1949 EDITION

CODE OF FEDERAL REGULATIONS

Title 43—Public Lands: Interior

CODE

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REGULATIONS

1949 Edition

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Preface

The Code of Federal Regulations, 1949 Edition, contains a codification of the Federal administrative rules and regulations, general and permanent in nature, duly promulgated on or before December 31, 1948, and effective as to facts arising on and after January 1, 1949. This is the second edition of the Code of Federal Regulations. The first edition, similar in scope and arrangement, was compiled as of June 1, 1938. Reference to the first edition and the supplements thereto should be made for Federal administrative rules affecting facts or circumstances which arose prior to January 1, 1949.

Current regulatory material appearing in the daily issues of the Federal Register is keyed to this second edition and serves as a daily supplement to the Code. Each book of this second edition is provided with a pocket for the insertion of the annual cumulative supplement thereto. Each book also contains a special subject index. The General Index to the entire edition is published in a separate volume together with the General Preface to the 1949 Edition and a reprint of the general preface to the first edition of the Code of Federal Regulations.

This book contains the rules and regulations constituting Title 43 of the Code of Federal Regulations, 1949 Edition. Each section of the Code is accompanied by a citation of the source document and of the specific authority under which it was prescribed. All citations of statutory authority and of statutes interpreted or applied by the codified material are tabulated under Title 2 in this edition. This tabulation is designed to lead users from the Federal statutes codified in the United States Code to the related administrative legislation codified in this edition of the Code of Federal Regulations. Title 3 of this edition consists of a tabulation of Proclamations, Executive orders, and similar documents promulgated by the President, which are cited or otherwise included in the 1949 Edition. Title 3 therefore serves as a guide leading from such Presidential documents to related or dependent codified material.

The 1949 Edition is published as a special edition of the Federal Register, dated January 1, 1949, pursuant to Part 2 of the regulations of the Administrative Committee of the Federal Register approved by the President October 11, 1948 (13 F. R. 5935; 1 CFR Part 2), under authority contained in section 11 (d) of the Federal Register Act, as amended (50 Stat. 305; 44 U. S. C. 311 (d)). The contents of the Federal Register and of this Code are by law prima facie evidence of the text of the original documents and are required to be judicially noticed (49 Stat. 502, 50 Stat. 304; 44 U. S. C. 307, 311 (c)).

This edition should be cited "CFR." Thus the approved abbreviated citation of § 1.1 in Title 43 hereof would be "43 CFR 1.1."

B. R. KENNEDY
D. C. EBERHART

DECEMBER 6, 1949.

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Title 43—Public Lands: Interior

CROSS REFERENCES: Canal Zone regulations relating to public lands; military and naval reservation: See Panama Canal, 35 CFR Part 21.

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NOTE: Other regulations issued by the Department of the Interior appear in Title 25, Title 30, Title 32, Chapter III; Title 36, Chapter I; Title 48; Title 50, Chapter I.

Subtitle A—Office of the Secretary of the Interior

Part 1—Practitioners

AUTHORITY: §§ 1.1 to 1.14 issued under sec. 5, 23 Stat. 101; 5 U. S. C. 493.

SOURCE: §§ 1.1 to 1.14 appear at 8 F. R. 7023, except as noted following sections affected.

§ 1.1 *Purpose.* This part is prescribed to govern practitioners representing parties in proceedings before the Department of the Interior.

§ 1.2 *Definitions.* As used in this part, unless the context or subject matter otherwise requires:

(a) "Committee" means the Committee on Practitioners.

(b) "Department" includes not only the Office of the Secretary of the Interior, but also any office of the Department of the Interior, in Washington, D. C., and elsewhere.

(c) "Party" includes applicant, claimant, or anyone whose interests are presented to this Department for adjudication.

(d) "Practitioner" means any individual who under this part may act in a representative capacity in practice before the Department; but no individual while acting exclusively on his own behalf shall be considered a practitioner.

(e) "Practice" relates only to action by practitioners with respect to the process of adjudication.

§ 1.3 *Committee on Practitioners.* A Committee on Practitioners composed of five members is hereby created. The Solicitor of the Department, ex officio, shall be a member and the chairman of the Committee. The other four members shall be appointed by the Secretary of the Interior. The Committee shall, by a majority of those present, act at such times as it may designate or at the call of the chairman, a quorum to consist of three members. Hearings may be held

before such persons and at such places and times as the Committee may designate. In administering its functions, the Committee may call upon any bureau of the Department for assistance, including any investigation. The Committee may delegate to one of its members or any employee of the Department authority to pass upon applications for admission and routine matters generally. Except as otherwise specifically provided, the Committee shall administer all functions under this part.

§ 1.4 *Who may practice.* (a) Any individual who has been admitted to practice before the Department or any of its bureaus under any prior regulations and who is in good standing at the effective date of this part will be permitted to practice before the Department under this part.

(b) Any individual who is a member in good standing of the bar of the highest court of a State, Territory or the District of Columbia will be permitted to practice without filing an application for such privilege. However, in the discretion of the Committee, or any hearing officer of the Department as to a particular matter pending before him, an individual claiming such privilege may be required to file a written statement concerning his status as an attorney, his character and repute, and setting forth such other information as may be required of him. The Committee or the hearing officer may permit such individual to practice in a particular matter subject to his filing the required statement and to any subsequent action by the Committee or the Secretary.

(c) In particular cases, the Committee in its discretion may admit to practice an individual not admitted to the bar upon a clear showing that, by virtue of his peculiar technical knowledge and experience, he is specially qualified to render valuable service to parties before the Department. Such privilege will be conferred only in unusual circumstances. Such an individual, seeking admission with respect to a matter pending in the Bituminous Coal Division may be granted permission to act by the Committee or a hearing officer of that Division in particular matters pending further action upon his application for admission or subject to its being filed within such time as may then be fixed.

(d) Any individual, not admitted to the bar, will be permitted to act as a practitioner in a particular matter if the party he represents is within one of the following groups: (1) a member of his family; (2) a partnership of which he is a member; (3) a receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (4) the lessee of a mineral lease which is subject to an operating agreement or sublease approved by the Department, which grants to such individual a power of attorney; (5) a Federal, State, district, territorial, or local government or an agency thereof, or a government corporation, or a district or advisory board established pursuant to statute. Where a corporation, business trust, or an association is a party, or a fiduciary within the meaning of subparagraph (3) of this paragraph, or an operator within the meaning of subparagraph (4) of this paragraph, any of its officers or regular full-time employees may act as the practitioner in the case.

§ 1.5 *Disqualifications.* (a) No individual who is an officer or a clerk or who is in regular full-time employment in any other place of trust or profit under the Government of the United States or of the District of Columbia, including any branch or any government corporation thereof, will be permitted to practice before this Department, except in the performance of his proper official duties, in relation to any proceeding or other matter or thing in which the United States is a party, or directly or indirectly interested: *Provided*, That, upon a proper showing that he is otherwise qualified to act as a practitioner and that his services are without compensation, the Committee may permit such an individual to appear in particular cases, in which event the Committee shall inform his client of its action. This paragraph shall not apply to any person or class of persons specifically declared by Congress to be exempt from the scope of section 113 of the Criminal Code (act of March 4, 1909, 35 Stat. 1088, 1109, 18 U. S. C. 203).

(b) No individual holding any such office or place of trust or profit will be permitted, while holding such position, to act as a practitioner to prosecute, or assist in the prosecution of, a claim against the United States, except in the performance of his proper official duties; nor will he be permitted to act as such, within two years next after he shall have ceased to hold such position, as to any such claim which was pending while he

held such position. This paragraph shall not apply to any person or class of persons specifically declared by Congress to be exempt from the scope of section 109 of the Criminal Code (act of March 4, 1909, 35 Stat. 1088, 1107–1108, 18 U. S. C. 198), or R. S. 190 (5 U. S. C. 99).

(c) No officer, employee, or other individual holding any place of trust or profit under the Department of the Interior, nor the spouse residing with any such person, will be permitted to act as a practitioner in any case before the Department.

(d) No individual shall act with respect to any matter to which as an officer, employee, or holder of any place of trust or profit under the Government of the United States or of the District of Columbia, including any branch or any Government corporation thereof, he personally gave consideration or as to the facts of which he personally gained knowledge while in the Government service.

No person shall knowingly assist or accept assistance from or share fees with any person with respect to any matter before the Department to which either of them personally gave consideration or as to the facts of which either of them personally gained knowledge while in the Government service.

[8 F. R. 7023, as amended by Order 2406, 13 F. R. 451]

CROSS REFERENCE: For attorneys and other practitioners acting as notaries in same case, see § 221.89a of this title.

§ 1.6 *Former employees or their spouses.* (a) A former officer or employee of the Department of the Interior may not, without the prior approval of the Committee on Practitioners, appear before the Department in a representative capacity, or render any assistance to persons other than personnel of the Department, with respect to any matter which was pending before the Department during the period of his employment. In applying for such approval, he shall file a certificate or affidavit stating: (1) His former position with the Department; (2) the nature of the matter in connection with which he desires to act; (3) the extent, if any, to which he had knowledge of, or was responsible for, or gave personal consideration to, or performed work that was related in any way to, such matter during the period of his employment; and (4) the circumstances surrounding his employment to handle the matter.

(b) The Committee shall disapprove an application submitted pursuant to paragraph (a) of this section if the Committee concludes that the proposed representation or assistance would be unlawful, unethical, or contrary to the public interest.

(c) The limitations imposed in this section with respect to former officers or employees of the Department of the Interior are likewise applicable to the spouses of former officers or employees. In submitting a certificate or affidavit under paragraph (a) of this section, the spouse of a former officer or employee will supply, with respect to subparagraphs (1) and (3), data concerning the former officer or employee.

[Order 2455, 13 F. R. 4597]

§ 1.7 *Statement upon appearance.* Except as otherwise provided in this part, upon the first appearance of a practitioner in any matter, he shall file a statement in the case setting forth (a) his name and address; (b) where admitted to the bar, or if he is not an attorney, the facts showing that he is within one of the categories of those who may also practice under these regulations; (c) the name and address and the interest of the party whom he is representing.

§ 1.8 *Practitioner's signature to constitute a certificate.* Every paper prepared or filed by a practitioner shall bear his signature unless it already bears the signature of a practitioner of record in the matter. Such signature shall constitute his certificate (a) that under this part and the law, he is authorized and qualified to represent the particular party in that matter; and (b) that he has read the paper, that to the best of his knowledge, information, and belief there is good ground to support its contents, that it contains no scandalous or indecent matter, and that it is not interposed for delay.

§ 1.9 *Grounds for disciplinary proceedings.* Disciplinary proceedings may be instituted against anyone acting as a practitioner under this part on grounds that he is incompetent, disreputable, unethical, or unprofessional, or that he is practicing without authority under this part, or that he has violated any provision of the laws or regulations governing practice before this Department or that he has been disbarred or suspended by any court or administrative agency.

§ 1.10 *Attorney for the Department.* Whenever in the discretion of the Committee, the circumstances warrant consideration of the question whether disciplinary proceedings should be initiated, it shall request the Secretary to designate a departmental lawyer, who is not a member of the Committee, to act as attorney for the Department in the matter. He shall thereupon investigate the facts and in doing so may call on any bureau of the Department for assistance and may require the practitioner involved to submit a written statement of facts or explanation. Upon completing his investigation, the Department attorney shall initiate a disciplinary proceeding or shall file a report with the Committee summarizing his investigations and stating the reasons why such a proceeding is unwarranted.

§ 1.11 *Disciplinary proceedings.* The Committee, after notice and an opportunity for a hearing upon the charges filed by the attorney for the Department against a practitioner, shall render its decision either; (a) dismissing the charges, or (b) censuring the defendant, or (c) ordering a rehearing, or (d) recommending to the Secretary the appropriate action to be taken.

[8 F. R. 7283]

§ 1.12 *Vacation or modification of orders of suspension or exclusion.* Any person who has been suspended or excluded from practice before this Department on charges brought against him, may file an application, in triplicate, for vacation or modification of the order of suspension or exclusion. The Committee, in its discretion, may hold a hearing on such application before disposing of it. The Committee shall either: (a) deny the application, or (b) recommend to the Secretary the appropriate action to be taken.

§ 1.13 *Appeals.* Any applicant or practitioner aggrieved by a final determination of the Committee may appeal therefrom to the Secretary within 30 days from the receipt of such decision by filing a written statement setting forth in detail the grounds for such appeal.

§ 1.14 *Short title.* The regulations in this part may be cited as "Department of the Interior Regulations on Practitioners, 1943."

[8 F. R. 7283]

Part 2—Records and Testimony

AVAILABILITY OF OFFICIAL RECORDS

TESTIMONY OF EMPLOYEES

AUTHORITY: §§ 2.1 to 2.20 issued under sec. 2, 37 Stat. 498; 5 U. S. C. 489. Interpret or apply sec. 1, 37 Stat. 497; 5 U. S. C. 488.

SOURCE: §§ 2.1 to 2.20 appear at 13 F. R. 1454, except as noted following sections affected.

AVAILABILITY OF OFFICIAL RECORDS

§ 2.1 *Inspection.* Unless the disclosure of matters of official record would be prejudicial to the interests of the Government, they shall be made available for inspection or copying, and copies may be furnished, during regular business hours at the request of persons properly and directly concerned with such matters. Requests for permission to inspect official records or for copies will be handled with due regard for the dispatch of other public business.

§ 2.2 *Determinations as to availability of records.* (a) In the first instance, the person whose general duties include the responsibility for the custody of a record shall determine whether the disclosure of the record would be prejudicial to the interests of the Government and whether the person making the request is properly and directly concerned with the subject matter. If a request for permission to inspect records or for copies is denied, the applicant may submit his request to the head of the bureau or office.

(b) An appeal from an adverse decision of the head of a bureau or office may be taken by the applicant to the Secretary. The Under Secretary and the Assistant Secretaries of the Interior are severally authorized to take final action upon any such appeal.

§ 2.3 *Applications.* The head of a bureau or office may require that a request for permission to inspect or to obtain copies of official records shall be made in writing and in such form as he may prescribe. The head of a bureau or

office may require the deposit in advance of an amount sufficient to pay the charges for furnishing copies.

§ 2.4 *Charges.* (a) The Chief Clerk of the Department shall establish a schedule of charges to be collected by all bureaus and offices from the public for mimeograph, multigraph, multilith; blue print, photostatic, and typewritten copies of official records. The heads of bureaus and offices shall establish charges for copies made by other processes. All such charges shall be equal to the cost of producing the copies furnished.

(b) A charge of 25 cents shall be made for each certificate or verification attached to authenticated copies of official records furnished to the public.

(c) No charge shall be made for furnishing unauthenticated copies of any rules, regulations, or instructions printed by the Government for gratuitous distribution.

(d) No charge shall be made for the making or verification of copies of official records which are required for official use by the officers of any branch of the Government.

(e) Money received from the collection of charges fixed under this section shall be deposited in the Treasury to the credit of the appropriation current and chargeable for the cost of furnishing the copies.

(f) This section does not apply to the establishment of fees or charges for copies of records pertaining to the enrollment of members of the Five Civilized Tribes, as authorized by section 8 of the act of April 26, 1906 (34 Stat. 136); for certified copies of the records of any Indian agency or Indian school; for certified copies, issued by the Secretary, of the official character of an officer of the Department; or for copies of aerial or other photographs and mosaics sold by the Geological Survey. This section does not apply to other charges specifically established by statute.

§ 2.5 *Opinions and orders.* (a) Each bureau of the Department shall maintain, in the headquarters office of the bureau or in the field office in which final action is taken, a file containing copies of all final opinions and orders issued by the bureau (including those approved by the Secretary) in the adjudication of cases, except opinions and orders which the head of the bureau or the Secretary may for good cause require to be held confidential and which are not cited as precedents.

(b) The Office of the Solicitor shall maintain a file containing copies of all final opinions and orders issued by the Secretary or the Solicitor in the adjudication of cases, except opinions and orders which the Secretary or the Solicitor may for good cause require to be held confidential and which are not cited as precedents.

(c) The files mentioned in this section may be inspected by the public at any time during regular business hours.

§ 2.6 *Compulsory process.* If the production of any record of the Department is sought by compulsory process, the record shall not be disclosed unless the person whose general duties include the responsibility for the custody of the record or the Secretary determines that such disclosure will not be prejudicial to the interests of the Government. If the person responsible for the custody of the record concludes that the record should not be produced, he shall immediately report the matter to the Secretary for a determination, and he shall appear in answer to the process and respectfully decline to produce the record on the ground that the disclosure, pending the receipt of instructions from the Secretary, is prohibited by this part.
[13 F. R. 8785]

TESTIMONY OF EMPLOYEES

§ 2.20 *Testimony of employees.* (a) An officer or employee of the Department shall not testify in any judicial or administrative proceeding concerning matters related to the business of the Government or the contents of official records without the written permission of the head of the bureau or office, or his designee, or of the Secretary. If the head of a bureau or office, or his designee, concludes that permission should be withheld, he shall report the matter immediately to the Secretary for a determination, and the officer or employee shall appear in answer to process and respectfully decline to testify, pending the receipt of instructions from the Secretary, on the ground that testimony is prohibited by this part.

(b) An affidavit must be submitted by a private litigant, or his attorney, setting forth the interest of the litigant and the information with respect to which the testimony of an officer or employee is

desired before permission to testify will be granted. Permission to testify will be limited to the information set forth in the affidavit, or to such portions thereof as may be deemed proper.

[13 F. R. 8785]

Part 3—Preservation of American Antiquities

Sec.

AUTHORITY: §§ 3.1 to 3.17 issued under secs. 3, 4, 34 Stat. 225; 16 U. S. C. 432.

SOURCE: §§ 3.1 to 3.17 contained in Uniform Rules and Regulations, Secretaries of Interior, Agriculture and War, Dec. 28, 1906.

§ 3.1 *Jurisdiction.* Jurisdiction over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic or scientific interest, shall be exercised under the act by the respective Departments as follows:

(a) By the Secretary of Agriculture over lands within the exterior limits of forest reserves;

(b) By the Secretary of the Army over lands within the exterior limits of military reservations;

(c) By the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, *Provided,* The Secretaries of the Army and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the act of June 8, 1906 (34 Stat. 225; 16 U. S. C. 431–433), as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

§ 3.2 *Limitation on permits granted.* No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States in situ, and remain an object of interest, shall be granted.

§ 3.3 *Permits; to whom granted.* Permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity will be granted, by the respective Secretaries having jurisdiction, to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

§ 3.4 *No exclusive permits granted.* No exclusive permits shall be granted for a larger area than the applicant can reasonably be expected to explore fully and systematically within the time limit named in the permit.

§ 3.5 *Application.* Each application for a permit should be filed with the Secretary having jurisdiction, and must be accompanied by a definite outline of the proposed work, indicating the name of the institution making the request, the date proposed for beginning the field work, the length of time proposed to be devoted to it, and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation, or gathering, and the public museum in which the collections made under the permit are to be permanently preserved. The application must be accompanied by a sketch plan or description of the particular site or area to be examined, excavated, or searched, so definite that it can be located on the map with reasonable accuracy.

§ 3.6 *Time limit of permits granted.* No permit will be granted for a period of more than 3 years, but if the work has been diligently prosecuted under the permit, the time may be extended for proper cause upon application.

§ 3.7 *Permit to become void.* Failure to begin work under a permit within 6 months after it is granted, or failure to diligently prosecute such work after it has been begun, shall make the permit void without any order or proceeding by the Secretary having jurisdiction.

§ 3.8 *Applications referred for recommendation.* Applications for permits shall be referred to the Smithsonian Institution for recommendation.

§ 3.9 *Form and reference of permit.* Every permit shall be in writing and copies shall be transmitted to the Smithsonian Institution and the field officer in charge of the land involved. The permittee will be furnished with a copy of this part.

§ 3.10 *Reports.* At the close of each season's field work the permittee shall report in duplicate to the Smithsonian Institution, in such form as its secretary may prescribe, and shall prepare in duplicate a catalogue of the collections and of the photographs made during the season, indicating therein such material, if any, as may be available for exchange.

§ 3.11 *Restoration of lands.* Institutions and persons receiving permits for excavation shall, after the completion of the work, restore the lands upon which they have worked to their customary condition, to the satisfaction of the field officer in charge.

§ 3.12 *Termination.* All permits shall be terminable at the discretion of the Secretary having jurisdiction.

§ 3.13 *Report of field officer.* The field officer in charge of land owned or controlled by the Government of the United States shall, from time to time, inquire and report as to the existence, on or near such lands, of ruins and archaeological sites, historic or prehistoric ruins or monuments, objects of antiquity, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

§ 3.14 *Examinations by field officer.* The field officer in charge may at all times examine the permit of any person or institution claiming privileges granted in accordance with the act and this part, and may fully examine all work done under such permit.

§ 3.15 *Persons who may apprehend or cause to be arrested.* All persons duly authorized by the Secretaries of Agriculture, Army and Interior may apprehend or cause to be arrested, as provided in the act of February 6, 1905 (33 Stat. 700) any person or persons who appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands under the supervision of the Secretaries of Agriculture, Army and Interior, respectively.

§ 3.16 *Seizure.* Any object of antiquity taken, or collection made, on lands owned or controlled by the United States, without a permit, as prescribed by the act and this part, or there taken or made, contrary to the terms of the permit, or contrary to the act and this part, may be seized wherever found and at any time, by the proper field officer or by any person duly authorized by the Secretary having jurisdiction, and disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise.

§ 3.17 *Preservation of collection.* Every collection made under the authority of the act and of this part shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and this part, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository.

Part 5—Filming of Motion Pictures

Sec.

AUTHORITY: §§ 5.1 to 5.8 issued under R. S. 161, 453, 463, 2478, sec. 10, 32 Stat. 390, sec. 3, 39 Stat. 535, sec. 10, 45 Stat. 1224, sec. 2, 48 Stat. 1270; 5 U. S. C. 22, 16 U. S. C. 3, 715i, 25 U. S. C. 2, 43 U. S. C. 2, 1201, 373, 315a.

SOURCE: §§ 5.1 to 5.8 appear at 11 F. R. 11706, except as noted following section affected.

§ 5.1 *Filming motion or sound pictures.* The filming of any motion or sound picture on any area under the jurisdiction of the agencies of the Department of the Interior hereafter named shall be governed by the regulations of this part: *Provided, however,* That only § 5.2 shall apply to amateurs and bona fide newsreel photographers.

§ 5.2 *Areas administered by Office of Indian Affairs.* (a) Anyone taking pictures of Indians, their homes, plazas, kivas, churches, etc., is expected to observe the ordinary courtesy of obtaining proper permission from the persons involved. Some Indian groups prohibit the taking of pictures of ceremonies and sacred shrines. Others do not. Permission to take such pictures must be obtained beforehand from the proper official of the community.

(b) Before any picture is made for commercial purposes on lands under the jurisdiction of the Office of Indian Affairs, permission must be first obtained from the appropriate tribal officers. Limitations which they may impose must be scrupulously regarded.

(c) Any schedules of wages or salaries to be paid to any Indians who may be employed by the permittee must be approved by the Superintendent or other official in charge of the area or areas involved.

§ 5.3 *Other areas.* With respect to any area under the jurisdiction of the Bureau of Reclamation, the Fish and Wildlife Service, the Bureau of Land Management, or the National Park Service, no such picture may be filmed unless written permission is first obtained from the field official designated for that purpose by the head of such agency. Applications for permission should be submitted to that field official substantially in accordance with the form prescribed in § 5.8.

