under § 4121.1–1 and hold a valid lease.

(2) *Applications.* Applications for permits must be approved prior to construction. Applications for permits must be filed with the Authorized Officer on a form approved by the Director. Construction of range improvements without an approved permit may result in cancellation of the grazing lease as provided in § 4125.1–1(h).

(3) *Appeals.* The Authorized Officer will act on the application and such action shall be final unless the applicant appeals in accordance with § 4125.1–3.

(4) *Assignments.* Assignments of range improvement permits must be be filed with the Authorized Officer on a form approved by the Director and are not effective until approved by the Authorized Officer.

(5) *Permit standards.* The Authorized Officer will specify the minimum Bureau of Land Management standards and design for all range improvements. Failure to comply with the standards and design may result in cancellation of the range improvement permit and/or the grazing lease as provided in § 4125.1–1(h).

(6) *Cooperative agreements.* A lessee may enter into a cooperative agreement with the Authorized Officer to construct and maintain range improvements upon the leased land. Failure to comply with the terms of such an agreement within a reasonable time, as allowed by the Authorized Officer, may result in the cancellation of the agreement and/or the grazing lease as provided in § 4125.1–1(h). A cooperative agreement for range improvements shall be made on a form approved by the Director.

(7) *Removal of improvements; compensation for loss of improvements.* (i) When a grazing lease expires or is terminated, the Authorized Officer may require an applicant for a subsequent lease to agree to compensate the prior lessee for the current value of his share of the cost of authorized permanent improvements placed on the leased land. The prior lessee must file a written application for compensation within 30 days after the date of termination or expiration of his lease or the date of the final decision terminating it. The amount of compensation shall be determined in accordance with § 4125.1–4(a)(8)(i). The failure of the new lessee to pay the prior lessee in accordance with such agreement shall be cause for cancellation of the new grazing lease.

(ii) The leasee will be allowed ninety (90) days from the date of expiration or termination of the grazing lease within which to remove improvements not disposed of in the manner set forth in subdivision (i) of this subparagraph; if not removed or otherwise disposed of within the said period or any extension thereof granted by the Authorized Officer, such improvements shall become the property of the United States. No improvements may be removed if the lessee is in default with respect to the grazing lease.

(8) *Leased land subject to disposition; compensation for loss of improvements.* (i) Ordinarily, before an application for disposal of leased lands under the public land laws is allowed, the applicant must agree to compensate the lessee or other

party for any authorized range improvements in which the lessee or other party has a financial investment. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, such matters shall be determined by the Authorized Officer. The failure of the applicant to comply with the agreement or the conditions fixed by the Authorized Officer shall be cause for cancellation of any right or interest in the land acquired by the applicant by reason of the allowance of the application. If improvements have been constructed in whole or in part with Federal funds, are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), the application may be allowed in the discretion of the Authorized Officer without compensation to the United States for its share of the value of the improvements. In such cases, the Authorized Officer shall determine whether the grazing improvements are needed by the United States and whether the probable salvage value is sufficient to warrant removal of the salvageable materials.

(b) *Contributions for administration, protection, and improvement of public lands.* The Authorized Officer may accept contributions, made under section 9 of the Taylor Grazing Act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction.

(1) Any individual, association, corporation, State or local body or private group, may enter into an agreement with the Authorized Officer with respect to such contribution.

§ 4125.1–5 Pledge of leases as security for loans.

(a) A grazing lease may be pledged as security for a loan 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 obtain from the Authorized Officer a written statement concerning the status of the grazing lease and related information. A service charge of $10 will be made for searching the records, except that Federal and State lending agencies shall be exempt from such charge.

(b) A borrower-lessee desiring an extension of the grazing lease term may file a request therefor with the Authorized Officer, setting forth the name of the lending agency, purpose and amount of the loan, and the need for an extension of the grazing lease. If the Authorized Officer determines that an extension will not conflict with the applicable laws and is not contrary to the public interest, he may issue a new grazing lease for a period up to 10 years from the date of the loan but not to exceed the period of the loan.

(c) If the preference land of a lessee is acquired by a lending agency through foreclosure or otherwise, the agency, its grantees and lessees, or parties authorized by it to occupy the preference lands, may, if qualified, file an application for the issuance of a new grazing lease. If, in selling the property, the lending agency takes back the mortgage on the property, the agency will receive the same administrative consideration as in the case of an original loan.

(d) Where a lending agency files notice with the Authorized Officer that it has made a loan and has accepted a grazing lease as security, such agency will be advised of any adverse action taken affecting the lease. The failure of the Bureau of Land Management to give timely notice of any such adverse action shall impose no liability or obligation on the Bureau of Land Management or any of its employees.

PART 4130—GRAZING ADMINISTRATION (ALASKA)

Subpart 4131—Grazing Leases

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AUTHORITY: The provisions of this Part 4130 issued under sec. 15, 44 Stat. 1455, as amended; 48 U.S.C. 471n.

Subpart 4131—Grazing Leases

§ 4131.0–2 Objectives.

The beneficial utilization of the public lands 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 their use for agriculture, to the protection, development and utilization of their forests, and to the protection, development and utilization of such other resources as may be of greater benefit to the public.

§ 4131.0–3 Authority.

The act of March 4, 1927 (44 Stat. 1452; 48 U.S.C. 471, 471a–471o) 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 10 years, or where the applicant desires a shorter term, and in such cases leases may be made for a shorter period.

§ 4131.0–5 Definitions.

As used in this subpart:

(a) "Secretary" means Secretary of the Interior;

(b) "Director" means Director, Bureau of Land Management;

(c) "Authorized officer" or "manager" means the designated official of the Bureau of Land Management, in whose district the lands involved are situated, who has been delegated the authority to issue grazing leases;

(d) "The act" means the act of March 4, 1927 (44 Stat. 1452, 48 U.S.C. secs. 471, 471a–471o);

(e) "Person" means individual, partnership, corporation or association;

(f) "Native" means any member of the aboriginal races inhabiting Alaska, of whole or not less than half blood;

(g) "District" means any grazing district established under the act.

(h) "Animal unit month" means the forage consumed or grazing privileges represented by the grazing of one cow or its equivalent for one month. For the purpose of this definition, one cow shall be considered the equivalent of one horse, or five sheep or five goats.

§ 4131.1 Conditions.

§ 4131.1–1 Grazing districts.

(a) *Establishment.* Pursuant to the act, grazing districts are hereby established, the boundaries of which shall be co-extensive with the boundaries of the public land districts in Alaska.

(b) *Leases on acreage basis.* Grazing leases will be granted only for such areas as may be deemed adequate and usable according to the needs of the lessee. Leases will provide for grazing on a definite area, and on an acreage basis, except where peculiar local conditions or the difficulties of administration make more practicable a lease based on the number of livestock to be grazed.

§ 4131.1–2 Lands subject to lease.

Vacant, unreserved, and unappropriated public lands are subject to lease. Where these lands are embraced within the natural grazing grounds or routes of migration of animals such as caribou or moose, or have other important values for wildlife, the lands may be leased, in the discretion of the manager, subject to such special terms and conditions as may be determined. Except as to those reservations described in § 4131.0–3 public lands within the boundaries of a grazing district which have been withdrawn for any purpose may be leased with the prior consent of the Department or agency having administrative jurisdiction thereof and subject to such additional terms and conditions as such Department or agency may impose.

§ 4131.1–3 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 on file before a court of competent jurisdiction a valid declaration of intention to become a citizen, or a valid petition for naturalization, or

(c) Is a group, association, or corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in Alaska, and the controlling interest in which is vested in persons who would be qualified under either paragraph (a) or (b) of this section.

§ 4131.1–4 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 issuance of a lease. Any such unauthorized use constitutes a trespass.[3]

[3] It is unlawful for any person to graze any class of livestock on the public lands in grazing districts in Alaska, except under authority of a lease or permit granted under the act. Any person who wilfully grazes livestock in such areas without such authority shall, upon conviction, be punished by a fine of not more than $500. (Sec. 12, act of March 4, 1927; 48 U.S.C. 471k, and notice approved March 7, 1929.)

§ 4131.2 Procedures.

§ 4131.2–1 Applicants.

(a) *Classes of applicants and preference.* Applicants for grazing leases shall be given preference in the following order:

(1) Natives.

(2) Bona fide settlers.

(3) Other qualified applicants.

(b) *Assertion of preference rights.* Any person claiming a preference right to a lease under paragraph (a) of this section must furnish with the application required under § 4131.2–2(a) a statement setting forth the facts on which such claim is made.

§ 4131.2–2 Application for lease.

(a) *Form used.* An application for grazing lease must be executed in duplicate on a form approved by the Director, and filed with the manager.

(b) *Schedule of operations.* The application must be accompanied by a schedule of the applicant's proposed annual program to develop and increase the number of livestock which will be grazed on the land, and showing the applicant's need for all the land applied for, to provide forage for the maximum number of livestock which the applicant intends to graze thereon.

(c) *Financial responsibility.* The applicant, upon request by the manager, must also furnish evidence of his financial responsibility consisting of a showing that he has the financial means or has made arrangements with an established financial institution to provide the capital necessary to commence and maintain his proposed schedule of operations.

§ 4131.2–3 Maximum number of stock.

The lease will indicate the maximum number of stock which may be grazed on the leased area, based on the condition of the range and its accessibility for summer and winter feeding. The manager may adjust the maximum number from time to time as the condition of the range may warrant.

§ 4131.2–4 Annual rental.

(a) *Amount.* Unless otherwise provided, each lessee shall pay to the Bureau of Land Management such rental per acre, per head, or per animal unit month, as may be determined to be a fair charge for grazing of livestock on the leased land. The rental under any grazing lease may be adjusted every 3 years. 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 the natural increase of grazing animals until the beginning of the following lease year.

(b) *Adjustment or waiver.* The manager, if he determines such action to be in the public interest by reason of (1) depletion or destruction of the range by any cause beyond the control of the lessee, or (2) calamity or disease causing wholesale destruction of or injury to livestock, may grant an extension of time for making payment, or reduce or waive the grazing fee under a lease so affected. An application for the desired relief should be filed with the manager and should state all pertinent details and itemize the losses sustained.

(c) *Payment.* The first rental payment required and the return of the proposed lease duly executed by the prospective lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid or the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice whichever is the later, the case shall be considered canceled and all rights terminated thereunder as of the end of such current lease period; except the lease shall not terminate if the lessee submits payment to the proper office within a grace period of sixty days following the last day of the current lease period together with a showing satisfactory to the authorized office that the delay in rental payment was for unavoidable reasons and that termination of the lease would cause undue hardship to the lessee.

§ 4131.2–5 Reduction in excessive leased area.

Whenever, in the opinion of the manager, the leased land is excessive for the number of livestock to be grazed by the lessee, the manager may, after 30 days' notice to the lessee, reduce the lease area to the extent necessary, and the annual rental, if on an acreage basis, shall be reduced proportionately, effective at the beginning of the next lease year.

§ 4131.2–6 Free grazing permits.

Any person may file application in duplicate on a form approved by the Director, for a permit to graze, free of charge, not to exceed the number of livestock whose products are consumed or whose work is directly and exclusively used by the applicant or his family, for a term of not more than one year.

§ 4131.2–7 Leases.

(a) *Issuance of lease.* If the application is complete and it is determined that a lease should be issued, the manager will prepare a proposed lease, with necessary copies, on a form approved by the Director, for execution by the applicant. The forms, signed by the applicant, must be forwarded promptly to the manager, together with any required rental payment. The lease will be dated as of January 1 of the year in which it is issued, and the required rental for the first year will be adjusted on a pro rata monthly basis to cover that portion of

the year subsequent to the lease issuance.

(b) *Report of grazing operations.* Before April 1 of the second lease year and each lease year thereafter, the lessee shall file with the manager a report, in duplicate, on a form approved by the Director, of his grazing operations during the preceeding year.

(c) *Assignments.* No part of the leased land may be subleased. Any proposed assignment of a lease, in whole or in part, must be filed in duplicate with the authorized officer within 90 days of its execution. Assignments will be executed on a form approved by the Director and must be accompanied by the application on a form approved by the Director, executed in duplicate, together with the same showing by the assignee as to qualifications and stock development schedule as would be required of applicants for a new lease, including financial responsibility when specifically requested by the manager. The assignee's acceptance of the lease offered pursuant to the grazing lease assignment shall constitute his acceptance of the lease terms. 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.

(d) *Renewals.* An application for renewal of a grazing lease should be executed and filed in duplicate on a form approved by the Director not less than four months but not more than eight months before the expiration date of the lease term. The renewal lease, if issued, will contain such terms and conditions as the manager may determine.

(e) *Rights reserved.* Grazing leases under this Subpart 4131 shall be subordinated to and shall be subject to modification or reduction by the manager to the extent necessary to permit:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water, and other resources on or in the leased lands, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses, pursuant to applicable public land laws, where the same are in the public interest or will not unduly interfere with the use of the area for grazing purposes.

(3) 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.

(f) *Restrictions.* No lessee may so enclose roads, trails or other highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the leased area; he shall not prevent legal hunting, fishing or trapping on the land, or the ingress of miners, mineral prospectors and other persons entitled to enter the area for lawful purposes.

(g) *Termination.* A lease may be surrendered by the lessee upon prior written notice filed with the manager, effective upon the date indicated in such notice but no less than 30 days from the date of filing, provided the lessee has complied with the terms and conditions of the lease and has paid all charges due thereunder.

