Part 74—Rights-of-Way

RIGHTS-OF-WAY FOR RAILROADS, WAGON ROADS, AND TRAMWAYS

RIGHTS-OF-WAY FOR RESERVOIRS AND CANALS AND FOR ROADWAY, POWER, TELEPHONE, AND TELEGRAPH PURPOSES

AUTHORITY: §§ 74.1 to 74.27 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 74.1 to 74.27 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.

CROSS REFERENCES: For rights-of-way, see Parts 243–245 of this chapter. For rights-of-way over Indian lands, see 25 CFR Part 256.

RIGHTS-OF-WAY FOR RAILROADS, WAGON ROADS, AND TRAMWAYS[1]

§ 74.1 *General statement.* The rights-of-way for railroads, wagon roads, and tramways in the Territory of Alaska, granted by sections 2 to 9, inclusive, of the act of May 14, 1898 (30 Stat. 409 ff.; 48 U. S. C. 411–419) does not convey an estate in fee in the lands used for such purposes or in the lands used for station and terminal facilities. The grant is merely of a right of use for the necessary and legitimate purposes of the roads, the fee remaining in the United States, except as to lands authorized to be sold under section 6 by the Secretary of the Interior, "upon such expressed conditions as in his judgment may be necessary to protect the public interests." The nature of these conditions will depend upon the public necessities and will be governed by the particular circumstances of each case. These sections authorize the Secretary of the Interior to approve maps and plats affecting unsurveyed as well as surveyed land, and, while it is not obligatory on the part of grantees to file additional maps and plats after survey of the lands, showing connections with the public surveys, and the smallest legal subdivisions of all lands affected, by so doing the grants and the extent thereof could be properly recorded on the records of the Bureau of Land Management and readily determined.

§ 74.2 *Right-of-way included in area entered.* All persons entering public lands, to part of which a right-of-way has attached, take the same subject to such right-of-way, the latter being computed as a part of the area of the tract entered.

§ 74.3 *Condemnation of right-of-way.* Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnations of the right-of-way across the same may be made in accordance with the provisions of section 4 of the said act of May 14, 1898.

§ 74.4 *Incorporated companies.* (a) Any incorporated company desiring to obtain the benefits of this part is required to file the following papers and maps:

(1) A copy of its articles of incorporation duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(2) A copy of the State or Territorial law under which the company was organized, with the certificate of the governor or secretary of the State or Territory that the same is the existing law.

(3) When said law directs that the articles of association or other papers connected with the organization be filed with any State or Territorial officer, the

[1] For forms 1 to 8, inclusive, referred to under §§ 74.1–74.23, see 50 L. D., pp. 75 to 78, inclusive.

certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

(4) A certificate from the Secretary of the Territory of Alaska showing that the company has complied with chapter 23, title 3, act of June 6, 1900 (31 Stat. 528), providing a civil code for the Territory of Alaska.

(5) The official statement, under seal of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory where organized. (Form 1.)[2]

(6) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2.)[2]

(7) If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to the Bureau of Land Management by the governor or secretary of any State or Territory, a company organized in such State or Territory may file, in lieu of the requirements of paragraph (b) of this section, a certificate of the governor or Secretary of the State or Territory that no change has been made since a given date, not later than that of the laws last forwarded.

(8) Maps, field notes, and other papers as hereinafter required.

(b) No forms are prescribed for the proofs required in subparagraphs (1)–(4), as each case must be governed to some extent by the laws of the State or Territory.

§ 74.5 *Individuals or associations of individuals.* Individuals or associations of individuals making applications for permits, under section 6 of the act (30 Stat. 411; 48 U. S. C. 416), for tramways or wagon roads are required to file evidence of citizenship. In the case of associations a statement must be filed by the principal officer thereof, giving a list of its members and stating that the list includes all the members. Evidence of citizenship must be furnished for each member of the association. Individuals and associations will also be required to file the maps, field notes, and other papers hereinafter required.

[2] For forms 1 to 8, inclusive, referred to under §§ 74.1–74.23, see 50 L. D., pp. 75 to 78, inclusive.

§ 74.6 *Preparation of maps and plats.* All maps and plats must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey thereof, wherever such surveys have been made. The word "profile" as used in the act is understood to intend a map of alignment. No profile of grades will be required.

§ 74.7 *Data required on maps.* (a) The maps should show any other road crossed or with which connection is made, and whenever possible the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which the applicant asks right of way. Field notes of the surveys should be written along the line on the map. If the map should be too much crowded to be easily read, then duplicate field notes should be filed separate from the map, and in such form that they may be folded for filing. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. Station numbers should also be given on the map in all cases where changes of numbering occur and where known lines of survey, public or otherwise, are crossed, with distance to the nearest permanent monument or other mark on such line. The map must also show the lines of reference of initial, terminal, and intermediate points, with their courses and distances.

(b) When the lines are located on surveyed land, the maps must show the 40-acre subdivisions; when on unsurveyed land, a meridian should be drawn on maps through initial and terminal points and at intervals of not more than 6 miles, intermediate points.