§ 5.4 *Fees.* In the areas described in § 5.3, there shall be charges for the taking of motion pictures (including sound pictures) involving professional casts, technical crews, livestock, or sets, as follows:

(a) *On areas administered by the Bureau of Reclamation, the Fish and Wildlife Service, and the Bureau of Land Management.* (1) For filming operations not involving the use of livestock, the charge shall be in accordance with the following schedule:

Charge per day or fraction thereof:	*Number of persons in cast*
$10	0
$10	1 to 5
$25	6 to 25
$50	26 to 75
$75	76 to 150
$100	More than 150

The charge prescribed in this subparagraph shall be made only for days or fractions thereof on which there are actual filming operations. The construction of sets in advance of filming, and cleaning up after the filming has been completed, shall not be regarded as actual filming operations for the purpose of such computation.

(2) In addition to the charge prescribed in subparagraph (1) of this paragraph, there shall be a charge of 25 cents per day per head for all horses, mules, cattle, sheep, and goats while on the land.

(b) *On areas administered by the National Park Service.* No fee will be imposed for filming operations, provided the permittee gives credit in an appropriate courtesy title to the National Park Service, Department of the Interior, and to the area in which the scenes are photographed, for any photographed scenes used. The regular general admission and other fees for each person, vehicle, etc., to any area administered by the National Park Service are not affected by this paragraph.

[13 F. R. 6847]

§ 5.5 *Issuance of permit.* Permission to take a motion or sound picture will be granted by the aforesaid field officials in their discretion and on the following conditions:

(a) The permittee shall exercise the utmost care to avoid injury to natural features, and after the filming has been completed the area shall, as required by the official in charge, either be cleaned up and restored to its prior condition or be left, after clean-up, in a condition satisfactory to the official in charge.

(b) The permittee shall refrain, in accordance with the act of the Congress approved on March 3, 1917 (39 Stat. 1106, 5 U. S. C. 66), from offering any gratuity of any nature whatsoever to any employee of the Government in connection with the exercise of the privilege granted.

(c) The permittee shall give credit to the Department of the Interior in an appropriate courtesy title if any of the scenes photographed are used in travelogs or motion pictures distributed for educational purposes.

(d) The permittee in any area administered by the National Park Service shall give appropriate courtesy credit in all motion pictures in which photographed scenes are used.

(e) The permittee shall furnish a bond, or make a deposit in cash or by

certified check, in an amount to be set by the official in charge, to insure full compliance with all the conditions prescribed in this section or elsewhere in the regulations in this part or set forth in the permit.

(f) The permittee, upon the request of the Secretary of the Interior, shall furnish to the Division of Information, Department of the Interior, Washington, D. C., for administrative use a print of the film footage taken pursuant to the permission granted under this section.

§ 5.6 *Wildlife.* Motion or sound pictures of wildlife on any area administered by the Department of the Interior shall be permitted only when such wildlife is shown in its natural state.

§ 5.7 *Report by field officials.* The field officials designated to grant the said permits shall report to the Secretary, through channels, within 30 days after January 1 and July 1 of each year, on all permits that have been issued for motion or sound pictures, listing for each permit the amount of the bond or deposit made, and the number of days required for the filming, and reporting in general on the scope of the picture and the manner in which it was taken. A copy of each approved permit application shall accompany the report.

§ 5.8 *Form of application.* Application for permission to take a motion or a motion and sound picture.

Date _____

To the _____
(Title)

_____
(Area)

(a) Permission is requested to film a motion or a motion and sound picture in the area mentioned above under the conditions stated in the regulations of the Department of the Interior (43 CFR, Subtitle A, Part 5).

(b) The scope of the filming and the manner and extent thereof will be as follows: We will commence filming on or about _____, and estimate it will take approximately _____ days, weather conditions permitting.

(An additional sheet should be used if necessary.)

(c) If any of the scenes filmed are used in travelogs or for educational purposes, credit will be given to the Department of the Interior in an appropriate courtesy title. If any of the scenes filmed are in areas administered by the National Park Service, credit will be given in an appropriate courtesy title to the Department of the Interior, National Park Service, and to the area filmed, in any picture in which such scenes are used.

(d) The filming will be strictly in accordance with the applicable regulations of the Department of the Interior, and we will comply with any special instructions given to us by the official in charge of the area. In addition, we will exercise the utmost care to see that no natural features are injured, and after the filming has been completed we will, as required by the official in charge, either clean up and restore the area to its prior condition or leave the area, after clean-up, in a condition satisfactory to the official in charge.

(e) Upon the request of the Secretary of the Interior, we will furnish to the Division of Information, Department of the Interior, Washington, D. C., for administrative use a print of the film footage taken pursuant to this permit.

(f) We will refrain, in accordance with the provisions of the act of the Congress approved on March 3, 1917 (39 Stat. 1106, 5 U. S. C. 66), from offering any gratuity of any nature whatsoever to any employee of the Government in connection with the exercise of the privilege herein requested.

(g) We will furnish to the official in charge of the area, upon request, any additional information relating to the taking of the motion or motion and sound picture covered by this application.

_____
(Applicant)

For_____
(Company)

Bond Requirement $_____

_____
(Area)

Approved:_____
(Date)

Fee: $_____;

_____
(Title)

_____
(Address)

Part 6—Patent Regulations

Subpart A—Inventions by Employees

Subpart B—Licenses

Sec.
6.55 Terms of licenses or sublicenses.
6.56 Issuance of licenses.
6.57 Evaluation Committee.

AUTHORITY: §§ 6.1 to 6.57 issued under R. S. 161, sec. 5, 58 Stat. 191; 5 U. S. C. 22, 30 U. S. C. 325.

SOURCE: §§ 6.1 to 6.57 appear at 12 F. R. 5728, except as noted following section affected.

SUBPART A—INVENTIONS BY EMPLOYEES

§ 6.1 *Purpose.* The regulations in this subpart are issued in order to (a) secure for the people of the United States the full benefits of Government research and investigation in the Department of the Interior, (b) make definite the rights and obligations of employees with respect to any inventions made by them during their employment in the Department, (c) establish a uniform procedure by which these rights and obligations may be equitably determined in each case, and (d) encourage and recognize individual and cooperative achievement in research and investigation. The Department undertakes to do all within its power to reward its employees who, through their inventive achievements, advance the technological and scientific knowledge of the Nation. The Department will also endeavor to further the use to the fullest possible extent by industry and the public of the inventions conceived in this Department and assigned to the Government.

§ 6.2 *Rights of Government and employee.* (a) The Government, as the employer and as the representative of the people of the United States, should have the ownership and control of any invention developed in the course of governmental activities. Each employee of the Department of the Interior is required upon request to assign to the United States, as represented by the Secretary of the Interior, all domestic and foreign rights to any invention made by the employee within the general scope of his governmental duties, unless such requirement is waived in writing by the Solicitor. An invention will be considered as having been made within the general scope of the governmental duties of an employee (1) whenever his duties include research or investigation, or the supervision of research or investigation, and the invention arose in the course of such research or investigation and is relevant to the general field of an inquiry to which the employee was assigned, or (2) whenever the invention was in a substantial degree made or developed through the use of Government facilities or financing, or on Government time, or through the aid of Government information not available to the public.

(b) An employee of the Department is entitled to all rights resulting from any invention which was made by him outside the general scope of his governmental duties, as defined in paragraph (a) of this section.

(c) If the Solicitor finds that an invention made by an employee of the Department outside the general scope of his governmental duties is used or liable to be used in the public interest, and executes a certificate to that effect, the employee may, if he wishes to do so, request that an application for a patent be filed and prosecuted at the expense of the Government under the act of March 3, 1883, as amended (35 U. S. C. 45). Under such circumstances, the invention may be manufactured and used by or for the Government for governmental purposes without the payment of any royalty.

(d) The requirement relative to the assignment of domestic patent rights to the United States, set forth in paragraph (a) of this section, may be waived in whole or in part, in writing, by the Solicitor in the case of any invention as to which he finds, upon grounds to be specified by him, that the interests of the United States do not require the full assignment of such rights.

(e) The requirement relative to the assignment of foreign patent rights to the United States, set forth in paragraph (a) of this section, may be waived in whole or in part, in writing, by the Solicitor if the Department of Commerce, pursuant to section 3 of Executive Order No. 9865, June 14, 1947, 3 CFR 1947 Supp., determines as to an invention that no foreign patent protection shall be procured or that foreign patent protection shall be procured only in specified foreign jurisdictions. An employee of this Department shall not file in any foreign jurisdiction any patent application relating to an invention made within the general scope of his governmental duties unless the Solicitor has waived in writing the requirement that foreign rights be assigned to the United States.

§ 6.3 *Report of inventions.* (a) Every invention made by an employee of the

Department of the Interior shall be reported by such employee through his supervisor and the head of the bureau to the Solicitor, unless the invention obviously is unpatentable. If the invention is the result of group work, the report shall be made by the supervisor and shall be signed by all employees participating in the making of the invention. The original and three copies of the invention report shall be furnished to the Solicitor. The Solicitor may prescribe the form of the reports.

(b) The report shall be made as promptly as possible, taking into consideration such factors as possible publication or public use, reduction to practice, and the necessity for protecting the Government's rights in the invention. Although it is not necessary to withhold the report until the process or device is completely reduced to practice, reduction to practice assists in the preparation of a patent application and, if diligently pursued, protects the interests of the Government and of the inventor. If an invention is reduced to practice after the invention report is filed, the Solicitor must be notified forthwith.

(c) For the protection of the rights of the Government and of the inventor, invention reports and memoranda or correspondence concerning them are to be considered as confidential documents.

§ 6.4 *Contents of invention reports.* (a) An invention report shall contain the following information:

(1) The title of the invention;

(2) The full name, the residence, and the office address of the inventor or inventors; bureau and division or branch; position or title; official working place;

(3) A statement of the evidence that is available as to the making of the invention, including information relative to conception, disclosures to others, and reduction to practice;

(4) Information concerning any publication or public use of the invention;

(5) The problems which led to the making of the invention;

(6) The objects, advantages, and uses of the invention;

(7) A description of the invention;

(8) Experimental data;

(9) Information which the inventor may have obtained as to the prior art;

(10) The inventor's opinion as to the foreign countries in which the invention would be most useful and would have the greatest commercial value;

(11) Either a statement that the employee is willing to assign the rights in the invention to the Government, or a request for a determination of the respective rights of the Government and the inventor, pursuant to paragraph (b) of this section.

(b) If the inventor believes that the invention was made outside the general scope of his governmental duties, and if he is unwilling to assign the rights in the invention to the Government, he shall, in his invention report, request that the Solicitor determine the respective rights of the Government and the inventor in the invention, and shall also include in his invention report information on the following points:

(1) The circumstances under which the invention was made and developed;

(2) The employee's official duties, as given on his job sheet or otherwise assigned, at the time of the making of the invention;

(3) Whether he wishes a patent application to be prosecuted under the act of March 3, 1883, as amended (35 U. S. C. 45), if it should be determined that an assignment of the invention to the Government is not required under § 6.2; and

(4) The extent to which he would be willing voluntarily to assign foreign rights in the invention to the United States if it should be determined that an assignment of the invention to the Government is not required under § 6.2.

§ 6.5 *Publication and public use.* (a) Publication or public use of an invention constitutes a statutory bar to the granting of a patent for the invention unless a patent application is filed within one year of the date of such publication or public use. In order to preserve rights in unpatented inventions, it shall be the duty of the inventor, or of his supervisor, if the inventor is not available to make such report, to report forthwith to the Solicitor any publication or use (other than experimental) of an invention, irrespective of whether an invention report has previously been filed. If an invention report has not been filed, such a report, including information concerning the public use or publication, shall be filed at once. If an invention

is disclosed to any person who is not employed by the Department of the Interior or working in cooperation with the Department upon that invention, a record shall be kept of the date and extent of the disclosure, the name and address of the person to whom the disclosure was made, and the purpose of the disclosure.

(b) No description, specification, plan, or drawing of any unpatented invention upon which a patent application is likely to be filed shall be published, nor shall any written description, specification, plan, or drawing of such invention be furnished to anyone other than an employee of the Department of the Interior or a person working in cooperation with the Department upon that invention, unless the Solicitor is of the opinion that the interests of the Government will not be prejudiced by such action. If any publication disclosing the invention, not previously approved by the Solicitor, comes to the attention of the inventor or his supervisor, it shall be the duty of such person to report such publication to the Solicitor.

§ 6.6 *Action by supervisor.* The preparation of an invention report and other official correspondence on patent matters is one of the regular duties of an employee who has made an invention, and the supervisor shall see that he is allowed sufficient time from his other duties to prepare such documents. The supervisor shall ascertain that the invention report and other papers are prepared in conformity with the regulations in this subpart; and, before transmitting the invention report to the bureau head, shall check its accuracy and completeness, especially with respect to the circumstances in which the invention was developed, and shall add whatever comments he may deem to be necessary or desirable. The supervisor shall add to the file whatever information he may have concerning the governmental and commercial value of the invention, and the foreign countries in which it is likely that the invention would be most useful and would have the greatest commercial value.

§ 6.7 *Action by head of bureau.* (a) The head of the bureau shall make certain that the invention report is as complete as circumstances permit. He shall provide whatever information may be available in his bureau concerning the governmental and commercial value of the invention, and the foreign countries in which it is likely that the invention would be most useful and would have the greatest commercial value.

(b) If the employee inventor requests that the Solicitor determine his rights in the invention, the head of the bureau shall state his conclusions with respect to such rights.

(c) The head of the bureau shall indicate whether, in his judgment, the invention is liable to be used in the public interest, and he shall set out the facts supporting his conclusion whenever the employee's invention report does not contain sufficient information on this point.

§ 6.8 *Action by Solicitor.* (a) If an employee inventor requests, pursuant to § 6.4 (b), that such a determination be made, the Solicitor shall determine the respective rights of the employee and of the Government in the invention.

(b) In respect to an invention made by an employee inventor, the Solicitor may take such action as he deems necessary or advisable to protect the interests of the United States.

[13 F. R. 9564]

§ 6.9 *Publicity concerning inventions.* (a) In order that the public may obtain the greatest possible benefit from inventions in which the Secretary of the Interior has transferable interests, inventions assigned to the Secretary upon which patent applications have been filed shall be publicized as widely as possible, within limitations of authority, by the Department, by the originating bureau, by the branch or division of that bureau in which the inventor is employed, and by the inventor himself in his contacts with industries in which the invention is or may be useful. Regular organs of publication shall be utilized to the greatest extent possible. In addition, it shall be the duty of the Solicitor of the Department, upon being advised of the issuance of any patent assigned to the Secretary, to take steps towards listing the patent as available for licensing in the register in the Patent Office established for that purpose.

§ 6.10 *Application of subpart.* (a) The regulations in this subpart, as were those of Departmental Orders Nos. 1763 (7 F. R. 10161) and 1871 (8 F. R. 12523) as amended (10 F. R. 9722), shall be a condition of employment of all employees of the Department of the Interior and shall be effective as to all inventions made during any period of employment

since November 17, 1942, except that the provisions relating to foreign patent rights and foreign patent applications shall not apply to inventions which, prior to the effective date of the regulations in this subpart, have been reported to the Solictor and upon which foreign patent applications already have been filed in accordance with the provisions of Orders Nos. 1763 and 1871. The regulations in this subpart shall be effective without regard to any existing or future contracts to the contrary entered into by any employee of this Department with any person other than the Government.

(b) If a patent application is filed upon an invention which has been made by an employee of this Department within the general scope of his governmental duties, as defined in § 6.2 (a), but which has not been reported to the Solicitor pursuant to the regulations in this subpart, title to such invention shall immediately vest in the Government, as represented by the Secretary of the Interior, and the contract of employment shall be considered an assignment of such rights.

§ 6.11 *W. A. E. employees.* Scientific and professional employees of the Department receiving compensation on a "when actually employed" basis are subject to the provisions of this subpart only with respect to inventions arising out of their governmental duties or made or developed to a substantial degree through the use of Government facilities or financing, or on Government time, or through the aid of Government information not available to the public.

SUBPART B—LICENSES

§ 6.51 *Purpose.* It is the purpose of the regulations in this subpart to secure for the people of the United States the full benefits of Government research and investigation in the Department of the interior (a) by providing a simple procedure under which the public may obtain licenses to use United States patents and inventions in which the Secretary of the Interior has transferable interests and which are available for licensing; and (b) by providing adequate protection for the inventions until such time as they may be made available for licensing without undue risk of losing patent protection to which the public is entitled.

§ 6.52 *Patents.* United States patents in which the Secretary of the Interior has transferable interests, and under which he may issue licenses or sublicenses, are classified as follows:

(a) *Class A.* Patents, other than those referred to in paragraph (c) of this section, which are owned by the United States, as represented by the Secretary of the Interior, free from restrictions on licensing except such as are inherent in Government ownership;

(b) *Class B.* Patents in which the interest of the United States, as represented by the Secretary of the Interior, is less than full ownership, or is subject to some express restriction upon licensing or sublicensing (including patents upon which the Secretary of the Interior holds a license, patents assigned to the Secretary of the Interior as trustee for the people of the United States, and patents assigned to the Secretary of the Interior upon such terms as to effect a dedication to the public);

(c) *Class C.* Patents and patent rights acquired by the Secretary of the Interior pursuant to the act of April 5, 1944 (58 Stat. 190; 30 U. S. C., Sup. 321–325), and any amendments thereof.

§ 6.53 *Unpatented inventions.* The Secretary of the Interior may also have transferable interests in inventions which are not yet patented. In order to protect the patent rights of the Department, for the eventual benefit of the public, a license may be granted with respect to such an invention only if (a) a patent application has been filed thereon; (b) the invention has been assigned to the United States, as represented by the Secretary of the Interior, and the assignment has been recorded in the Patent Office; and (c) the Solicitor of the Department is of the opinion that the issuance of a license will not prejudice the interests of the Government in the invention. Such licenses shall be upon the same terms as licenses relating to patents of the same class, as described in § 6.52.

§ 6.54 *Use or manufacture by or for the Government.* A license is not required with respect to the manufacture or use of any invention patented under the act of March 3, 1883, as amended (35 U. S. C. 45), or assigned or required to be assigned without restrictions or qualifications to the United States, as represented by the Secretary of the Interior, when such manufacture or use is by or for the Government for governmental

purposes. A license or sublicense may be required, however, for such manufacture or use in the case of Class B patents or patent rights when the terms under which the Secretary of the Interior acquires interests therein necessitate the issuance of a license or sublicense in such circumstances.

§ 6.55 *Terms of licenses or sublicenses.* (a) The terms of licenses and sublicenses issued under this subpart shall not be unreasonably restrictive. All terms and conditions required by this subpart shall be expressly stated in licenses and sublicenses.

(b) To the extent that they do not conflict with any restrictions to which the licensing or sublicensing of Class B patents and unpatented inventions may be subject, all licenses and sublicenses relating to Class A and Class B patents and unpatented inventions shall be subject to the following terms and provisions, and to such other terms and conditions as the Solicitor may prescribe:

(1) The acceptance of a license or sublicense shall not be construed as a waiver of the right to contest the validity of the patent. A license or sublicense shall be revocable only upon a finding by the Solicitor of the Department that the terms of the license or sublicense have been violated and that the revocation of the license or sublicense is in the public interest. Such finding shall be made only after reasonable notice and an opportunity to be heard.

(2) Licenses and sublicenses shall be nontransferable. Upon a satisfactory showing that the public will be benefited thereby, they may be granted to properly qualified applicants royalty-free. If no such showing is made, they shall be granted only upon a reasonable royalty or other consideration, the amount or character of which is to be determined by the Solicitor. A cross-licensing agreement may be considered adequate consideration.

(3) Licensees and sublicensees may be required to submit annual or more frequent technical or statistical reports concerning practical experience acquired through the exercise of the license or sublicense, the extent of the production under the license or sublicense, and other related subjects.

(4) A licensee or sublicensee manufacturing a patented article pursuant to a license or sublicense shall give notice to the public that the article is patented by affixing thereon the word "patent," together with the number of the patent, or when, from the character of the article, this cannot be done, by fixing to it, or to the package in which it is enclosed, a label containing such notice.

(c) Licenses and sublicenses relating to Class C patents and patent rights shall be granted upon such terms and conditions as may be prescribed pursuant to sections 3 and 5 of the act of April 5, 1944, and any amendments thereof.

§ 6.56 *Issuance of licenses.* (a) Any person desiring a license relating to an invention upon which the Secretary of the Interior holds a patent or patent rights may file with the Solicitor of the Department of the Interior an application for a license, stating:

(1) The name, address, and citizenship of the applicant;

(2) The nature of his business;

(3) The patent or invention upon which he desires a license;

(4) The purpose for which he desires a license;

(5) His experience in the field of the desired license;

(6) Any patents, licenses, or other patent rights which he may have in the field of the desired license; and

(7) The benefits, if any, which the applicant expects the public to derive from his proposed use of the invention.

(b) It shall be the duty of the Solicitor, after consultation with the bureau most directly interested in the patent or invention involved in an application for a license, and with the Evaluation Committee if royalties are to be charged, to determine whether the license shall be granted. If he determines that a license is to be granted, he shall execute, on behalf of the Secretary, an appropriate license.

§ 6.57 *Evaluation Committee.* At the request of the Solicitor, an Evaluation Committee will be appointed by the Secretary to recommend royalty rates with respect to any patents or inventions for which royalties may be charged.

Part 12—Payments to School Districts

SUBPART A—BOULDER CITY SCHOOL DISTRICT, NEVADA, BOULDER CANYON PROJECT

Sec.

AUTHORITY: §§ 12.1 to 12.3 issued under sec. 2, 54 Stat. 774 as amended; 43 U. S. C. and Sup., 618a.

SOURCE: §§ 12.1 to 12.3 contained in Order 2444, 13 F. R. 4188.

§ 12.1 *Average cost of instruction.* The principal local officer of each employing agency of the United States at Boulder City, Nevada, upon written certification sworn to by the President of the Board of Trustees of the Boulder City School District or his duly authorized representative, of the following facts:

(a) The average cost of instruction per pupil per day of pupils enrolled in the high school and in the grade school of the Boulder City School District during the semester for which payment is claimed;

(b) The names of those pupils in the high school and in the grade school who are believed to be dependents of employees of that agency living in or in the immediate vicinity of Boulder City and, as to each of them, the number of days during that semester that he or she attended school, the first and last dates of attendance during that semester, and the name and address of the person upon whom she or he is dependent; shall promptly satisfy himself that the statements therein made are correct and particularly that each person therein listed as one upon whom a pupil was dependent was, in fact, an employee of his agency throughout the period of that pupil's school attendance and, upon so satisfying himself, shall certify to the Director of Power, Bureau of Reclamation, Boulder City, the cost of instruction per semester (which shall be taken, for each pupil, as (1) $65 or (2) the product of the number of days that pupil was in attendance at school and the average cost of instruction in that school per pupil per day, whichever of the two is the smaller) for which payment may lawfully be made pursuant to the terms of section 2 of the act of July 19, 1940, as amended (43 U. S. C. 618a). In the event that a person upon whom dependency of a pupil is claimed was employed by the agency concerned during only part of the period of school attendance, the principal local officer of that agency shall advise the President of the Board of Trustees of the Boulder City School District, or his duly authorized representative, of the date within the semester in question upon which he entered or left the employ of that agency and shall request a certification as above of the number of days' attendance at school by the dependent during the period of employment by that agency, and shall, in certifying to the Director of Power the cost of instruction as aforesaid, make his computations accordingly.