(h) *Cancellation.* A lease may be cancelled by the manager if the lease was issued improperly through error with respect to a material fact or facts, or if the lessee shall fail to comply with any of the provisions of the lease or of this Subpart 4131. No lease will be cancelled for default in complying with the provisions of the lease or of this Subpart 4131 until the lessee has been notified in writing of the nature of the default and has been afforded an opportunity to show why the lease should not be cancelled.

§ 4131.2–8 Stock driveways; crossing permits; quarantine regulations.

(a) *Stock driveways.* The manager may establish stock driveways for the regular crossing of livestock across public lands, in such form and manner as he may determine.

(b) *Crossing permits.* A permit for the crossing of livestock on a stock driveway or other public lands, including lands under grazing lease, may be issued free of charge, upon the filing of an application on a form approved by the Director, in duplicate, with the authorized officer at least 30 days prior to the date the crossing is to begin.

(c) *Quarantine regulations.* Persons driving or transporting stock across any public lands must comply with the quarantine and other sanitary laws prescribed by the Territorial or other proper authorities.

§ 4131.2–9 Range improvements.

(a) *Permits for construction and maintenance.* Application for a permit to construct and maintain range improvements should be filed with the authorized officer in duplicate on a form approved by the Director. The lessee, upon obtaining an executed permit from the authorized officer, may construct, maintain, and utilize authorized fences, buildings, corrals, reservoirs, wells, or other improvements needed for the exercise of the grazing privileges under the lease. The lessee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes. The lessee, upon written approval by the authorized officer, may improve by seeding or reseeding within the lease area and may harvest hay or ensilage from such seeded or reseeded areas provided that the forage so produced is used primarily as feed for the lessee's livestock. The authorized officer may approve the assignment of range improvements upon receipt of an application for such assignment on a form approved by the Director.

(b) *Removal of improvements and personal property.* (1) 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.

(2) If all moneys due have been paid and the lessee, on or before the termination of his lease in whole or in part for any reason, notifies the manager of his determination to leave on the land involved in such termination improvements, the construction or maintenance of which has been authorized, no other person shall use or occupy, under any permit, 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 manager. All such agreements, to be effective, must be approved by the manager. The failure of the subsequent permittee, lessee, or entryman to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the permit, lease, or entry.

(3) In the absence of a notice by the lessee in accordance with subparagraph (2) of this paragraph the lessee shall, within 90 days from the date of expiration or termination of the lease, and if all charges due thereunder have been paid, 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 allowed shall thereupon become the property of the United States.

§ 4131.3 Disposition of leased lands.

§ 4131.3–1 Settlement, location, and acquisition.

Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be cancelled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands (see § 4131.2–7(e)) and that the lands are suitable for and otherwise subject to the intended settlement, location, entry or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee the grazing lease may be cancelled or reduced to permit the settlement, location, entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

§ 4131.3–2 Mineral prospecting, location and purchase.

Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3800 of this chapter.

§ 4131.5 Protests, hearings and appeals.

§ 4131.5–1 Protests.

Protests against an application for a lease should be filed in duplicate, with the manager, 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 upon the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protests is filed, the protest should be accompanied by an application for a grazing lease.

§ 4131.5–2 Hearings; appeals.

(a) Any lessee of or applicant for grazing privileges may procure a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. The filing of any such application and the conduct of the proceedings before an examiner shall be governed by Subpart 1852 of this chapter pertaining to contests.

(b) An appeal may be taken from any decision of the authorized officer to the Director of the Bureau of Land Management, and from any decision of the Director to the Secretary of the Interior, pursuant to Part 1840 of this chapter.

Subpart 4132—Grazing Permits (Reindeer)

§ 4132.0–3 Authority.

Section 12 of the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250k), authorizes the Secretary of the Interior to promulgate such rules and regulations as, in his judgment, are necessary to carry into effect the provisions of 48 U.S.C. 250–250n.

§ 4132.0–5 Definitions.

(a) "Reindeer" includes reindeer and such caribou as have been introduced into animal husbandry or have actually joined reindeer herds and the increase thereof.

(b) "Natives" include the native Indians, Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to September 1, 1937, have migrated into Alaska from the Dominion of Canada, and their descendants of whole or part blood.

(c) "Bureau" means Bureau of Land Management.

(d) "Director" means Director, Bureau of Land Management.

(e) "Authorized Officer" means the Bureau official who has been authorized to issue a reindeer grazing permit.

(f) "The Act" means the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250, 250a–250p).

§ 4132.1 Conditions.

§ 4132.1–1 Lands subject to grazing permit.

Vacant and unreserved and unappropriated public lands are subject to inclusion in a reindeer grazing permit. Where these lands are within the natural migration routes of caribou, or when they have other important wildlife values, the lands may be included in a permit, at the discretion of the authorized officer after consultation with the Bureau of Sport Fisheries and Wildlife, subject to such special terms and conditions as may be jointly agreed upon. Public lands which have been withdrawn for any purpose may also be included in a grazing permit with the prior consent of the Department or agency having administrative jurisdiction thereof, and subject to such additional terms and conditions as such Department or agency may impose.

§ 4132.1–2 Qualifications of applicants.

An applicant is qualified if he is a native or group, association or corporation of natives as defined by the Act of September 1, 1937, organized under the laws of the United States or the State of Alaska.

§ 4132.1–3 No rights acquired by applicant prior to issuance of grazing permit.

The filing of an application will not segregate the land applied for from application by other persons for a grazing permit, or from other disposition under the public land laws. As the issuance of a grazing permit is discretionary, the filing of an application will not create a right for such a permit, or to the use of the lands applied for pending the issuance of a grazing permit.

§ 4132.1–4 Rights reserved; public land laws applicable.

(a) Grazing permits under this Subpart 4132 shall be subordinated to higher uses and subject to modification or reduction by the authorized officer to the extent necessary to allow:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water and other resources on or in the lands included in the grazing permit, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses pursuant to applicable public land laws.

(3) The temporary closing of portions of the permitted area to grazing whenever, because of improper handling of the reindeer, overgrazing, fire, or other cause, such action is deemed necessary to restore the range to its normal condition.

(b) No permittee may so enclose roads, trails, or highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the permitted area; he shall not prevent legal hunting, fishing or trapping on the land, or ingress of miners, mineral prospectors and other persons entitled to enter the area for lawful purposes.

(c) Persons using public lands for grazing of reindeer or for driving of reindeer across such lands must comply with applicable State and Federal laws relative to livestock quarantine and sanitation.

§ 4132.1–5 Location, settlement, entry, and other disposition of lands included in grazing permit; notice to permittee of disposition and reduction of permitted area.

(a) Lands included in grazing permits under the act are subject to settlement, location, and acquisition under the non-mineral public land laws applicable to the State of Alaska.

(b) Upon settlement, location or entry of any lands included within a reindeer grazing permit, the permittee shall be notified of the settlement, location or entry, and the permitted area shall be reduced by the area involved in the settlement, location or entry.

(c) Unless otherwise withdrawn therefrom lands included in grazing permits under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3400 of this chapter.

§ 4132.2 Procedures.

§ 4132.2–1 Application for grazing permit.

(a) *Form used.* An application for a grazing permit must be executed in duplicate on a form approved by the Director and filed in the Bureau office which has jurisdiction over lands applied for.

(b) *Bureau of Indian Affairs certification.* A certification of reindeer allotment to the applicant, signed by the authorized Bureau of Indian Affairs officer, must accompany the application if the applicant is to receive a herd from the Government.

(c) *Source of reindeer other than Government.* If reindeer are to be obtained from a source other than the Government, the applicant should state the source and show evidence of his purchase or option to purchase.

(d) *Listing of improvements.* With the initial application for any grazing permit issued under this Subpart 4132, the applicant must list by location and description the improvements found in the area under application which are owned by the applicant. Such statement of ownership will be verified by a Bureau of Indian Affairs official prior to submitting it to the Bureau of Land Management. Such existing improvements will be permitted by the terms of the initial grazing permit. Improvements to be constructed subsequent to the issuance of the initial

grazing permit must be under permit in accordance with § 4132.2–9.

§ 4132.2–2 Filing fee; grazing fee.

A filing fee of $10 must accompany each application for a reindeer grazing permit or application for renewal thereof. No grazing fee will be charged.

§ 4132.2–3 Term of grazing permit; renewals.

(a) Reindeer grazing permits shall be issued for a maximum term of 10 years, except where the applicant desires a shorter term, or where the authorized officer determines that a shorter period will be in the public interest.

(b) Application for renewal of a grazing permit shall be made not less than four months or more than eight months before the expiration date of the permit. The authorized officer may at his discretion offer the permittee a renewed grazing permit containing such terms, conditions, and of such duration as he determines to be in the public interest.

§ 4132.2–4 Area of use and maximum number of reindeer.

(a) Permits will restrict grazing use to a definitely described area. Grazing permits will be granted only for such areas as may be deemed adequate and usable according to the needs of the permittee.

(b) The grazing permit will indicate the maximum number of reindeer which may be grazed on the permitted area, based on range conditions, and will be subject to adjustment as the condition of the range indicates.

§ 4132.2–5 Adjustment of grazing permit area.

The permitted area may be reduced at any time, after not less than 30 days notice to the permittee, when in the opinion of the authorized officer the area is excessive for the number of reindeer grazed thereon. The permit may be increased by the authorized officer on his own motion or upon request of the permittee, when in the opinion of the authorized officer the area is insufficient for the number of reindeer grazed thereon. The permittee shall have opportunity within such notice period to show cause why the area included in the grazing permit should not be adjusted.

§ 4132.2–6 Report of grazing operations; assignments allowed.

(a) Before April 1 of the second permit year and each year thereafter, the permittee shall file with the authorized officer a report in duplicate of his grazing operations during the preceding year on an approved form.

(b) No part of the land included in the permit may be subleased. Proposed assignments of a permit, in whole or in part, must be filed in duplicate with the authorized officer within 90 days from the date of its execution. Such assignments must contain all of the terms and conditions agreed upon by the parties thereto, accompanied by the same showing by the assignee as to qualifications and a reindeer allotment as is required of applicants for a permit, and by the assignee's statement agreeing to be bound by the provisions of the permit. No assignment shall be effective until approved by the authorized officer.

§ 4132.2–7 Termination of grazing permit; cancellation.

(a) A grazing permit may be surrendered by the permittee upon prior written notice filed with the authorized officer, effective upon the date indicated in such notice, but not less than 30 days from the date of filing.

(b) A grazing permit may be cancelled by the authorized officer if the permit was issued improperly through error with respect to a material fact or facts, or if the permittee shall fail to comply with any of the provisions of the permit or of this Subpart 4132. No permit shall be cancelled for default in complying with the provisions of the permit or of this Subpart 4132 until the permittee has been notified in writing of the nature of the default and has been afforded an opportunity of not less than 30 days to show why the permit should not be cancelled.

§ 4132.2–8 Crossing permits.

A permit for the crossing of reindeer over public lands, including lands under grazing permit, may be issued free of charge, upon application filed with the authorized officer at least 30 days prior to the date the crossing is to begin. The application must show the number of reindeer to be driven, date of starting, approximate period of time required, and the land to be traversed.

§ 4132.2–9 Permits for construction and maintenance of improvements; removal.

(a) Application for a permit to construct and maintain range improvements should be filed, in duplicate, with the authorized officer on an approved form. The grazing permittee, upon obtaining a permit from the authorized officer, may construct, maintain and utilize any fence, building, corral, reservoir, well, or other improvement needed for the exercise of the grazing privileges under the grazing permit. The permittee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes.

(b) The permittee, within 90 days from the date of expiration or termination of the grazing permit, or within any extension of such period, shall be allowed 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 allowed shall thereupon become the property of the United States.

§ 4132.3 Protests and appeals.

(a) Protests against an application for a grazing permit shall be filed in duplicate, with the authorized officer; contain a complete disclosure of all facts upon which the protest is based; and describe the lands involved in such protests. It shall be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to obtain a grazing permit for all or part of the land embraced in the application against which the protest is filed, the protest shall be accompanied by an application for a grazing permit.

(b) An appeal may be taken from any decision of the authorized officer to the Director, and from any decision of the Director to the Secretary, pursuant to Appeals and Contests (Parts 1840 and 1850 of this chapter).

§ 4132.4 Trespass.

(a) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in this Subpart 4132 is unlawful and is prohibited.

(b) Any person who wilfully violates any of the rules and regulations in this Subpart 4132 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than $500.

Group 4200—Wildlife

PART 4250—COOPERATIVE PROGRAMS

Subpart 4251—Joint Regulations Relating to Game Ranges or Wildlife Refuges in Grazing Districts

Sec.

4251.0–3 Authority.
4251.1 Protection of wildlife.
4251.2 Acts not permitted on game ranges or wildlife refuges.
4251.3 Grazing.
4251.4 Specimens for scientific, exhibition, or propagating purposes.
4251.5 Scientific studies.
4251.6 Removal of surplus animals.
4251.7 Economic utilization of resources.
4251.8 Fishing.
4251.9 Exhibition and revocation of permits.

AUTHORITY: The provisions of this Part 4250 issued under sec. 10, 45 Stat. 1224, sec. 2, 48 Stat. 1270; 16 U.S.C. 715i, 43 U.S.C. 315a.