§ 74.8 *Data required in field notes; instructions as to surveys.* Typewritten field notes, with clear carbon copies, are preferred, as they expedite the examination of applications. All monuments and other marks with which connections are made should be fully described, so that they may be easily found. The field notes must be so complete that the line may be retraced on the ground. On account of the conditions existing in Alaska surveys based wholly on the magnetic needle will not be accepted. In that case a true meridian should be established, as accurately as possible, at

the initial point. It should be permanently marked and fully described. The survey should be based thereon and checked by a meridian similarly fixed at the terminal point and, when the line is a long one, by intermediate meridians at proper intervals. On account of the rapid convergence of the meridians in these latitudes such intermediate meridians should be established at such intervals as to avoid large discrepancies in bearings. It will probably be found preferable to run by transit deflections from a permanently established line, with frequent and readily recoverable reference lines permanently marked; and in such surveys occasional true bearings should be stated, at least approximately. On all lines of railroad the 10-mile sections should be indicated and numbered, and on maps of tramways and wagon roads the 5-mile sections shall likewise be indicated and numbered.

§ 74.9 *Filing of papers.* The maps, field notes, and accompanying papers should be filed in the district land office for the district where the proposed right of way is located.

§ 74.10 *Connections with other surveys.* Connections should be made with other surveys, public or private, whenever possible; also with mineral monuments and other known and established marks. When a sufficient number of such points are not available to make such connections at least every 6 miles, the surveyor must make connection with natural objects or permanent monuments.

§ 74.11 *Permanent monuments or marks.* Along the line of survey, at least once in every mile, permanent and easily recoverable monuments or marks must be set and connected therewith, in such positions that the construction of the road will not interfere with them. The locations thereof must be indicated on the maps. All reference points must be fully described in the field notes, so that they may be relocated, and the exact point used for reference indicated.

§ 74.12 *Designation of termini.* The termini of a line of road should be fixed by reference of course and distance to a permanent monument or other definite mark. The initial point of the survey and of station, terminal, and junction grounds should be similarly referred. The maps, field notes, engineer's certificate, and applicant's certificate (Forms 3 and 4) [3] should each show these connections.

§ 74.13 *Statement and certificates required.*[4] The engineer's certificate and applicant's certificate must be written on the map, and must both designate by termini (as in the preceding section) and length in miles and decimals the line of route for which right of way application is made. (See Forms 3 and 4.) Station, terminal, or junction grounds must be described by initial point (as in the preceding section) and area in acres (Forms 7 and 8), when they are located on surveyed land, and the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein. When the applicant is an individual the word "applicant" should be used instead of "company," and such other changes made as are necessary on this account.

§ 74.14 *Additional width for right-of-way.* Where additional width is desired for railroad right-of-way on account of heavy cuts or fills, the additional right-of-way desired should be stated, the reason therefor fully shown, the limits of the additional right-of-way exactly designated, and any other information furnished that may be necessary to enable the Secretary of the Interior to consider the case before giving it his approval.

§ 74.15 *Preliminary map and field notes.* The preliminary map authorized by the proviso of section 4 of the act will not be required to comply so strictly with the foregoing instructions as maps of definite location; but it is to be observed that they must be based upon an actual survey, and that the more fully they comply with §§ 74.1–74.23 the better they will serve their object, which is to indicate the lands to be crossed by the final line and to preserve the company's prior right until the approval of its maps of definite location. Unless the preliminary map and field notes are such that

[3] For forms 1 to 8, inclusive, referred to under §§ 74.1–74.23, see 50 L. D., pp. 75 to 78, inclusive.

[4] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

the line of survey can be retraced from them on the ground, they will be valueless for the purpose of preserving the company's rights. The preliminary map and field notes should be in duplicate, and should be filed in the district land office in order that proper notations may be made on the records as notice to intending settlers and subsequent applicants for the right of way.

§ 74.16 *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to an inch. The maps may, however, be drawn to a scale of 1,000 feet to an inch when necessary, or, in extreme cases, to 500 feet to an inch. No other scales must be used and should be so selected as to avoid making maps inconveniently large for handling. In most cases, by furnishing separate field notes, an increase of scale can be avoided. Plats of station, terminal, and junction grounds, etc., should be drawn on a scale of 500 feet to an inch, and must be filed separately from the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

§ 74.17 *Plats of station, terminal, and junction grounds.* Plats of station, terminal, and junction grounds must be prepared in accordance with the directions for maps of lines of routes. Whenever they are located on or near navigable waters the shore line must be shown, and also the boundaries of any other railroad grounds or other claims located on or near navigable waters within a distance of 80 rods from any point of the tract applied for.

§ 74.18 *Showing required in application.* All applications for permits made under section 6 of the act should state whether it is proposed to collect toll on the proposed wagon road or tramway; and, in case of wagon roads, the application must be accompanied by satisfactory evidence, corroborated by a statement, tending to show that the public convenience requires the construction of the proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. In all cases, if the proposed line of road shall be located over any road or trail in common use for public travel, a satisfactory statement, corroborated by statement, must be submitted with the application, showing that the interests of the public will not be injuriously affected thereby.

§ 74.19 *Action on filing of application.* When maps are filed, the manager will make such pencil notations on his records as will indicate the location of the proposed right of way as nearly as possible. He should note that the application is pending, giving the date of filing and name of applicant. He must also indorse on each map and other paper the date of filing, over his written signature, transmitting them promptly to the Bureau of Land Management.

§ 74.20 *Action on approval of map.* Upon the aproval of a map of definite location or station plat by the Secretary of the Interior the duplicate copy will be sent to the manager, who will make such notations of the approval on his records, in ink, as will indicate the location of the right of way as accurately as possible.