§ 12.2 *Payment to school district.* Upon receipt of the certification of the principal local officer of any agency as aforesaid, the Director of Power shall promptly pay to the appropriate officer of the Boulder City School District the amount so certified as due under the terms of section 2 of the act of July 19, 1940, as amended (43 U. S. C. 618a). However, such payment shall not prejudice the setting-off of overpayments, if any such be later discovered, against payments thereafter coming due under said act or their recoupment by other lawful means.

§ 12.3 *Certified copy to school district.* A certified copy of this part shall be furnished the Boulder City School District for its information and guidance.

Subtitle B—Regulations Relating to Public Lands

CHAPTER I—BUREAU OF LAND MANAGEMENT DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—ALASKA

SUBCHAPTER B—APPLICATIONS AND ENTRIES

SUBCHAPTER C—AREAS SUBJECT TO SPECIAL LAWS

SUBCHAPTER D—CERTIFICATES AND SCRIP

SUBCHAPTER E—CITIZENSHIP

SUBCHAPTER F—COLOR OF TITLE AND RIPARIAN CLAIMS

SUBCHAPTER G—EXCHANGES

SUBCHAPTER H—GRAZING

SUBCHAPTER I—HOMESTEADS

SUBCHAPTER J—INDIAN ALLOTMENTS AND INDIAN LANDS

SUBCHAPTER K—MILITARY AND NAVAL SERVICE

SUBCHAPTER L—MINERAL LANDS

SUBCHAPTER M—NATIONAL FORESTS, NATIONAL PARKS, AND NATIONAL MONUMENTS

SUBCHAPTER N—OFFICERS AND ABSTRACTERS

SUBCHAPTER O—PAYMENTS AND REPAYMENTS

SUBCHAPTER P—PRACTICE

SUBCHAPTER Q—RECLAMATION AND IRRIGATION

SUBCHAPTER R—RECORDS

SUBCHAPTER S—RIGHTS-OF-WAY

SUBCHAPTER T—SALE, LEASE, OR USE, AND ACQUISITIONS

ABBREVIATIONS: The following abbreviations are used in this chapter:
Circ.=*Circular.* O & C=*Oregon and California.* P. L. O.=*Public Land Order.*

NOTE: Prior to Dec. 31, 1948, the following changes were effected in the organization of the Department of the Interior and the regulations of Title 43, Chapter I.

1. *Organization.* Section 403 of the President's Reorganization Plan No. 3 of 1946, effective July 16, 1946 (11 F. R. 7876, 60 Stat. 1100; 5 U. S. C. 133y–16), provided:

"(a) The functions of the General Land Office and the Grazing Service in the Department of the Interior are hereby consolidated to form a new agency in the Department of the Interior to be known as the Bureau of Land Management. The functions of the other agencies named in subsection (d) of this section are hereby transferred to the Secretary of the Interior.

"(b) There shall be at the head of such Bureau a Director of the Bureau of Land Management, who shall be appointed by the Secretary of the Interior under the classified civil service, who shall receive a salary at the rate of $10,000 per annum, and who shall perform such duties as the Secretary of the Interior shall designate.

"(c) There shall be in the Bureau of Land Management an Associate Director of the Bureau of Land Management and so many Assistant Directors of the Bureau of Land Management as may be necessary, who shall be appointed by the Secretary of the Interior under the classified civil service and subject to the Classification Act of 1923, as amended, and who shall perform such duties as the Secretary of the Interior may preseribe.

"(d) The General Land Office, the Grazing Service, the offices of Commissioner of the General Land Office, Assistant Commissioner of the General Land Office, Director of the Grazing Service, all Assistant Directors of the Grazing Serviee, all registers of the distriet land offices, and United States Supervisor of Surveys, together with the Field Surveying Service now known as the Cadastral Engineering Service, are hereby abolished.

"(e) The Bureau of Land Management and its functions shall be administered subject to the direction and control of the Secretary of the Interior, and the functions transferred to the Secretary by subsection (a) of this section shall be performed by the Secretary or, subject to his direction and control, by such officers and agencies of the Department of the Interior as he may designate."

Section 402 of the Reorganization Plan (11 F. R. 7876, 60 Stat. 1099; 5 U. S. C. 133y–16) transferred to the Secretary of the Interior certain functions theretofore performed by the Secretary of Agriculture relating to mineral deposits in certain acquired lands.

2. *Functions of Officers and Employees.* By orders effective on and after July 16, 1946, on which date Reorganization Plan No. 3 of 1946 became effective, certain functions which by reason of the reorganization became vested in the Secretary of the Interior, were delegated by him to the Director, Bureau of Land Management. In turn, the Director delegated some of these functions to the regional administrators, the managers of the district land offices and others. These orders were codified as Part 4, Subpart C, and Part 50, of Title 43 of the Code of Federal Regulations. They were removed from codification by order of the Secretary of the Interior of Deeember 18, 1948 (13 F. R. 8308), but otherwise left in full force and effect.

3. *Regulations.* The regulations of the former General Land Offiee and Grazing Service which were affected by the above-mentioned Reorganization Plan and orders, but which, nevertheless, had not on or before December 31, 1948, been amended so as to conform thereto, were corrected editorially for the 1949 edition of the Code of Federal Regulations so as to conform to such Plan and orders.

SUBCHAPTER A—ALASKA

CROSS REFERENCE: Annette Islands Reserve, Alaska; Metlakahtla Indians and other natives: See 25 CFR Part 1.

Part 51—Public Land Laws Applicable to Alaska

§ 51.1 *Governing laws.* (a) The act of May 17, 1884 (23 Stat. 24), providing for a civil government for Alaska, in section 8, extended to Alaska "the laws of the United States relating to mining claims, and the rights incident thereto," but provided that "nothing contained in this act shall be construed to put in force in said district the general land laws of the United States." Similar provision is contained in sections 26 and 27 of the act of June 6, 1900 (31 Stat. 329, 330; 48 U. S. C. 381, 356), which act also made provision for a civil government for Alaska.

(b) However, in section 3 of the act of August 24, 1912 (37 Stat. 512; 48 U. S. C. 23), it was provided that "the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States."

(c) In an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), the Attorney General had occasion to consider the effect of the act of August 24, 1912, in respect to extending certain public-land statutes to Alaska, and, in this connection, he stated: "The express exception of the public land laws, found in the earlier organic acts, is here omitted; all the laws of the United States are to operate in Alaska save only such as may be locally inapplicable."

(d) It follows, therefore, that whether or not any particular public land statute is applicable in the Territory depends on

whether or not it may operate therein consistently with special legislation and with local conditions.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 491, Feb. 24, 1928]

Part 52—Oaths, Affirmations, and Acknowledgments

§ 52.1 *Officers qualified to administer oaths.* (a) Oaths in public land cases in Alaska may be executed before the manager or the acting manager of the land office for the district in which the lands sought are situated, or before any court, judge, or other officer in the Territory, or elsewhere in the United States, authorized by law to administer an oath, or before any postmaster in Alaska. (30 Stat. 409, 413, 53 Stat. 1219; 48 U. S. C. 359, 35a–35c)

(b) Except as otherwise provided by an act of Congress, the postmaster is authorized to charge and receive for his services the fees prescribed by law for a notary public for similar services in the Territory.

(c) The official character of any officer not using a seal of office, other than a manager, an acting manager, or a postmaster, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. Each certificate of oath, affirmation, or acknowledgment executed by a postmaster within the Territory as provided in this section must be signed by him, with a designation of his title, must have affixed thereto the cancellation stamp of the post office, and must state the name of the post office and the date on which the oath or affirmation is administered or the acknowledgment is taken.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 1463a, 9 F. R. 6916]

Part 60—Applications and Entries

EXECUTION AND FILING OF APPLICATION

Sec.

AUTHORITY: §§ 60.1 to 60.5 issued under R. S. 2478; 43 U. S. C. 1201. Statutory provisions interpreted or applied are cited to text in parentheses.

CROSS REFERENCE: For applications and entries, general regulations, see Parts 101–108 of this chapter.

EXECUTION AND FILING OF APPLICATIONS

§ 60.1 *Applications shall not be rejected because executed more than 10 days prior to filing.* Section 101.1 of this chapter directs managers to reject all applications to make entry which are executed more than 10 days prior to filing.

Until such time as the transportation facilities in Alaska are improved the provisions of said section will not be held applicable to applications filed in the district land offices of Alaska.

[Reg. Dec. 9, 1914, 43 L. D. 467]

ENTRIES SUBJECT TO SECTION 24 OF FEDERAL POWER ACT

§ 60.2 *Governing regulations.* Applications involving lands in Alaska, for other than power purposes which conflict in whole or in part with lands reserved or classified as power sites, or covered by power applications under the act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791–823), known as "The Federal Power Act," will be acted upon and disposted of in accordance with §§ 103.1–103.7.

[Circ. 491, Feb. 24, 1928]

CROSS REFERENCE: For regulations of the Federal Power Commission, see 18 CFR Chapter I.

HOW LAND SHOULD BE DESCRIBED IN PROOF NOTICES, WHEN COVERED BY SPECIAL SURVEYS

§ 60.3 *Metes and bounds description to be omitted.* (a) The requirements with reference to publication of proof notices in homestead cases in Alaska, where a special survey has been made, are set forth in § 65.25. The requirements of the law with reference to publication are contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 359). These requirements are

applicable to homestead entries, soldiers' additional entries, and trade and manufacturing sites.

(b) In Alaska, in the classes of entries mentioned, the important feature of proof notices is to inform all interested parties of the geographical location of the land, and the information should be given in such a way that the people who read the notice will be able to interpret it properly. The metes and bounds description is technical, and not generally understood. Hence, in these cases, it is not of much value to the general public as a means of identification of land. The metes and bounds description adds to the length of the notice and to the cost of the notice to the claimant. The statute does not require the inclusion of such description in the published notice.

(1) Adverse claimants may inform themselves as to the exact location of the land by the markings on the ground or from a copy of a plat of survey which must be filed in the district land office and posted on the land.

(2) It is believed, therefore, that in the cases mentioned, and for the reasons stated, the inclusion of the metes and bounds descriptions in the published notices is objectionable and unnecessary. It is directed, therefore, that such descriptions be omitted.

(c) In the cases referred to, as a means of identification of the land, the manager will cause each notice issued to give the survey number and area of the claim, with a statement as to the general location of the land. If the survey is not tied to a corner of the rectangular system of the public-land surveys the notice should give the name and number of the location monument to which some corner of the survey is tied, and the course and distance from the location monument to such corner, with approximate latitude and longitude. If the survey is tied to a corner of the rectangular system of the public-land surveys, such corner should be identified by section, township, and range. The statement as to general location will identify the land as shown on the plat of survey or otherwise as the manager may deem best. The statement, where possible, should refer to the land in connection with some well-known topographical point or natural object or monument, river, trail, town, mining camp, etc.

[Circ. 1181, Feb. 19, 1929; see also item 3 of Note to chapter]

PATENTS ON ENTRIES

§ 60.4 *Reservations in patents.* All patents for lands in Alaska will reserve a right-of-way thereon for ditches or canals constructed by the authority of the United States under the act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 945), and all patents for lands in the Territory taken up, entered, or located subsequent to the passage of the act of March 12, 1914 (38 Stat. 305; 48 U. S. C. 301–308), will reserve to the United States a right-of-way for the construction of railroads, telegraph, and telephone lines.

In addition to the reservations mentioned, other appropriate reservations will be inserted in the patents, if required by the special laws relating to the particular entries or selections.

[Circ. 491, Feb. 24, 1928]

CROSS REFERENCES: For mineral reservations, see Part 102 of this chapter; for rights-of-way for roadways, see § 74.27 of this chapter.

JOINT ACTION BY TEN OR MORE PERSONS TO ACQUIRE PUBLIC LANDS IN ALASKA

§ 60.5 *Joint action to acquire public lands in Alaska.* (a) Ten or more persons may file in the proper district land office applications in a single group under any one or more of the laws relating to the acquisition of lands in Alaska, including the Homestead Laws (30 Stat. 409; 32 Stat. 1028; 48 U. S. C. 371), Small Tract Laws (52 Stat. 609, 59 Stat. 467; 43 U. S. C. 682a), Home-Site Law (48 Stat. 809; 48 U. S. C. 461) and Town-Site Laws (R. S. 2380–2389, as amended, 43 U. S. C. 711–722; 26 Stat. 1099; 48 U. S. C. 355). Each application must be complete in itself except that information common to more than one application in a group need not be duplicated at length but may appear in or as an appendix to one such application and be adopted by reference made in the other applications.

(b) All claims to specified tracts of land must be initiated in the manner required by law. Where certain requirements must be met before an application to enter or purchase may be filed, a statement of intention to meet such requirements, signed by each prospective 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 25, D. C. Such preliminary diagram may be used as the basis for the diagram to be filed with the group of applications and which must relate to specific land.

(d) Upon the filing of such a diagram by the applicants or their authorized representative, a petition or petitions may be filed requesting the withdrawal of the lands to be devoted to school and other municipal or common purposes.

(e) If any of the applications involve unsurveyed public lands, such applications may also be accompanied by a petition, either joint or several, for the withdrawal of the lands in behalf of specified applicants, the survey, and, in appropriate cases, the classification under the Small Tract Law, of such lands. The filing of such applications confers of itself no right upon the applicants. If the withdrawal is made, and the land classified, applicants shall have the first right to acquire the interests for which they have applied, to the extent permitted by statute. Any application, entry or withdrawal made pursuant to this section shall be subject to all valid prior claims.

(f) Persons who propose to file applications in a group under paragraph (a) of this section, by a writing to be filed in the district land office, may designate a representative or representatives who may, at their direction and in their behalf, make the actual filing of the applications, previously executed by the applicants and accompanying and supporting documents; pay any or all fees and costs in connection therewith; and, in complete satisfaction of the requirements of § 166.1 of this chapter, personally examine the lands sought to be entered and make and file a statement setting forth the information otherwise required of each individual applicant by § 166.1 (a) and (b) of this chapter.

(g) Where ten or more settlers are entitled by statute to request and receive a free survey of the lands upon which they have settled, they may file a joint petition stating the facts as to compliance with law by each of them. Such petition must be corroborated by two witnesses having knowledge of the facts.

(h) Where the costs of any survey made under this section are required by statute to be borne by one who seeks the survey, the necessary deposit for costs must be made in accordance with § 78.7 of this chapter. The individual applicant is ultimately responsible in such instances for the costs entailed in satisfying his request for such a survey, but persons who file joint or group petitions for such surveys may share the costs thereof in any proportion they may determine.

(Sec. 11, 26 Stat. 1099, secs. 1, 10, 30 Stat. 409, 413, as amended; 48 U. S. C. 355, 371, 461) [Circ. 1629, 11 F. R. 13912]

Part 61—Certificates and Scrip

SOLDIERS' ADDITIONAL HOMESTEAD ENTRIES

SCRIP

AUTHORITY: §§ 61.1 to 61.20 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 61.1 to 61.20 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCES: For certificates and scrip, general regulations, see Parts 130–133 of this chapter. For homesteads, generally, see Part 166 of this chapter. For soldiers' additional homestead rights, see Part 132 of this chapter. For soldiers' and sailors' homestead and other rights under public land laws, see Part 181 of this chapter.

SOLDIERS' ADDITIONAL HOMESTEAD ENTRIES

§ 61.1 *Statutory authority.* The laws authorizing entries in Alaska under sections 2306 and 2307, Revised Statutes (43 U. S. C. 274, 278), known as soldiers' additional homestead entries, are incorporated as a part of the general homstead laws which are applicable in the Territory.

§ 61.2 *General information.* General information relative to soldiers' additional homestead rights is contained in Part 132 which contains information as to the inheritability and assignability of the rights.

§ 61.3 *Coal, oil, and gas lands not locatable.* Soldiers' additional rights are not locatable on lands in Alaska withdrawn or classified as coal, oil, or gas, or lands which are valuable for coal, oil, or gas.

CROSS REFERENCE: For homesteads on coal, oil and gas lands, see Part 66 of this chapter.

§ 61.4 *Form of application.* Application to locate soldiers' additional rights in Alaska must be presented on the form prescribed therefor, viz Form 4–008a. If presented by other than an assignee, the form may be appropriately modified.

§ 61.5 *Application by association or corporation.* An application by an association must show the qualifications of each member thereof, and an application by a corporation must be accompanied by proof of incorporation, established by the certificate of the officer having custody of the records of incorporation at the place of its formation, and it must be shown that the corporation is authorized to hold land in Alaska.

§ 61.6 *Description of land in application.* If the land be surveyed, it must be described in the application according to the legal subdivisions of the public land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey.

§ 61.7 *Statement to accompany application.*[1] An application on the prescribed form must be accompanied by a duly corroborated statement showing:

(a) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived, and that it is not within a distance of 80 rods along any navigable or other waters from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application or the lands have been restored from reservation.

(c) That the land does not adjoin any inland or water-front location made with soldiers' additional rights which, together with the land applied for, would constitute a single body of land exceeding 160 acres.

(d) That the land is not included within an area which is reserved, because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 292.8 of this chapter.

(e) The facts as to all waters upon the land other than springs, whether creek, pond, lagoon, or lake, their source, depth, width, outlet, and current (whether swift or sluggish) whether or not the same or any of them are navigable for skiffs, canoes, motor boats, launches, or

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

other small water craft, and whether or not the same or any of them constitute a passageway for salmon or other merchantable seagoing fish to spawning grounds.

(f) That no part of the land is valuable for coal, oil, gas or other valuable mineral deposits and that at the date of the application no part of the land was claimed under the mining law.

[Circ. 491, Feb. 24, 1928; modified to conform to E. O. 5106, May 4, 1929, as amended by Circ. 1700, 13 F. R. 6005]

CROSS REFERENCES: See the following parts in this chapter: For homesteads, Part 65; for Indian and Eskimo allotments, Part 67; for mining claims, Part 69; for school indemnity selections, Part 76; for shore space, Part 77; for trade and manufacturing sites, Part 81.

§ 61.8 *Execution and filing of application.* The application must be executed in duplicate and it must be filed in the proper district land office. It must be signed by the applicant, but need not be sworn to.

§ 61.9 *Evidence required of validity and ownership of right.* The applicant must furnish evidence of the prima facie validity of the additional right and of his ownership thereof.

§ 61.10 *Area selected not to exceed right tendered.* An applicant will not be permitted to select an area which is greater than the area of the additional right or rights tendered.

§ 61.11 *Evidence of unused portion of certificate or recertified certificate.* If the right used is a certificate or recertified certificate which exceeds the area of the land entered, evidence of the unused portion may be obtained by procuring a certified copy or photostat copy of the certificate bearing proper notation as to the amount used.

§ 61.12 *Action by manager; report by regional administrator.* Upon receipt of the application the manager will note its filing, assign a current serial number thereto, and transmit the original thereof, unallowed, together with the accompanying papers, to the Bureau of Land Management. He will forward the duplicate copy of the application to the regional administrator for report. With each copy he will report the status of the land as shown by his records.

The report of the regional administrator will be made to the Bureau of Land Management and it should show whether the lands contain valuable deposits of coal, oil, gas, or other minerals, whether they have power or reservoir possibilities, whether they are within an area which is reserved because of hot, medicinal or other springs, and any other facts deemed appropriate.

[Circ. 491, Feb. 24, 1928; modified to conform to E. O. 5106, May 4, 1929]

§ 61.13 *Application for 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 to the regional cadastral engineer stating the facts, and, after receiving such certificate, the applicant may make application to the public survey office for the survey of the land. The manager will advise the public survey office of the issuance of the certificate, and unless the applicant promptly makes application for the survey, the public survey office will report the facts to the Bureau of Land Management for such action as may be deemed proper.

CROSS REFERENCE: For surveys, see Part 78 of this chapter.

§ 61.14 *Survey.* (a) Upon receipt of an application under the provisions of section 2 of the act of April 13, 1926 (44 Stat. 244; 48 U. S. C. 380), the regional cadastral engineer of the public survey office 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 the regional cadastral engineer will issue appropriate instructions for the survey of the claim, such survey to be made by the Bureau of Land Management 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 by the public survey office 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 by the public survey office to the depositor or his legal representative.

(b) In case it is decided by the regional administrator that by reason of the inaccessibility of the locality embraced in an application for the survey, or by reason of other conditions, it will result to the advantage of the Government or claimant to have the survey executed by

a deputy surveyor, the public survey office will deliver to the applicant an order for such survey, which will be sufficient authority for any deputy surveyor to make a survey of the claim.

(c) In the latter contingency the survey must be made at the expense of the applicant, and no right will be recognized as initiated by such application unless actual work on the survey is begun and carried to completion without unnecessary delay. Further information as to the requirements and procedure in cases of this kind is given in §§ 78.6–78.9 of this chapter.

§ 61.15 *Publication and posting.* After a special survey of the land has been made, and upon receipt of the plat and field notes thereof from the public survey office, the manager will notify the applicant that within 60 days from a date to be fixed by the manager the applicant must furnish evidence of publication and posting, and that if he fails to do so the application will be rejected and the survey canceled. The publication and posting will be required as follows:

(a) The notice will be prepared by the manager, containing the information required under § 60.3, and it must be published once a week for a period of nine consecutive weeks, in accordance with § 106.18 of this chapter, at the expense of the applicant in a newspaper of established character and general circulation designated by the manager as being published nearest the land. The manager will send a copy of the notice to the regional administrator.

(b) The applicant must cause a copy of the plat showing the survey, together with a copy of the application, to be posted in a conspicuous place on the claim for 60 consecutive days during the period of publication.

(c) The manager must cause a copy of the notice to be posted in his office during the entire period of publication.

Where the land is located according to the public surveys, publication and posting will be required in accordance with §§ 130.1–130.4 of this chapter.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1455, 4 F. R. 1102]

§ 61.16. *Adverse claim.* (a) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association having or asserting any adverse interest in or claim to the tract of land or any part thereof sought to be purchased may file in the district land office where the application is pending, under oath, an adverse claim setting forth the nature and extent thereof; and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(b) Where such adverse claim is filed, action on the application will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(c) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title as stated and any contest which may be filed will be disposed of by the manager in accordance with the Rules of Practice, Part 221 of this chapter.

§ 61.17 *Proof of publication and posting.* The proof of publication must consist of the statement of the publisher or foreman of the designated newspaper, or some other employee authorized to act for the publisher, that the notice (a copy of which must be attached to the statement) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper, and not in a supplement. Proof of posting on the claim must consist of the statements of the applicant and one witness who of their own knowledge know that the plat of survey and application were posted as required and remained so posted during the required period. The manager must certify to the posting of the notice in a conspicuous place in his office during the period of publication. The manager will send the proofs to the Bureau of Land Management upon the expiration of the period for the filing of adverse claims and will report whether or not any adverse claim or protest has been filed.

§ 61.18 *Fees and commissions.* The same payments as fees and commissions are required in connection with soldiers' additional homestead entries and proofs in Alaska as must be made in connection with ordinary homestead entries in the State of Oregon. The amounts are set forth in § 166.8. These payments are not required at the time the application is filed, but, if tendered, the manager must, of course, issue receipts therefor.