§ 4251.0–3 Authority.

Subpart 4251 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 25. For Fish and Wildlife Service, Department of the Interior, see Wildlife and Fisheries, 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 Ch. I. For regulations of the Forest Service, Department of Agriculture, relating to wildlife, see Parks, Forests, and Memorials, 36 CFR Part 241.

§ 4251.1 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.

§ 4251.2 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.

§ 4251.3 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.

§ 4251.4 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.

§ 4251.5 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 of this chapter for the administration of grazing districts.

§ 4251.6 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.

§ 4251.7 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 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.

§ 4251.8 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.

§ 4251.9 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.

SUBCHAPTER E—FOREST MANAGEMENT (5000)

Group 5000—Forest Management General

PART 5040—SUSTAINED YIELD UNIT AND COOPERATIVE AGREEMENTS

Subpart 5040—Sustained Yield Unit and Cooperative Agreements; General

Sec.
5040.0-3 Authority.

Subpart 5041—Annual Productive Capacity

5041.1 Determination of annual productive capacity.

Subpart 5042—Master Units

5042.1 Master units and appurtenant marketing areas.

Sec.
5042.2 Hearings concerning master units.
5042.3 Notice of hearings concerning master units.

Subpart 5043—Sustained Yield Forest Units

5043.1 Establishment of units.
5043.2 Hearings concerning sustained-yield forest units and cooperative agreements.
5043.3 Notice of hearings concerning forest units and cooperative agreements.

Subpart 5044—Cooperative Sustained-Yield Agreements

5044.1 General items of agreements.
5044.2 Qualifications for agreement.
5044.3 Forms of agreement.
5044.4 Execution of agreement.

Subpart 5045—Exchanges

5045.1 O. and C. timberlands.

AUTHORITY: The provisions of this Part 5040 issued under sec. 5, 50 Stat. 875; 43 U.S.C. 1181e.

Subpart 5040—Sustained Yield Unit and Cooperative Agreements; General

§ 5040.0–3 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.

Subpart 5041—Annual Productive Capacity

§ 5041.1 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 § 5043.1, each such unit shall be treated separately in the determination of its annual productive capacity and the average annual cut of timber.

Subpart 5042—Master Units

§ 5042.1 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.

§ 5042.2 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.

§ 5042.3 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.

Subpart 5043—Sustained Yield Forest Units

§ 5043.1 Establishment of 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 establish 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.

§ 5043.2 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 § 5042.2. 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.

§ 5043.3 Notice of hearings concerning forest units and cooperative agreements.

The provisions of § 5042.3 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.

Subpart 5044—Cooperative Sustained-Yield Agreements

§ 5044.1 General items of 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.

§ 5044.2 Qualifications for agreement.

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.

§ 5044.3 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 State Director, 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.

§ 5044.4 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.

Subpart 5045—Exchanges

§ 5045.1 O. and C. timber lands.

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 Subpart 2200 of this chapter.)

Group 5400—Sales of Forest Products

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

Subpart 5400—Sales of Forest Products; General

Sec.
5400.0-3 Authority.
5400.0-5 Definitions.
5400.0-7 Public hearings to determine surplus quantities and species of unprocessed timber.

Subpart 5401—Advertised Sales; General

5401.0-6 Policy.

Subpart 5402—Other Than Advertised Sales; General

5402.0-6 Policy.
5402.1 Report requirements.

AUTHORITY: The provisions of this Part 5400 issued under 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 48 U.S.C. 315, 423, 1181e.

Subpart 5400—Sales of Forest Products; General

§ 5400.0-3 Authority.

(a) *O and C and public domain lands.* (1) The act of August 28, 1937 (50 Stat. 874, 43 U.S.C. 1181a) authorizes the sale of timber from the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and directs that such lands shall be managed for permanent forest production and the timber thereon 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 streamflow and contributing to the economic stability of local communities and industries and providing recreational facilities.

(2) The act of July 31, 1947 (61 Stat. 681), as amended by the acts of July 23, 1955 (69 Stat. 367, 30 U.S.C. 601 et seq.) and the act of September 25, 1962 (76 Stat. 587) authorizes the disposal of timber and other vegetative resources on public lands of the United States including lands embraced within an unpatented mining claim located after July 23, 1955, if the disposal of such resources is not otherwise expressly authorized by law including, but not limited to, the act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315–315o–1), as amended, and the United States mining laws; is not expressly prohibited by laws of the United States; and would not be detrimental to the public interest.

(i) The act also authorizes the United States, its permittees, and licensees to use so much of the surface of any unpatented mining claim located under the mining law of the United States after July 23, 1955, as may be necessary for access to adjacent land for the purposes of such permittees or licensees. Any authorized use of the surface of any such mining claim shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.

(ii) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this subpart only with the consent of such other Federal department or agency or of such state, or local governmental unit. The act of July 23, 1955, supra, provides, however, that the Secretary of Agriculture shall dispose of materials under the act of July 31, 1947, as amended, supra, if such materials are on lands administered by the Secretary of Agriculture for national forest purposes or for purposes of Title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture.

(iii) The provisions of the act of July 23, 1955, supra, in disposal of vegetative or mineral materials do not apply to

lands in any 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.

(3) The sale of timber in Alaska will be made under pertinent statutes and the applicable regulation (Part 5490); however, sales of more than a two-year supply of timber for domestic use in Alaska may be authorized under the act of July 31, 1947 (61 Stat. 681), as amended.

(b) *Alaska sales.* (1) Authority for small sales of timber for use in Alaska. Section 5490.1 is issued under authority of Sec. 11, 30 Stat. 414, as amended; 48 U.S.C. 421. Section 5490.1 is contained in Circular 1901, 20 F.R. 1216, Feb. 26, 1955; 26 F.R. 5006, June 6, 1961.

(2) Authority for sale of timber for exportation 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).

(4) The Act of April 12, 1926 (44 Stat. 242) as amended by section 401 of the Act of October 8, 1968 (82 Stat. 960) limits the amount of unprocessed timber which may be sold for export from the United States from Federal lands located west of the 100th meridian to not more than 350 million board feet for each calendar year 1969 through 1971 inclusive. The act also provides that specific quantities and species of unprocessed timber surplus to the needs of domestic users may be designated as available for export in addition to the quantity stated above after public hearing and a finding to this effect by the appropriate Secretary of the Department administering Federal lands. Authority to issue rules and regulations to carry out the purpose of the act including the prevention of substitution of timber restricted from export for exported non-Federal timber is contained in section 2 (c) of the act as amended. Authority to issue rules and regulations providing for the exclusion of the limitations imposed by the act for sales having an appraised value of less than $2,000 is contained in section 2(d) of the act as amended.

(i) The Secretary of the Interior and the Secretary of Agriculture shall determine annually the distribution among the Federal lands of the 350 million board feet of unprocessed timber which may be sold for export from Federal lands west of the 100th meridian.

(ii) The rules and regulations issued to carry out the purposes of this act do not apply to Federal timber sold prior to January 1, 1969.

(iii) The Director shall coordinate actions by other Departmental agencies which are subject to this paragraph (a)(4).

§ 5400.0–5 Definitions.

Except as the context may otherwise indicate, as the terms are used in Parts 5400–5490 of this chapter and in contracts issued thereunder:

(a) "Bureau" means the Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized Officer" means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

(d) "O. and C. Lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the Act of August 28, 1937 (50 Stat. 874).

(e) "Public Lands" means the public domain and its surface resources under the jurisdiction of the Bureau of Land Management and lands from which the vegetative resources may be sold in accordance with the provisions of § 5400.0–3(a)(2)(ii).

(f) "Timber" means standing trees, downed trees or logs which are capable of being measured in board feet.

(g) "Other vegetative resources" means all vegetative material which cannot be measured in units of board feet of timber.

(h) "Set-aside" means a designation of timber for sale which is limited to bidding by small business concerns as defined by the Small Business Administration in its regulations (13 CFR Part 121) under the authority of section 15 of the Small Business Act of July 18, 1958 (72 Stat. 384).

(i) "Third party scaling" means the measurement of logs by a scaling organization, other than a Government agency, approved by the Bureau.

(j) "Sale value" means the contract value of the stumpage sold under the contract.

(k) "Unprocessed timber" means (1) any logs, such as sawlogs, peeler logs, and pulp logs; (2) cants or squares to be subsequently remanufactured exceeding a nominal eight (8) inches in thickness; or (3) split or round bolts, or other roundwood not processed to standards and specifications suitable for end product use.

(l) "Federal lands" as used in the Act of April 12, 1926 as amended by the Act of October 8, 1968, means all lands administered by the Department of the Interior west of the 100th meridian with the exception of tribal and trust allotted lands managed by the Bureau of Indian Affairs on behalf of the Indians.

§ 5400.0–7 Public hearings to determine surplus quantities and species of unprocessed timber.

(a) Pursuant to section 2(b) of the Act of April 12, 1926 as amended by the Act of October 8, 1968, public hearings will be held when authorized by the Director to seek advice and counsel as to the quantities and species of unprocessed timber surplus to the needs of domestic users and processors. Such species and quantities thereof determined to be surplus may be designated as available for export by the Secretary in addition to the quantities specified in section 2(a) of the Act.

(b) Such hearings will be coordinated with the Department of Agriculture and held at convenient, centralized locations within the range of the species under consideration.

(c) Before any hearing is held in this regard, a notice will be published in a newspaper of general circulation within the range of the species under consideration at least 15 days prior to the hearing. In addition, known parties or groups with special interest in the species concerned should be notified directly. The record of the hearing shall be kept open for at least 5 consecutive calendar days from the date of the hearing for receipt of additional statements.

(d) The hearing will be conducted by a representative or representatives of the Department of the Interior and the Department of Agriculture, respectively. At the conclusion of the hearing, the record thereof together with appropriate recommendations shall be forwarded to the Director for further action deemed appropriate. The Director shall give the public due notice as to the quantities and species of unprocessed timber determined to be surplus to the needs of domestic users and processors.

Subpart 5401—Advertised Sales; General

§ 5401.0–6 Policy.

(a) All sales other than those specified in § 5402.0–6 shall be made only after inviting competitive bids through publication and posting. Sales shall not be held sooner than one week after the last advertisement. No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid.

(b) All competitive sales having an appraised value of $2,000 or more shall be subject to the limitations relating to the export from the United States of unprocessed timber required by the Act of April 12, 1926 as amended by the Act of October 8, 1968.

(Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq., as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.)

Subpart 5402—Other Than Advertised Sales; General

§ 5402.0–6 Policy.

(a) When it is determined by the authorized officer to be in the public interest, he may sell at not less than the appraised value, without advertising or calling for bids, timber where the contract is for the sale of less than 250 M board feet.

(b) Timber on the right-of-way of a logging road and danger trees adjacent to the right-of-way on O&C lands may be sold at not less than the appraised value without advertising or calling for bids to (1) permittee who constructs a road pursuant to a permit issued under Subpart 2800 of this chapter, or (2) a

contractor who is constructing a road with Government funds.

(c) In addition to paragraph (b) of this section, negotiated sales with no limitation as to volume may be made if:

(1) The contract is for the disposal of materials to be used in connection with a public works improvement program on behalf of a Federal, State or local government agency and the public exigency will not permit the delay incident to advertising; or if

(2) The contract is for the disposal of property for which it is impracticable to obtain competition.

(d) All negotiated sales having an appraised value of $2,000 or more shall be subject to the limitations relating to the export from the United States of unprocessed timber required by the Act of April 12, 1926 as amended by the Act of October 8, 1968.

(Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.)

§ 5402.1 Report requirements.

A report will be made to Congress on January 1, and July 1 of each year of the contracts from public lands made under paragraph (c) (1) and (2) of § 5402.0–6 during the period since the date of the last report. This report shall include name of purchaser; the appraisal value of the material involved; the amount of each contract; and description of the circumstances leading to the determination that the contract should be entered into by negotiation instead of competitive bidding after formal advertising.

PART 5410—ANNUAL TIMBER SALE PLAN

Subpart 5410—Annual Timber Sale Plan; General

§ 5410.0–6 Policy.

Plans for the sale of timber from the O. and C. and public lands will be developed annually. Suggestions from prospective purchasers of such timber may be received to assist in the development of a sound annual timber sale plan. Such plan may be advertised in a newspaper of general circulation in the area in which the timber is located. Such advertisement shall indicate generally the probable time when the various tracts of timber included in the plan will be offered for sale, set-asides if any, and the probable location and anticipated volumes of such tracts. The authorized officer may subsequently change, alter or amend the annual timber sale plan.

PART 5420—PREPARATION FOR SALE

Subpart 5420—Preparation for Sale; General

Sec.
5420.0–6 Policy.

Subpart 5422—Volume Measurements

5422.1 Cruise sales.
5422.2 Scale sales.

Subpart 5424—Preparation of Contract

Sec.
5424.0–6 Policy.

AUTHORITY: The provisions of this Part 5420 issued under sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

Subpart 5420—Preparation for Sale; General

§ 5420.0–6 Policy.

All timber or other vegetative resources to be sold shall be appraised and in no case shall be sold at less than the appraised value. Measurement shall be by tree cruise, log scale, weight, or such other form of measurement as may be determined to be in the public interest.

Subpart 5422—Volume Measurements

§ 5422.1 Cruise sales.

As the general practice, the Bureau will sell timber on a tree cruise basis.