§ 74.21 *Statement and certificates required when road is constructed.* When the road is constructed, a certificate of the engineer and a certificate of the applicant (Forms 5 and 6)[5] should be filed in the district land office in duplicate for transmission to the Bureau of Land Management. In case of deviations from the map previously approved, whether before or after construction, there must be filed new maps and field notes in full, as in this part provided, bearing proper forms, changed to agree with the facts in the case, and the location must be described in the forms as the amended survey and the amended definite location. In such cases, the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the Secretary of the Interior.

§ 74.22 *Action where required evidence is not filed.* Unless the proper evidence of construction is filed within the time prescribed by the act for the construction of each section of the road, appropriate steps will be taken looking

[5] For forms 1 to 8, inclusive, referred to under §§ 74.1–74.23, see 50 L. D., pp. 75 to 78, inclusive.

to the cancellation of the approval of the right of way and the notations thereof on the records.

§ 74.23 *Charges for transportation of passengers and freight.* (a) In the case of a wagon road or tramway built under permit issued under section 6 of the act upon which it is proposed to collect toll, a printed schedule of the rates for freight and passengers should also be filed with the Director of the Bureau of Land Management for submission to the Secretary of the Interior for his consideration and aproval at least 60 days before the road is to be opened to traffic, in order to allow a sufficient time for consideration, inasmuch as by section 6 it is made a misdemeanor to collect toll without written authority from the Secretary of the Interior. In the case of a wagon road satisfactory evidence, corroborated, must be submitted with said schedule, showing that at least an average of $500 per mile has been actually expended in constructing such road. These schedules must be submitted in duplicate, one copy of which, bearing the approval of the Secretary of the Interior, will be returned to the applicant if found satisfactory. Said schedules shall be plainly printed in large type.

(b) Schedules of passenger and freight rates on railroads should be filed with the Interstate Commerce Commission.

CROSS REFERENCE: For Interstate Commerce Commission, see 49 CFR Chapter I.

RIGHTS-OF-WAY FOR RESERVOIRS AND CANALS AND FOR ROADWAY, POWER, TELEPHONE, AND TELEGRAPH PURPOSES

§ 74.24 *General statement.* (a) On the general applicability of right-of-way laws in the Territory, the Attorney General in an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), responding to an inquiry whether it would be lawful to grant revocable licenses under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), or easements under the act of March 4, 1911 (36 Stat. 1253; 16 U. S. C. 5, 420, 523, 43 U. S. C. 961), held, after a full review of all the statutes and departmental decisions thereon, and especially of the act of August 24, 1912 (37 Stat. 512; 48 U. S. C. 23), providing for the full organization of the Territory and the extension of all the laws of the United States to the Territory not locally inapplicable, that such action was authorized, for the reason that said acts of Congress were now applicable to the public lands in Alaska.

(b) By analogy it would appear that the provisions of sections 18 to 21, inclusive, of the act of March 3, 1891 (26 Stat. 1101, 1102; 43 U. S. C. 946–949), as amended by section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U. S. C. 951), allowing rights-of-way for canals, ditches, and reservoirs to canal and ditch companies formed for purposes of irrigation, are also applicable to public lands in Alaska and it has been so held since said opinion.

(c) Section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 524), granting rights-of-way for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals within and across the forest reserves of the United States, applies to and is operative in forest reserves in the Territory.

§ 74.25 *Effect of Federal Power Act.* It is to be noted, however, that the act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791–823), known as the Federal Power Act, as amended, has superseded and repealed all acts or parts of acts inconsistent therewith, providing for the development and transmission of water power on the public domain and certain reservations of the United States, and that this act is applicable to Alaska. Applications thereunder should be filed with the Federal Power Commission, Washington, D. C. But electrical projects that are in no way connected with water power, for instance, those where the electrical power is generated by steam, remain under the jurisdiction of the Department of the Interior pursuant to the provisions of the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), and that of March 4, 1911 (36 Stat. 1253; 16 U. S. C. 5, 420, 523, 43 U. S. C. 961), where the land involved is not within a national forest.

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

§ 74.26 *General instructions.* The general instructions and regulations regarding the various rights-of-way referred to in §§ 74.24 and 74.25 are found in Parts 244 and 245 of this chapter.

§ 74.27 *Right-of-way for roadway.* (a) A provision is made in section 10 of the

act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 462), that:

A roadway 60 feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway.

The phrase "shore line" as thus used means high-water line.

(b) This reservation occurs in the proviso relating to the reservation between claims abutting on navigable waters; but since it is its purpose to reserve a roadway for public use as a highway along the shore line of navigable waters, it is held to relate to the lands entered or purchased under this act as well as to the reserved lands; otherwise it would serve little or no purpose. This reservation will not, however, present the location and survey of a claim up to the shore line, for in such case the claim will be subject to this servitude and the area in the highway will be computed as a part of the area entered and purchased.

(1) Section 26 of the act of June 6, 1900 (31 Stat. 329; 48 U. S. C. 381) provides that the reservation for roadway shall not apply to mineral lands or town sites.

(2) The reservation for roadway should not be inserted in patents (Departmental Instructions of March 15, 1915, 44 L. D. 22).

(c) The act of July 24, 1947 (61 Stat. 418; 48 U. S. C. 321d) amended the act of June 30, 1932 (47 Stat. 446) by adding at the end thereof a new section, as follows:

SEC. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1680, 13 F. R. 2993]

Part 75—Sales and Leases [1]

SALE OR LEASE OF CERTAIN LANDS IN THE MATANUSKA VALLEY OF ALASKA

Sec.

AUTHORITY: §§ 75.1 to 75.14 issued under 54 Stat. 1191; 48 U. S. C. 353 note.

