

prove lands withdrawn as or in connection with public water reserves, under the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141-143), or any other act, by filing application for such permission under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), in accordance with the regulations under said act, as found in §§ 292.10-292.17 of this chapter.

[Circ. 491, Feb. 24, 1928]

LEASING OF PUBLIC LANDS NEAR OR ADJACENT TO MINERAL, MEDICINAL, OR OTHER SPRINGS

§ 82.4 *Governing regulations.* The matter of leasing public lands near or adjacent to mineral, medicinal, or other springs, for the erection of bathhouses, hotels, or other improvements for the accommodation of the public is governed by §§ 292.18-292.26 of this chapter.

[Circ. 491, Feb. 24, 1928]

## SUBCHAPTER B—APPLICATIONS AND ENTRIES

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**AUTHORITY:** §§ 101.1 to 101.21 issued under R. S. 2478; 43 U. S. C. 1201.

**CROSS REFERENCES:** For amendments of entries, see Part 104 of this chapter. For applications and entries, Alaska, see Part 60 of this chapter.

#### EXECUTION AND FILING OF APPLICATIONS

§ 101.1 *Time limit for filing applications.* (a) The manager will reject all applications to make entry which are executed more than 10 days prior to filing.

(b) Such rejections should be subject to the usual right of appeal; also subject to the right to file a new and properly executed application, or to reexecute the rejected application, prior to the intervention of any valid adverse claim.

(c) The manager will accept as filed within the time named in paragraph (a) of this section all applications to enter which were deposited in the mails within 10 days from the date of execution.

[Circ. 352, Sept. 8, 1914, as amended by Circ. 583, Jan. 15, 1918]

**CROSS REFERENCE:** For applications, Alaska, see § 60.1 of this chapter.

#### SEGREGATION OF LAND UNDER APPLICATION

§ 101.2 *Payments required to effect segregation of land.* (a) The minimum

fees or payments necessary to gain segregative effect for agricultural and other kinds of applications or selections shall be those which are prescribed by existing regulations in connection with the particular application or selection that may be involved; *Provided, however*, That where the laws or regulations so plainly express the full amount of fees or other payments required to be made at the time of filing, that no mistaken interpretation thereof could reasonably be made, the amounts tendered by the conflicting applicants when filing their applications may be an element for consideration in the adjudication of their respective priorities, notwithstanding a tender of the minimum fee has been made by all of them.

(b) The minimum fee, as in the case of all other fees, must be in the form prescribed by § 216.30 of this chapter. [Circ. 1158, Aug. 1, 1928]

CROSS REFERENCE: For rule of priority in the case of mineral permits and leases, see § 102.35 of this chapter.

#### NOTATION OF RIGHTS-OF-WAY

§ 101.3 *Notations to be made on entry papers and notice of allowance.* (a) In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, the manager is directed to note upon the original entry papers and upon the notice of allowance of the application (Form 4-279) issued to the entryman, a reference to such right-of-way.

(b) He will make no such notation upon the final entry papers unless the right-of-way has been granted under an act of Congress which does not in terms protect the grantee against subsequent adverse rights, in which case he will place the same notation as to right-of-way upon the final entry papers, so that the reservation of the right-of-way will be made in the patent, when issued (23 L. D. 67).

[Reg. Nov. 3, 1909, as amended by Reg. Jan. 19, 1910]

§ 101.4 *When notation is required.* The manager will make notations of rights-of-way on entry papers, only where his records show that the land involved, or some part of it, is covered by an approved application for right-of-way. In this connection, attention is directed to the decision of the United States Supreme Court in the case of Minneapolis, St. Paul & Sault Ste. Marie Railway

Co. v. Doughty (208 U. S. 251, 52 L. ed. 474). Applicants to enter public lands that are affected by a mere pending application for right-of-way, should be verbally informed thereof by the manager, and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine

[Circ. 78, Feb. 2, 1912]

§ 101.5 *When notation is not required.*

(a) The Secretary of the Interior having held, in the case of Dunlap v. Shingle Springs and Placerville R. R. (23 L. D. 67) that "A railroad right-of-way under the act of March 3, 1875, 18 Stat. 482; 43 U. S. C. 934-939, is fully protected by the terms of the act as against subsequent adverse rights, and a reservation of such right-of-way, in final certificates and patents issued for lands traversed thereby, is therefore not necessary and should not be inserted" (syllabus), and having on October 16, 1896 denied a motion for review of said decision, the managers will be governed thereby.