§ 61.19 *Entry and final certificate.* The application and proofs filed therewith, and the report of the regional administrator on the application, will be carefully examined in the Bureau of Land Management, and, if all be found regular, the manager will be instructed to allow the application and to issue final certificate thereunder, upon the required payments being made and in the absence of objections shown by his records.

SCRIP.

§ 61.20 *Scrip which may and may not be located in Alaska.* Aside from the right of the Territory of Alaska to select lands in lieu of tracts to which it may be entitled, under its grant in aid of public schools made by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354), and which have been lost, no scrip or lieu rights can be located in said Territory except soldiers' additional homestead rights.

Part 62—Fur Farming

FUR FARM LEASES

Sec.
62.1 Statutory authority.
62.2 Area subject to lease.
62.3 Application for lease.
62.4 Beaver raising.
62.5 Investigation.
62.6 News item.
62.7 Rental.
62.8 Cancellation of lease.
62.9 Form of lease.
62.10 Appeals.

AUTHORITY: §§ 62.1 to 62.10 issued under sec. 2, 44 Stat. 822; 48 U. S. C. 361. Interpret or apply sec. 1, 44 Stat. 821; 48 U. S. C. 360.

SOURCE: §§ 62.1 to 62.10 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

§ 62.1 *Statutory authority.* The act of July 3, 1926 (44 Stat. 821; 48 U. S. C. 360, 361) authorizes the Secretary of the Interior to lease public lands in Alaska for fur farming, for periods not exceeding 10 years.

§ 62.2 *Area subject to lease.* (a) Leases under the act of July 3, 1926 may cover an entire island where such island contains an area of not more than 30 square miles, if the regional administrator determines that such island is subject to lease for fur farming, and that the entire area is needed and can be properly used therefor.

(b) Any islands subject to lease under this act having an area of more than 30 square miles will be treated as mainland, and leases for lands within same shall not be awarded for an area in excess of 640 acres.

(c) Where islands are so close together that animals can cross from one to the other, and the combined area does not exceed 30 square miles, more than one island may be included in a single lease.

[Reg. Jan. 30, 1928, 52 L. D. 262]

§ 62.3 *Application for lease.*[1] Applications for leases should be filed in duplicate in the proper district land office. After assignment of a serial number and due notation thereof, the original should be forwarded to the regional administrator and the duplicate to the Bureau of Land Management. A status report should be furnished by the manager with each. No specific form of application is required, and no blanks will be furnished therefor. Applications must be signed by the applicant but need not be sworn to. They should cover, in substance, the following points:

(a) Applicant's name and post office address.

(1) Married or single person.

(2) If married, whether the husband or wife of applicant, as the case may be, is the holder of a lease under said act, or has an application pending.

(3) If both husband wife are applicants, proof must be furnished that each is acting solely on his or her separate account and not under any agreement or understanding with the other for joint operation.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(b) Proof of citizenship of applicant; if an association of individuals, proof of citizenship of each member thereof; and if a corporation, a certified copy of the articles of incorporation must be furnished.

(c) Description of the land for which the lease is desired, by legal subdivision if surveyed, and by metes and bounds if unsurveyed. In order to properly identify unsurveyed lands, if practicable, the metes and bounds description should be connected by course and distance with some corner of the public-land surveys and their position with reference to rivers, creeks, mountains or mountain peaks, towns, islands, or other prominent topographical points or natural objects or monuments should be given.

(d) The approximate acreage, if the application is for unsurveyed land.

(e) Two references as to applicant's reputation and business standing.

(f) The kind or kinds of fur-bearing animals to be raised, and, if foxes, whether silver, blue or white.

(g) The number of fur-bearing animals the applicant expects to have on the leased land within 1 year from the date of the lease.

(h) A showing that the applicant has a permit to take animals with which to stock the leased land.

(i) 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.

[Circ. 491, Feb. 24, 1928; Circ. 1183, Mar. 19, 1929]

§ 62.4 *Beaver raising.* No lease under this act for the purpose of raising beavers shall be granted on any area already occupied by a beaver colony and no such lease shall be granted on streams or lakes which will interfere with the spawning grounds of salmon.

§ 62.5 *Investigation.* When the application is received by the regional administrator he will cause an investigation to be made as to the improvements, if any, existing on the lands; as to their use and occupancy, and as to the feasibility of granting the lease.

§ 62.6 *News item.* Upon the issuance of a lease under this act the manager of the land office for the district in which the leased land is situated will furnish the newspaper nearest said land a statement of the issuance of the lease, containing the name of the lessee and a description of the leased land, such statement to be published as an item of news.

§ 62.7 *Rental.* Every lessee under the act of July 3, 1926 shall pay to the lessor in advance a minimum rental of $5 per annum on leases for all tracts up to and including 10 acres, a minimum of $25 annual rental on all leases of tracts over 10 acres and not exceeding 640 acres, and a minimum of $50 annual rental on leases of tracts exceeding 640 acres, and shall pay a maximum rental equal to a royalty of 1 percent on the gross returns derived from the sale of live animals and pelts, if the amount thereof exceeds the minimum rental mentioned, such yearly rental to be credited against the royalties as they accrue for that year: *Provided,* That the specifications of minimum basic yearly rates in this section shall not prevent a lower rate to be fixed, in the discretion of the regional administrator, upon satisfactory showing in particular cases that the specified rate applicable to the area involved would be excessive.

[Circ. 1312, Sept. 2, 1933]

§ 62.8 *Cancellation of lease.* (a) A lease under the act of July 3, 1926, will be subject to cancellation by the manager for failure of the lessee to comply with any of the conditions enumerated therein or to exercise due diligence in raising the kind or kinds of fur-bearing animals specified in the lease or for the devotion of the leased area primarily to any purpose other than the raising of fur-bearing animals.

(b) A lease will be automatically canceled for failure of the lessee to place on the leased area the number and kind of fur-bearing animals specified in the lease within a period of 1 year from the date of said lease as follows: When the lease embraces an area not exceeding 640 acres, not less than 2 pairs (two males and two females) of such animals shall be placed on the land within the year; 4 pairs on areas between 640 and 3,000 acres; and 6 pairs on areas exceeding 3,000 acres.

§ 62.9 *Form of lease.* Leases under the act of July 3, 1926, will be made on Form 4–230.

§ 62.10 *Appeals.* Any party aggrieved by any action of the Manager or the regional administrator may appeal to

the Director, Bureau of Land Management and the Secretary of the Interior pursuant to Part 221 of this chapter.

[Circ. 1541, 8 F. R. 7508]

Part 63—Grazing

ESTABLISHMENT OF GRAZING DISTRICTS AND ISSUANCE OF GRAZING LEASES

REINDEER GRAZING

AUTHORITY: §§ 63.1 to 63.26 issued under sec. 15, 44 Stat. 1455, sec. 12, 50 Stat. 902; 48 U. S. C. 471n, 250k. Statutory provisions interpreted or applied are cited to text in parentheses.

SOURCE: §§ 63.1 to 63.26 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCES: For grazing leases, general regulations (not applicable in Alaska), see Part 160 of this chapter. For the Federal Range Code for grazing districts (not applicable in Alaska), see Part 161 of this chapter. For regulations of the Bureau of Indian Affairs relating to grazing, see 25 CFR Parts 71, 72, 73.

ESTABLISHMENTS OF GRAZING DISTRICTS AND ISSUANCE OF GRAZING LEASES

§ 63.1 *Statutory authority.* (a) The act of March 4, 1927 (44 Stat. 1452; 48 U. S. C. 471, 471a–471o) authorizes the Secretary of the Interior, on application or otherwise, to create grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, national forests, and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease the grazing privileges therein.

(b) Section 7 of the said 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, in which case leases may be made for a shorter term.

§ 63.2 *Areas not to be leased.* (a) Leases will not be granted for areas which embrace the natural grazing grounds or routes of migration of wild animals, such as caribou and moose, it being the policy to retain such areas intact for the benefit of wild life and for the natives to subsist thereon, and to prevent the interbreeding of reindeer with wild animals.

(b) Any grazing district may be enlarged or diminished, for any sufficient reason, subject to existing rights of any lessee.

§ 63.3 *Establishment of grazing districts.*[1] Pursuant to the act of March 4,

[1] Penalty for unauthorized grazing is prescribed by the following notice which was approved March 7, 1929:

Pursuant to section 12 of the act of March 4, 1927 (44 Stat. 1454; 48 U. S. C. 471k), notice is hereby given that on and after June 1, 1929, it shall be unlawful for any person to graze any class of livestock on the public lands of Alaska, in the three grazing districts established June 30, 1928, except under authority of a lease made or permission granted by the Secretary of the Interior, as provided by said act; and that any person who wilfully grazes livestock in such grazing districts, after June 1, 1929, without such authority shall, upon conviction, be punished by a fine of not more than $500.

1927 (44 Stat. 1452; 48 U. S. C. 471, 471a–471o), three grazing districts were established on June 30, 1928, and the boundaries of such grazing districts were declared temporarily to be coincident with the boundaries of the three public land districts in Alaska.
[Dept. order, May 2, 1928]

§ 63.4 *Application for lease; action by manager.*[2] After the establishment of a grazing district, applications for leases may be filed in the proper district land office. Applications should be filed in duplicate.

(a) After a serial number has been assigned by the manager of the district land office to an application for a lease, the original will be forwarded to the regional administrator and the duplicate to the Bureau of Land Management, each copy to be accompanied by a status report.

(b) Applications for leases must conform substantially to the Form 4–469.
[Circ. 1138a, May 26, 1938]

§ 63.5 *Reports by regional administrator.* The regional administrator will cause an investigation to be made of all applications to lease for grazing purposes as to the livestock to be grazed on the land; as to the carrying capacity of the areas sought; as to the improvements, if any, existing thereon; as to their use and occupancy and as to the feasibility of granting the lease applied for. A determination should be made as to what rental should be charged and whether such charge should be deferred for any particular period.
[Circ. 1138a, May 26, 1938]

§ 63.6 *Temporary closing of leased areas to restore normal range.* The regional administrator may temporarily close portions of a leased area to grazing whenever, because of incorrect handling of the stock, overgrazing, fire, or other cause such action is necessary to restore the range to its normal condition. This temporary closing will not operate to exclude such lands from the boundaries of a lease.

§ 63.7 *Number of stock to be grazed.* The regional administrator may prescribe the maximum number of stock which may be grazed on a particular area, this maximum number to be fixed on the condition of the range and its accessibility to summer and winter feeding, with the right to reduce the maximum number of stock grazed whenever permanent damage to the range is liable to result, and to increase the number whenever it is possible to do so without injury to the range.
[Circ. 491, Feb. 24, 1928]

§ 63.8 *Leased area may be reduced.* The regional administrator may reduce the leased area if it is excessive for the number of stock owned by the lessee.

§ 63.9 *Exclusion of stock from a specified area.* The regional administrator may exclude stock from a specified area whenever it is determined that such area is required for the protection of camping places, sources furnishing drinking water to communities, roads and trails, town sites, mining claims, and for feeding grounds near villages for the use of draft animals or near the slaughtering or shipping points for use of stock to be marketed, and for reasonable native berrying grounds.

§ 63.10 *Definitions of "natives," "other occupants of range," and "settlers."* (a) "Natives," as mentioned in section 6 of the act of March 4, 1927 is defined as meaning members of the aboriginal races inhabiting Alaska, of whole or mixed blood.

(b) "Other occupants of the range" is defined as meaning persons occupying the range on March 4, 1927, and the area regarded as occupied by this class will be limited in the case of homesteaders or other claimants under public land laws to the area actually used or occupied on that date.

(c) "Settlers" will be regarded as those persons who have established and maintained a bona fide residence within or adjacent to a grazing district either before or after March 4, 1927.

§ 63.11 *When preference will not be granted.* Preference will not be granted according to the classes listed under section 6 of the act of March 4, 1927 where to do so would oust others who have been grazing the land applied for if it is determined that such other persons should be protected.

§ 63.12 *Showing required of person claiming preference right.* Any person

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

claiming a preference right to a lease must fully state the facts, duly corroborated, on which such claim is made.

§ 63.13 *Showing required of corporations.* If an application for a lease is filed in the name of a corporation, the applicant must be prepared to furnish such evidence of the creation of the corporation as the manager may require.

§ 63.14 *Description of lands.* If the land for which a lease is desired is surveyed, it must be described by legal subdivision. If the land is unsurveyed, it may be shown by a map drawn to appropriate scale, showing the land in relation to rivers, creeks, mountains, mountain peaks, towns, islands, or other prominent topographic features or natural objects, with the approximate latitude and longitude of at least one point on the boundary.

§ 63.15 *Lease granted on definite area; exceptions.* Leases will be granted for grazing on a definite area, except where local conditions or the administration of the grazing privileges makes more practicable a lease based on the number of stock to be grazed.

§ 63.16 *Annual rental.* (a) Unless otherwise provided, each lessee shall pay to the proper district land office such annual rental, per head or per acre, as may be determined is a fair compensation to be charged for the grazing of livestock on the leased land, the compensation to be fixed with due regard to the general economic value of the grazing privilege. The date for making the annual payment will be specified in the lease.

(b) If the rental is to be paid according to the number of animals grazed, no charge will be made for animals under 1 year of age at the time of entering on the leased area, provided they are the natural increase of the stock upon which fees are paid.

§ 63.17 *Assignments.* Proposed assignments, in whole or in part, of a lease must be submitted to the manager for approval, and must be accompanied by the same showing as is required of applicants for a lease.

§ 63.18 *Driveways; quarantine regulations.* (a) When it appears necessary for stock to regularly cross any portion of an established grazing district, and undue injury to other interests will not result, suitable driveways may be established. Such driveways will be as short and as easy of passage and access as the character of the country and the protection of other interests will permit. They will be established with care for the interests of lessees using adjoining ranges. Where driveways are reserved along well-defined routes which must be traveled, all grazing on these areas will be prohibited except by stock in transit.

(b) It is absolutely essential that persons driving or transporting stock from one point to another comply with the quarantine regulations prescribed by the Territorial or other proper authorities, and unless they do so the privilege may be denied them. The condition of the stock as to contagious or infectious diseases will be determined by the proper Federal or Territorial authorities.

§ 63.19 *Crossing privileges and permits therefor.* Crossing permits will ordinarily not be required when the period for crossing is short, when the stock will be driven along a public highway and will not be grazed upon the leased land, or when such crossing will not interfere with the grazing district administration or other related interests.

(a) Free crossing permits will be issued by the regional administrator, when good grazing administration or the protection of other related interests do not make the issuance of such permits objectionable. Applicants for crossing privileges must make their applications to the regional administrator, or such other officer as he may designate, sufficiently in advance of the date when such privilege is to begin to enable the proper officer to handle the details of the business and to give such sufficient notice of the proposed drive to the lessee that he will be able to remove his animals from the line of the drive if he so desires. The application must show the number of stock to be driven, the date of starting, and the approximate period required for crossing.

(b) Applications for crossing permits may be made either in person or by letter, and permits may be issued to either the owner or persons in charge of the stock.

(c) If the land to be crossed is unenclosed and the lessee does not desire to waive the right to its exclusive use, the stock must be so handled that the animals will not intrude upon the adjoining grazing areas.

(d) If a shipping point within a grazing district is the only one reasonably accessible to persons grazing stock outside that grazing district, crossing privileges may be allowed under such restrictions as are necessary to protect the interests of the lessee.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1596, 10 F. R. 2759]

§ 63.20 *Free grazing.* Any person, including prospectors and miners, may graze, free of charge, not more than 10 animals upon any land included within any grazing district upon applying to the regional administrator in person or by letter, stating the number and kind of stock to be thus grazed and the approximate time such grazing will be continued.

§ 63.21 *No annual rental charged for lease to native or half-breed.* Any Eskimo or other native or half-breed, or association thereof, may apply for a grazing allotment on unallotted public lands, and the same lease shall be issued to him or them as to other persons, except that no annual rental will be charged for such lease. Such applicant must show by a corroborated statement that the applicant is an Eskimo or other native or half-breed, or an association thereof, and entitled to such lease without charge.

§ 63.22 *Reduction in grazing fee when land is grazed by Eskimo, native, or half-breed.* When such Eskimo, native, or half-breed grazes his livestock, through cooperative agreement, on an allotment held by other lessees or permittees, any grazing fee charged for said land on the basis of acreage will be reduced in proportion to the relative number of such native-owned livestock to the total number on said allotment.

§ 63.23 *Advisory boards.* Whenever any livestock association, whose membership includes a majority of the lessees or permittees owning any class of livestock using a range district unit or allotment, shall select a committee, an agreement on the part of which shall be binding on the association, such committee, upon application to the regional administrator may be recognized as an advisory board for the association. Such advisory board shall then be entitled to receive notice of proposed action and have an opportunity to be heard by the local representative of the regional administrator in reference to increase or decrease in the number of stock to be allowed for any year, the division of the range between owners, or the adoption of rules to meet local conditions.

(a) When an association represents only a minority of the lessees or permittees owning any class of livestock, but its members own 75 percent of that class of livestock using the range, its advisory board may be recognized upon petition of a sufficient number of other owners to constitute a majority of all the grazing lessees or permittees affected.

(b) Upon request from, and with the approval of, an officially recognized advisory board the Regional Administrator may adopt special rules to regulate the use and occupancy of the range and to prevent damage to the range areas, under rules to be binding upon and observed by all lessees or permittees grazing stock within the range involved. Such conditions as may be necessary may be imposed upon the handling of permitted stock, the employment of herders to confine the stock to the allotted ranges, the distribution of salt, the enforcement of Territorial livestock laws, and the construction of permanent improvements to protect the range or facilitate the handling of stock.

§ 63.24 *Form of lease.* Leases under the act of March 4, 1927, will be made on Form 4–470.

§ 63.24a *Appeals.* Any party aggrieved by any action of the Manager or the regional administrator may appeal to the Director, Bureau of Land Management and the Secretary of the Interior pursuant to Part 221 of this chapter.

[Circ. 1542, 8 F. R. 7508]

REINDEER GRAZING

§ 63.25 *Statutory authority.* The act of March 4, 1927 (44 Stat. 1452; 48 U. S. C. 471, 471a–471o), authorized the Secretary of the Interior to lease public lands in Alaska for grazing reindeer and other animals on the public lands of Alaska. Section 14 of the act of September 1, 1937 (50 Stat. 902; 48 U. S. C., 250m) authorizes the Secretary of the Interior, in order to co-ordinate the use of public lands in Alaska for grazing reindeer, to regulate the grazing of reindeer upon said lands. It authorizes him, in his discretion, to define reindeer ranges and to regulate the use thereof

for grazing reindeer, to issue reindeer grazing permits and to issue rules and regulations to carry into effect the provisions of said section of the act.

(Sec. 14, 50 Stat. 902; 48 U. S. C., 250m) [Circ 1138a, May 26, 1938]

§ 63.26 *No reindeer leases to issue under act of March 4, 1927, after May 26, 1938.* In view of the provisions of section 14 of the act of September 1, 1937, no reindeer leases will issue under the act of March 4, 1927, after May 26, 1938, and the grazing of reindeer in Alaska will be governed by the act of September 1, 1937, and the rules and regulations that may be promulgated thereunder.

(Sec. 14, 50 Stat. 902; 48 U. S. C. 250m) [Circ. 1138a, May 26, 1938]

Part 64—Homesites or Headquarters

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, ON SHOWING AS TO EMPLOYMENT OR BUSINESS

Sec.

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, WITHOUT SHOWING AS TO EMPLOYMENT OR BUSINESS

AUTHORITY: §§ 64.1 to 64.10 issued under sec. 10, 30 Stat. 413, as amended; 48 U. S. C. 461.

CROSS REFERENCES: For general homestead regulations, see Part 166 of this chapter; for homesteads in Alaska, see Part 65 of this chapter. For home and industrial sites in Alaska, see 36 CFR 251.7. For lease or sale of small tracts in Alaska for home, cabin, camp, health, convalescent, recreational or business sites, see Part 257 of this chapter.

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, ON SHOWING AS TO EMPLOYMENT OR BUSINESS

§ 64.1 *Statutory authority.* The act of March 3, 1927 (44 Stat. 1364; 48 U. S. C. 461) authorizes the sale as a homestead or headquarters of not to exceed 5 acres of unreserved public lands in Alaska, not including mineral, coal, oil or gas lands, at the rate of $2.50 per acre, to any citizen of the United States 21 years of age employed by citizens of the United States, associations of such citizens, or by corporations organized under the laws of the United States, or of any State or Territory, whose employer is engaged in trade, manufacture, or other productive industry in Alaska, and to any such person who is himself engaged in trade, manufacture or other productive industry in Alaska.

[Circ. 491, Feb. 24, 1928]

§ 64.2 *Purpose of statute.* The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the Territory, not exceeding 5 acres, as homesteads or headquarters.

[Circ. 491, Feb. 24, 1928]

§ 64.3 *Use of lands.* Care will be taken in all cases before patent issues to see that the lands applied for are used for the purposes contemplated by the said act of March 3, 1927, and that they are not used for any purpose inconsistent therewith.

[Circ. 491, Feb. 24, 1928]

§ 64.4 *Form and contents of applications.*[1] Applications under the act of March 3, 1927, must be filed in duplicate in the land office for the district in which the land is situated, and the claim must be in reasonably compact form.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(a) The age and citizenship of applicant.

(b) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

(c) The date when the land was first occupied as a homestead or headquarters.

(d) The nature of the trade, business, or productive industry in which applicant

[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.

or his employer, whether a citizen, an association of citizens, or a corporation, is engaged.

(e) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters.

(f) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any natives of Alaska, or occupied as a town site or missionary station or reserved from sale, and that the tract does not include improvements made by or in possession of another person, association, or corporation.

(g) That at the date of the initiation of the claim the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or from any trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where petition for restoration based on an equitable claim is filed with the application, or the land has been restored from reservation.

(h) That the land is not included within an area which is reserved because of springs thereon. All facts as to medicinal or other springs must be stated, in accordance with § 292.8 of this chapter.

(i) That no part of the land is valuable for coal, oil, gas, or other valuable mineral deposits and that at the date of location no part of the land was claimed under the mining laws.

[Circ. 491, Feb. 24, 1928; modified to conform to E. O. 5106, May 4, 1929, as amended by Circ. 1699, 13 F. R. 5881, Circ. 1700, 13 F. R. 6005; see also item 3 of note to chapter]

CROSS REFERENCES: See the following parts in this subchapter. For Indian and Eskimo allotments, Part 67; for mining claims, Part 69; for school indemnity selections, Part 76; for shore space, Part 77; for soldiers' additional rights, Part 61; for trade and manufacturing sites, Part 81.

§ 64.5 *Procedure on applications.* In the matter of procedure, applications for homesteads or headquarters will be governed by Part 81 of this chapter.

[Circ. 491, Feb. 24, 1928]

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, WITHOUT SHOWING AS TO EMPLOYMENT OR BUSINESS

§ 64.6 *Statutory authority.* The act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461) amended section 10 of the act of May 14, 1898 (30 Stat. 413), as amended by the act of March 3, 1927 (44 Stat. 1364), so as to provide that any citizen, after occupying land of the character described in said section as a homestead or headquarters, in a habitable house not less than 5 months each year for 3 years, may purchase such tract, not exceeding 5 acres, in a reasonably compact form, without a showing as to his employment or business, upon the payment of $2.50 per acre, the minimum payment for any one tract to be $10.

[Circ. 1342, Nov. 23, 1934]

§ 64.7 *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 district land office for the district within which the land is situated.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(a) Full name, post office address and age of applicant.