§ 75.1 *Statutory authority.* (a) The act of October 17, 1940 (54 Stat. 1191; 48 U. S. C. 353 note) authorizes the Secretary of the Interior, in his discretion, to lease, or to sell at not less than $1.25 per acre, under such rules and regulations and upon such terms and conditions as he may prescribe, subject to valid existing rights certain lands released from reservation for the support of common schools and the public lands in the Territory of Alaska in the area described as follows:

SEWARD MERIDIAN

Tps. 17 and 18 N., Rs. 1 and 2 E., Secs. 16 and 36 and the public lands in the townships.
T. 17 N., R. 1 W.,
Secs. 25, 26, 27, 31, 32, 33, 34, and 35.
T. 16 N., R. 1 W.,
Secs. 3, 4, 5, 6, and 7.
T. 16 N., R. 2 W.,
Secs. 1, 2, 11, and 12.

[1] The act of March 27, 1928 (45 Stat. 371; 48 U. S. C. 472, 472a) provides that lands within abandoned military reservations, in Alaska, not otherwise withdrawn or used for a public purpose, may be surveyed, appraised and sold as provided by the Act of July 5, 1884 (23 Stat. 103; 43 U. S. C. 1071–1074), or that, in the discretion of the Secretary of the Interior, such lands may be restored to disposal under the public land laws applicable to the territory. The said Act further provides: "That any person locating, entering or acquiring title to any such lands shall, in addition to the regular fees, commissions, and purchase price of the land, pay the appraised price of any improvements placed thereon by the Government."

(b) All the public lands in the areas described in paragraph (a) of this section are situated within the boundaries of the Matanuska Valley Colonization Project administered by the Alaska Rural Rehabilitation Corporation and, except for the school lands released from reservation for the Territory as described in the following paragraph, were withdrawn by Executive Order No. 6957 of February 4, 1935, and Executive Order No. 7128 of August 6, 1935, under authority of the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497; 16 U. S. C. 471; 43 U. S. C. 141 et seq.) from settlement, location, sale, entry, or other form of appropriation, and reserved for classification, and in aid of legislation. The act of October 17, 1940 (54 Stat. 1191; 48 U. S. C. 353 note), provides an exclusive method for the lease or disposal of these public lands.

(1) The act releases sections 16 and 36, townships 17 and 18 north, ranges 1 and 2 east, Seward Meridian, Alaska, from the reservation thereof made by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354), for the support of the common schools in the Territory of Alaska, and provides for the designation and reservation of an equal area of indemnity lands in lieu thereof, in accordance with the act of February 28, 1891 (26 Stat. 796; 43 U. S. C. 851, 852).

(2) The act provides that all leases and patents issued shall contain a reservation to the United States of the oil, gas, and other mineral deposits, together with the right to prospect for, mine and remove the same under such regulations as the Secretary of the Interior may prescribe.

[Circ. 1563, 8 F. R. 12446]

§ 75.2 *Policy.* It will be the policy of this Department to promote the beneficial use of the public lands in the area described, subject to the terms of the Act, and at the same time to safeguard the public interest in the land. To this end, the regional administrator will cooperate with the Alaska Rural Rehabilitation Corporation in its development program of the Matanuska Valley Colonization Project of Alaska.

[Circ. 1563, 8 F. R. 12447, as amended by Circ. 1697, 13 F. R. 5680]

§ 75.3 *Preference right to Alaska Rural Rehabilitation Corporation.* The Alaska Rural Rehabilitation Corporation shall have the preference right to purchase such part of the above-described public lands as the Corporation shall certify to the Bureau of Land Management, have been improved or cleared and are ready for settlement and development into farm units. The preference right application must be filed by the Alaska Rural Rehabilitation Corporation within 60 days from the date of approval of this part.

[Circ. 1563, 8 F. R. 12447]

§ 75.4 *Persons entitled to make application.* Colonists and settlers who are approved and certified by the Alaska Rural Rehabilitation Corporation may file an application for the purchase or lease of such lands as are not sold to the Corporation. The amount of land sold or leased to any such person shall not exceed the acreage necessary for the purpose of developing a farm unit which will support such person and his family, as determined by the Corporation.

[Circ. 1563, 8 F. R. 12447]

§ 75.5 *Authorization for sale.* No sale will be authorized or made, except on prior approval of the regional administrator.

[Circ. 1563, 8 F. R. 12447, as amended by Circ. 1697, 13 F. R. 5680]

§ 75.6 *Sale price and lease rental.* The sale price of lands sold hereunder shall be fixed by the regional administrator upon consideration of the recommendation of the Alaska Rural Rehabilitation Corporation but in no case shall it be less than $1.25 per acre. The annual rental on land leased hereunder shall be the amount determined by the regional administrator upon consideration of the recommendation of the Corporation.