§ 5422.2 Scale sales.

(a) Scaling by the Bureau will be used from time to time for administrative reasons. Such reasons would include but not be limited to the following: To improve cruising standards; check accuracy of cruising practices; for volumetric analysis; and for highly defective timber where it is impossible to determine the tree cruise volume within a reasonable degree of accuracy.

(b) Third party scaling may be ordered by the Bureau after a determination that all of the following factors exist: (1) A timber disaster has occurred; (2) a critical resource loss is imminent; (3) measurement practices listed in § 5422.1 and paragraph (a) of this section are inadequate to permit orderly disposal of the damaged timber. Third party scaling volumes must be capable of being equated to Bureau standards in use for timber depletion computations, to insure conformance with sustained yield principles.

Subpart 5424—Preparation of Contract

§ 5424.0–6 Policy.

All sales shall be made on contract forms approved by the Director. The authorized officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, protection of improvements, watersheds and recreational values, and restrictions on export of unprocessed timber. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

PART 5430—ADVERTISEMENT

Subpart 5430—Advertisement; General

Sec.
5430.0–6 Policy.
5430.1 Requirements.

AUTHORITY: The provisions of this Part 5430 issued under sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

§ 5430.0–6 Policy.

Competitive timber sales shall be advertised in a newspaper of general circulation in the area in which the timber or other vegetative resources are located and a notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks, except that sales amounting to less than 500 M board feet, need be published once only. When in the discretion of the authorized officer longer advertising periods are desired, such longer periods are permitted.

§ 5430.1 Requirements.

The advertisement of sale shall state the location by legal description of the tract or tracts on which timber or other vegetative resources is being offered, the species, estimated quantities, the unit of measurement, appraised values, time and place for receiving and opening of bids, minimum deposit required, the access situation, the method of bidding, which tracts of timber if any have been designated as set-asides, the office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

PART 5440—CONDUCT OF SALES

Subpart 5441—Advertised Sales

Sec.
5441.1 Qualifications of bidders.
5441.1–1 Bid deposits.
5441.1–2 Special considerations.
5441.1–3 SBA set-aside sales.

Subpart 5442—Bidding Procedure

5442.1 Bidding.
5442.2 Rejection of bids; waiver of minor deficiencies.

Subpart 5443—90-Day Sales

5443.1 General.

AUTHORITY: The provisions of this Part 5440 issued under sec. 5, 50 Stat. 875, 61 Stat. 631, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

Subpart 5441—Advertised Sales

§ 5441.1 Qualification of bidders.

(a) A bidder or purchaser for the sale of timber must be (1) an individual who is a citizen of the U.S., (2) a partnership composed wholly of such citizens, (3) an unincorporated association composed wholly of such citizens, or (4) a corporation authorized to transact business in the States in which the timber is located. A bidder must also have submitted a deposit in advance, as required by § 5441.1–1. To qualify for bidding to purchase set-aside timber, the bidder must not have been determined by the Small Business Administration to be ineligible for preferential award of set-aside sales and must accompany his deposit with a self-certification statement that he is qualified as a small business

concern as defined by the Small Business Administration (13 CFR Part 121).

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification in conformance with paragraph (a) of this section or if such evidence has already been furnished, make appropriate reference to the record containing it.

§ 5441.1–1 Bid deposits.

Sealed bids must be accompanied by a deposit of not less than 10 percent of the appraised value of the timber or other vegetative resources. For offerings at oral auction, bidders must make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers' or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the United States Treasury Department. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidders, shall be returned. Except for corporate surety bid bonds, the deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer.

§ 5441.1–2 Special considerations.

Where a timber sale notice provides that the successful bidder may use a Small Business Administration road construction loan, and the bidder has reason to believe that he qualifies for such road construction loan under SBA regulations (13 CFR PART 121), the bidder shall submit to the authorized officer a statement of his intention to file with SBA for such SBA road construction loan. The purpose of the filing is to facilitate action by the Authorized officer and the Small Business Administration on the loan application.

§ 5441.1–3 SBA set-aside sales.

Only bids of small business concerns which have filed a self-certification statement as required by § 5441.1 may be considered for sales subject to set-asides. When no such bids are received, the timber may be sold under § 5443.1 in the same manner as timber not previously made subject to a set-aside. When timber subject to a set-aside is not sold for any other reason, the sale may be rescheduled for a set-aside sale.

Subpart 5442—Bidding Procedure

§ 5442.1 Bidding.

Bidding at competitive sales shall be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder shall be determined by oral auction among the high bidders. If no oral bid is made which is higher than the sealed bids, the highest bidder shall then be determined by lot. In oral auction sales the high bidder must confirm his bid in writing immediately upon being declared the high bidder. Except for the first bid, no oral bid will be considered or recorded which is not higher than the highest preceding bid.

§ 5442.2 Rejection of bids; waiver of minor deficiencies.

When it is in the interest of the Government to do so the authorized officer may reject any or all bids and may waive minor deficiencies in the bids or the timber sale advertisement.

Subpart 5443—90-Day Sales

§ 5443.1 General.

If no bid is received within the time specified in the advertisement of sale, and if the authorized officer determines that there has been no significant rise in the market value, he may in his discretion, keep the sale open for not to exceed 90 days by posting notice thereof in a conspicuous place in the office where bids are to be submitted. If during such period a written bid is submitted, together with the required deposit, for not less than the advertised appraised value, a notice of such bid shall be posted immediately after receipt of such bid for seven successive days in the same office and in the same manner. If no other written bid is received during the 7-day posting period, the sole bidder shall be deemed the high bidder. If, however, during such seven day posting period other written bids are received, an oral auction shall be conducted in the usual manner for those who have submitted written bids. The authorized officer shall notify those who have submitted written bids of the time and place of the oral auction. The written bids shall be considered the initial bids in such oral auction. If there is a tie in the high written bids that are submitted during the seven day posting period and if no higher bid is offered during the oral auction, the party who first submitted the high bid shall be deemed the high bidder.

PART 5450—AWARD OF CONTRACT

Subpart 5450—Award of Contract; General

Sec.
5450.1 Pre-award qualifications of high bidder.

Subpart 5451—Performance Bond

5451.1 Minimum bond requirements; types.
5451.2 Bonds in excess of minimum.
5451.3 Bond reduction.

Subpart 5452—Method of Payment

5452.1 Cash sales.
5452.2 Installment payments.

AUTHORITY: The provisions of this Part 5450 issued under sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

Subpart 5450—Award of Contract; General

§ 5450.1 Pre-award qualifications of high bidder.

(a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to perform the obligations of the contract. The contract shall be awarded to the high bidder, unless he is not qualified or responsible, or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond; the contract may be offered and awarded for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: *Provided*, That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period. If the successful bidder fails to comply within the stipulated time, his bid deposit shall be retained as liquidated damages.

Subpart 5451—Performance Bond

§ 5451.1 Minimum bond requirements; types.

(a) A minimum performance bond of not less than 20 percent of the total contract price will be required for all contracts of $2,500 or more. A minimum performance bond of not less than $500 will be required for all installment contracts less than $2,500. For cash sales less than $2,500, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the United States Treasury Department and executed on an approved standard form; or

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States.

§ 5451.2 Bonds in excess of minimum.

The authorized officer may permit the cutting of timber before payment of the second or subsequent installments as provided in this paragraph. The purchaser must increase the minimum performance bond required by § 5451.1(a) of this section by an amount equal to one or more installment payments. The adjusted bond must be approved by the authorized officer in writing prior to cutting any timber under the adjusted bond. The unenhanced value of timber allowed to be cut in advance of payment is limited to the amount of the increase over and above the minimum performance bond required by § 5451.1(a) of this section and in no event shall the unenhanced value of the timber cut exceed 50 percent of the total contract purchase price. The increased amount of the bond shall be used to assure payment for such timber. Timber cut pursuant to this paragraph may be paid by install-

ments. Upon payment, the increased amount of the bond may be applied to other timber sold under the contract to permit its cutting in advance of payment.

[29 F.R. 4629, Mar. 31, 1964, as amended at 31 F.R. 8915, June 28, 1966]

§ 5451.3 Bond reduction.

As contract provisions are completed to the satisfaction of the authorized officer, he may, in his discretion, reduce the amount of the performance bond required: *Provided, however,* The amount of the performance bond shall not be reduced below the minimum required by § 5451.1 until payment for the timber sold is complete.

Subpart 5452—Method of Payment

§ 5452.1 Cash sales.

For sales under $500 the full amount shall be paid prior to or at the time the authorized officer signs the contract.

§ 5452.2 Installment payments.

For sales of $500 or more the authorized officer may allow payment by installments as provided by § 5461.2 of this chapter.

PART 5460—SALES ADMINISTRATION

Subpart 5461—Contract Payments

Sec.
5461.1 Payment in advance of cutting or removal.
5461.2 Installment payment requirements.
5461.3 Total payment.

Subpart 5463—Expiration of Time for Cutting and Removal

5463.1 Time for cutting and removal.
5463.2 Extension of time.

AUTHORITY: The provisions of this Part 5460 issued under sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

Subpart 5461—Contract Payments

§ 5461.1 Payment in advance of cutting or removal.

Except as provided in § 5451.2 no part of any timber or other vegetative resources sold may be cut or removed unless advance payment has been made as provided in the contract.

§ 5461.2 Installment payment requirements.

(a) Contract installment payments shall be determined by the authorized officer as follows:

(1) Payment in advance of cutting. For sales under $100,000 installment payments shall be not less than 10 percent of the total purchase price. For sales of $100,000 or more installment payments shall not be less than $10,000. The first installment shall be paid prior to, or at the time the authorized officer signs the contract. The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of the material cut or removed equals the sum of all the payments minus the first installment.

(2) Payment in advance of skidding, yarding or removal. The first installment shall be paid in the same manner as provided in subparagraph (1) of this paragraph. If cutting is permitted before payment, as provided by § 5451.2 of this chapter, payment by installment shall be made prior to the skidding, yarding, or removal of the timber sold. Each subsequent installment shall be due and payable without notice when the sale value of the timber skidded, yarded or removed equals the sum of all the payments minus the first installment.

§ 5461.3 Total payment.

The total amount of the contract purchase price must be paid prior to expiration of the time for cutting and removal under the contract. For a cruise sale the purchaser shall not be entitled to a refund even though the amount of timber cut, removed, or designated for cutting may be less than the estimated total volume shown in the contract. For a scale sale, if it is determined after all designated timber has been cut and measured that the total payments made under the contract exceed the total sale value of the timber measured, such excess shall be refunded to the purchaser within 60 days after such determination is made.

Subpart 5463—Expiration of Time for Cutting and Removal

§ 5463.1 Time for cutting and removal.

Time for cutting and removal of timber or other vegetative resources sold shall not exceed a period of thirty months except that such time for cutting and removal may be extended as provided in §§ 5463.2 and 5473.1.

§ 5463.2 Extension of time.

If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request of the purchaser.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

Subpart 5473—Extension of Time for Cutting and Removal

Sec.
5473.1 Application.
5473.4 Approval of request.
5473.4–1 Reappraisal.

Subpart 5474—Contract Assignment

5474.1 Conditions; general.

AUTHORITY: The provisions of this Part 5470 issued under sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

Subpart 5473—Extension of Time for Cutting and Removal

§ 5473.1 Application.

Written requests for extension must be received prior to the expiration of the time for cutting and removal. No extension may be granted without reappraisal as provided in § 5473.4–1.

§ 5473.4 Approval of request.

§ 5473.4–1 Reappraisal.

(a) If an extension is granted as provided in §§ 5463.2 and 5473.1 the material sold shall be reappraised by the authorized officer. In making the reappraisal, the authorized officer shall use the Bureau of Land Management's prescribed procedures.

(b) For a cruise sale the timber sold remaining on the contract area shall be reappraised for the purpose of computing the reappraised total purchase price. The reappraised total purchase price shall not be less than the total purchase price established by the contract or last extension. The authorized officer may require that the reappraised total purchase price shall be paid in advance as a condition of granting an extension.

(c) For a scale sale each species of timber remaining on the contract area shall be reappraised. The reappraised unit price for each species shall be effective for the remaining life of the contract: *Provided, however,* The reappraised unit price for each species shall not be less than the unit price established by the contract or previous extension.

SUBPART 5474—CONTRACT ASSIGNMENT

§ 5474.1 Conditions; general.

(a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State in which the timber or other vegetative resource is located; (2) submits such information as is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by Subpart 5451 of this chapter or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

PART 5490—ACTS SPECIFIC TO ALASKA

Subpart 5490—Acts Specific to Alaska; General

Sec.
5490.1 Small sales of timber for use in Alaska.
5490.1–1 Lands from which timber may be sold.
5490.1–2 Appraised prices.
5490.1–3 Application; who may purchase.
5490.1–4 Deposit, payment, bond requirement.
5490.1–5 Permits.
5490.1–6 Appeals.
5490.2 Sale of timber for exportation from Alaska.
5490.2–1 Small quantity sales.

Sec.
5490.2–2 Large quantity sales.
5490.2–3 Application to purchase; deposit.
5490.2–4 Publication and posting; marking of land.
5490.2–5 Action on application; field report and appraisal.
5490.2–6 Execution of contract; bond required.
5490.2–7 Renewals of contract.
5490.2–8 Lands from which timber may not be sold.