(b) The language of the canal and reservoir right-of-way act of March 3, 1891 (26 Stat. 1101, 1102; 43 U. S. C. 946-949), in reference to this matter, being the same as of the act of 1875, the ruling applies to it as well.

[Reg. Nov. 27, 1896]

#### APPLICATIONS AND SELECTIONS FOR, AND FILINGS AND LOCATIONS UPON, UNSURVEYED LAND

§ 101.6 *Rules to be observed.* To remedy the confusion and uncertainty arising from applications and selections for and filings and locations upon unsurveyed public lands, managers will reject any such application, selection, filing, or location, under whatsoever law permitted, unless it conforms to paragraphs (a) to (e) of this section.

(a) It must contain a description of the land by metes and bounds, with courses, distances, and reference to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts

well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or object need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, water courses, or other natural objects will not be permitted.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished; or, if this can not be done, a statement<sup>1</sup> must be filed setting forth a valid reason therefor.

(c) The address of the claimant must be given, and it shall be the duty of the manager, upon the filing of the township plat in the district land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 30 days. In default of action by the party notified the manager will promptly adjust the claim and report his action to the Bureau of Land Management.

(d) Notice of the application, selection, filing, or location, describing the land as directed in paragraph (a) of this section, must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application, selection, filing, or location, as the case may be.

(e) Wherever, under existing regulations, notice of such application, selection, filing, or location is required to be posted elsewhere than upon the land and published in a newspaper, the description of the tract in the posted and published notice must conform to the requirements of paragraph (a) of this section.

[Reg. Nov. 3, 1909]

<sup>1</sup> 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.

#### APPLICATION IN CONFLICT WITH RESERVOIR SITES

§ 101.7 *Nature of grant for reservoir sites; disposition of applications conflicting with such a grant.* (a) The grant for reservoir sites made by sections 18 to 21, inclusive, of the act of March 3, 1891 (26 Stat. 1101, 1102; 43 U. S. C. 946-949), is an easement only, and not a fee. See § 244.19 of this chapter. The act of May 21, 1930 (46 Stat. 373; 30 U. S. C. 301-306), authorizes the leasing of oil and gas deposits in lands covered by such a grant under certain conditions, to the right-of-way grantee, or his or its successor in interest, as provided in §§ 200.80 to 200.87, inclusive, of this chapter.

(b) An application other than for oil and gas which includes one or more legal subdivisions entirely within the grant of an easement for a reservoir site will be rejected as to such subdivisions. If the application covers legal subdivisions partially within such a grant, it may be allowed as to such subdivisions, in the absence of other objection, subject to the easement.

[Circ. 1683, 13 F. R. 3276]

#### DISPOSITION OF CONFLICTING APPLICATIONS UNDER SECTIONS 8 (b), 14, AND 15 OF THE TAYLOR GRAZING ACT

§ 101.8 *Allowance of applications discretionary with the Secretary of the Interior.* The exchange of privately owned lands under section 8 (b) of the Taylor Grazing Act approved June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), the ordering of public sales under section 14 of the act (48 Stat. 1274; 43 U. S. C. 1171), and the issuance of leases under section 15 (49 Stat. 1978; 43 U. S. C. 315m), thereof are within the discretionary power of the Secretary of the Interior. In adjudicating such applications, consideration will be given to all rights and interests and to all attendant circumstances.

[Circ. 1384a, May 25, 1938; see also item 3 of Note to chapter]

CROSS REFERENCES: See reference at end of § 101.9. Also see § 147.19 of this chapter, as to the issuance of grazing leases for public lands embraced in pending conflicting State exchange applications.

§ 101.9 *Action by manager on conflicting applications.* The manager will not reject an application of the classes mentioned in § 101.8 solely for conflict

with a prior application of such classes, but will suspend it and will attach to the original and each copy a memorandum stating the facts as to the conflict. The manager will forward the original and copies of such applications as directed by the governing regulations.

[Circ. 1384a, May 25, 1938]

CROSS REFERENCE: For "governing regulations", see Parts 146, 160, 250 of this chapter.

#### NAMES OF CLAIMANTS

§ 101.10 *Full names of claimants should appear in applications, final certificates, and patents.* (a) That patents may issue in the full and proper names of claimants, the full names of all claimants who submit final proofs should be obtained. Patents issued to claimants by abbreviations of their names (such as "Ed," "Al," "Joe," etc.) and by mere initials often cause trouble at a future time for the patentees and those claiming under them.