[Circ. 1563, 8 F. R. 12447, as amended by Circ. 1697, 13 F. R. 5680]

§ 75.7 *Evidence of citizenship required.*[1] No person shall be entitled to a patent or lease unless he is a native born or naturalized citizen of the United States, or one who has declared his intentions to become a citizen. If naturalized, or a declarant, he must show, by a signed statement, the title and location of the court in which proceedings were

[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.

instituted, the date of naturalization or declaration of intentions, and if available, the number of the document.
[Circ. 1563, 8 F. R. 12447; see also item 3 of Note to chapter]

§ 75.8 *Action by Alaska Rural Rehabilitation Corporation.* If the Corporation approves an application by a colonist or settler for the purchase or lease of land, the Corporation shall file the application and its certificate of approval with the manager, district land office, Anchorage, Alaska. The application shall include the name, address, and evidence of citizenship of the applicant, and a complete legal description of the land involved. If the application is for a patent, it shall be accompanied by the full amount of the purchase price of the land, as recommended by the Corporation. If the application is for a lease, it shall be accompanied by the full amount of the first annual lease rental payment, as recommended by the Corporation. The certificate of approval of the Corporation shall include a statement that the land described does not exceed the amount necessary for the purpose of developing a farm unit which will support the applicant and his family.
[Circ. 1563, 8 F. R. 12447]

§ 75.9 *Action by the district land office.* The manager will assign a current serial number to each case and make appropriate notations on the records of his office. In the absence of any objection as shown by his records, he will, if the application is for a patent, and is accompanied by the purchase price, issue a cash certificate on Form 4–189, to the person named in the application, as a basis for the issuance of patent. If the application is for a lease and the regional administrator has authorized the issuance of a lease, the manager, upon the receipt of the first annual rental payment, will cause a lease to be issued.
[Circ. 1697, 13 F. R. 5680]

§ 75.10 *Action by the Bureau of Land Management.* Upon receipt by the Bureau of Land Management of an application to purchase, together with the cash certificate, the Director, if all be found regular, will cause a patent to be issued to the applicant.
[Circ. 1697, 13 F. R. 5680]

§ 75.11 *Causes for cancellation.* A lease shall be subject to cancellation by the manager for failure of the lessee to comply with any of the terms, covenants, and stipulations of the lease, or of any of the regulations contained in §§ 75.1 to 75.14.
[Circ. 1697, 13 F. R. 5680]

§ 75.12 *Payment of annual rental on lease.* The annual rental on a lease must be paid to the manager, District Land Office, Anchorage, Alaska, on or before each anniversary date of the lease.
[Circ. 1697, 13 F. R. 5680]

§ 75.13 *Patent and lease reservations.* Patents and leases issued under the provisions of the act shall contain a reservation to the United States of the oil, gas, and other mineral deposits, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary of the Interior may prescribe.
[Circ. 1563, 8 F. R. 12447]

§ 75.14 *Appeals.* Any party aggrieved by any action of the manager may appeal to the Director and the Secretary of the Interior, pursuant to the Rules of Practice (Part 221 of this chapter).
[Circ. 1697, 13 F. R. 5680]

Part 76—School Land Reservation; Grant for University

SCHOOL LANDS RESERVED FOR THE TERRITORY OF ALASKA

Sec.
76.1 Statutory authority.
76.2 Report as to completion of survey; examination of school sections as to mineral character.
76.3 Indemnity selections.
76.4 Leasing of school lands.

GRANT TO ALASKA FOR AGRICULTURAL COLLEGE AND SCHOOL OF MINES, NOW UNIVERSITY OF ALASKA

76.5 Statutory authority.
76.6 Applications for selection.
76.7 Statement must accompany application.

AUTHORITY: §§ 76.1 to 76.7 issued under R. S. 2478; 43 U. S. C. 1201.

SCHOOL LANDS RESERVED FOR THE TERRITORY OF ALASKA

§ 76.1 *Statutory authority.* (a) By the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354), sections numbered 16 and 36 in every township, not known to be mineral in character at the date of acceptance of survey, on which no settlement has been made before the survey of the land in the field, and which have not been sold or otherwise appropriated

by authority of Congress, are reserved for the support of the common schools in Alaska.

(b) Section 33 in each township between parallels 64° and 65° of north latitude and between 145° and 152° of west longitude are reserved for the support of a Territorial agricultural college and school of mines, now University of Alaska.

[Circ. 491, Feb. 24, 1928]

§ 76.2 *Report as to completion of survey; examination of school sections as to mineral character.* (a) Upon the completion of surveys in the field, the regional cadastral engineer will make report of that fact in triplicate, the original and one carbon to be forwarded to the regional administrator and the third copy to be transmitted to the Director, Bureau of Land Management. Where less than a full township is involved, the report will list any and all school sections embraced therein.

(b) Upon receipt of such notification, the regional administrator will take appropriate action looking to the examination and report with a view to classification of the school sections affected as mineral or nonmineral, subject, however, to such instructions as may be received from the Bureau of Land Management with reference to forest or other withdrawals which would render field examination unnecessary. Where any school section is reported as mineral, opportunity will be afforded the proper officers of the Territory to disprove such finding.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 996, Apr. 7, 1925]

§ 76.3 *Indemnity selections.* Where any of the sections are lost to the reservations mentioned in the act of March 4, 1915, in whole or in part, because of prior settlement or sale, or other appropriation under an act of Congress, or where they are wanting or are fractional in quantity, indemnity lands may be designated and reserved in lieu thereof, as provided in the act of February 28, 1891 (26 Stat. 796; 43 U. S. C. 851, 852). The regulations in Part 270 of this chapter providing for such selections by the States will be followed in Alaska.

Each application for selection must be accompanied by a duly corroborated statement showing:

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

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

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

(d) The facts as to all waters upon the land other than springs, whether creek, pond, lagoon or lake, their source, depth, width, outlet, and current (whether swift or sluggish), whether or not the same or any of them are navigable for skiffs, canoes, motorboats, launches, or other small watercraft and whether or not the same or any of them constitute a passageway for salmon or other merchantable sea-going fish to spawning grounds.