(b) Whether the applicant is a native-born or naturalized citizen of the United States, and if naturalized, evidence of such naturalization must be furnished.

(c) A description of the habitable house on the land, the date when it was placed on the land, and the dates each year from which and to which the applicant has resided in such house.

(d) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any native of Alaska, or occupied as a townsite, or missionary station, or reserved from sale, and that the tract does not include improvements made by or in the possession of any other person, association, or corporation.

(e) That at the date of the initiation of the claim the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers'

additional rights, or from any trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from reservation.

(f) That the land is not included within an area which is reserved because of hot, medicinal or other springs, as explained in § 292.8 of this chapter. If there be any such springs upon or adjacent to the land, on account of which the land is reserved, the facts relative thereto must be set forth in full.

(g) That no part of the land is valuable for coal, oil, gas or other valuable mineral deposits, and that at the date of settlement no part of the land was claimed under the mining laws.

(h) That the applicant has not theretofore applied for land under said act, or if he has previously purchased a tract he should make a full showing as to the former purchase and the necessity for the second application.

(i) All applications for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres.

(j) All applications for unsurveyed land must be accompanied by a petition for survey, describing the land applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

[Circ. 1342, Nov. 23, 1934, as amended by Circ. 1699, 13 F. R. 5881, Circ. 1700, 13 F. R. 6006]

NOTE: See cross references following § 64.4.

§ 64.7a *Applications by veterans of World War II.* Upon the restoration or opening of surveyed public lands in Alaska with a preference right of application to veterans of World War II pursuant to section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U. S. C. 282), as amended, such veterans may file applications for home or headquarter sites on such lands under the act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461). Preference right applications filed by such veterans must describe the land desired in terms of the public land surveys and must give all of the information required by § 64.7, except as to the erection of a habitable house on the land and compliance with the law in the matter of residence. No payment will be required until proof of compliance with the residence requirements has been made. Such an applicant will be required to establish residence upon the land in a habitable house within 6 months from the date of the notice of the allowance of his application. An extension of time to establish residence may be granted under the conditions under which it may be granted to a homestead entryman. During the first year after establishing residence the claimant will be required to reside upon the land for a period of at least 5 months. He may claim credit on the period of residence required by the act of May 26, 1934, for military or naval service in like manner as is provided in the case of homestead entries.

[Circ. 1699, 13 F. R. 5881]

§ 64.8 *Action on application; survey; report.* (a) Upon receipt of the application the manager will note its filing, assign a current serial number thereto and transmit the original application, unallowed, together with the accompanying papers to the regional administrator, and the duplicate copy to the Bureau of Land Management. With each application the manager will report the status of the land as shown by his records.

(b) Where an application is for unsurveyed land, if the manager finds the showing satisfactory, and no objections appear of record, he will, if no shore space question is involved, transmit the triplicate copy to the regional cadastral engineer, who, not later than the next succeeding surveying season, will issue instructions for the survey of the land, without expense to the applicant. If a shore space question is involved the regulations governing free survey of homestead claims without expense to settler, as set forth in the last paragraph of § 65.20, will govern.

(c) The report of a field examination, if made, should show the facts as to applicant's house and the occupancy of the land and whether the lands contain valuable deposits of coal, gas or other minerals; whether they have power or reservoir possibilities; whether they are within an area which is reserved because of hot, medicinal or other springs, and any other facts deemed appropriate.

[Circ. 1342, Nov. 23, 1934; see also item 3 of Note to chapter]

§ 64.9 *Publication and posting.* In the matter of publication and posting

these applications will be governed by the instructions given in connection with applications for soldiers' additional homestead entries as set out in § 61.15 of this chapter.

[Circ. 1342, Nov. 23, 1934, as amended by Circ. 1455, 4 F. R. 1102; see also item 3 of Note to chapter]

§ 64.10 *Payment and final certificate.* If, on examination of the application by the regional administrator, all be found regular, the manager will be directed to issue a final certificate, upon payment for the land, and in the absence of objections shown by his records.

[Circ. 1342, Nov. 23, 1934]

Part 65—Homesteads

HOMESTEADS UNDER THE ACT OF MAY 14, 1898, AS AMENDED

AUTHORITY: §§ 65.1 to 65.29 issued under R. S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U. S. C. 1201, 48 U. S. C. 371.

SOURCE: §§ 65.1 to 65.29 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For applications and entries, general, see Parts 101–108 of this chapter. For home and industrial sites in Alaska, see 36 CFR 251.7. For home sites or headquarters, Alaska, see Part 64 of this chapter. For homestead regulations, general, see Part 166 of this chapter. For homesteads on coal, oil, and gas lands, Alaska, see Part 66 of this chapter.

HOMESTEADS UNDER THE ACT OF MAY 14, 1898, AS AMENDED [1]

§ 65.1 *Lands subject to settlement and homestead entry.*[1] All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

§ 65.2 *Form of settlement on unsurveyed land.* A settlement claim on unsurveyed land must be rectangular in form, not more than 1 mile in length, located by lines running north and south, according to the true meridian, the four corners being marked by permanent monuments, unless a departure from such restrictions is authorized by the act of April 13, 1926 (44 Stat. 243; 48 U. S. C. 379, 380, 380a). The said act permits a departure from the restrictions mentioned where by reason of local or topographic conditions it is not feasible or economical to include in rectangular form with cardinal boundaries the lands desired. Under the conditions recited in the law as justifying such departure, it will be sufficient that the claims shall be compact and approximately rectangular in form and where a departure from cardinal courses in the direction of boundary lines is necessary in order to include the lands desired there will be no restriction as to the amount of such departure. The modification of former practice in the matter of form and direction of boundaries is not to be construed, however, as authorizing the lines of the claims to be unduly ex-

[1] The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 371), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 48 U. S. C. 371), July 8, 1916 (39 Stat. 352; 48 U. S. C. 373–375, 378), June 28, 1918 (40 Stat. 632; 48 U. S. C. 373–375, 378) and April 13, 1926 (44 Stat. 243; 48 U. S. C. 379, 380, 380a).

tended in any such manner as will be productive of long narrow strips of land departing materially from the compactness of the tract as a whole.

§ 65.3 *Notice of settlement.* In addition to marking the claim by permanent monuments at each corner, the settler, in order to protect his claim, must post a notice of the location on the land and must, within 90 days after the settlement, file a copy of the notice for record with the commissioner of the recording district in which the land is situated. The location notice should contain the name of the settler, the date of the settlement, and such description of the land claimed by reference to some natural object or permanent monument as will serve to identify it.

§ 65.4 *Settlement on surveyed lands; time of filing application.* Settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section; but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter, he should define his claim by placing some improvements on each of the smallest subdivisions claimed. As to such claims no posting or recording of a location notice is required, but an application for entry must be filed at the proper district land office within 3 months after the date of settlement in order to preserve the preference right of entry as against subsequent settlers.

§ 65.5 *Form of application.*[2] Application to make homestead entry for lands in Alaska should be presented on Form 4–007, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U. S. C. 161, 171).

§ 65.6 *Showing to accompany application.* Each application on the prescribed form should be accompanied by a corroborated statement showing:

(a) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration based on an equitable claim is filed with the application, or the land has been restored from the reservation.

(b) That the land is not within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 292.8 of this chapter.

[Circ. 491, Feb. 24, 1928; modified to conform to E. O. 5106, May 4, 1929, as amended by Circ. 1700, 13 F. R. 6006]

CROSS REFERENCES: See the following parts in this subchapter: For Indian and Eskimo allotments, Part 67; for school indemnity selections, Part 76; for shore space, Part 77; for soldiers' additional rights, Part 61; for trade and manufacturing sites, Part 81.

§ 65.8 *Description and contiguity of lands.* A homestead application must describe the lands desired according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

§ 65.9 *Area subject to appropriation.* A homestead settlement or entry in Alaska is restricted to 160 acres, except in the case of a settlement made before July 8, 1916, or an entry based thereon, which may include as much as 320 acres, provided notice of the settlement was filed for record in the recording district in which the land is situated within 90 days after the settlement was made and the settlement was duly maintained until the filing of the application for entry and provided the applicant has not exhausted his homestead right in whole or in part in the United States.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 65.10 *Limitation of acreage.* The act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 212), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

§ 65.11 *Qualifications required.* Any person who is qualified to make an ordinary homestead entry in the United States under section 2289, Revised Statutes (43 U. S. C. 161, 171), is qualified to make homestead entry in Alaska, and a former homestead entry outside of Alaska does not bar the claimant's right to make entry in that Territory for not exceeding 160 acres.

§ 65.12 *Second entries.* No showing is required of an applicant for 160 acres in the Territory as to a former homestead entry outside of the Territory, but if the applicant has made homestead entry or filed a location notice of a settlement in the Territory and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the Territory, make the showing required by the act of September 5, 1914 (38 Stat. 712; 43 U. S. C. 182), explained in §§ 166.86–166.92 of this chapter.

§ 65.13 *Additional entries.* Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 214), for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 166.79–166.85 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

§ 65.14 *Law under which homestead must be perfected.* All homestead claims in Alaska must be perfected under and in accordance with the provisions of the 3-year homestead law of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218), and rgulations thereunder.

§ 65.15 *Establishment of residence.* Residence must be established upon the claim within 6 months after the date of the entry or the recording of the location notice, as the case may be; but an extension of not more than 6 months may be allowed upon application duly filed, in which the entryman shows by his own statement, and that of two witnesses, that residence could not be established within the first 6 months, for climatic reasons, or on account of sickness, or other unavoidable cause.

§ 65.16 *Leave of absence.* A leave of absence for 1 year or less may be granted by the manager to a homesteader who has established actual residence on the land, where failure or destruction of crops, sickness, or other unavoidable casualty has prevented him from supporting himself and those dependent upon him by cultivation of the land.

§ 65.17 *Period of residence and amount of cultivation required.* (a) A homestead entryman must show residence upon his claim for at least 3 years; 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 district land office of the time of leaving the homestead and returning thereto.

(b) There must be shown also cultivation of one-sixteenth of the area of the claim during the second year of the entry and of one-eighth during the third year and until the submission of proof, unless the requirements in this respect be reduced upon application duly filed. The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

§ 65.18 *Effect of transfer of land before proof.* In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the Territory transfers for church, cemetery, or school purposes to the extent

of 5 acres and for railroad rights of way across the land having an extreme width of 200 feet are permitted.

§ 65.19 *Commutation of entries.* To the extent of not more than 160 acres an entry may be "commuted;" that is, the claimant may show 14 months' residence upon the land and cultivation of one-sixteenth of the area commuted and pay $1.25 per acre therefor, cash certificate thereupon issuing, followed by patent in the usual manner. In such cases, the homesteader is entitled to a 5 months' absence in each year, but cannot have credit as residence for such period, actual presence on the land for 14 months being required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–508, 509), is not subject to commutation.

§ 65.20 *Survey without expense to settler.* (a) The land included in a settlement claim may be surveyed without expense to the settler provided he has sufficiently complied with the law in the matter of residence, cultivation, and improvements to submit 3-year proof.

(b) Petition for survey should be filed in duplicate in the proper district land office, describing the land settled upon by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. The petition should show the date when the settlement was made, the dates from which and to which the settler has resided upon the land, the number of acres cultivated each year and the results of the cultivation, and the character and value of the improvements on the land. The petition should also show that the land does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from the reservation. The petition must be signed by the applicant and should be corroborated by the statements of two persons having knowledge of the facts.

(c) The manager will assign a current serial number to the petition and will transmit the original thereof to the regional administrator, and if the manager finds the showing satisfactory, if no shore-space question is involved, and in the absence of other objection he will send the duplicate copy of the petition to the regional cadastral engineer of the public survey office, who, not later than the next succeeding surveying season will issue instructions for the survey of the land without expense to the applicant.

(d) If deemed advisable the regional cadastral engineer will direct the survey of the land under the rectangular system instead of the survey of the particular claim by metes and bounds.

(e) If a shore-space question is involved, the request for survey should be accompanied by a petition, in duplicate, for the waiver of the restriction as to length of claim or for the restoration of the land from reservation, or both. In such case the manager will send the original of both petitions to the regional administrator and the duplicate of both petitions to the regional cadastral engineer. The former will determine whether or not there is objection to the waiver or restoration requested or to the making of the survey. The determination will be sent to the manager, as in other cases, but the regional administrator will send a copy of the determination to the public survey office at Juneau, Alaska. If a favorable determination is made, the survey may be proceeded with in the public survey office in like manner as though the land had been restored; but the survey will not be accepted by the Bureau of Land Management and an application to enter based thereon will not be entertained unless and until the land is actually restored. In the case of an unfavorable determination by the regional administrator, action on the petition for survey will be suspended until final action has been had on the petition for restoration.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1700, 13 F. R. 6006]

§ 65.21 *Survey at expense of settler.* A settler who wishes to secure earlier action in the matter of survey, or one

who wishes to submit commutation proof, may have a survey made at his own expense by a deputy surveyor appointed by the regional administrator.

§ 65.22 *Application to enter land included in special survey.* After a special survey has been made, application to enter should be made as in the case of other settlements on surveyed lands.

§ 65.23 *Submission of proof.* (a) Proof may be submitted without previous notice of intention by publication, but it should not be submitted in advance of a special survey.

(b) Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the manager of the land office for the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the district land office.

§ 65.24 *Fees and commissions.* The same payments as fees and commissions are required in connection with homestead entries and proofs in Alaska as must be made in connection with ordinary homestead entries in the State of Oregon. The amounts are set forth in § 166.8 of this chapter.

§ 65.25 *Publication and posting.* (a) The manager will report promptly to the regional administrator the receipt of the application to enter and the proof testimony. He will take no action thereon and withhold the issuance of notice for publication and posting until the mineral or nonmineral character of the land has been determined and he has been instructed as to further action which should be taken. When authorized he will carefully examine the application to enter and the proof testimony and if the required payments have been made, he will allow the application and will issue and transmit to the entryman notice for publication reading as follows:

Final proof testimony on homestead entry ---------- embracing ---------- has been submitted by ----------, entryman, and his witnesses, ---------- residing at ----------, and ---------- residing at ----------, and is now in the files of the district land office at ----------, Alaska, and if no protest is filed in the district land office at ---------- on or before ----------, said final proof will be accepted and final certificate issued.

The manager will send a copy of the proof notice to the regional administrator.

(b) Where a special survey has been made, the proof notice must give the survey number of the land, and other information required by § 60.3 of this chapter, and it must be published once a week for nine consecutive weeks, in accordance with § 106.18 of this chapter, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(c) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 106.18 of this chapter. The manager must cause a copy of the notice to be posted in his office during the entire period of publication. [Circ. 491, Feb. 24, 1928, as amended by Circ. 1181, Feb. 19, 1929, Reg. Oct. 19, 1929, Circ. 1455, 4 F. R. 1102, Circ. 1547, 8 F. R. 7508]

§ 65.26 *Adverse claim.* (a) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to, the tract of land or any part thereof sought to be acquired, may file in the land office where the proof is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(b) Where such adverse claim is filed, action on the proof will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(c) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet

title, as stated, and any contest which may be filed will be disposed of by the manager in accordance with the Rules of Practice, Part 221 of this chapter.

§ 65.27 *Proof of publication and posting.* The proof of publication must consist of the statement of the publisher or foreman of the designated newspaper, or some other employee authorized to act for the publisher, that the notice (a copy of which must be attached to the statement) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper and not in a supplement. Proof of posting on the claim must consist of the statements of the applicant and one witness who of their own knowledge know that the plat of survey and proof notice were posted as required and remained so posted during the required period. The manager must certify to the posting of the notice in a conspicuous place in his office during the period of publication.

§ 65.28 *Issuance of certificate.* Upon the expiration of the period allowed for the filing of adverse claims, if all necessary proofs and payments have been made, and in the absence of objection then appearing, the manager will issue final or cash certificate as may be proper.

NATIONAL FOREST HOMESTEADS

§ 65.29 *Procedure governing national forest homesteads.* (a) The act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–508, 509), providing for homestead entries of agricultural lands within national forests applies to such lands in Alaska. The regulations under this act will be found in Part 170.

(b) National-forest entries may be made only after the lands desired have been listed by the Secretary of Agriculture as agricultural in character and after a declaration by the Director, Bureau of Land Management that the listed lands are subject to settlement and entry.

(c) Information as to the boundaries of the forests, the method of applying for listing, etc., may be obtained by addressing the Chief, Forest Service, Washington, D. C., or the Regional Forester, Forest Service, Juneau, Alaska.

(d) Homestead entries in national forests are limited in area to 160 acres and are subject to the general homestead laws and regulations, except that no commutation is allowed. Application should be made on Form 4–007, as in other cases.

(e) In the matter of form of entry and direction of boundaries, homestead settlements and entries in national forests in Alaska are subject to the same conditions and provisions as are applicable to other homestead claims in Alaska.

(f) No showing as to shore space, or as to springs or water holes, is required in connection with homestead entries in national forests in Alaska.

CROSS REFERENCE: For prohibition of settlement on forest lands except in accordance with the act of June 11, 1906, see 36 CFR 261.11 (a).

Part 66—Homesteads on Coal, Oil, and Gas Lands

INITIATION AND COMPLETION OF HOMESTEAD CLAIMS ON COAL, OIL, AND GAS LANDS

Sec.

AUTHORITY: §§ 66.1 to 66.10 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 66.1 to 66.10 contained in Circular 491, Feb. 24, 1928, except as noted following section affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

§ 66.1 *Statutory authority.* (a) The act of March 8, 1922 (42 Stat. 415; 48 U. S. C. 376, 377) provides that upon the unreserved, unwithdrawn public lands in the Territory of Alaska homestead claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits, or which may be, in fact, valuable for the coal, oil, or gas contained therein. Thus, by the class last named, provision is made

for cases in which land is not at the date of the initiation of the claim thereto actually known to contain workable coal, oil, or gas deposits, but in which it becomes known, during the interval between the initiation of the claim and its completion, that the land is, in fact, valuable for the coal, oil, or gas contained therein.

(b) It also provides that homestead claims so initiated may be perfected under the appropriate public land laws and that, upon satisfactory proof of full compliance with these laws, the claimant shall be entitled to patent to the lands entered by him, which patent shall contain a reservation to the United States of all the coal, oil, or gas in the land patented, together with the right to prospect for, mine, and remove the same.

(c) The act constitutes, therefore, an extension to the Territory of Alaska of the principles of the surface homestead acts already in force in the public-land States, namely, the acts of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), and July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123).

§ 66.2 *Action by manager on applications.* (a) An application to make homestead entry for lands embraced in an oil and gas lease, or a coal permit or lease, or an application for such a lease, or permit, should be suspended and forwarded to the regional administrator for consideration and instructions.

(b) Applications to make homestead entry for land classified as or known to be valuable for coal, oil, or gas must have written, stamped, or printed upon their face the following:

Application made in accordance with and subject to the provisions and reservations of the act of March 8, 1922 (42 Stat. 415).

(c) Like notations will be made by the managers on the face of the notices of allowance issued on applications filed under this act. If, prior to the date of the filing of the homestead applications, the land was embraced in an oil and gas lease, or a coal permit or lease, or an application for such a lease, or permit, the notice of allowance should contain substantially the following:

This land is subject to the right of any prior mineral permittee or lessee, or of any prior applicant for a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the nonmineral entryman or patentee for crop and improvement damages resulting from such mineral activity.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1704, 13 F. R. 6606]

§ 66.3 *Reservations in final certificates and patents.* (a) Final certificates issued to homestead claimants under the act of March 8, 1922, will contain the following provision, which the manager will cause to be written or stamped thereon:

Patent will contain provisions, reservations, conditions, and limitations of the act of March 8, 1922 (42 Stat. 415).

(b) There will be incorporated in patents issued to homestead claimants under this act the following:

Excepting and reserving, however, to the United States all the (deposit on account of which the lands are withdrawn, classified, or reported to be valuable—coal, or oil and gas, as the case may be) in the lands so patented, and to it or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922 (42 Stat. 415).

§ 66.4 *Notations on records of district land office.* Upon the acceptance by the manager of any filing under the act of March 8, 1922, he will make appropriate notation on his records to show that the filing was made under the provisions of the act. He will make a similar notation on the margin of the township plat, if any, giving the description of the land in which the deposits have been reserved.

§ 66.5 *Coal, oil, or gas lands not subject to soldiers' additional homesteads.* The final proviso to the act of March 8, 1922 excludes all the lands in Alaska withdrawn, classified, or valuable for coal, oil, or gas, from entry or disposition by means of the location of rights under section 2306, Revised Statutes (43 U. S. C. 274), commonly known as soldiers' additional homestead entries.

§ 66.6 *Disposal of mineral deposits.* (a) Section 2 of the act of March 8, 1922 (42 Stat. 416; 48 U. S. C. 377) provides that, upon satisfactory proof of full compliance with the provisions of the laws under which entry was made and with the provisions of the act itself, the homestead claimant shall be entitled to a

patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal, oil, and gas in the land so patented, together with the right to prospect for, mine, and remove the same; and that the coal, oil, and gas deposits so reserved shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits, or coal, oil, or gas lands in Alaska, in force at the time of such disposal. It also provides that any person qualified to acquire coal, oil, or gas deposits, or the right to mine and remove the coal, or to drill for and remove the oil or gas, under the laws of the United States shall have the right at all times to enter upon the lands as provided by this act for the purpose of prospecting for coal, oil, or gas upon the approval, by the Secretary of the Interior, of a bond or undertaking to be filed with him as security for the payment of all the damages to the crops and improvements on such lands by reason of such prospecting; and that any person who has acquired from the United States coal, oil, or gas deposits in any such land or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove the oil or gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking, in an action instituted in any competent court to ascertain and fix the said damages.

(b) There is no provision under the law for prospecting prior to the actual issuance of a permit or lease therefor.

§ 66.7 *When bond is required with prospecting permit or lease.* Provision is made by the act of March 4, 1921 (41 Stat. 1363; 48 U. S. C. 444), for coal prospecting permits in Alaska, and by the act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), as amended, for oil and gas leases. In order lawfully to mine, remove, or drill for the coal, oil, or gas affected by the act of March 8, 1922, the coal permittee or noncompetitive oil or gas lease applicant whose application was filed subsequent to the homestead application must file a waiver from, or a consent of the homestead claimant, or there must be filed a bond or undertaking for the payment of all damages to the crops and improvements on the lands prospected caused by the prospecting.

§ 66.8 *Form and amount of bond.* (a) There must be filed with the bond or undertaking required by the preceding section, evidence of service of a copy thereof upon the homestead claimant. The bond must be executed by the prospector as principal with two competent individual sureties, or a corporate surety which has complied with the provisions of the act of August 13, 1894 (28 Stat. 279; 6 U. S. C. 6–13), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U. S. C. 8, 9), in the sum of $1,000. Except in the case of a bond given by a qualified corporate surety there must be filed therewith statements of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a postmaster as to the identity, signatures, and financial competency of the sureties.

(b) This bond or undertaking may be filed as a matter of expedition at the time of the filing by the mineral claimant of his application for a permit or the filing may be deferred until formal notice of the necessity therefor shall be received from the Bureau of Land Management. For forms of bonds which should be utilized see 50 L. D. 129 to 131 inclusive.