AUTHORITY: The provisions of this Part 5490 issued under 61 Stat. 681, as amended, 69 Stat. 367, sec. 11, 30 Stat. 414, as amended, 30 U.S.C. 601 et seq., 48 U.S.C. 421–3, 44 Stat. 242; 16 U.S.C. 616.

§ 5490.1 Small sales of timber for use in Alaska.

§ 5490.1–1 Lands from which timber may be sold.

Timber may be sold from vacant public lands in Alaska, and from withdrawn public lands in Alaska when permitted by the order of withdrawal.

CROSS REFERENCES: For timber sales in Alaska not authorized by this part, see § 5400.0–3(a)(2). For timber sales for export, see § 5490.2.

§ 5490.1–2 Appraised prices.

No sales may be made below the appraised prices established by the State Director.

§ 5490.1–3 Application; who may purchase.

(a) An application to purchase timber should be submitted on a form approved by the Director which may be obtained from any office of the Bureau in Alaska. The application should be filed in the district in which the timber desired is situated, or in any forestry office of the Bureau in Alaska. It must be accompanied by a deposit in accordance with § 5490.1–4.

(b) The application may be made by an individual, a partnership, an unincorporated association, or a corporation organized under the laws of the United States, or of a State or Territory thereof, and authorized to transact business in Alaska.

§ 5490.1–4 Deposit, payment, bond requirements.

(a) If the estimated sale value of the timber applied for equals or exceeds $25, the application must be accompanied by a deposit of $25, or 15 percent of the estimated sale value, whichever is the greater. If the estimated sale value is less than $25, a deposit representing the full estimated sale value must be made.

(b) The deposit may be in the form of cash, a money order, cashier's check, certified check, or personal check made payable to the Bureau of Land Management. At the discretion of the authorized officer, larger deposits—up to the full sale value—may be required before the permit is issued.

(c) In the discretion of the authorized officer, a performance bond may be required of not less than 25 percent of the sale value. Upon satisfactory completion of the permit the bond, if in cash or securities will be returned to the permittee, and if in the form of a surety bond will be cancelled.

(d) After a permit is issued, the minimum deposit is not returnable, even if no timber has been cut. Where the value of the timber to be cut exceeds the amount of the deposit, the deposit will be credited as partial payment against the total sale value.

(e) Additional payments shall be made by the permittee at the request of the authorized officer, or when the value of the timber cut equals the amount of the deposit plus previous payments. The computed volume, based on an inventory of stumps made by the authorized officer shall be prima facie evidence in establishing the volume of forest products cut by the permittee.

§ 5490.1–5 Permits.

(a) *Issuance of permit.* (1) A permit to cut and remove timber will be issued on a form approved by the Director. The authorized officer may, in his discretion, reject the application, or he may amend or otherwise limit the area, species, products, or volume applied for or add such additional provisions and conditions which, in his opinion, are required by sound forest practices, provided the applicant consents. If the applicant refuses consent his deposit will be refunded. The appropriate Bureau sign must be posted in a conspicuous place on the land, before any timber is cut.

(2) Permits will be valid for one year unless an extension is granted. Extensions will be granted only on a showing that the permittee, because of matters beyond his control, was unable to cut and remove the timber within the life of the permit and that the interests of the Government will not be prejudiced by the extension.

(3) Where, after the issuance of a permit and before the timber covered thereby is cut and removed the timber is destroyed or damaged, in whole or in part, without fault on the part of the permittee or his agent, the authorized officer, in his discretion, may grant the permittee relief by the amendment of the permit to include an equivalent value of other timber.

(b) *Amendment of permit.* The original permit may be amended at any time during the permit year with the consent of the permittee. For example, the permit volume might be increased to meet additional requirements of the permittee.

(c) *Subsequent claim subject to timber application.* When a valid homestead, mining or other claim is initiated on public land subsequent to the issuance of a permit to cut timber and the posting on the land of the appropriate sign, such subsequent claimant's rights are subject to the right of the timber applicant to cut and remove the timber covered by the permit.

(d) *Revocation of permit.* A permit may be revoked for failure of the permittee to comply with the provisions of these regulations, or with the terms of the permit. If cutting is being done in violation of the terms of the permit, any authorized officer of the Bureau may order the cutting stopped, revoke the permit, and demand such additional payment for the timber as may be due the Government.

(e) *Removal of personal property upon termination of permit.* (1) Upon termination of a permit the permittee shall have the right at any time within 60 days thereafter to remove his equipment, improvements, or other personal property from the Government land, provided all charges due the United States under the permit have been paid. The authorized officer, in his discretion, may grant requests for a reasonable extension. Any improvements, equipment, or personal property remaining on the Government land after the time for removal has expired shall become the property of the United States.

(2) Improvements needed by the permittee for the severance, extraction, or removal of other Government-owned materials under existing contracts or permits may be left on the Government land for such period and under such terms as may be prescribed by the authorized officer.

§ 5490.1–6 Appeals.

A party aggrieved by any official action involving his application or permit may appeal to the Director, Bureau of Land Management, and from the Director to the Secretary of the Interior, pursuant to Appeals and Contests contained in Parts 1840 and 1850 of this chapter.

§ 5490.2 Sale of timber for exportation from Alaska.

§ 5490.2–1 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 § 5490.1, 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.

§ 5490.2–2 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.

§ 5490.2–3 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.

§ 5490.2–4 Publication and posting; marking of land.

Immediately upon the filing of an application to purchase timber under § 5490.2–2 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 § 1824.4 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.

§ 5490.2–5 Action on application; field report and appraisal.

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 § 5490.2–2 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.

§ 5490.2–6 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 approved by the Director.

§ 5490.2–7 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.

§ 5490.2–8 Lands from which timber may not be sold.

The rules and regulations in § 5490.2, 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.

Group 5500—Nonsale Disposals

PART 5500—NONSALE DISPOSALS; GENERAL

Subpart 5500—Nonsale Disposals; General

Sec.
5500.0–3 Authority.
5500.0–5 Definition.

AUTHORITY: The provisions of this Part 5500 issued under 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, 30 U.S.C. 601 et seq., 43 U.S.C. 315, 423.

§ 5500.0–3 Authority.

(a) The act of July 31, 1947 (61 Stat. 681), as amended by the acts of July 23, 1955 (69 Stat. 367, 30 U.S.C. 601 et seq.) and the act of September 25, 1962 (76 Stat. 587) authorizes the disposal of timber and other vegetative resources on public lands of the United States including lands embraced within an unpatented mining claim located after July 23, 1955, if the disposal of such resources is not otherwise expressly authorized by law including, but not limited to, the act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315–315o–1), as amended, and the United States mining laws; is not expressly prohibited by laws of the United States; and would not be detrimental to the public interest.

(1) The act also authorizes the United States, its permittees, and licensees to uses so much of the surface of any unpatented mining claim located under the mining law of the United States after July 23, 1955, as may be necessary for access to adjacent land for the purposes of such permittees or licensees. Any authorized use of the surface of any such mining claim shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.

(2) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a

State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this subpart only with the consent of such other Federal department or agency or of such State, or local governmental unit. The act of July 23, 1955, supra, provides, however, that the Secretary of Agriculture shall dispose of materials under the act of July 31, 1947, as amended, supra, if such materials are on lands administered by the Secretary of Agriculture for national forest purposes or for purposes of Title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture.

(3) The provisions of the act of July 23, 1955, supra, in disposal of vegetative or mineral materials do not apply to lands in any 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.

§ 5500.0–5 Definitions.

Except as the context may otherwise indicate, as the terms are used in Parts 5500–5520 of this chapter and in contracts issued thereunder:

(a) "Bureau" means the Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized Officer" means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

(d) "O. and C. Lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the Act of August 28, 1937 (50 Stat. 874).

(e) "Public Lands" means the public domain and its surface resources under the jurisdiction of the Bureau of Land Management.

(f) "Timber" means standing trees, downed trees or logs which are capable of being measured in board feet.

(g) "Other vegetative resources" means all vegetative material which cannot be measured in units of board feet of timber.

PART 5510—FREE USE OF TIMBER

Subpart 5510—Free Use of Timber; General

Sec.
5510.0–3 Authority.

Subpart 5511—Free Use Regulations

5511.1 Act of 1878.
5511.1–1 Free use of timber on mineral and nonmineral public lands.
5511.1–2 Use by settlers and homesteaders of timber on their pending claims.
5511.1–3 Use of timber on lands covered by grazing leases, by lessees, and others.
5511.1–4 Free use of timber upon oil and gas leases.
5511.2 Act of 1898 (Alaska).
5511.2–1 Free use privilege; cutting by agent.
5511.2–2 Free use of timber for Government purposes.
5511.2–3 Permits.
5511.2–4 Timber on withdrawn lands.
5511.2–5 Trespass; penalty for unauthorized cutting of timber.
5511.2–6 Appeals.
5511.2–7 Governing regulations for free use by oil and gas claimants.
5511.3 Act of 1947.
5511.3–1 Free use of timber under other statutes.
5511.3–2 Permits.
5511.3–3 Conservation practices.
5511.3–4 Removal by agent.
5511.3–5 Removal of improvements.
5511.3–6 Permits to governmental units.
5511.3–7 Permits to non-profit organizations.
5511.3–8 Permits to mining claimants.

AUTHORITY: The provisions of this Part 5510 issued under 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, R.S. 2478, sec. 32, 41 Stat. 450; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 48 U.S.C. 423, 43 U.S.C. 1201, 30 U.S.C. 189, unless otherwise noted.

Subpart 5510—Free Use of Timber; General

§ 5510.0–3 Authority.

(a) *Nonsale disposals act of June 3, 1878.* (1) Authority for free use of timber on mineral and nonmineral public lands. Section 5511 is issued 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.

(2) 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. 405; 30 U.S.C. 189).

CROSS REFERENCE: For additional free use privileges, see § 5511.3.

(b) *Nonsale disposals act of July 23, 1955.* The act of July 23, 1955, supra, authorizes the Secretary of the Interior in his discretion to permit free use of timber or other vegetative resources or mineral materials by any Federal or State governmental agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit for use other than for commercial or industrial purposes or resale. The act of July 23, 1955, supra, also provides in part, under certain circumstances, for a mining claimant to obtain free-use of timber from other Bureau administered land in lieu of timber disposed of by the Bureau from lands covered by his mining locations. See § 5511.3–8.

(c) *Nonsale disposals act of May 14, 1898.* Section 5511.2 is issued under the authority of Sec. 11, 30 Stat. 414, as amended; 48 U.S.C. 423. Section 5511.2 appears at 19 F.R. 8880, Dec. 23, 1954.

(1) 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.

Subpart 5511—Free Use Regulations

§ 5511.1 Act of 1878.

§ 5511.1–1 Free use of timber on mineral and nonmineral public lands.

(a) *Lands on which timber may be cut.* Free-use permits to cut timber may be issued covering public lands as follows: (1) 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); (2) Nonmineral, unoccupied, and unreserved public lands in the States mentioned and also in the States of California, Oregon, and Washington.

(b) *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 debris made in felling and removing timber under this section 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.

(c) *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.

(d) *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.

(e) *Exportation of timber.* Timber may not be exported from the State in

which it is cut except: (1) 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); (2) 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); (3) 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; (4) 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; (5) 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); (6) 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).

(f) *Application and permit*—(1) *Information to be furnished by applicant.* (i) 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.

(ii) Blank forms for making application may be procured from the State Director for the State in which the timber to be removed is located.

(iii) 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.

(2) *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.

(3) *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 §§ 5510.0–3(a) and 5511.1–1(a) to 5511.1–1(g) 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.

(g) *Agents*—(1) *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.

(2) *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 faithfull performance of the requirements.

§ 5511.1–2 Use by settlers and homesteaders of timber on their pending claims.

This section is issued under the authority of R.S. 2478; 43 U.S.C. 1201.

(a) *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.)

(b) *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.

(c) *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.

(d) *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.

§ 5511.1–3 Use of timber on lands covered by grazing leases, by lessees, and others.

(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.C. 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), §§ 5510.0–3(a) and 5511.1–1(a) to 5511.1–1(g).

(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 Director for the State in which the timber to be cut is located and should comply with the regulations contained in § 5511.1–1.

(Sec. 1, 20 Stat. 88, as amended, 26 Stat. 1003, as amended; 16 U.S.C. 604, 607)

§ 5511.1–4 Free use of timber upon oil and gas leases.

(a) *Application*—(1) *Where to apply.* 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.

(2) *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.

(3) *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.

(i) Evidence of service of such notice must be furnished.

(ii) 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.

(iii) 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.

(4) *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.

(b) *Land subject to permit.* A permit granted under this section shall not embrace any land not included in the oil and gas lease, issued or assigned to the applicant. No permit will be issued where title to the surface has passed from the United States.

(c) *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.

(d) *Cutting and use of timber.* Timber cut under a permit issued under this section 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 debris 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.

(e) *Liability of permittee.* Where permits are secured by fraud or timber is not used in accordance with this section, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

(f) *Unauthorized cutting.* The cutting of timber for sale and speculation, or for use by others than the permittee, is strictly prohibited.

§ 5511.2 Act of 1898 (Alaska).

§ 5511.2–1 Free use privilege; cutting by agent.

(a) Except as provided in § 5511.2–4 the only timber which may be cut under §§ 5511.2–1 to 5511.2–6 for free use in Alaska is timber on vacant public lands in the State 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 § 5490.1–5(b).