(b) An application to enter public land will not be rejected, however, on the ground that the applicant did not sign his name in full.

[Circ. 378, Jan. 29, 1915]

CROSS REFERENCE: For patents, see Part 108 of this chapter.

#### ENTRIES FOR LANDS IN MORE THAN ONE LAND DISTRICT

§ 101.11 *Governing regulations.* Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by §§ 101.12 to 101.18.

[Circ. 505, Sept. 22, 1916]

§ 101.12 *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.

[Circ. 505, Sept. 22, 1916]

§ 101.13 *Only one proof and publication necessary; separate final certificates to issue.* In submitting proof, the two entries should be treated as one, and the published notice of intention should describe all the land and specify in which land district each part of the claim is located. The notice must be posted in each office, a copy thereof being forwarded to the other office by the office

issuing the notice. If the notice is published and posted 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.

[Circ. 505, Sept. 22, 1916]

§ 101.14 *Appeal or further showing, when proof is rejected.* Should a proof be rejected by the office from which the notice of intention is issued, the other office should be so advised, but the appeal or further showing must be filed in the office which rejected the proof.

[Circ. 505, Sept. 22, 1916]

§ 101.15 *Annual proofs on desert-land entry.* When a desert-land entry embraces land in more than one district, the required annual proofs may be filed in either district, provided proper reference is made to the portion of the entry in the adjoining district, and the entryman must notify the manager of the adjoining district by letter of the date when the annual proof is filed.

[Circ. 505, Sept. 22, 1916]

CROSS REFERENCE: For desert-land entries, see Part 232 of this chapter.

§ 101.16 *Mining claims.*<sup>1</sup> In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, the proceedings in each office shall be conducted in all respects in conformity with law. 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. Notice of application for patent should be posted in each office and remain posted for the period required by law. However, only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the state-

<sup>1</sup> 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.

ments 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 and posting in office will be further governed by the provisions of § 101.13.

[Circ. 505, Sept. 22, 1916; see also item 3 of Note to chapter]

CROSS REFERENCE: For mining claims, see Part 185 of this chapter.

§ 101.17 *Timber and stone entries.* Sections 101.12 and 101.13 are applicable to timber and stone entries, except that on such entries no commissions are collected.

[Circ. 505, Sept. 22, 1916]

CROSS REFERENCE: For timber and stone entries, see Part 285 of this chapter.

§ 101.18 *Public offerings.* Applications for public offerings under section 2455, Revised Statutes, as amended (43 U. S. C. 1171), cannot be considered unless all the land lies in one land district.

[Circ. 505, Sept. 22, 1916]

CROSS REFERENCE: For public offerings, see Part 250 of this chapter.

#### APPLICATIONS FOR LANDS CONTAINING RANGE OR OTHER IMPROVEMENTS

§ 101.20 *Action on applications.* When an application under the public land laws for lands upon which range or other improvements have been placed by the United States, or pursuant to an agreement with it, is filed in a district land office or other authorized office of the Bureau of Land Management, it should be referred to the appropriate official for determination as to whether it may be allowed, notwithstanding such improvements, and if so, with or without a reservation. No right is acquired to such lands merely by the filing of an application, since any part of a legal subdivision thus improved is considered appropriated within the meaning of sections 7, 8, and 14 of the Taylor Grazing Act. (See 84 F. 2d, 232 and 44 L. D. 359, 513.)

[Circ. 1716, 13 F. R. 9564]

#### OATHS

§ 101.21 *Elimination of the requirements of oaths on written statements in*

*public land matters.* (a) By section 1 of the act of June 3, 1948 (62 Stat. 301; 43 U. S. C. 1211), written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require. Accordingly, all written statements in public land matters within the jurisdiction of the Department of the Interior required prior to July 28, 1948, by law, or this chapter, to be made under oaths, need no longer be made under oath except as provided in Part 221, Rules of Practice, Part 222, Government contests, and Part 223, Witnesses, and with the further exception that final proofs required by R. S. 2294 (43 U. S. C. sec. 254) as amended and supplemented, and the regulations thereunder, to be taken in affidavit form before designated officers shall continue to be taken in that form before such officers. (See §§ 52.1, 65.23, 166.48, 232.30, 285.22 and 210.1 of this chapter.)

(b) Unsworn statements in public land matters are subject to 18 U. S. C. 1001. [Circ. 1689, 13 F. R. 4637; see also item 3 of Note to chapter]

## Part 102—Agricultural Entries on Mineral Lands

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