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

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1700, 13 F. R. 6006; see also item 3 of Note to chapter]

CROSS REFERENCES: See the following parts in this chapter: for homesteads, Part 65; for Indian and Eskimo allotments, Part 67; for mining claims, Part 69; for shore space, Part 77; for soldiers' additional rights, Part 61; for trade and manufacturing sites, Part 81.

§ 76.4 *Leasing of school lands.* The Territory of Alaska is authorized to provide by law for the leasing of its school lands, it being stipulated, however, that no greater area than one section shall

be leased to any person, association, or corporation, and that leases shall not be for longer periods than 10 years.
[Circ. 491, Feb. 24, 1928]

GRANT TO ALASKA FOR AGRICULTURAL COLLEGE AND SCHOOL OF MINES, NOW UNIVERSITY OF ALASKA

§ 76.5 *Statutory authority.* The act of Congress approved January 21, 1929 (45 Stat. 1091; 48 U. S. C. 354a) granted to the Territory of Alaska, for the exclusive use and benefit of the Agricultural College and School of Mines (now University of Alaska), 100,000 acres of vacant non-mineral surveyed unreserved public lands in said Territory, to be selected by the Territory, under the direction and subject to the approval of the Secretary of the Interior, and subject to the conditions and limitations expressed in the act. This grant was made in addition to the provision made for the benefit of the Agricultural College and School of Mines by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354).
[Reg. June 11, 1929]

§ 76.6 *Applications for selection.*[1] (a) Applications to select lands under the grant made to Alaska by the act of January 21, 1929, will be made by the proper selecting agent of the Territory and will be filed in the district land office of the district in which such selected lands are situated. Such selections must be made in accordance with the law, and with the regulations governing the selections of lands by States, set forth in §§ 270.1–270.16, insofar as such sections apply to "special grants" or "grants in quantity."

(b) Each list of selections must contain a reference to this act under which the selections are made and must be accompanied by a certificate of the selecting agent showing the selections are made under and pursuant to the laws of the Territory of Alaska.

(c) The selections in any one list should not exceed 6,400 acres. No more than one serial number must be given to any list of selections, notwithstanding it may contain more than one selection.

(d) Each list must be accompanied by a certificate of the selecting agent showing that the selections therein and those pending, together with those approved, do not exceed the total amount granted for the purpose stated.

(e) The nonmineral character of the land applied for must be shown by a statement of some responsible party, having and testifying to a personal knowldege of the land, based upon examination made not more than 3 months prior to the filing of the list, and shall apply to each smallest legal subdivision of land selected. This statement should also show that the land is not occupied by nor does it contain improvements placed thereon by any Indian.
[Reg. June 11, 1929; see also item 3 of Note to chapter]

§ 76.7 *Statement must accompany application.* Every application for selection under the act of January 21, 1929, must be accompanied by a duly corroborated statement making the following showing as to the lands sought to be selected:

(a) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant; that no part of the land is valuable for coal, oil, gas or other mineral deposits, and that at the date of the application no part of the land was claimed under the mining laws.

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

(c) All facts relative to medicinal or hot springs upon the land must be stated. The facts as to all waters upon the land other than springs, whether creek, pond, lagoon or lake, their source, depth, width, outlet and current (whether swift or sluggish), whether or not the same or any of them are navigable for skiffs, canoes, motorboats, launches or other small watercraft, and whether or not

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

the same or any of them constitute a passageway for salmon or other merchantable sea-going fish to spawning grounds.

[Circ. 491, Feb. 24, 1928, as amended by Reg. June 11, 1929; Circ. 1700, 13 F. R. 6006; see also item 3 of Note to chapter]

Part 77—Shore Space

SHORE-SPACE RESTRICTION AND RESERVATION

SHORE-SPACE RESTORATION

AUTHORITY: §§ 77.1 to 77.11 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 77.1 to 77.11 contained in circular 1684, 13 F. R. 3814.

SHORE-SPACE RESTRICTION AND RESERVATION

§ 77.1 *Statutory authority.* Section 1 of the act of May 14, 1898 (30 Stat. 409), as amended by the act of March 3, 1903 (32 Stat. 1028; 48 U. S. C. 371, 462), provides among other things, that no location or scrip, selection, or right along any navigable or other waters shall be made within the distance of 80 rods of any lands, along such waters, theretofore located by means of any such scrip or otherwise and that no entry shall be allowed extending more than 160 rods along the shore of any navigable water, and along such shore a space of at least 80 rods shall be reserved from entry between all such claims. However, under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 462) the Secretary of the Interior may grant the use of such shore-space reserves for landings and wharves. (See Part 68 of this chapter.)

Section 10 of the act of May 14, 1898, as amended by the acts of March 3, 1927 (44 Stat. 1364) and May 26, 1934 (48 Stat. 809; 48 U. S. C. 462, 461, 411), provides among other things, that no entry shall be allowed for trade and manufacturing sites, homesites and headquarter sites, and rights-of-way for railroad terminals and junction points, on lands abutting on navigable waters for more than 80 rods.

§ 77.2 *Navigable or other waters defined.* The term "navigable waters" is defined in section 2 of the act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 411), "to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark." The words "or other waters" as used in section 1 of the act, are held to include all waters of sufficient magnitude to require meandering under the Manual of Surveying Instructions, or which are used as a passageway or for spawning purposes by salmon or other seagoing fish.