§ 66.9 *Bonds required with leases, other than noncompetitive oil and gas leases.* There is no provision for the presentation to the Bureau of Land Management of bonds executed to or for homestead claimants by lessees or by persons who have acquired from the United States coal, oil, or gas deposits or the right to mine, drill for, or remove the same. In such cases bonds are to be arranged for in an action instituted in any competent court to ascertain and fix the damages suffered.

§ 66.10 *Use of coal by the homestead claimant, prior to its disposal by the United States.* The homestead claimant under the act of March 8, 1922, may, at any time prior to the disposal by the United States of the coal deposits on his claim, make use of them for his domestic purposes and this may be done without the filing of any application therefor. This privilege does not, however, authorize the mining of the coal deposits for the purpose of barter or sale.

Part 67—Indians and Eskimos

ALLOTMENTS TO INDIANS AND ESKIMOS

RESERVATIONS FOR INDIANS AND ESKIMOS

AUTHORITY: §§ 67.1 to 67.19 issued under R. S. 2478, 34 Stat. 197; 43 U. S. C. 1201, 48 U. S. C. 357. Statutory provisions interpreted or applied are cited to text in parentheses.

SOURCE: §§ 67.1 to 67.19 contained in Circular 1359, June 22, 1935, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCES: For applications and entries, see Parts 60, 101–108 of this chapter. For Indian homestead entries and patents, see § 166.7 of this chapter.

ALLOTMENTS TO INDIANS AND ESKIMOS

§ 67.1 *Statutory authority.* The act of May 17, 1906 (34 Stat. 197; 48 U. S. C. 357), authorizes the Secretary of the Interior to allot not to exceed 160 acres of nonmineral land in Alaska to certain Indians or Eskimos of full or mixed blood, who reside in and are natives of the Territory.

§ 67.2 *Execution and filing of application.*[1] An application for allotment must be made on Form 4–021. The application must be signed by the applicant but need not be sworn to, and it must be corroborated by the statements of two persons having knowledge of the facts, who may be Indians or Eskimos. If the applicant is unable to write his name, his thumb print should be attached to the application in preference to his signature by mark, and the thumb print should be witnessed by two persons. The application must be filed in the proper district land office.

§ 67.3 *Description of land in application.* If surveyed, the land must be described in the application according to legal subdivisions of the public land surveys. If unsurveyed, it must be described as accurately as possible by metes and bounds and natural objects, and its position with reference to rivers, creeks, mountains or mountain peaks, towns or other prominent topographic points or natural objects or monuments, giving the distance and directions with reference to any well-known trail to a town or mining camp, or to a river or mountain appearing on the map of Alaska.

§ 67.4 *Marking claim on ground; notice of application.* The applicant should plainly indicate on the ground the corners of the land claimed by setting substantial posts or heaping up mounds of stones at each corner. Notice of the application should be posted on the land, describing the tract applied for in the terms employed in the application, and a copy of such notice should accompany the application.

§ 67.5 *Showing required in application.* The application, giving the name and address of the applicant, must show that the applicant is an Indian or Eskimo of full or mixed blood, who resides in and is a native of the Territory; whether the applicant is married or single; whether the applicant is 21 years of age or over; the facts constituting applicant the head of a family, if applicant is under 21 years of age, or is a married woman;

[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.

that the applicant has not theretofore made application for allotment under the act of May 17, 1906, if such is the case; and that the land applied for is not reserved by authority of Congress or embraced in any reservation made by Executive order or proclamation of the President. If the land has been occupied by the applicant, the application should show when the residence commenced and the extent to which it has been maintained.

§ 67.6 *Nonmineral statement required.* The applicant must furnish a nonmineral statement on the prescribed form, which is printed as a part of Form 4–021. This statement must be made on personal knowledge and not on information and belief.

§ 67.7 *Allotments in national forests.* Allotments will not be made in national forests unless founded on occupancy of the land prior to the establishment of the particular forest, except as authorized by section 31 of the act of June 25, 1910 (36 Stat. 863; 25 U. S. C. 337), which authorizes an allotment to be made to an Indian who is occupying, living on or has made improvements on the land included within a national forest, and for whose tribe no reservation has been made, provided the Secretary of Agriculture shall certify that the land applied for is more valuable for agricultural or grazing purposes than for the timber thereon. An application under said section 31 should be made on Form 5–149, and should contain a reference to the act of May 17, 1906.

CROSS REFERENCE: For national forest homesteads, Alaska, see § 65.29 of this chapter.

§ 67.8 *Shore space.* An Indian allotment may not extend more than 160 rods along the shore of any navigable water unless the restriction as to length of claim has been waived and it may not extend within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homesite, Indian or Eskimo allotment, or school indemnity selection, unless the land has been restored from reservation, or a petition for restoration based on an equitable claim is filed with the application (34 Stat. 197; 48 U. S. C. 357).

[Circ. 1700, 13 F. R. 6006]

CROSS REFERENCE: For shore space, see Part 77 of this chapter.

§ 67.9 *Action by manager on applications.* The manager will give appropriate serial numbers to applications for allotments and will note such applications on the regular returns. He will carefully examine each application, and if he finds it complete in all respects and no objection is shown by his records, he will allow it and will advise the applicant of the allowance by special letter, reading substantially as follows:

> Your application under the act of May 17, 1906 (34 Stat. 197), No. ____, for _____, has been placed of record in this office and forwarded to the Bureau of Land Management.
>
> This action segregates the land from the public domain, and no other application can be allowed therefor, or settlement rights attach, during the life of this application.

If the application is incomplete or in conflict with any other application or claim of record, the manager will take such action as the facts may warrant. The application, upon allowance, will operate as a segregation of the land. Any application subsequently presented which conflicts therewith in whole or in part, should be rejected, as to the part in conflict, subject to appeal, unless rights superior to those of the Indian or Eskimo claimant are asserted under the conflicting application, in which case the manager will transmit the records in both cases to the Bureau of Land Management, through the regional administrator with appropriate recommendations.

§ 67.10 *Manager to aid in preparing papers; no fees to be charged.* The manager will assist applicants in the preparation of their papers as far as possible, and as the act of May 17, 1906 (34 Stat. 197; 48 U. S. C. 357), does not make any provision for the collection of fees, none will be charged.

§ 67.11 *Officers should be advised of allowance of application.* (a) The manager will send a copy of the notice of allowance to the office of the regional administrator at Anchorage, to the General Superintendent of the Alaska Native Service at Juneau, Alaska, and to the regional cadastral engineer of the Public Survey Office in Alaska, and will advise

each of them that if any objection to the application is known when the notice of allowance is received, or if any objection to the application is found at any time prior to the completion or rejection thereof, the facts should be reported to the manager. If the said officer receives a report showing objections, he will transmit it to the Bureau of Land Management, with appropriate recommendations.

(b) Where an application subsequent to its allowance is amended, or rejected in whole or in part, the officers mentioned should be advised by the manager of such action.

(c) The regional cadastral engineer should note the allowance of the application in the book kept by him for that purpose, and where practicable he will note in pencil the location of the land on the district sheets of his office, the notation to remain until such time as survey may be ordered or until the application has been rejected.

§ 67.12 *Indian claims; adjustment to survey.* If in surveying any township it is found that lands therein are occupied or claimed, or have been applied for by Indians or Eskimos, the regional cadastral engineer will advise the manager as to such claims. If, when the plat of survey is filed, it is found that any Indian or Eskimo occupants or claimants in the township have not filed applications for allotments, the manager will advise such occupants or claimants of their right to file such applications. Where application has been filed, the manager will send notice to the applicant by registered mail, requiring him to adjust his claim to the survey within 90 days from receipt of notice, and will advise him that if the adjustment is not made or an appeal filed within the time allowed, the claim will be adjusted by the manager. If no action is taken by the claimant, the manager will make the adjustment. The claim may not embrace more than 160 acres, and if possible it should be adjusted so as to embrace all subdivisions which have been used and occupied by the Indian or Eskimo, and which contain his improvements. A copy of each notice to an Indian claimant will be sent by the manager to the General Superintendent of the Alaska Native Service at Juneau, and where adjustment to survey is required, such copy will be sent by registered mail. In each case the manager will make report to the Bureau of Land Management showing the action taken.

§ 67.13 *Proof required before approval of application by Secretary of the Interior.* An allotment application will not be submitted by the Bureau of Land Management to the Secretary of the Interior for approval untii the applicant has made satisfactory proof of five years' use and occupancy of the land as an allotment. Such proof must be made in triplicate, corroborated by the statements of two persons having knowledge of the facts, and it should be filed in the district land office. It must be signed by the applicant but need not be sworn to. The showing of 5 years' use and occupancy may be submitted with the application for allotment if the applicant has then used or occupied the land for 5 years, or at any time after the filing of the application when the required showing can be made. The proof should give the name of the applicant, identify the application on which it is based, and appropriately describe the land involved. It should show the periods each year applicant has resided on the land; the amount of the land cultivated each year to garden or other crops; the amount of crops harvested each year; the number and kinds of domestic animals kept on the land by the applicant and the years they were kept there; the character and value of the improvements made by the applicant and when they were made, and the use if any to which the land has been put for fishing or trapping. The proof will be suspended by the manager pending the receipt of the reports hereinafter mentioned. The duplicate copy of the proof will be sent by the manager to the regional administrator at Anchorage, and the triplicate copy to the General Superintendent of the Alaska Native Service at Juneau.

§ 67.14 *Reports by regional administrator and the General Superintendent of the Alaska Native Service.* The manager will request the regional administrator and the General Superintendent of the Alaska Native Service to make report as to the bona fides of the claim and as to the occupation and improvement of the land by the applicant. The report of the regional administrator should also show whether the land applied for is nonmineral in character, whether it is within an area which is reserved because of hot or medicinal

springs; whether the land is reserved for any purpose or is occupied or claimed adversely to the Indian or Eskimo; whether the land extends more than 160 rods along the shore of any navigable water, and the facts as to the use, occupation and improvement of the land by the Indian or Eskimo. If the land is affected by shore-space reservation or restriction, sufficient facts should be set forth to show whether the reservation or restriction should be waived.

CROSS REFERENCE: For shore-space restrictions, see §§ 77.1–77.6 of this chapter.

§ 67.15 *Action by manager on proof.* When the above mentioned reports have been received, the manager will consider the proof in connection therewith, will attach to the proof his recommendation as to whether it should be accepted or rejected, and will transmit all papers in the case to the Bureau of Land Management with the regular returns.

§ 67.16 *Action by Bureau of Land Management on proof.* (a) If the Director of the Bureau of Land Management on examination of the proof and the reports thereon is satisfied that the applicant has used or occupied the land applied for in good faith for 5 years as an allotment, and no objection appears, he will recommend to the Secretary of the Interior that the allotment be approved.

(b) Where an allotment is approved by the Secretary and where the land applied for has not been surveyed, a special survey of the claim will be ordered, except in cases where it is planned to extend the public land surveys over the land within 2 years following. In the event last mentioned, action will be suspended pending the extension of the public land surveys over the land, after which the applicant will be required to adjust his application thereto, as indicated in this section.

(c) Upon the approval by the Secretary of the Interior of an allotment for surveyed land, or upon the adjustment of an approved allotment to a survey made subsequent to the approval of the allotment, a certificate will be issued by the Director of the Bureau of Land Management showing that the land has been allotted to the Indian or Eskimo.

§ 67.17 *Certificate of allotment.* (a) The certificate of allotment will be written in duplicate on Form 4–203. The certificate will show the name and address of the applicant and the date of the approval of the application by the Secretary of the Interior; it will give a description of the land which has been allotted, and it will recite that the land shall be deemed the homestead of the allottee and his heirs in perpetuity and that it shall be inalienable and nontaxable until otherwise provided by Congress.

(b) The original certificate will be sent by the Bureau of Land Management to the district land office for delivery to the claimant. The duplicate will be retained in the Bureau of Land Management with the record of the case as a part thereof. The Bureau of Land Management will advise the Commissioner of Indian Affairs of the issuance of the certificate and will instruct the manager to advise the general superintendent of the Alaska Native Service that the certificate has been issued.

§ 67.18 *Land occupied by Indians or Eskimos not subject to entry.* Lands occupied by Indians or Eskimos in good faith are not subject to entry or appropriation by others.

§ 67.18a *Rules of practice for hearings upon possessory claims to lands and waters used and occupied by natives of Alaska*—(a) *Petition of native groups.* Petitions of native groups of Alaska concerning possessory claims to lands and waters based upon any of the statutes for which citations are given below in this section 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, 1949. No petition filed thereafter will be considered by the Department. A copy of any such petition shall be forthwith transmitted to the Commissioner of Indian Affairs and the Director of the Bureau of Land Management for preliminary investigations and reports, and such reports shall be made a part of the record at the hearing.

(b) *Hearing and notice.* The Secretary of the Interior or such other presiding officer as may be designated by the Secretary of the Interior shall hold public hearings upon the possessory claims of native groups of Alaska. The Secretary will give notice of the hearings by publication of the time, place and subject matter of the hearing in the FEDERAL REGISTER. The Secretary will also

cause a copy of the said notice to be mailed to the last known address of all parties who are shown by the preliminary investigations to have interests in the area concerned which may be adversely affected by the claims asserted. The hearing may be continued from time to time and adjourned to a later date or a different place without notice other than the announcement thereof by the presiding officer at the hearing.

(c) *Powers of presiding officer.* (1) The hearing shall be conducted in an informal but an orderly manner in accordance with the rules of practice hereinafter set forth. Matters of procedure not covered by this section shall be determined by the presiding officer. He shall have power to: (i) Administer oaths; (ii) rule upon motions and requests; (iii) examine witnesses and receive evidence; (iv) admit or exclude evidence and rule upon objections; (v) hear oral arguments and receive memoranda on facts and law in his discretion; (vi) do all acts and take all measures necessary for the maintenance of order at the hearing and the official conduct of the proceeding.

(2) At any stage of the hearing, the presiding officer may call for further evidence upon any matter. In the event that the hearing shall be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place for the taking of evidence shall be published in the FEDERAL REGISTER and sent to all parties who appeared at the hearing.

(3) The presiding officer may take official notice of any generally recognized fact, any established technical or scientific fact, or any official public records.

(d) *Appearances.* Any interested person including any agency of the Department or other governmental agency shall be given an opportunity to appear either in person or through authorized counsel or other representation and to be heard with respect to matters relevant and material to the proceeding. Each such person or representative shall be required to inform the presiding officer of his name and address, the names, addresses and occupations of persons, if any, whom he represents and the position he takes with respect to the issues of the hearing. Where a person appears through counsel or representation, such counsel or representative shall before proceeding to testify or otherwise to participate in the hearing, state for the record his authority to act as such counsel or representative.

(e) *Evidence.* (1) The evidence of the witnesses shall be given under oath. Witnesses may be questioned by the presiding officer or by any person who has entered an appearance for the purpose of assisting the presiding officer in ascertaining the material facts with respect to the subject matter of the hearing.

(2) The evidence, including affidavits, records, documents and exhibits received at the hearing, shall be reported and a transcript thereof shall be made. In the discretion of the presiding officer, written evidence may be received without being read into the record. Every party shall be afforded adequate opportunity to cross-examine, rebut or offer contravening evidence. Evidence shall be received with respect to the matters specified in the notice of the hearing in such order as the presiding officer shall announce.

(f) *Rules of evidence.* All evidence having reasonable probative value shall be admitted, regardless of common law or statutory rules of evidence, but immaterial, irrelevant or unduly repetitious evidence shall be excluded.

(g) *Opinion evidence.* In the discretion of the presiding officer, opinion evidence by properly qualified witnesses may be admitted.

(h) *Stipulations.* In the discretion of the presiding officer, stipulations of facts signed by the parties or their representatives may be introduced.

(i) *Depositions.* The presiding officer may order evidence to be taken by deposition at any stage of the proceeding before any person designated by him and having the power to administer oaths or affirmations. Unless notice be waived, no deposition shall be taken except after reasonable notice to the parties. Any person desiring to take a deposition of a witness shall make application in writing setting out the reasons why such deposition should be taken and stating the time when, the place where, and the name and address of the person before whom it is desired the deposition should be taken, the name and address of the witness and the subject matter concerning which the witness is expected to testify. If good reason be shown, the presiding officer will make and serve upon the parties or their attorneys an order naming the witness whose deposition is to be taken and specifying the time

when, the place where, and the person before whom the witness is to testify. These may or may not be the same as those named in the application. The deponent shall be subject to cross-examination by all the parties appearing. In lieu of oral cross-examination, parties may transmit written cross-interrogations to the deponent. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in the usual form by the officer. Such deposition, unless otherwise ordered by the presiding officer for good cause shown, shall be filed in the record in the proceeding and a copy thereof supplied to the party upon whose application said deposition was taken or his attorney.

(j) *Objections.* It shall not be necessary to make formal exceptions to adverse rulings of the presiding officer upon objections.

(k) *Oral argument and briefs.* (1) Oral arguments may be permitted in the discretion of the presiding officer. Such arguments shall be made a part of the transcript, if the presiding officer so orders.

(2) Briefs and proposed findings of fact and conclusions of law may not be filed after 30 days from the close of the hearing unless otherwise ordered by the presiding officer.

(l) *Filing the record of the hearing.* As soon as practicable after the close of the hearing the complete record shall be filed with the presiding officer. It shall consist of the transcript of the testimony and include exhibits and any written arguments that may have been filed. This record shall be the sole official record. No free copies of the record will be available in any proceeding under this section.

(m) *Action of presiding officer.* Within a reasonable time of the filing of the record of the hearing, the presiding officer shall file with the Secretary of the Interior a report upon the possessory claims of the petitioner which shall contain findings of fact and conclusions of law with respect to such claims. Unless final authority has been delegated by the Secretary to the presiding officer, the Secretary of the Interior will approve, disapprove or modify the findings and conclusions of the presiding officer. The determinations finally made shall be published in the FEDERAL REGISTER and a copy thereof shall be mailed to each party who appeared at the hearing or who received actual written notice of the hearing.

(n) *Rehearing.* Upon good cause shown within 30 days of the publication of the presiding officer's report, the Secretary in his discretion may order a rehearing.

(o) *Public notice of regulations.* Public notice of the issuance of the foregoing rules of practice for hearings shall be given by publishing the same in the FEDERAL REGISTER.

(p) *Revision of section.* This section may be revised by the Secretary of the Interior at any time without prior notice and such revision shall be published in the FEDERAL REGISTER.

(Sec. 8, 23 Stat. 26, sec. 14, 26 Stat. 1101, 30 Stat. 409, 413, 31 Stat. 321, 330, 43 Stat. 464, 49 Stat. 1250; 48 U. S. C. 356, 358, 359, 371, 61, 356, 221, 362) [11 F. R. 6909]

NOTE: This section is also codified as 50 CFR 102.21a.

RESERVATIONS FOR INDIANS AND ESKIMOS

§ 67.19 *Extension of certain provisions of the Wheeler-Howard Act to Alaska; establishment of reservations.* (a) The inherent power conferred upon the Secretary of the Interior by section 441, Revised Statutes (5 U. S. C. 485), to supervise the public business relating to the Indians includes the supervision over reservations in the Territory of Alaska created in the interest of the natives and the authority to lease lands therein for their benefit. Opinion of the solicitor, May 18, 1923 (49 L. D. 592).

(b) The act of May 1, 1936 (49 Stat. 1250; 48 U. S. C., Sup., 358a, 362) extends certain provisions of the act of June 18, 1934 (48 Stat. 984; 25 U. S. C. 461–479), known as the Wheeler-Howard Act, to Alaska, and provides for the designation of Indian reservations in the Territory.

(c) The act of May 31, 1938 (52 Stat. 593; 48 U. S. C. 353a), authorizes the Secretary of the Interior in his discretion to withdraw, subject to any valid existing rights, and permanently reserve, small tracts of not to exceed 640 acres each of the public domain in Alaska, for schools, hospitals, and such other purposes as may be necessary in administering the affairs of the Indians, Eskimos, and Aleuts of Alaska.

[Circ. 491, Feb. 24, 1928, as amended at 13 F. R. 2754]

Part 68—Landing and Wharf Permits on Reserved Shore Spaces

Sec.
68.1 Statutory authority.
68.2 Application; evidence required.
68.3 Use of lands; tolls.
68.4 Survey; issuance of permit.
68.5 Jurisdiction in national forests.

AUTHORITY: §§ 68.1 to 68.5 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 68.1 to 68.5 contained in Circular 491, February 24, 1928. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCE: For shore space, see Part 77 of this chapter.

§ 68.1 *Statutory authority.* Section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 464), authorizes the Secretary of the Interior to grant the use of reserved shore space lands abutting on the water front to any citizen, or association of citizens, or to any corporation incorporated under the laws of the United States or under the laws of any State or Territory, for landings and wharves, with the provision that the public shall have access to and proper use of such landings and wharves at reasonable rates of toll to be prescribed by the Secretary of the Interior.

§ 68.2 *Application; evidence required.* (a) Applications for landing and wharf privileges should be addressed to the Secretary of the Interior and filed in the proper district land office for transmission to the Bureau of Land Management.

(b) Applications should describe the tracts desired by words and by a preliminary diagram showing their position in connection with adjoining surveys and water front and by courses and distances where not defined by prior surveys. There should be filed diagrams and specifications of the proposed wharves and landings, showing their position in connection with the roadway used by vessels, the width of the channel, and the various soundings. Maps and such other papers as may be necessary to fully show the situation must be furnished. All buildings proposed to be erected should be shown on the diagram accompanying the application, and there should be indicated their use and whether they are for public or private purposes.

(c) In an application by an individual or association, the citizenship of the individual and of the members of the association must be shown.

(d) In case of a corporation a certified copy of the articles of incorporation and evidence of organization must be furnished in the same manner as is required where corporations apply for rights of way for railroad purposes.

CROSS REFERENCE: For railroad rights-of-way, see §§ 74.1–74.23 of this chapter.

§ 68.3 *Use of lands; tolls.* The use of such land is limited to landings and wharves, and all rates of toll to be paid by the public must be submitted for approval of the Secretary of the Interior. The application should be accompanied by a proposed schedule of public toll charges; and if such charges are found to be reasonable, the schedule will be approved, subject, however, to revision as the public interests may thereafter require.

§ 68.4 *Survey; issuance of permit.* If the application be allowed, the regional cadastral engineer in charge of the public survey office will instruct a surveyor of the Bureau of Land Management to execute a survey and set permanent monuments to delineate the boundaries of the tract, and a permit will be issued granting the applicant the use of the land sought for landings and wharves, subject to the provisions and conditions prescribed by the statute, which permit will be revocable at the discretion of the Secretary of the Interior. The erection of wharves and piers in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside of established harbor lines, or where no harbor lines have been established, must be in conformity with plans recommended by the Chief of Engineers, and authorized by the Secretary of the Army; consequently such applications will be submitted to the Department of the Army for approval, or such other action as that department may deem proper, before final action is taken in the Interior Department.

CROSS REFERENCE: For surveys, see Parts 78, 280 of this chapter.

§ 68.5 *Jurisdiction in national forests.* Reserved spaces between claims upon navigable waters within existing national forests in Alaska are subject to the jurisdiction of the Secretary of Agriculture, pursuant to the act of Febru-

ary 1, 1905 (33 Stat. 628; 16 U. S. C. 472), and permits for the use of such spaces for landings and wharves must be obtained through that department.