(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.

§ 5511.2–2 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 a form approved by the Director must be filed, as in other cases, and a copy of the contract must be attached to the application.

§ 5511.2–3 Permits.

(a) *Application for permit.* Before timber is cut for free use, an application for permit in duplicate on a form approved by the Director must be filed in an office or with an employee of the Bureau of Land Management in Alaska.

(b) *Issuance and cancellation of permit; removal of timber; bond.* (1) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of the official form shall be returned to the applicant showing the approval or rejection of such application.

(2) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or the regulations in §§ 5511.2–1 to 5511.2–6, or if the permit has been issued erroneously.

(3) 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 §§ 5511.2–1 to 5511.2–6.

(c) *Cutting rules and restrictions.* 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.

(d) *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.

(e) *Notice of completion of timber cutting operations.* Upon completion of the cutting and the removal of the timber, the permittee must notify the State Director, 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.

(f) *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.

§ 5511.2–4 Timber on withdrawn lands.

Sections 5511.2–1 to 5511.2–6 are inapplicable to timber on withdrawn areas unless the order of withdrawal so permits.

§ 5511.2–5 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 §§ 5511.2–1 to 5511.2–6 will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under Title 18, U.S. Code, or under State law.

§ 5511.2–6 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 Appeals and Contests contained in Parts 1840 and 1850 of this chapter.

§ 5511.2–7 Governing regulations for free use by oil and gas claimants.

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 § 5511.2–4.

§ 5511.3 Act of 1947.

§ 5511.3–1 Free use of timber under other statutes.

Free use will be allowed under the following circumstances:

(a) In certain States by settlers on public lands, citizens and bona fide residents of the State, and corporations doing business in the State (§ 5511.1), and

(b) In Alaska by actual settlers, residents, individual miners, prospectors for minerals, churches, hospitals and charitable institutions (§ 5511.2).

(c) Free-use of timber by Governmental units, nonprofit organizations, and certain mining claimants may be authorized under the act and these regulations only when such applicants cannot qualify under the provisions of §§ 5511.1 to 5511.1–4 and 5511.2.

§ 5511.3–2 Permits.

(a) *Application for permit.* An application for permit in duplicate, must be made on a form approved by the Director and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit. A free-use permit may be applied

for without formal application for the removal of not more than three Christmas trees upon oral or written request.

(b) *Issuance and cancellation of free-use permits; bond.* (1) A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of timber. Free-use permits shall not be issued when the applicant owns or controls an adequate supply of the material to meet his needs. Timber applied for must be for the applicant's own use and may not be bartered or sold. No timber may be cut or removed until the permit is issued.

(2) 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.

(3) 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.

(4) A free-use permit issued under this part may not be assigned.

(c) *Duration, extension, and termination of permit.* (1) Permits shall be granted for periods not to exceed 6 months and shall terminate on the expiration dates shown therein unless extended by the authorized officer. An extension not to exceed 3 months may be granted by the authorized officer. The permittee must notify the officer-in-charge upon completion of removal.

(2) Permits issued for the benefit of a mining claimant under authority of the act shall terminate upon transfer of the ownership of the claim by any means. Reapplication must be made by the new claimants.

§ 5511.3–3 Conservation practices.

All free-use timber disposed of under the act shall be severed, or removed in accordance with sound 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, cutting and removal shall be accomplished in such a manner as to leave the stand in condition for continuous production.

§ 5511.3–4 Removal by agent.

A free-use permittee may procure the timber by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor and money expended in procuring timber and processing it, and no charge shall be made by such agent for the timber itself. No part of the timber may be used in payment for services in obtaining it or processing it.

§ 5511.3–5 Removal of improvements.

Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property and any improvements he has placed on the land, except roads, culverts and bridges are to be left in place, in good condition and will become the property of the United States upon expiration of the 90-day removal period.

§ 5511.3–6 Permits to governmental units.

A free-use permit may be issued to a Federal or State agency, unit, or subdivision, including a municipality, only if the applicant makes a satisfactory showing to the authorized officer that such timber will be used for a public project. The right to remove timber under the permit is not revoked or terminated by (a) any subsequent claim or entry of the lands, (b) by any mining claim located prior to the issuance of the permit if such location was subsequent to July 23, 1955, nor (c) by any other mining claim as to which the Government's right to manage the surface resources has been established in accordance with Group 3800 of this chapter, or other proceedings.

§ 5511.3–7 Permits to nonprofit organizations.

A free-use permit issued to a nonprofit association or corporation may not provide for the disposition of more than $100 worth of timber to the permittee during any one calendar year. Such permittee is granted a right to remove timber as against a subsequent applicant who may wish to obtain the same timber by purchase. The timber 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.

§ 5511.3–8 Permits to mining claimants.

(a) Free-use timber shall be granted under § 5510.0–3(b) to the record owner of a valid mining claim if such claim was located subsequent to July 23, 1955, or if the Government's right to manage the surface resources has been established in accordance with Group 3400 of this chapter, and he requires more timber than is available to him for prospecting, mining, or processing operations on his claim or claims after disposition of timber from his claim by the United States. The claimant shall be entitled to the free use of timber for such requirements from the nearest timber administered by the Bureau which is substantially equal in kind and quantity to the timber estimated by the authorized officer at the time of application to have been disposed of by the Bureau from the claim. Upon issuance of a patent to the mining claims, the free-use privilege will automatically terminate.

(b) The application required to be filed for free-use timber under this section must contain a statement that the timber applied for will be used for bona fide prospecting, mining, or prospecting operations on the claim or group of claims designated in the application. The applicant must also include a statement that he is the record owner of a valid mining claim or claims from which the timber was originally removed by the Government.

Group 6000—Outdoor Recreation

PART 6000—OUTDOOR RECREATION; GENERAL

Sec.

6000.0–1 Purpose.
6000.0–2 Objective.
6000.0–4 Responsibility.
6000.0–6 Management policy.

AUTHORITY: The provisions of this Part 6000 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6000.0–1 Purpose.

The lands administered by the Bureau of Land Management are used and managed for a variety of purposes which are described in Subpart 1725 of this chapter. The regulations in this subchapter relate to the use and development of these lands for outdoors recreation purposes. The regulations also identify circumstances under which use of such lands may be restricted in order to protect the public health and safety, and natural resources and values.

§ 6000.0–2 Objective.

The Bureau shall manage lands to promote public use and enjoyment of the lands for outdoor recreation use in a manner which will protect the health, safety, and comfort of the public and preserve and protect natural resources and values.

§ 6000.0–4 Responsibility.

(a) Except where specified to the contrary, the authority of the Secretary of the Interior to develop, manage, authorize the use, and stipulate the terms and conditions of such use of lands, and make other determinations in accordance with the regulations of this part has been delegated to authorized officers of the Bureau of Land Management.

(b) The using public has the responsibility to use the lands in a manner which will permit maximum use and enjoyment by all, and will protect and preserve the lands, their resources, and any public recreation facility or value which is added thereon.

§ 6000.0–6 Management policy.

(a) Subpart 1725 of this chapter describes the program and multiple-use management policy for public lands, including the development of recreational resources, consistent with the economic and effective development and management of public lands, for use by the public.

(b) Encouragement will be given to State and local governments and private agencies to develop additional public recreation facilities when such development is consistent with long-range management plans and programs of the Bureau.

(c) Priority will be given to:

(1) Recreation development and enhancement as follows:

(i) Undeveloped sites currently under heavy, uncontrolled use that threatens public health and safety or damage to the recreation resource.

(ii) Areas in localities where public recreational demand exceeds available opportunities and facilities.

(iii) Areas adjacent to heavily traveled routes or highways near urban areas, bodies of water, and unique scenic attractions.

(2) Preservation and protection of natural and cultral resources, including but not limited to scientific, scenic, historic, and archeological values, and primitive environments.

(d) Reasonable fees in accordance with Part 18 of this title may be established and collected by the authorized officer.

PART 6010—GENERAL PROGRAM

Sec.
6010.1 Identification of lands.
6010.2 Rules of conduct.
6010.3 Supplemental rules.
6010.4 Closure of lands.
6010.5 State and local laws.

AUTHORITY: The provisions of this Part 6010 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6010.1 Identification of lands.

To assist the public in the identification of lands, the Bureau shall, where feasible, post signs, publish ownership maps, and otherwise identify public recreation opportunities.

§ 6010.2 Rules of conduct.

(a) *Permitted activities.*—(1) *Collecting—hobby specimens.* Flowers, berries, nuts, seeds, cones, leaves, and similar renewable resources and nonrenewable resources such as rocks, mineral specimens, common invertebrate fossils, and gem stones may be collected in reasonable quantities for personal use, consumption, or hobby collecting. Limitations on this privilege are contained in paragraph (b) of this section.

(2) *Collecting—for sale or barter.* Gathering or collecting of renewable or nonrenewable resources for the purpose of sale or barter may be done only where specifically authorized by law.

(3) *Petrified wood.* For regulations pertaining to collection of petrified wood see Subpart 3612 of this chapter.

(4) *Vegetative and mineral materials.* For regulations pertaining to removal of vegetative and mineral materials under the Mineral Material Sales Act, see Subparts 3610, 3611, and 5400 of these regulations.

(b) *Prohibited activities.* In the use of lands for public outdoor recreation purposes, no one shall:

(1) Intentionally or wantonly destroy, deface, injure, remove or disturb any public building, sign, equipment, marker, or other public property.

(2) Harvest or remove any vegetative or mineral resources or object of antiquity, historic, or scientific interest unless such removal is in accordance with Part 3 of this title regulations or paragraph (a) of this section, or is otherwise authorized by law.

(3) Appropriate, mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property.

(4) Dig, remove, or destroy any tree or shrub.

(5) Gather or collect renewable or nonrenewable resources for the purpose of sale or barter unless specifically permitted or authorized by law.

(6) Drive or operate motorized vehicles or otherwise conduct himself in a manner that may result in unnecessary frightening or chasing of people or domestic livestock and wildlife.

(7) Use motorized mechanical devices for digging, scraping, or trenching for purposes of collecting.

§ 6010.3 Supplemental rules.

Additional rules to protect the public health and safety and protect resources may be established by the authorized officer, as necessary. They shall be posted in appropriate locations to notify the public of requirements for the occupancy and use of lands, outdoor recreation facilities, and roads and trails. The posted rules may provide for, but need not be limited to, protection of public health and safety, protection of the lands from fires, prevention of soil erosion, and utilization and protection of outdoor recreation and other resource values of the Federal lands.

§ 6010.4 Closure of lands.

In the management of lands to protect the public and assure proper resource utilization, conservation, and protection, public use and travel may be temporarily restricted. For instance, areas may be closed during periods of high fire danger or unsafe conditions, or where use will interfere with or delay mineral development, timber, and livestock operations, or other authorized use of the lands. Areas may also be closed temporarily to:

(a) Protect the public health and safety.

(b) Prevent excessive erosion.

(c) Prevent unnecessary destruction of plant life and wildlife habitat.

(d) Protect the natural environment.

(e) Preserve areas having cultural or historical value.

(f) Protect scientific studies or preserve scientific values.

§ 6010.5 State and local laws.

Except as otherwise provided by law, State and local laws and ordinances shall apply. This refers, but is not limited, to laws and ordinances governing:

(a) Operation and use of motor vehicles, aircraft, and boats.

(b) Hunting and fishing.

(c) Use of firearms.

(d) Injury to persons or destruction of property.

(e) Air and water pollution.

(f) Littering.

(g) Sanitation.

(h) Use of fire.

Group 6200—Recreation Management

PART 6200—GENERAL

Sec.
6200.0–1 Purpose.
6200.0–6 Policy.

AUTHORITY: The provisions of this Part 6200 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6200.0–1 Purpose.

This group defines outdoor recreation regulations dealing with the administration of lands for specific types of public use, resource conditions, outdoor recreation occupancy and use, and resource development.

§ 6200.0–6 Policy.

Where appropriate for management and public identification purposes, lands having significant natural values may be (a) designated pursuant to the provisions of Subpart 1727 of Part 1720 of this chapter, and (b) segregated pursuant to the provisions of § 2410.1–4 of this chapter.

PART 6220—PROTECTION AND PRESERVATION OF NATURAL VALUES

Sec.
6220.0–1 Purpose.

Subpart 6221—Primitive Areas

6221.0–1 Purpose.
6221.0–2 Objective.
6221.1 Characteristics.
6221.2 Criteria for use.

Subpart 6222—Scenic Corridor-Buffer Zones

6222.0–6 Policy.

Subpart 6223—Wild and Scenic Rivers

6223.0–1 Purpose.
6223.0–2 Objectives.
6223.0–3 Authority.
6223.0–6 Policy.

Subpart 6225—Natural Areas

6225.0–1 Purpose.
6225.0–2 Objectives.
6225.0–5 Definition.
6225.0–6 Policy.
6225.1 Use of natural areas.

AUTHORITY: The provisions of this Part 6220 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6220.0–1 Purpose.

This part provides guidelines for the management; and criteria for the use, of lands to preserve, protect, and enhance areas of scenic splendor, natural wonder, scientific interest, primitive environment, and other natural values for the enjoyment and use of present and future generations.

Subpart 6221—Primitive Areas

§ 6221.0–1 Purpose.

This subpart provides procedures and guidelines for the protection and recreation use of lands that have been determined to be primitive in character.