§ 77.3 *Entries and claims affected by shore-space reservations and restrictions.* Claims, including homestead settlements and entries, other than in national forests (see act of June 5, 1920, 41 Stat. 1059; 48 U. S. C. 372), allotments to Indians and Eskimos which are considered as homesteads, soldiers' additional entries, trade and manufacturing sites, homesites and headquarter sites under Part 64 of this chapter, and school-indemnity selections, but not including mission sites (44 L. D. 83) or mining claims (43 L. D. 120), may not be made in Alaska, within a distance of 80 rods (one-quarter of a mile), of any such claim, entry, or selection theretofore located along any navigable waters. In addition, a soldier's additional entry or school-indemnity selection may not be made in Alaska within a distance of 80 rods of any lands along any navigable or other waters theretofore located as such entry, selection or otherwise.

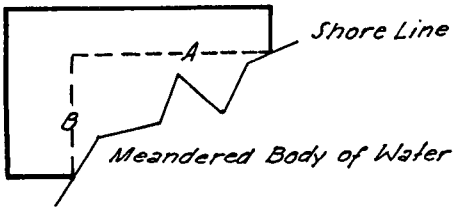
Trade and manufacturing sites, and rights-of-way for terminals and junction points under the act of May 14, 1898, may not extend more than 80 rods along the shore of any navigable water, and homesites and headquarter sites under Part 64 of this chapter, which must be reasonably compact in form, may not extend as much as 80 rods along such shore. All other claims subject to the restrictions of the preceding paragraph may not extend more than 160 rods along the shore of any navigable water.

§ 77.4 *Restriction as to length of claims; method of measuring length of shore space.* In the consideration of ap-

plications to enter lands shown upon plats of public surveys in Alaska, as abutting upon navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the longest straight-line distance between the shore corners of the tract, measured along lines parallel to the boundaries of the subdivision; and the sum of the distances of each subdivision of the application abutting on the water, so determined, shall be considered as the total shore length of the application. Where, so measured, the excess of shore length is greater than the deficiency would be if an end tract or tracts were eliminated, such tract or tracts shall be excluded, otherwise the application may be allowed if in other respects proper.

The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

The following sketch shows the method of measuring the length of shore space, the length of line "A" or line "B", whichever is the longer, representing the length of shore space which is chargeable to the tract:



§ 77.5 *Reservation between claims.* For the purpose of the regulations in this part, any claim which is so located as to approach within 80 rods of the actual shore line shall be considered as if it were actually on the shore line. Between all such claims or the constructive extension thereof, the reserved strip shall extend for a distance of 80 rods from the shore as well as 80 rods along the shoreline. However, the land included within that constructive extension to the shore line shall not be included within the shore space reservation created by such claim, but shall be open and subject to appropriation under and in accordance with appropriate law.

§ 77.6 *Surveys involving shore space.* The procedure which should be followed in connection with a petition for the survey of a homestead settlement claim, where a shore-space limitation is involved, is set forth in § 65.20 of this chapter. Surveys of other kinds of claims for lands subject to a shore-space limitation will not be made by the Bureau of Land Management unless and until the limitation on the land is removed.

SHORE-SPACE RESTORATION

§ 77.7 *Statutory authority.* The act of June 5, 1920 (41 Stat. 1059; 48 U. S. C. 372), provides that the Secretary of the Interior, in his discretion, may upon application to enter or otherwise, restore to entry and disposition the reserved shore spaces, or waive the restriction that no entry shall be allowed extending more than 160 rods along the shore of any navigable waters as to such lands as he shall determine are not necessary for harborage, landing and wharf purposes.

The act of June 5, 1920, does not authorize the waiver of the 80-rod restriction in the case of trade and manufacturing sites, homesites and headquarter sites, or in any way affect the reservation for roadway purposes along navigable waters, created by section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 462).

§ 77.8 *Form of petition for restoration; preference right.*[1] Any person who desires to secure such waiver or restoration should file a petition therefor, in duplicate, in the proper district land office. No special form of petition is required, but it should be in typewritten form or legible manuscript, and must be signed by the applicant and corroborated by the statements of two persons having knowledge of the facts.

No preference right to enter the land will be secured by the applicant by reason of the filing of such a petition unless it is based on an equitable claim which is subject to allowance and confirmation. Restoration of the land to disposal under the homestead laws, under the small-tract act of June 1, 1938 (52 Stat. 609), as amended by the act of July 14, 1945

[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.

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(59 Stat. 467; 43 U. S. C. 682a), and under the act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461) for homesite or headquarters site purposes, will be subject to the provisions of section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U. S. C. 282), as amended by the act of May 31, 1947 (61 Stat. 123; 43 U. S. C. 282) and the act of June 3, 1948 (62 Stat. 305), granting preference to veterans of World War II.

§ 77.9 *Description of land in petition.* If the land is surveyed, it should be described by legal subdivisions of the public land surveys. If unsurveyed, it should be described by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. The description should be tied to known monuments, towns, and natural objects whenever possible.

§ 77.10 *Showing required in petition.* The petition must contain a full statement as to all pending claims on each side of the tract bordering along the water in question and as to the availability of the land sought for harborage, landing and wharf purposes, and, if the land abuts a stream or lake, all facts must be stated as to the width, depth and navigability of the water and the use which is ordinarily made thereof, as well as whether or not such stream or lake is a runway or spawning ground for seagoing fish.

Where it is asserted that equities have accrued, and a preference right of entry based thereon is claimed, the petition should set forth the facts upon which the alleged claim is founded. If settlement is claimed and the land is unsurveyed, the petition should be accompanied by a certified copy of the location notice which was filed in the local recording office.