Part 69—Mineral Lands; General Mining Regulations

LOCATION AND ENTRY OF MINERAL LANDS IN ALASKA

AREAS SUBJECT TO SPECIAL LAWS

MINING FOR GOLD AND OTHER PRECIOUS METALS IN BEDS AND ALONG SHORES OF NAVIGABLE WATERS IN ALASKA

SCHOOL SECTIONS

CROSS REFERENCES: For mineral lands, general mining regulations, see Part 185 of this chapter. For surveys in Alaska, see Part 78 of this chapter. For surveys and resurveys, general, see Parts 280, 281 of this chapter.

LOCATION AND ENTRY OF MINERAL LANDS IN ALASKA [1]

AUTHORITY: §§ 69.1 to 69.10 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 69.1 to 69.10 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

§ 69.1 *Laws relating to mining claims extended to Alaska.* The laws of the United States relating to mining claims were extended to Alaska by section 8 of the act of May 17, 1884 (23 Stat. 26), and sections 15, 16, and 26 of the act of June 6, 1900 (31 Stat. 327–329; 48 U. S. C. 119, 120, 381–383), again, in terms, extended the mining laws of the United States and all rights incident thereto, to the Territory, with certain further provisions with respect to the acquisition of claims thereunder.[2]

§ 69.2 *Law in respect to placer claims.* (a) The law in respect to placer claims in Alaska was modified and amended by the act of August 1, 1912 (37 Stat. 242), and section 4 of that act was amended by the act of March 3, 1925 (43 Stat. 1118).

(b) By the act of May 4, 1934 (48 Stat. 663; 48 U. S. C. 381a) [3] the acts of August 1, 1912, and March 3, 1925, were repealed and the general mining laws of the United States applicable to placer mining claims were declared to be in full force and effect in the Territory.

§ 69.3 *Annual assessment work on mining claims and proof thereof.* Under the act of March 2, 1907 (34 Stat. 1243; 48 U. S. C. 384, 385),[4] an unpatented mining claim in Alaska becomes forfeited for failure to complete the required assessment work during any assessment period, the act containing no provision for the protection or preservation of such claim through resumption of work.

[1] The general mining regulations contained in Part 185, as modified and supplemented by the regulations in this part, are effective in the Territory of Alaska. For laws relating to mining enacted by the Territory, see Session Laws of Alaska, March 14, 1935, Ch. 76, and March 9, 1939, Ch. 77.

[2] See also amendatory acts of May 31, 1938 and August 8, 1947 (52 Stat. 588, 61 Stat. 916; 48 U. S. C. 381).

[3] Sec. 3 of the act of May 4, 1934 (48 Stat. 663; 48 U. S. C. 381a) provided: "This Act shall take effect thirty days subsequent to the date of convening of the first regular session of the Alaska Territorial Legislature which is held after the passage of this Act." The next legislature convened on the second Monday of January, 1935.

[4] The act of March 2, 1907 (34 Stat. 1243; 48 U. S. C. 384, 385), prescribes the requirements as to annual assessment work on mining claims in Alaska and the manner of making proof thereof. The act of June 22, 1943 (62 Stat. 571), suspends the annual assessment work on mining claims held by location in Alaska until 12 o'clock meridian of July 1, 1949, provided certain requirements are met.

§ 69.4 *Identification of lands.* A statement as to descriptions should be incorporated in field notes of survey not tied to a corner of the public survey, and in applications for patent based thereon.[5]

§ 69.5 *Plats and field notes of survey.* Copies of the plats and field notes of survey in mining cases will be made and disposed of in accordance with instructions given in § 78.8 of this chapter.

§ 69.6 *Rates for newspaper publications.* Section 2334 of the Revised Statutes (30 U. S. C. 39) provides for the appointment of surveyors to survey mining claims, and authorizes the Director of the Bureau of Land Management to establish the rates to be charged for surveys and for newspaper publications in mining cases. Under this authority of law, the following rates have been established as the maximum charges for newspaper publications:

(a) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of Alaska for the publication of legal notices wherein the notice is published, and in no case shall the charge exceed $9.40 for each 10 lines of space occupied. Such charge shall be accepted as full payment for the publication for the entire period required by law.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates are established upon the understanding that the notices are to be set in the usual body type used for legal notices.

(c) Further information relative to publication and a sample of advertisement set up in accordance with Government requirements is given in § 185.88 of this chapter.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1612, 11 F. R. 1820]

§ 69.7 *Abstract of title.* In the Territory of Alaska, the application for patent will be received and filed and the order for publication issued, if the abstract showing full title in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental abstract of title brought down so as to include the date of the filing of the application must be furnished prior to the expiration of the 60-day period of publication.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 491, Feb. 24, 1928]

§ 69.8 *Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.*[6] Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

§ 69.9 *Period allowed for filing of adverse claims.* The act of June 7, 1910 (36 Stat. 459; 48 U. S. C. 386), provides that adverse claims may be filed at any time during the 60-day period of publication or within 8 months thereafter. This provision operates to enlarge by 8 months additional the time within which an adverse claim may be filed.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 491, Feb. 24, 1928]

§ 69.10 *Period allowed for institution of adverse suits.* (a) It is also provided by the act that adverse suits may be instituted at any time within 60 days after

[5] The field notes of survey of all claims within the Territory of Alaska, and all applications for patent based thereon, where the survey is not tied to a corner of the public survey, shall contain a description of the location or mineral monument to which the survey is tied by giving its latitude and longitude and its position with reference to rivers, creeks, mountains, or mountain peaks, towns or other prominent topographical points or natural objects or monuments, giving the distances and directions as nearly accurate as possible, especially with reference to any well-known trail to a town or mining camp or to a river or mountain appearing on the map of Alaska, which description shall appear regardless of whether or not the survey be tied to an existing monument or to a monument established by the surveyor when making the survey in accordance with existing regulations with reference to the establishment of such monuments. The description of such monument shall appear in a paragraph separate from the description of the courses and distances of the survey.

[6] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

the filing of adverse claims in the district land office. This provision applies to any adverse claim which is seasonably filed.

(b) Managers of district land offices in Alaska will exercise the greatest care in applying the provisions of the act, and will allow no mineral entry until after the expiration of the full period granted for the filing of adverse claims. For example, on any application under which the publication period ended with or after June 7, 1910, no entry will in any event be allowed until after the expiration of the 8 months' period following the publication period.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 491, Feb. 24, 1928]

AREAS SUBJECT TO SPECIAL LAWS [1]

§ 69.11 *Mineral deposits in the Glacier Bay National Monument.* (a) Under the act of June 22, 1936 (49 Stat. 1817), the lands in the Glacier Bay National Monument, reserved by proclamation of February 26, 1925 (43 Stat. 1988), or as it may be extended are open to prospecting for the kinds of mineral now subject to location under the United States mining laws, and, upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations, duly made, will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior.

(b) The owner of a mining location may cut such timber within the boundaries of his claim as is necessary for mining purposes. Prospectors may cut timber for their necessary mining and domestic uses only with the permission of the custodian of the monument or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims or by prospectors shall be disposed of by the claimant or prospector in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

(c) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition so long as it is used by the permittee or his successors.

(d) Occupation and use of the surface of an unpatented mining claim is restricted by the general law to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Upon written permission of the Director of the National Park Service or his representative, the surface of such claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(e) Prospectors and miners shall at all times conform to any rules prescribed or which may be made applicable by the Director of the National Park Service to the national monument.

(f) The Park regulations for the protection of wild life provide:

The national monument is a sanctuary for wild life of every sort, and all hunting, or the killing, wounding, frightening, capturing or attempting to capture at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited.

Firearms, traps, seines, and nets are prohibited within the boundaries of the monument, except upon written permission of the custodian or his representative.

(g) The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to the act of June 22, 1936, will

[1] 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.

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terminate when the minerals are mined out or the claim is abandoned. Any owner of an unpatented location who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim and his right of occupation and use of the surface of the claim considered at an end.

(h) Applications for patents and final certificates issued thereon for mining claims in this monument should be noted "Glacier Bay National Monument Lands", and all patents issued for claims under the act will convey title to the minerals only, and contain appropriate reference to the act and the regulations issued thereunder.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 1415, Dec. 28, 1936]

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

MINING FOR GOLD AND OTHER PRECIOUS METALS IN THE BEDS AND ALONG THE SHORES OF NAVIGABLE WATERS IN ALASKA

AUTHORITY: §§ 69.12 to 69.18 issued under 61 Stat. 916.

SOURCE: §§ 69.12 to 69.18 contained in Circular 1667, 12 F. R. 8205.

§ 69.12 *Purpose and authority.* The act of August 8, 1947 (61 Stat. 916) amends section 26 of the act of June 6, 1900, as amended (31 Stat. 321, 52 Stat. 588; 48 U. S. C. 381) to authorize the exploration and mining for gold and other precious metals in Alaska in land below the line of ordinary high tide on tidal waters and below the line of ordinary high water mark on nontidal waters navigable in fact, subject to certain conditions. It is the purpose of §§ 69.12 to 69.18, inclusive, to set forth the conditions under which such exploration and mining operations may be conducted.

§ 69.13 *Filing of notice of intention to mine.* Any citizen of the United States, any person who has legally declared his intention to become such, any association of such citizens, or any corporation organize under the laws of the United States or of any State or Territory thereof, shall, before commencing actual operations, file a notice of intention to mine or dredge for gold and other precious metals in any of the land described in the preceding section. This notice must be filed in triplicate in the nearest District Land Office, and should contain (a) the full name, address and citizenship of the person filing the notice, (b) a description of the place where the dredge will be initially located or the mining operations otherwise commenced, such place to be connected where practicable by course and distance to a corner of the public land survey on the shore, or if there are no surveyed lands in the vicinity, with the nearest, readily-ascertainable geographical or topographical point, (c) a statement that actual dredging or mining operations will be commenced no later than 90 days after the date of filing of the notice, and (d) a statement that the dredging or other mining operations will comply with all pertinent regulations and laws.

§ 69.14 *Area to be dredged.* In order to assure the preservation of order and the avoidance of conflict, each dredge commencing operations in accordance with §§ 69.12 to 69.18, inclusive, shall not be interfered with by other dredging or mining operations within an area of 200 feet in the direction of either bank and within a space of 500 feet up or down stream. This area shall be indicated by properly placed buoys. Other dredges or boats are to have access to such area for passage and navigational purposes, but, while passing through that area, are not to extract any minerals nor engage in any dredging or moving of materials except as may be necessary for the actual movement of the equipment.

§ 69.15 *Restrictions on dredge location.* No dredge shall be placed in a position or be so operated as to interfere with the free passage of boats on nontidal waters navigable in fact or along the shore line of tidal waters, or interfere with the landing at any public wharf, or with other authorized means for landing stores or supplies. No dredge shall be located nearer to the shore than 100 feet from the line of ordinary low tide on tidal waters. Nor shall any dredge be located within the limits of frontage occupied by any townsite, mission or trading company with established entry under the law.

§ 69.16 *Laws for the protection of navigable waters and fisheries.* No dredging or other mining operations shall be conducted unless all the applicable laws and regulations relating to navigable waters and to the protection of fisheries are complied with.

CROSS REFERENCE: The regulations of the Fish and Wildlife Service of the Department of the Interior concerning fisheries are codified in 50 CFR chapter I. For regulations of the Department of the Army concerning navigable waters, see 33 CFR Chapter II.

§ 69.17 *Prior rights protected.* No dredging or other mining shall in any way be deemed to affect or impair any valid claims, rights or privileges arising under any other provision of law, including possessory claims under the first proviso of section 8 of the act of May 17, 1884 (23 Stat. 26).

§ 69.18 *No title to be acquired; rights of future States.* No dredging or other mining operations shall authorize, or be permitted to lead to, the acquisition of title to any of the land dredged or mined. Any privileges acquired with respect to mining operations in land, title to which is later transferred to a future State upon its admission to the Union, and which is situated within its boundaries, shall be terminable, by such State, and the mining operations shall be subject to the laws of such State.

SCHOOL SECTIONS

§ 69.19 *Statutory authority; mining claims.* (a) The act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353) amended section 1 of the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), to provide that the lands reserved to the Territory of Alaska for educational uses and the minerals therein shall be subject to disposition under the mining and mineral leasing laws of the United States, upon conditions providing for compensation to any Territorial lessee for any resulting damages to crops or improvements on such lands, and that the entire proceeds or income derived by the United States from such disposition of the lands or the minerals therein shall be appropriated and set apart as permanent funds in the Territorial treasury.

(b) The act of August 7, 1939, applies to the lands in sections 16 and 36 in each township in the Territory, and section 33 in each township in the Tanana Valley between parallels 64° and 65° of north latitude and between meridians 145° and 152° of west longitude, which have been surveyed and were not of known mineral character at the time of the acceptance of the survey, and any such numbered sections in other townships hereafter surveyed and not of known mineral character at the time of the acceptance of the survey. The act does not apply to such numbered sections to which the reservation for the Territory has not attached either because the lands have not been surveyed or because of their known mineral character at the date of the acceptance of the survey, which lands are subject to the operation of the mining and mineral leasing laws, in like manner as other public lands.

(Sec. 1, 38 Stat. 1214, as amended; 48 U. S. C. 353) [Circ. 1478, 5 F. R. 3394]

§ 69.20 *Mining locations, entries and patents.* Under the provisions of the amendatory act of August 7, 1939, lands in the reserved school sections are subject to location, entry and patent under the mining laws, subject to all the conditions thereof applicable to the Territory and with the additional condition that in cases where the lands are under lease from the Territory at the time of prospecting for mineral or making a mining location, the prospector or locator will be liable to and shall compensate such lessee for resulting damages to the crops and improvements of such lessee by reason of prospecting or mining operations. The act also provides that any lease issued by the Territory for such reserved lands after a valid appropriation under the mining laws shall be with due regard to the rights of the mineral claimant. Controversies between Territorial lessees and mineral prospectors or owners of mining claims on the same lands involving the right of possession, occupancy and use of the lands, or liability for damages, are matters within the jurisdiction of the local courts.

(Sec. 1, 38 Stat. 1214, as amended; 48 U. S. C. 353) [Circ. 1478, 5 F. R. 3394]

Part 70—Mineral Lands; Coal Permits and Leases and Permits for Free Use of Coal

COAL PROSPECTING PERMITS

COAL LEASES

PERMITS FOR FREE USE OF COAL

SCHOOL SECTIONS

AUTHORITY: §§ 70.1 to 70.29 issued under sec. 17, 38 Stat. 745; 48 U. S. C. 451. Exceptions are cited to text in parentheses.

SOURCE: §§ 70.1 to 70.29 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCES: For coal permits, leases, and licenses (not applicable to Alaska), see Part 193 of this chapter. For additional coal regulations of the Department of the Interior, see 30 CFR, Chapter II.

COAL PROSPECTING PERMITS

§ 70.1 *Statutory authority.* The act of March 4, 1921 (41 Stat. 1363; 48 U. S. C. 444) added a proviso to section 3 of the act of October 20, 1914 (38 Stat. 742; 48 U. S. C. 434, 444) authorizing the issuance of permits for a term of not to exceed 4 years to prospect unclaimed, undeveloped areas in Alaska where prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

§ 70.2 *To whom permits may issue.* Permits may be issued to any person above the age of 21 years who is a citizen of the United States, or to any association of such persons, or to any corporation or municipality organized under the laws of the United States or any State or Territory thereof, provided that a majority of the stock of such corporation shall at all times be owned and held by citizens of the United States.

§ 70.3 *Area.* Permits may be issued for tracts of not exceeding 2,560 acres of contiguous lands in reasonably compact form.

§ 70.4 *Rights conferred.* A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right the permittee shall be authorized to remove from the premises only such coal as may be necessary in order to determine the workability and commercial value of the coal deposits in the land.

§ 70.5 *Application for permit.*[1] Applications for permits shall be filed in the proper district land office, and after due notice thereof on the records forwarded to the Bureau of Land Management with report of status of the land affected. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(a) Applicant's name and address.

(b) Qualifications of petitioner to take a lease under the act includes: (1) Statement of his interests, direct or indirect, in other coal leases, permits or applications therefor on public lands in Alaska identifying the same by land office and serial number, and (2) proof of citizenship—in the case of an individual by a statement as to whether native-born or naturalized and, if naturalized, date of naturalization, court in which naturalized and number of certificate, if known; if a woman whether she is married or single, and if married, the date of her marriage and citizenship of her husband. Corporations are required to file a certified copy of their articles of incorporation, a showing as to residence and citizenship of the stockholders and, if any stock is held by aliens, a showing to the extent reasonably ascertainable, of the name, country to which each such alien owes allegiance and amount of stock held by each.

(c) Description of land for which a permit is desired, by legal subdivisions, if surveyed, and by metes and bounds and such other description as will identify the land if unsurveyed. If unsurveyed, a survey sufficient to identify more fully and segregate the land may be required before permit is granted.

(d) Condition of coal occurrences, so far as determined, description of workings, and outcrops of coal beds, if any, and reason why the land is believed to offer a favorable field for prospecting for coal.

[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.

(e) Detailed plan and method of conducting prospecting or exploratory operations on the land, estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

(f) A brief statement of applicant's experience in coal-mining operations, if any, together with one or more references as to his reputation and business standing.

(1) The application must be signed by the applicant or his attorney in fact, or, if a corporation, by one of its officers theretofore duly authorized. If executed by an attorney in fact, it must be accompanied by a power of attorney and a statement of the applicant as to his qualifications.

(2) The application must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

(g) After a permit is ready for delivery, the permittee will be notified and allowed 30 days within which to furnish a bond, with approved corporate surety or two qualified individual sureties, in the sum fixed by the Director when the permit is granted, but not to exceed $500, conditioned upon compliance with the terms of the permit and against failure of the permittee to use reasonable precautions to prevent damage to the coal deposits or to leave the premises in a safe condition upon the termination of the permit. With bonds signed by individual sureties must be filed affidavits of justification by the sureties that each is worth double the sum specified in the undertaking over and above his just debts and liabilities and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a postmaster, as to the identity, signatures, and financial competency of the sureties. Bond with additional obligations therein will be required where the permit embraces lands entered or patented with the coal reserved under the act of March 8, 1922 (42 Stat. 415; 48 U. S. C. 376, 377).

§ 70.6 *Form of permit.* On receipt of the application, if found sufficient and the lands subject thereto, a permit will be issued on Form 4–031b, of which the district land office will be advised.

§ 70.7 *Leases to permittees.* A qualified permittee who has shown, within the period of the permit, that the land included therein contains coal in commercial quantities will be entitled to a lease for such land, or part thereof as the permittee may desire, upon due application and publication of notice thereof. The application for lease should be filed in the proper district land office before expiration of the period of the permit. An application for lease under this section should describe the land desired and set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit. Such leases will be granted, without competitive bidding, on rents and royalties to be fixed by the Director, Bureau of Land Management, and otherwise substantially in the form of lease provided governing coal-land leases in Alaska.

COAL LEASES [2]

§ 70.8 *Statutory authority.* By authority of the act of Congress approved October 20, 1914 (38 Stat. 741; 48 U. S. C. 432–445, 446–452), the unreserved surveyed coal lands in the Bering River and the Matanuska coal fields, Alaska, have been divided into leasing blocks, or tracts, of 40 acres, or multiples thereof, and leases of such blocks or tracts, with the privilege of mining and disposing of the coal, lignite, and associated minerals therein may be procured from the United States as provided in §§ 70.9–70.18.

[2] On request addressed to the Director of the Bureau of Land Management at Washington, D. C. a blank lease (Form 4–031a) will be furnished the applicant; also, those who desire may procure from the Superintendent of Documents, Government Printing Office, Washington, D. C., a folio containing photolithographic copies of the approved plats of the topographic and subdivisional township surveys of the Matanuska field (13 townships) for $1 and of the Bering River field (8 townships) for 75 cents.

A complete topographic and subdivisional township survey of the Nenana field is contained in Geological Survey Bulletin 664, copies of which may be procured on application to the Superintendent of Documents, Washington, D. C., for $1.10.

§ 70.9 *Qualifications of lessees.* Under the act of October 20, 1914 the qualifications of lessees are defined as follows:

(a) Any person above the age of 21 who is a citizen of the United States.

(b) Any association of such persons (that is, citizens of the United States over 21 years of age).

(c) Any corporation or municipality organized under the laws of the United States, or of any State or Territory thereof; *"Provided,* That a majority of the stock of such corporation shall at all times be owned and held by citizens of the United States."

§ 70.10 *Area.* In accordance with the provisions of section 6 of the act of October 20, 1914 (38 Stat. 743; 48 U. S. C. 440), as amended by the act of February 21, 1944 (58 Stat. 18), the total area that may be held by any one lessee in one or more leases is 2,560 acres, and no person, association or corporation is permitted to take or hold any interest as a stockholder or otherwise in leases or applications therefor exceeding in the aggregate 2,560 acres. One or more contiguous leasing blocks within the acreage limitation may be embraced in one lease.

[Circ. 1571, 9 F. R. 4401]

§ 70.11 *Form and contents of application.*[3] Applications for lease need not be under oath but must be signed by the applicant and should be filed in the proper district land office. No specific form of application is required and no blanks will be furnished, but the application should cover the following points:

(a) Applicant's name and address.

(b) Statement as to citizenship: In the case of an individual, whether native born or naturalized, and if naturalized, date of naturalization, court in which naturalized, and the number of certificate if known, and if a woman, whether married or single, and if married, the date of marriage and the citizenship of her husband; of a corporation, by showing the residence and citizenship of its stockholders and filing a certified copy of its articles of incorporation. In case any of the stockholders of the corporation are aliens, their names, record addresses and the amount of stock held by each is required to be shown.

(c) A statement showing all leases and applications under the act in which the applicant has any interest, direct or indirect. If applicant is a corporation it must also list the holdings of any single holder of a majority of its stock.

(d) A description of the leasing block or blocks desired, and the applicant's experience in coal mining, the amount of capital proposed as an investment under the lease, and references as to the financial standing of the applicant.

(e) A statement showing that the applicant filed his application on his own behalf and if not, for whom he is acting and what agreement, if any, he has with such persons on whose behalf he may be acting.

[Circ. 1571, 9 F. R. 4401, as amended by Circ. 1638, 12 F. R. 1814]

§ 70.12 *Method of award.* The statute under which these proceedings are authorized provides that the Secretary of the Interior may award leases "through advertisement, competitive bidding, or such other methods as he may by general regulation adopt," and the purpose of the applications required herein is to procure such information as will best enable the awarding of leases so as to procure the best terms on behalf of the United States and the most effective development of the coal deposits of the territory.

§ 70.13 *Publication.* All applications will be promptly listed and the proposed terms thereunder will be noted. Thereafter due publication at the expense of the Government for not less than once a week for a period of 30 days will follow in at least two newspapers of general circulation, one of which shall be published in the Territory of Alaska and one in the United States proper, of the applications filed, each to be designated by a number and not by the name of the applicant, the block or blocks applied for, with the announcement that at the expiration of the period of publication the said applications will be taken up and the proposals therein considered, subject to any better terms that may be offered by any other qualified applicant during the period of publication, or by the first applicant.

§ 70.14 *Award of lease.* All applications for a lease, or proposals in connection therewith, pending at the expiration of the period of publication will be submitted to the Director, Bureau of Land Management for consideration, and such action will be taken by the Director as may in his discretion seem warranted on the showing made in each case, by which he will obtain the largest invest-

[3] See note to § 70.5.

ment proportionate to the acreage of the lease, and the earliest actual development of the coal mine on a commercial basis, reserving the right to modify proposed leasing blocks or tracts if the economical mining of the coal will better be procured thereby, or finally to reject any or all applications if, in his judgment, the interest of the United States so require.