§ 6221.0–2 Objective.

Lands designated as primitive areas shall be administered for public recreational use in a manner to protect primitive values, and to:

(a) Allow the free operation of natural ecological succession to the extent feasible for scientific and other study.

(b) Preserve solitude, physical and mental challenge, inspiration and primitive recreation values.

(c) Preserve public values that would be lost if the lands were developed for commercial purposes or passed from Federal ownership.

(d) Allow the natural restoration of the primitive character of the lands.

§ 6221.1 Characteristics.

Natural, wild, and undeveloped lands in settings essentially removed from the effects of civilization are appropriate for designation as primitive areas. Essential characteristics are a natural environment that can be conserved and on which there is no undue disturbance by roads and commercial uses. Primitive areas may be representative of natural environments ranging from the southwest desert to the arctic tundra.

§ 6221.2 Criteria for use.

(a) Public use of primitive areas for recreation purposes is encouraged to the optimum extent consistent with the maintenance of the primitive environment.

(b) Travel in primitive areas is restricted to nonmechanized forms of locomotion.

(c) Construction will not be allowed in or on the land except in connection with authorized nonrecreation uses of the lands, and as necessary to meet requirements for the protection and administration of the area (including measures required in emergencies involving the health and safety of persons within the area).

(d) Roads, mechanized equipment, commercial timber harvesting, nontransient occupancy, and the landing of aircraft is prohibited except in connection with activities necessary in the use of the lands for authorized nonrecreation purposes, and then only under conditions specified by the authorized officer.

(e) Grazing of domestic livestock, water storage projects, and rights-of-way for utility lines and other purposes may be permitted by the authorized officer under such conditions and restrictions as he deems necessary to preserve primitive values.

Subpart 6222—Scenic Corridor—Buffer Zones

§ 6222.0–6 Policy.

Scenic corridors may be established along roads and highways, rivers and streams, trails and other lands for the preservation, protection and enhancement of scenic and natural values. Size and use of scenic corridors shall be consistent with the purposes for which they are established.

Subpart 6223—Wild and Scenic Rivers

§ 6223.0–1 Purpose.

To provide guidelines for management of lands affected by the Wild and Scenic Rivers Act.

§ 6223.0–2 Objectives.

To assure that all lands affected by the Wild and Scenic Rivers Act are managed in a manner consistent with the purposes of the act.

§ 6223.0–3 Authority.

(a) The Wild and Scenic Rivers Act (82 Stat. 906) provides that certain selected rivers which, with their immediate environment, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that their immediate environments shall be protected for the benefit and enjoyment of present and future generations.

§ 6223.0–6 Policy.

Lands affected by the Wild and Scenic Rivers Act will be identified as soon as possible and will be managed in such a manner as to preserve that characteristic of the area that led to its designation under the act.

Subpart 6225—Natural Areas

§ 6225.0–1 Purpose.

To describe procedures for management, protection and recreation use of lands having unusual natural characteristics.

§ 6225.0–2 Objectives.

To provide guidelines for the outdoor recreation use of natural areas.

§ 6225.0–5 Definition.

The following types of areas may be established under the regulations of this subpart:

(a) *Research natural areas.* These are established and maintained for the primary purpose of research and education. Scientists and educators are encouraged to use research natural areas in a manner that is nondestructive and consistent with the purpose for which the area is established. The general public may be excluded or restricted where necessary to protect studies or preserve research natural areas. Lands having the following characteristics may qualify:

(1) Typical or unusual faunistic or floristic types, associations, or other biotic phenomena, or

(2) Characteristic or outstanding geologic, pedologic, or aquatic features or processes.

(b) *Outstanding natural areas.* These are established to preserve scenic values and areas of natural wonder. The preservation of these resources in their natural condition is the primary management objective. Access roads, parking areas and public use facilities are normally located on the periphery of the area. The public is encouraged to walk into the area for recreation purposes wherever feasible.

§ 6225.0–6 Policy.

Where appropriate the Bureau shall establish and record areas of sufficient number and size to provide adequately for scientific study, research, recreational use and demonstration purposes. These will include:

(a) The preservation of scenic values, natural wonders and examples of significant natural exosystems.

(b) Research and educational areas for scientists to study the ecology, successional trends, and other aspects of the natural environment.

(c) Preserves for rare and endangered species of plants and animals.

§ 6225.1 Use of natural areas.

No person shall use, occupy, construct or maintain improvements in natural areas in a manner inconsistent with the purpose for which the area is established; nor shall he use, occupy, construct or maintain improvements unless permitted by law or authorized by the regulations of this subpart.

PART 6250—RECREATION ACCESS

Sec.

6250.0–1 Purpose.
6250.0–2 Objective.
6250.0–6 Policy.
6250.1 Use of trails.
6250.1–1 Hiking and horse riding trails.
6250.1–2 Motor trails.

Subpart 6251—Operation of Motorized Vehicles

6251.0–6 Policy.
6251.1 Motorized vehicles.
6251.2 Motorized vehicle events.
6251.4 Off-road travel restrictions.

AUTHORITY: The provisions of this Part 6250 issued under 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6250.0–1 Purpose.

To provide guidelines for provision of access to and limitations on travel across lands.

§ 6250.0–2 Objective.

To assure that persons wishing to use lands have access to them and that outdoor recreation use does not damage the resources.

§ 6250.0–6 Policy.

(a) In cooperation with State and local governments and private individuals and associations, the Bureau will endeavor to provide access for public use and enjoyment of lands with outdoor recreation values.

(b) Roads and trails constructed by the Bureau shall normally be available for public access to the lands. However, lands and roads and trails may be restricted to specified authorized use or no use in the interest of public health and safety or preservation and protection of the lands.

(c) The Bureau shall, where feasible, locate, identify, construct, and maintain hiking, horse riding and motor trails, and shall post appropriate signs or markers and use other means to make the existence of such routes known to the general public.

§ 6250.1 Use of trails.

§ 6250.1–1 Hiking and horse riding trails.

Motorcycles and other motor vehicles are prohibited on trails limited to hiking and horse riding.

§ 6250.1–2 Motor trails.

(a) Motor vehicles shall remain on established routes or trails.

(b) Drivers of motor vehicles shall yield the right-of-way to pedestrians, saddle horses, pack trains and horse-drawn vehicles.

(c) Motor vehicles shall be operated in accordance with the regulations in § 6251.1

Subpart 6251—Operation of Motorized Vehicles

§ 6251.0–6 Policy.

Where appropriate, the Bureau will designate vehicle use sites and areas for the operation of motorized vehicles. Such sites and areas shall be selected from lands having terrain suitable to vehicle capability, with low resource production, erosion and siltation potentials. Selection shall be governed by the ability of the land and resources to withstand and sustain cross-country driving and vehicle use impacts. Lands where scenic qualities or other values would be impaired will not be selected for vehicle use sites and areas. Sites and areas will be designed to:

(a) Provide recreation opportunities for owners of vehicles with off-road vehicle use capability.

(b) Provide public use areas where dune buggies, motorcycles, "jeeps", tote-gotes and other vehicles may be tested and driven under varied conditions.

(c) Concentrate off-road vehicle use into specific areas and sites.

(d) Reduce impacts on other lands and resources by providing suitable locations for cross-country driving.

§ 6251.1 Motorized vehicles.

The operation of motorized vehicles for outdoor recreation and other purposes is permitted within the following limits unless more restrictive regulations of this subpart apply:

(a) Operators shall maintain safe speeds and drive in a prudent and safe manner with full consideration and regard to public safety and property.

(b) Drivers may be restricted to established roads and motor trails or existing vehicle tracks.

(c) Operators of vehicles shall at all times drive in a manner as to prevent destruction of the land or vegetative resources.

(d) Operators may not drive their vehicles where prohibited by posting or other public notice.

(e) All vehicles shall be maintained in a safe operating condition for public safety and the prevention of fire.

§ 6251.2 Motorized vehicle events.

(a) The authorized officer may issue permits in accordance with the regulations in Subpart 2236 of Part 2230 of this chapter for the operation of motor vehicles for organized races, rallies, meets, endurance contests, and other motorized vehicular events.

(b) Permits may be issued to provide a suitable location for motorized vehicular events. Any permit issued will contain provisions to:

(1) Protect the public and participants.

(2) Minimize damage to the land and its resources.

§ 6251.4 Off-road travel—restrictions.

(a) The authorized officer may specify areas where the casual operation of motorized vehicles for recreational or other purposes will be restricted if the lands are subject to (1) resource damage and soil erosion, or (2) loss of primitive, scenic or other environmental qualities.

(b) Areas where such use is restricted will be posted by means of boundary signs and identified on maps and diagrams of sufficient detail to make the existence and locations known to the general public.

PART 6260—VISITOR MANAGEMENT

Subpart 6261—Rules for Visitor Use of Developed Recreation Sites

Sec.

6261.0–1 Purpose.
6261.0–2 Objective.
6261.0–6 Compliance.
6261.1 Sanitation.
6261.2 Audio devices.
6261.3 Occupancy and use.
6261.4 Vehicles.
6261.5 Public health, safety and comfort.
6261.6 Public property and resources.

AUTHORITY: The provisions of this Part 6260 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

Subpart 6261—Rules for Visitor Use of Developed Recreation Sites

§ 6261.0–1 Purpose.

The rules of this subpart are designed for the comfort and well-being of the public in its use of developed outdoor recreation sites and outdoor recreation facilities provided by the Bureau.

§ 6261.0–2 Objective.

To promote orderly occupancy and use of developed recreation sites, and other locations where the Bureau has installed outdoor recreation facilities for public use.

§ 6261.0–6 Compliance.

Rules for public use and occupancy of developed recreation sites, and other locations where the Bureau has installed outdoor recreation facilities, will be posted in conspicuous locations. Failure to comply with rules so posted may result in denial of the use of developed recreation sites and facilities and such other further action as may be required.

§ 6261.1 Sanitation.

All persons shall:

(a) Dispose of all garbage, paper, cans, bottles, waste materials, and rubbish by burning in authorized fires, removal from the site, or by disposal at places which may be provided for such purpose.

(b) Drain or dump refuse or waste from any trailer or other vehicle only in places or receptacles provided for such use.

(c) Refrain from cleaning fish or food or washing clothing or articles of household use at hydrants or at water faucets located in restrooms.

(d) Avoid polluting or contaminating water supplies or water used for human consumption.

(e) Deposit any body waste only into toilet receptacles provided for that purpose. Deposit of any bottles, cans, cloths, rags, metal, wood, stone or other damaging substance in any of the receptacles in toilet structures is prohibited.

(f) Use refuse containers or other refuse facilities only for the purposes for which they are supplied. The dumping of household or commercial garbage or trash brought from private property is prohibited.

§ 6261.2 Audio devices.

The following acts are prohibited in developed recreation sites:

(a) Operating or using any audio devices, including radio, television, and musical instruments, and other noise-producing devices, such as electrical generator plants and equipment driven by motors or engines, in a manner to annoy other persons.

(b) Operating or using public address systems, whether fixed, portable, or vehicle mounted unless approved by the authorized officer.

(c) Installing aerial or other special radiotelephone or television equipment unless approved by the authorized officer.

§ 6261.3 Occupancy and use.

The following rules apply to the occupancy and use of developed camping and picnicking facilities on the public lands. As a condition to such occupancy and use, the user shall:

(a) Pitch tents or park trailers or place other camping equipment only in places provided for such purposes.

(b) Camp within a campground no longer than the period of time established by the authorized officer.

(c) Attend camping equipment within prescribed time limits. Camping equipment which is unattended for more than posted limits, without permission of the authorized officer, is subject to disposition under State and local laws.

(d) Before departure remove equipment and clean any rubbish from the place occupied for recreation purposes.

(e) Build fires only in stoves, grills, fireplaces, or fire rings provided for such purposes.

(f) Camp overnight only in places provided or posted for such purposes.

(g) Maintain reasonable quiet in campgrounds between evening and morning hours as posted.

(h) Enter or remain in campgrounds closed during established night periods only as an occupant, or to visit persons occupying the campground for camping purposes.

(i) Not enter or use a site or a portion of a site closed to public use.

§ 6261.4 Vehicles.

The following rules apply to driving and operation of motor vehicles in developed recreation sites in the interest of public safety and comfort.

Motor vehicles and trailers shall not be:

(a) Driven or operated in excess of posted speeds.

(b) Driven or parked except on roads and places provided for this purpose.

(c) Driven or operated in willful disregard of the rights or safety of others or without due caution and at a speed, or in a manner, so as to endanger, or be likely to endanger, any person or property.

(d) Driven or operated on trails within developed recreation sites, except for purposes of maintaining such sites and facilities.

(e) Driven or operated in developed recreation sites, for any purpose other than access to or from the site.

(f) Driven or operated in developed recreation sites closed to such entrance by the authorized officer.

(g) Driven or operated at any time without a muffler in working order, or in such a manner as to create excessive or unusual noise or annoying smoke or dust, or using a muffler cutoff, bypass, or similar device.

(h) Unnecessarily accelerated when not moving or approaching or leaving a stopping place.

§ 6261.5 Public health, safety and comfort.

The following rules are adopted to further the public health, safety and comfort in the use and occupancy of developed recreation sites and facilities. The user shall not:

(a) Discharge firearms, firecrackers, rockets, or other fireworks in developed recreation sites.

(b) Be accompanied by a dog, cat, or other animal unless it is crated, caged, leashed, or otherwise under physical restrictive control at all times.

(c) Bring animals, other than Seeing Eye dogs, to swimming areas.

(d) Bring saddle, pack, or draft animals into any developed recreation site except where specifically permitted or authorized

§ 6261.6 Public property and resources.

The following rules are adopted to protect public property and to preserve the resources in developed recreation sites for public use and enjoyment. The user shall not:

(a) Intentionally or wantonly destroy, deface, or remove any natural feature or plant.

(b) Intentionally or wantonly destroy, injure, deface, remove, or disturb in any manner any public building, sign, equipment, marker, or other structure or property.

PART 6270—RECREATION DEVELOPMENT

Subpart 6273—Transfer of Responsibility

§ 6273.0–6 Policy.

State and local governments and private individuals and agencies are encouraged to develop and manage recreation facilities on the public lands for public recreation use and services. Such developments and operations shall be consistent with long-range management plans and authorities of the Bureau, and consistent with leases, licenses, and permits issued under the authority of the regulations in this part.

SUBCHAPTER G (7000) [RESERVED]

SUBCHAPTER H (8000) [RESERVED]

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9100—Engineering

PART 9180—CADASTRAL SURVEY

Subpart 9180—Cadastral Surveys; General

Sec.
9180.0–2 Objectives.
9180.0–3 Authority.
9180.1 Interpretation of survey records.
9180.1–1 Meridians.

Subpart 9183—Special Surveys

9183.0–2 Objectives.

Subpart 9185—Instructions and Methods

9185.1 Applications.
9185.1–1 Surveys.
9185.1–2 Resurveys.
9185.1–3 Mining claims.
9185.2 Requirements for surveys.
9185.2–1 [Reserved]
9185.2–2 Lands omitted from original survey.
9185.3 Requirements for resurveys; without cost to applicant.
9185.3–1 Eligibility.
9185.3–2 Showing required.
9185.3–3 Majority of land owners.
9185.4 Requirements for resurvey; with cost prorated.
9185.4–1 Estimate of cost.
9185.4–2 Showing required.
9185.4–3 Three-fourths of land owners.

AUTHORITY: The provisions of this Part 9180 issued under R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 9180—Cadastral Surveys; General

§ 9180.0–2 Objectives.

(a) *Alaska; existing surveys and extension 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.

(b) *Resurveys.* 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.

§ 9180.0–3 Authority.

(a) *Delegation to Director, Bureau of Land Management.* (1) 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.

(2) 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 State Director.

(b) *Alaska.* The rectangular system of survey of the public lands was extended to the State 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.

(1) Administration of the public land surveying activities in Alaska is under the general supervision of the State Director, Bureau of Land Management, at Anchorage, Alaska. The office, in which the records relating to the public land surveys in the State are maintained, is located at Anchorage, Alaska. Correspondence relating to local survey matters should be addressed to the State Director, Juneau, Alaska.

(c) *Resurvey of township*—(1) *Without cost to applicant when title to at least 50 percent of the area is in the*

United States. 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.

(2) *Cost to be prorated between applicants and United States, when more than 50 percent of the area is privately owned.* (i) 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.

(ii) Under the act mentioned, and upon the application of the owners of three-fourths of the privately owned lands 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 State Director, 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.

(iii) 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.

(40 Stat. 965, as amended; 43 U.S.C. 773)

§ 9180.1 Interpretation of survey records.

§ 9180.1–1 Meridians.

(a) *Alaska.* 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.

(b) *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.

Subpart 9183—Special Surveys

§ 9183.0–2 Objectives.

Information respecting special surveys of soldiers' additional entries, homesites, homesteads, and trade and manufacturing sites is given in Subparts 2610, 2511, 2562, and 2730 of this chapter, respectively.

Subpart 9185—Instructions and Methods

§ 9185.1 Applications.

§ 9185.1–1 Surveys.

(a) *Original surveys.* 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 Director 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.

(b) *Lands omitted from original survey.* 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 Director for the State in which the lands are situated.

§ 9185.1–2 Resurveys.

(a) *Filing of applications for survey without cost to applicant.* The application prepared in accordance with this part, should be submitted to the State Director for the State in which the lands are situated.

(b) *Filing of applications for survey with cost prorated.* Applications for resurvey based upon the provisions of the act of September 21, 1918, prepared in accordance with this part should be submitted to the State Director 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.

(40 Stat. 965, as amended; 43 U.S.C. 773)

§ 9185.1–3 Mining claims.

(a) *Application for survey.* Application for the survey of a mining claim should be filed with the State Director for the State in which the claim is situated.

(b) *Mineral surveyors.* The appointment of mineral surveyors pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39) and § 3861.6–1 of this chapter, will be made by the State Director; application for such appointment should be made to the appropriate State Director.

§ 9185.2 Requirements for surveys.

§ 9185.2–1 [Reserved]

§ 9185.2–2 Lands omitted from original survey.

(a) *Notice of intended application.* 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) *Form of notice.* 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 Director. 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.

(c) *Evidence required as to character of land in 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.

(d) *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.

(e) *Cost of survey.* In the event of approval of the application, the costs of the survey will be borne by the Government.

(f) *No preference right.* 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.

§ 9185.3 Requirements for resurveys; without cost to applicant.

§ 9185.3–1 Eligibility.

(a) *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.

(b) *Determined by physical character of remaining public land.* 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.

(c) *Small areas.* In the application of the terms of the act of March 3, 1909 (35 Stat. 845), as amended, 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.

§ 9185.3–2 Showing required.

(a) *Necessity.* 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.

(b) *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.

§ 9185.3–3 Majority of land owners.

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.

§ 9185.4 Requirements for resurvey; with cost prorated.

§ 9185.4–1 Estimate of cost.

(a) The cost of resurvey 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 State Director will be restricted to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. 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.

(d) Deposit required: 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.

(40 Stat. 965, as amended; 43 U.S.C. 773)

§ 9185.4–2 Showing required.

(a) *Necessity.* 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.

(b) *Ownership of land.* 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. Failure to comply with the condition set forth in 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.

(40 Stat. 965, as amended; 43 U.S.C. 773)

§ 9185.4–3 Three-fourths of land owners.

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.

(40 Stat. 965, as amended; 43 U.S.C. 773)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

Sec.

9239.0-3 Authority.
9239.0-7 Penalty for unauthorized removal of material.
9239.0-8 Measure of damages.
9239.0-9 Sale, lease, permit, or license to trespassers.
9239.1 Timber.
9239.1-1 Unauthorized cutting of timber.
9239.1-2 Penalty for unauthorized cutting of timber.
9239.1-3 Measure of damages, when not prescribed by State law.
9239.2 Unlawful enclosures or occupancy.
9239.2-1 Enclosures of public lands in specified cases declared unlawful.
9239.2-2 Duty of district attorney.
9239.2-3 Responsibility for execution of law.
9239.2-4 Filing of charges or complaints.
9239.2-5 Settlement and free passage over public lands not to be obstructed.
9239.3 Grazing.
9239.3-1 Outside grazing districts.
9239.3-2 Inside grazing districts.
9239.3-3 Alaska.
9239.5 Minerals.
9239.5-1 Ores.
9239.5-2 Oil.
9239.5-3 Coal.
9239.6 Materials.
9239.6-1 Turpentine.
9239.7 Right-of-way.
9239.7-1 O&C lands.

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.0-3 Authority.

(a) Sections 9239.0-3 to 9239.7 are issued under the authority of R.S. 2478; 43 U.S.C. 1201.

(b) 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:

(1) Timber trespass. 18 U.S.C. 1852, 1853.

(2) Turpentine trespass. 18 U.S.C. 1854.

(3) Coal trespass. 18 U.S.C. 1851.

§ 9239.0-7 Penalty for unauthorized removal of material.

The extraction, severance, injury, or removal of timber or mineral materials from public lands 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 prosecution for such unlawful acts.

§ 9239.0-8 Measure of damage.

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, unless by Federal law a different rule is prescribed or authorized.

§ 9239.0-9 Sale, lease, permit, or license to trespassers.

(a) For the purpose of this section, a trespasser is any person, partnership, association, or corporation responsible for the unlawful use of, or injury to, property of the United States.

(b) The authorized officer may refuse to sell to a trespasser timber or materials, or to issue to him a lease, permit, or license if, after a demand for payment has been served by certified or registered mail on the trespasser, a satisfactory arrangement for payment of the debt due the United States has not been made within reasonable time, and there is reason for the authorized officer to believe payment will not be made. Satisfactory arrangement shall be deemed to have been made by:

(1) Payment by the trespasser of the amount found to be due by the authorized officer, by a final judgment of a court, or pursuant to a compromise settlement accepted by the United States; or

(2) Execution by the trespasser of a promissory note or installment agreement, satisfactory to the authorized officer, so long as the agreed-upon payments are made on schedule; or

(3) Delivery by the trespasser of a bond guaranteeing payment to the United States of the amount found to be due by the authorized officer or by a court of competent jurisdiction; or

(4) Cancellation of the debt due the United States by a discharge in bankruptcy.

(c) Notwithstanding the provisions of paragraph (b) of this section, the authorized officer may sell to a trespasser timber or materials or issue to him a lease, permit, or license for materials despite lack of a satisfactory arrangement for payment if such officer establishes in writing that:

(1) There is no other qualified bidder or no other qualified bidder will meet the high bid, and

(2) The sale, lease, permit, or license to the trespasser is necessary to protect substantial interests of the United States either by preventing deterioration of, or damage to, resources of the United States or by accepting an advantageous offer, and

(3) The timber management or other resource management program of the United States will not be adversely affected by the action.

§ 9239.1 Timber.

§ 9239.1-1 Unauthorized cutting of timber.

(a) The cutting or removing of the timber referred to in §§ 5511.1 to 5511.1-4 of this chapter in any other manner than that authorized by such sections will be considered a trespass.

(b) The cutting of timber for sale and speculation, or for use by others than the permittee, is strictly prohibited.

(c) Where permits are secured by fraud or timber is not used in accordance with § 5511.1-4 of this chapter the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

§ 9239.1-2 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 §§ 5511.2 to 5511.2-6 of this chapter will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under Title 18, U.S. Code, or under State law.

§ 9239.1-3 Measure of damages, when not prescribed by State law.

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.

§ 9239.2 Unlawful enclosures or occupancy.

§ 9239.2-1 Enclosures of public lands in specified cases declared unlawful.

(a) 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 of erection thereof.

(b) Section 4 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1271; 43 U.S.C. 315o) 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.

(c) Section 10, paragraph (4) of the Federal Range Code, § 4112.3 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."

(d) 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."

(e) 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).

§ 9239.2–2 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.

§ 9239.2–3 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.

§ 9239.2–4 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 Director. 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.

§ 9239.2–5 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.

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the District manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the District manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the District manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the District manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) 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 on his lien with the District manager 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.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may, take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his repre-

sentative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the District manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c)(2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. 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.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license 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, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the District manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3-2 shall be made in accordance with the applicable provisions of § 4122.2-5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

§ 9239.3-3 Alaska.

(a) *Reindeer.* (1) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in Subpart 4132 of this chapter, is unlawful and is prohibited.

(2) Any person who wilfully violates any of the rules and regulations in Subpart 4132 of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than $500.

(b) *Livestock.* (1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated in his lease shall be in default and shall be subject to the provisions of § 4131.2-7(g) and (h) of this chapter. Under section 2 of the act, any person who wilfully grazes livestock on public lands without authority, shall, upon conviction, be punished by a fine of not more than $500.

(2) Whenever it appears that a violation exists the authorized officer shall serve written notice upon the alleged violator. The notice shall set forth the act or omission constituting such violation and will allow the party involved a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance. If the showing is satisfactory to the authorized officer he will close the case, if satisfactory showing is not made within the time allowed, the violation alleged in the notice will be deemed to have been wilful.

(3) Where the owner of the trespassing livestock, or his representative, is known, the authorized officer shall determine the amount of the damage to the public land and other property of the United States and shall make a demand for payment upon the alleged violator setting forth the foregoing values including the value of the forage consumed. Such forage value shall be computed at the commercial rates, if susceptible to proof by reasonably available and reliable data; otherwise, a minimum charge of $2 per animal unit month for trespass not clearly wilful will be made Where the trespasses are repeated and/or wilful, a minimum charge of $4 per animal unit month for forage consumed will be charged. All offers for settlement for value of forage consumed and for damage to the public land or to other property of the United States resulting from an alleged violation of any provision of the act or regulations found within § 4131.0-3 et seq. of this chapter in the amount of $2,000 or less may be accepted by the authorized officer. Offers for settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for consumed forage and damage

involved until finally accepted by the authorized officer or the State Director, and in no event will it relieve the violator of criminal liability. No lease 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.

§ 9239.5 Minerals.

§ 9239.5–1 Ores.

(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).

§ 9239.5–2 Oil.

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).

§ 9239.5–3 Coal.

(a) *Determination of payment in 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:

(1) 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).

(2) 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).

(b) *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.

(c) *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.

(d) *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.

(e) *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.

§ 9239.6 Materials.

§ 9239.6–1 Turpentine.

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).

§ 9239.7 Right-of-way.

§ 9239.7–1 O&C lands.

The mere filing of an application under Subpart 2800 of this chapter 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 Director, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or (c) the State Director 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.

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