§ 70.15 *Investment and bond.* (a) An actual, bona fide expenditure on the land for mine operation, development, or improvement purposes of $100 for each acre included in the lease is adopted as the minimum basis for granting leases, with the requirement that not less than one-fifth of the required investment shall be expended in development of the mine during the first year and a like amount each year for the 4 succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. If the investment to be made is fixed at more than $50,000, the lessee shall furnish a bond with approved corporate surety in the sum of $10,000, conditioned upon the expenditure of the specified amount of investment and upon compliance with the other terms of the lease. If the investment is fixed at $50,000 or less, a bond similarly conditioned in the sum of $5,000 must be furnished. After the required investment has been made the lessee may substitute in lieu of the bond originally furnished a like bond in the sum of $5,000 conditioned upon compliance with the terms of the lease.

(b) In lieu of corporate surety the applicant may deposit United States bonds of a par value equal to the amount of his bond, pursuant to the act of July 30, 1947 (61 Stat. 646; 6 U. S. C. 15) and Treasury Circular No. 154 (31 CFR Part 225). When United States bonds are thus submitted, the same shall be accompanied by a bond and power of sale duly executed by the applicant.

§ 70.16 *Additional leasing blocks.* Lands found to contain coal but not divided into leasing blocks may be divided into such blocks, and the lands therein made the subject of a leasing offer, the rights of adjacent lessees to be given due consideration in any award that may be made under such offer.

§ 70.17 *Form of lease.* Leases will be issued on Form 4–031a.

§ 70.18 *Use of timber.* The use of timber by the lessee, in addition to that taken from the leasehold under the terms of the lease, may be secured by him from other lands not embraced in leasing units in accordance with the regulations that may be prescribed by the Secretary of the Interior under the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 423), and the acts amendatory thereof, or by arrangement with the Department of Agriculture if from a national forest.

CROSS REFERENCES: For timber regulations, Alaska, see Part 79 of this chapter; for Glacier National Park, timber disposal regulations of the National Park Service, see 36 CFR Part 22; for regulations of the Forest Service relating to timber, see 36 CFR Part 221.

PERMITS FOR FREE USE OF COAL

§ 70.19 *Statutory authority.* Permits for the free use of coal in the unreserved public lands in Alaska, may be issued under section 10 of the act of October 20, 1914 (38 Stat. 744; 48 U. S. C. 445). No such permits, however, will be issued for coal lands in the Bering or Matanuska coal fields which have been surveyed into leasing blocks or tracts or in fields where mines are being operated under lease.

§ 70.20 *Qualifications.* Under the terms of the act of October 20, 1914, expressed in section 3 thereof, only citizens of the United States above the age of 21 years, associations of such citizens, corporations, and municipalities, organized under the laws of the United States or of any State or Territory thereof, provided the majority of the stock of such corporations shall at all times be owned and held by citizens of the United States, are eligible to receive a permit to prospect for and mine coal from the unreserved public lands in Alaska.

§ 70.21 *Who may mine coal for sale.* All permittees may mine coal for sale except railroads and common carriers, who by the terms of section 3 of the act of October 20, 1914 (38 Stat. 742; 48 U. S. C. 434), are restricted to the acquirement of only such an amount of coal as may be required and used for their own consumption.

§ 70.22 *Duration of permits.* Permits will be granted for 2 years, beginning at date of filing, if filed in person or by attorney, or date of mailing, if sent by

registered letter, subject to the approval of the Director of the Bureau of Land Management and upon application and satisfactory showing as to the necessity therefor, may be extended by the Director for a longer period, subject to such conditions necessary for the protection of the public interest as may be imposed prior to or at the time of the extension. Misrepresentation, carelessness, waste, injury to property, the charge of unreasonable prices for coal, or material violation of such rules and regulations governing operation as shall have been prescribed in advance of the issuance of a permit, will be deemed sufficient cause for revocation.

§ 70.23 *Limitation of area.* The act of October 20, 1914, limits the area to be covered in any one permit to 10 acres. It is not to be inferred from this, however, that the permits granted thereunder shall necessarily cover that area. The ground covered by a permit must be square in form and should be limited to an area reasonably sufficient to supply the quantity of coal needed.

§ 70.24 *Scope of permit.* Permits issued under section 10 of the act of October 20, 1914, grant only a license to prospect for, mine, and remove coal free of charge from the unreserved public coal lands in Alaska, and do not authorize the mining of any other form of mineral deposit, nor the cutting or removal of timber.

§ 70.25 *How to proceed to obtain permit.*[4] The application should be duly executed on Form 4–020, and the same should either be transmitted by registered mail to or filed in person with the manager of the land office of the district in which the land is situated. Prior to the execution of the application the applicant must have gone upon the land, plainly marked the boundaries thereof by substantial monuments, and posted a notice setting forth his intention of mining coal therefrom. The application must contain the statement that these requirements have been complied with and the description of the land as given in the application must correspond with the description as marked on the ground. The permit, if granted, should be recorded with the local mining district recorder, if the land is situated within an organized mining district.

[4] See note to § 70.5.

§ 70.26 *When coal may be mined before issuance of a permit.* In view of the fact that by reason of long distances and limited means of transportation many applicants may be unable to appear in person at the district land office to file their applications, it has been deemed advisable to allow such applicants the privilege of mining coal as soon as their applications have been duly executed and sent by registered mail to the proper district land office. Should an application be rejected, upon receipt of notice thereof all privileges under this section terminate and the applicant must cease mining the coal.

§ 70.27 *Action by manager.* (a) The manager will keep a proper record of all applications received and all actions taken thereon in a book provided for that purpose. If there appear no reason why the application should not be allowed, the manager will issue a permit on Form 4–020a. Should any objection appear either as to the qualifications of the applicant or applicants, or in the substance or sufficiency of the application, the manager may reject the application or suspend it for correction or supplemental showing under the usual rules of procedure, subject to appeal to the Director, Bureau of Land Management. Upon the issuance of a permit, the manager will promptly forward to the Director, Bureau of Land Management the original application and a copy of the permit and transmit copies thereof to the regional administrator and to the local representatives of the Bureau of Mines for their information.

(b) If application is filed for free permit or for renewal of an existing free permit under section 10 of the act of October 20, 1914, involving land within a field within which there are mines being operated under the leasing provisions of the said act, the manager will transmit such application to the Director of the Bureau of Land Management without action but with appropriate recommendation, calling special attention to the possibility of its competition with existing Government leases.

CROSS REFERENCE: For Bureau of Mines, Department of the Interior, see 30 CFR chapter I.

SCHOOL SECTIONS

§ 70.28 *Coal permits and leases.* Under the provisions of the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353),

coal permits and leases may be issued under the Leasing Act of October 20, 1914 (38 Stat. 741), as amended, and the regulations thereunder (§§ 70.1–70.27), on the lands reserved to the Territory of Alaska for educational uses by section 1 of the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as set forth in § 69.19.

(53 Stat. 1243, as amended; 48 U. S. C. 353) [Circ. 1478, 5 F. R. 3394]

§ 70.29 *Occupation and use of surface by coal permittees or leasees.* Permits and leases issued for such lands will be subject to the additional condition provided by the act of August 7, 1939 that in cases where the permit or lease is issued after leases have been issued for the land by the Territory, the permittee or lessee shall compensate the Territorial lessee for any resulting damages to crops or improvements on such lands incurred while prospecting for or removing coal from the land. The act also provides that any lease issued by the Territory for such reserved lands after a valid appropriation under the mineral leasing laws of the United States shall be with due regard to the rights of the mineral claimant. Controversies between Territorial lessees and coal permittees or lessees on the same lands involving the right of possession, occupancy and use of the lands, or liability for damages, are matters within the jurisdiction of the local courts.

(53 Stat. 1243, as amended; 48 U. S. C. 353) [Circ. 1478, 5 F. R. 3394]

Part 71—Mineral Lands; Oil and Gas, Phosphate, Oil Shale Leases, Potash and Sodium Permits and Leases

OIL AND GAS LEASES

POTASSIUM PERMITS AND LEASES

PHOSPHATE AND OIL SHALE LEASES AND SODIUM PERMITS AND LEASES

SCHOOL SECTIONS

AUTHORITY: §§ 71.1 to 71.12 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189. Exception is cited to text in parentheses.

CROSS REFERENCES: For general regulations applicable to mineral permits, leases, and licenses, see Part 191 of this chapter. For oil and gas leases, see Part 192 of this chapter. For oil shale leases, see Part 197 of this chapter. For phosphate leases, see Part 196 of this chapter. For potassium permits and leases, see Part 194 of this chapter. For additional sodium permits and leases, see Part 195 of this chapter. For additional oil and gas regulations of the Department of the Interior, see 30 CFR Part 221; for operating and safety regulations governing the mining of potash, oil shale, sodium, and phosphate, see 30 CFR Part 231.

OIL AND GAS LEASES

§ 71.1 *Statutory authority.* The disposition of oil and gas deposits in lands owned by the United States in Alaska is governed by the act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), as amended, known as the Mineral Leasing Act.

[Circ. 1431, July 3, 1937; see also item 3 of Note to chapter]

§ 71.2 *Governing regulations.* The regulations governing oil and gas leases in the United States outside of Alaska contained in Part 192 of this chapter are to be regarded, insofar as they are appropriate and are not modified by any rule or regulation in this part, as regulations affecting oil and gas leases in Alaska, under the act of February 25, 1920, as amended.

[Circ. 845, Aug. 12, 1922; see also item 3 of Note to chapter]

§ 71.3 *Acreage limitation.* (For acreage limitation, see §§ 192.3 and 192.20 of this chapter.)

§ 71.5 *Royalty on leases issued with and without competitive bidding.* (For royalty rates on oil and gas leases, see §§ 192.81 and 192.82 of this chapter.)

§ 71.6 *Rental on leases issued without competitive bidding.*[1] The rental payable on noncompetitive oil and gas leases shall be 25 cents per acre or fraction thereof for the first year of the lease, payable prior to execution of the lease.

[Par. 3, Circ. 1431, July 3, 1937; see also item 3 of Note to chapter]

§ 71.7 *Descriptions of unsurveyed lands to be given with reference to true cardinal directions.* All applicants for oil and gas leases must describe unsurveyed lands with reference to true cardinal directions.

[Circ. 905, Oct. 15, 1923]

§ 71.8 *Descriptions of unsurveyed lands to be given by metes and bounds and ties to monuments.* In order to permit adjustment of conflicts, the claims of all conflicting applicants must be identified with reference to a common monument which can be definitely ascertained and located upon the records and plats in the Bureau of Land Management.

(a) These conflicting claims fall into two general classes: (1) Those involving lands located in the vicinity of the public-land surveys; (2) those involving lands which are removed from such surveys.

(b) Subparagraphs (1), (2), and (3) of this paragraph are prescribed for the designation of these lands in applications for leases.

(1) In all cases where circumstances permit, applicants for leases for unsurveyed lands must describe the lands applied for by metes and bounds connecting such description by courses and distances to some monument of an approved public-land survey.

(2) The point of reference utilized may be the initial monument erected by another applicant who has described said monument by courses and distances with reference to a public-survey monument, provided the location of said monument has been definitely established with reference to the public-land survey. In such case, however, the location of the adopted monument, with respect to such public-land survey monument, must be stated or the field notes or calculations by which the location of the applicant's initial monument with reference to the public survey monument was obtained, must be furnished.

(3) In cases where there are no available public-land survey monuments the applicant for lease must describe the land by metes and bounds designating the location of his initial monument by courses and distances, with reference to such permanent monuments as will enable the Bureau of Land Management to identify its location from its records and maps. A plat or chart illustrating the location of said monument will aid in a determination of its location.

[Circ. 905, Oct. 15, 1923]

§ 71.9 *Preference right to lease of owner of surface.* Nonmineral claimants upon lands in Alaska are entitled to preference right leases under section 20 of the act of February 25, 1920 (41 Stat. 445; 30 U. S. C. 229), as amended, wherever the mineral deposits are reserved under the act of March 8, 1922 (42 Stat. 415; 48 U. S. C. 376, 377), under the conditions indicated in § 192.70.

[Circ. 845, Aug. 12, 1922]

POTASSIUM PERMITS AND LEASES

§ 71.10 *Governing regulations.* The act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281–287), authorizes the exploration for and disposition of deposits of potassium in lands owned by the United States, including Alaska. Instructions under the act are contained in Part 194.

[Circ. 491, Feb. 24, 1928]

PHOSPHATE AND OIL SHALE LEASES AND SODIUM PERMITS AND LEASES

§ 71.11 *Governing regulations.* (a) The disposition of deposits of phosphate and oil shale in lands owned by the United States in Alaska is also governed by the act of February 25, 1920 (41 Stat. 437), and sodium by said act, as amended by the act of December 11, 1928 (45 Stat. 1019; 30 U. S .C. 261, 262).

(b) Instructions governing the issuance of leases for deposits of phosphate and oil shale and of permits and leases for deposits of sodium are contained in Parts 196, 197, and 195, respectively.

[Circ. 491, Feb. 24, 1928]

SCHOOL SECTIONS

§ 71.12 *Potash and sodium permits and leases, and oil and gas, phosphate and oil shale leases.* Under the provisions of the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353) any person

[1] For the rental rates on noncompetitive oil and gas leases, after discovery, and on competitive oil and gas leases, see §§ 192.80 and 192.81 of this chapter.

having acquired a permit or lease from the United States for the prospecting for or mining potash, sodium, oil, gas, phosphate or oil shale deposits from the lands reserved to the Territory of Alaska for educational purposes by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as set forth in § 69.19 of this chapter, shall compensate the Territorial lessee for any resulting damages to crops or improvements on such lands where the mineral permit or lease shall be issued after the issuance of the Territorial lease. The act also provides that any lease issued by the Territory for such reserved lands after a lease has been issued under the mineral leasing laws shall be with due regard to the rights of the mineral claimant. Controversies between Territorial lessees and permittees or lessees under the mineral leasing laws on the same lands involving the right of possession, occupancy and use of the lands, or liability for damages, are matters within the jurisdiction of the local courts.

(Sec. 1, 38 Stat. 1214, as amended; 48 U. S. C. 353) [Circ. 1478, 5 F. R. 3394]

Part 72—Park, Recreational, and Cemetery Sites

LEASE OR SALE OF PUBLIC LANDS IN ALASKA TO INCORPORATED CITIES OR TOWNS FOR PARK OR RECREATIONAL PURPOSES, AND SALES OF SUCH LANDS FOR CEMETERY PURPOSES

Sec.

SALE OF PUBLIC LANDS TO RELIGIOUS OR FRATERNAL ASSOCIATIONS OR PRIVATE CORPORATIONS, FOR CEMETERY PURPOSES

AUTHORITY: §§ 72.1 to 72.14 issued under sec. 1, 54 Stat. 1192; 48 U. S. C. 363. Exception is cited to text in parentheses.

SOURCE: §§ 72.1 to 72.14 contained in Circular 1493, 6 F. R. 3731, except as noted following section affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

LEASE OR SALE OF PUBLIC LANDS IN ALASKA TO INCORPORATED CITIES OR TOWNS FOR PARK OR RECREATIONAL PURPOSES, AND SALES OF SUCH LANDS FOR CEMETERY PURPOSES

§ 72.1 *Statutory authority.* The lease or sale of vacant and unreserved public lands in Alaska to incorporated cities or towns for park or recreational purposes, and the sale to them of such lands for cemetery purposes, is authorized by the act of October 17, 1940 (54 Stat. 1192; 48 U. S. C. 363).

§ 72.2 *Lands subject to lease or purchase.* Not to exceed 160 acres of contiguous tracts may be leased or sold for park or recreational purposes. Not to exceed 80 acres of contiguous tracts may be sold for cemetery purposes.

§ 72.3 *Application to lease or purchase.* An application to lease or purchase land under the act of October 17, 1940, must be executed in duplicate by the municipal authorities of an incorporated city or town, shall be addressed to the Director of the Bureau of Land Management, Washington 25, D. C., and filed with the manager of the land office for the district in which the land is situated. The application should show:

(a) The official character and authority of the officer or officers making the application.

(b) A certificate of the officer having custody of the record of incorporation, setting forth the fact and date of incorporation.

(c) A description of the land by legal subdivisions, if the land is surveyed, or, if the land is unsurveyed, a description by metes and bounds, with courses, distances and references to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The land, if unsurveyed, must be compact and rectangular in form, and the approximate acreage thereof must be given. Preferably a map, in duplicate, drawn to appropriate scale, approved by the city or town surveyor, should accompany the application if the same is for unsurveyed land, the map to show, among other data, the approximate latitude and longitude of at least one point on the boundary, and, if practicable, the course and distance of some designated corner of the tract with some corner of the public land survey.

(d) The distance and direction in which the land is situated from the city or town making application therefor.

(e) Facts as to the value of the land for park, recreational or cemetery purposes and the need of the land by the city or town for the use requested. The following information should be given, if the land is desired for park or recreational purposes:

(1) The location of the tract in relation to the natural direction of community development.

(2) Any outstanding features which would make the tract particularly suitable for the contemplated park or recreational use.

(3) The general surface configuration, the soils, the drainage, and the present vegetation, including the kind and amount of timber on the land.

(f) The statement of the applicant, corroborated by the statement of two witnesses, that the land is vacant, unreserved, unoccupied, unimproved, or unclaimed by anyone other than the applicant; that the land does not abut more than 160 rods upon navigable waters or that the restriction has been waived, and that the land is not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that it has been restored from reservation; and that the land is not included within an area which is reserved because of hot or medicinal spring thereon. If the facts are contrary as to any of the matters set forth in this paragraph, a complete statement should be made thereof.

[Circ. 1493, 6 F. R. 3731, as amended by Circ. 1700, 13 F. R. 6006]

§ 72.4 *Action on application; report of regional administrator;* [1] *appraisal.*

(a) Upon receipt of the application, the manager will note its filing, assign a current serial number thereto, and transmit the original, unallowed, together with the accompanying papers, to the Bureau of Land Management, and the copy to the regional administrator, at Anchorage, Alaska, for report and appraisal. With each copy, the manager will report the status of the land as shown by his records.

(b) The report of the regional administrator should show whether the lands have power or reservoir possibilities, whether they are chiefly valuable for purposes other than those for which they are proposed to be used, the facts enumerated in § 72.3 (d), (e), and (f), and any other facts deemed appropriate. The report shall include an appraisal of the land, which shall in no case be less than $1.25 per acre.

(c) The application and proofs filed therewith, and the report of the regional administrator will be carefully examined in the Bureau of Land Management.

(d) In the case of an application to lease, after the regional administrator has reported, if the facts so warrant and if all appear regular, a lease, in quadruplicate, on Form 4–978, will be prepared.

§ 72.5 *Survey.* If a lease or sale shall be authorized by the Director, Bureau of Land Management in the case of an application to lease or purchase unsurveyed lands, the regional cadastral engineer will be directed to survey the land. The cost of such surveys shall be charged to the current appropriation for surveying the public lands.

§ 72.6 *Publication and proof; issuance of final certificate.* Upon payment of the appraised price, and upon acceptance of the plat of special survey, if any, the manager will be instructed to require the applicant to publish notice of the application once a week for 5 consecutive weeks, in accordance with § 106.18 of this chapter. During the entire period of publication, a copy of the notice must be posted in the district land office and on the land. Upon receipt of proof of publication and posting in the Bureau of Land Management, if all be found regular, the manager will be instructed to issue final certificate.

§ 72.7 *Reservation of minerals.* Any lease or patent issued under authority of the act of October 17, 1940, shall contain a reservation to the United States of the coal and other mineral deposits in the land leased or patented, together

[1] The instructions in this section govern leases and sales of public lands in Alaska for park or recreational purposes. Sales of public lands in the Territory for cemetery purposes will be acted upon by the manager and the regional administrator without reference to the Bureau of Land Management.

with the right to prospect for, mine and remove the same, under rules and regulations issued by the Secretary of the Interior. No provision has been made for development of the unreserved mineral deposits in lands to be conveyed or leased under the act of October 17, 1940 and until such regulations shall have issued the reserved deposits will not be subject to disposition.

§ 72.8 *Offer of lease in lieu of sale.* When an application to purchase lands for park or recreational purposes has been filed under the act of October 17, 1940, the Director, Bureau of Land Management, may suspend or reject such application to purchase, and may offer a lease of the premises to the applicant.

§ 72.9 *Inspection of leased premises.* At any time during the term of a lease, under the act of October 17, 1940, the authorized representatives of the Department of the Interior may inspect the leased premises, and they shall have free access to the books or records relating to the leased premises. A report will be made to the Bureau of Land Management for appropriate action of any facts found to exist which constitute cause for which the lease may be canceled as set forth in § 72.10. Also, Federal Agents, including game wardens, shall at all times have the right to enter the leased premises on official business.

§ 72.10 *Cancellation of lease.* A lease will be subject to cancellation by the Director, Bureau of Land Management, for failure of the lessee to make any of the required payments of annual rental within the time prescribed, or for failure of the lessee otherwise to perform or observe any of the terms, covenants and stipulations of the lease, or of any of the regulations issued under the act of October 17, 1940, where such default has continued for 30 days after written notice.

§ 72.11 *Period of lease; renewal; sale of land.* Leases issued under the act of October 17, 1940, shall be for a period not to exceed 20 years. The matter of issuing a further lease to the city or town, upon the expiration of the lease, will rest in the discretion of the Director, Bureau of Land Management. The matter of selling the land to the city or town is also within the discretion of the Director, Bureau of Land Management.

§ 72.12 *Annual rental.* Every lessee under the act of October 17, 1940, under new leases or renewals of leases, shall pay to the lessor in advance such reasonable rental as may be fixed by the Director, Bureau of Land Management. The rental may be adjusted by the Director, Bureau of Land Management, at the end of the second year of the lease and at 2-year intervals thereafter.

SALE OF PUBLIC LANDS TO RELIGIOUS OR FRATERNAL ASSOCIATIONS OR PRIVATE CORPORATIONS, FOR CEMETERY PURPOSES

§ 72.14 *Statutory authority; governing regulations.* The sale of public lands in Alaska to religious or fraternal associations or private corporations authorized to hold real estate in the Territory for cemetery purposes, is authorized by the act of March 1, 1907 (34 Stat. 1052; 43 U. S. C. 682), and the regulations thereunder (Part 253 of this chapter).
(R. S. 2478; 43 U. S. C. 1201)

Part 73—Practice

CONTESTS OF ENTRIES AND HOMESTEAD LOCATIONS

§ 73.1 *Procedure in contest cases.* (a) Contests against entries of public lands in the Territory of Alaska may be initiated by private persons or on the part of the Government in the same manner as such proceedings are begun elsewhere in the United States.

(b) The procedure in such cases will be governed by the Rules of Practice in Part 221 of this chapter.

(c) Homestead locations of lands in the Territory of Alaska may be contested and canceled upon any ground which would warrant the cancellation of a homestead entry of land elsewhere made under section 2289, R. S. (43 U. S. C. 161, 171); and contests of this character may be initiated at the proper district land office by either the Government or any private person, and should be proceeded with in the same manner and given the same effect as contests against homestead entries elsewhere.

(d) Where a final decision has been rendered in a contest proceeding canceling a homestead location, the manager will secure the notation of such judgment on the record of the location in the recording office.
(R. S. 2478; 43 U. S. C. 1201) [Circ. 491, Feb. 24, 1928]