§ 77.11 *Application to make entry in conflict with shore-space reserve.* The Manager will reject any application to enter which conflicts with a shore-space reservation or restriction, unless it is accompanied by a petition for restoration or request for waiver of the restriction, based on an equitable claim warranting consideration. The Manager, in every case, will notify the applicant that consideration will be given to the restoration of the land from the shore-space reserve or to the waiver of the restriction.

Part 78—Surveys

AUTHORITY: §§ 78.1 to 78.9 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 78.1 to 78.9 contained in Circular 1711, 13 F. R. 7865.

§ 78.1 *System of surveys.* The rectangular system of survey of the public lands was extended to the Territory of Alaska by the act of March 3, 1899 (30 Stat. 1098; 48 U. S. C. 351). The regular township surveys in Alaska conform to that system, but departures therefrom are permitted under the conditions stated in the act of April 13, 1926 (44 Stat. 243; 48 U. S. C. 379), and in certain other cases, such as special surveys for trade and manufacturing sites, headquarters sites, and homesites under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 461), as amended; for soldiers additional entries, pursuant to sections 2306 and 2307 of the Revised Statutes (43 U. S. C. 274, 278); and for small tracts under the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended.

§ 78.2 *Meridians.* The public land surveys in Alaska are governed by three principal meridians established as follows: The Seward Meridian, initiated just north of Resurrection Bay and extending to the Matanuska coal fields; the Fairbanks Meridian, commencing near the town of Fairbanks and controlling the surveys in that vicinity, including the Nenana coal fields; and the Copper River Meridian which lies in the valley of the Copper River and from which surveys have been executed as far north as the Tanana River and south to the Bering River coal fields and the Gulf of Alaska.

§ 78.3 *Administration of surveying activities.* Administration of the public land surveying activities in Alaska is under the general supervision of the regional administrator, Bureau of Land Management, at Anchorage, Alaska. A public survey office, in which the records

relating to the public land surveys in the Territory are maintained, is located at Juneau, Alaska. Correspondence relating to local survey matters should be addressed to the Public Survey Office, Juneau, Alaska.

§ 78.4 *Existing surveys and extensions thereof.* The surveys up to the present time have been confined to known agricultural areas, the coal fields, and such other lands as have been considered to be suitable for development by settlers or otherwise. The extensions of the surveys to other areas will be governed largely by the character of the lands and their suitability for use, development, and administration under the public land laws applicable to Alaska.

§ 78.5 *Special surveys.* Information respecting special surveys of soldiers' additional entries, homesites, homesteads, and trade and manufacturing sites is given in Parts 61, 64, 65, and 81 of this chapter, respectively.

§ 78.6 *Deposit required for survey made by deputy surveyor.* When application is made to have a special survey executed by a deputy surveyor, the Regional Cadastral Engineer, Public Survey Office, Juneau, Alaska, will furnish the applicant with an estimate of the cost of the office work involved in the preparation of the plat and field notes of such survey. The applicant will be required to deposit such estimated amount with said officer. If the estimated amount is found to be insufficient to cover the actual cost of such office work, the applicant will be required to pay the deficiency; if in excess of the actual cost, the excess will be refunded to the applicant.

§ 78.7 *Copy of plat of nonmineral survey for posting on land.* The public survey office will furnish the claimant, without charge, a copy of the plat of a special nonmineral survey for posting on the land.

§ 78.8 *Plats of mineral surveys released upon approval.* Upon approval of plats of Alaskan mineral surveys by the Office Cadastral Engineer, Public Survey Office, Juneau, Alaska, two copies thereof will be prepared in the public survey office by photostat, blueprint, or such other process as may be available. Such copies will be furnished without charge to the claimant, or his agent or attorney, for immediate use, one for posting on the land and one for filing with the application.

§ 78.9 *Copies of records.* Copies of plats of surveys in Alaska, or other records of the Public Survey Office, will be sold at the cost of production, in accordance with section 1 of the act of August 24, 1912 (37 Stat. 497; 5 U. S. C. 488), as amended by the act of July 30, 1947 (61 Stat. 521), and § 2.4 of this title.

Part 79—Timber

FREE USE OF TIMBER ON PUBLIC LANDS IN ALASKA

Sec.
79.1 Statutory authority.
79.2 Free use privilege; cutting by agent.
79.3 Free use of timber for Government purposes.
79.4 Application for permit.
79.5 Action by manager on application.
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79.7 Amount of timber which may be cut.
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FREE USE OF TIMBER BY OIL AND GAS CLAIMANTS

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SMALL SALES OF TIMBER FOR USE IN ALASKA

79.15 Statutory authority.
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SALE OF DEAD, DOWN, OR DAMAGED TIMBER

SALE OF TIMBER FOR EXPORTATION FROM ALASKA

FREE USE OF TIMBER ON PUBLIC LANDS IN ALASKA

AUTHORITY: §§ 79.1 to 79.13a issued under sec. 11, 30 Stat. 414, as amended; 48 U. S. C. 423.

SOURCE: §§ 79.1 to 79.13a contained in Circular 1548, 8 F. R. 7708. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCE: For additional free use privileges, see §§ 259.24–259.28 of this chapter.

§ 79.1 *Statutory authority.* Section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 423), empowers the Secretary of the Interior to permit the use of timber found upon the public lands in Alaska by actual settlers, residents, individual miners, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes as may actually be needed by such persons for such purposes. This section was amended by the act of June 15, 1938 (52 Stat. 699), so as to permit the use of such timber by churches, hospitals, and charitable institutions for firewood, fencing, buildings and for other domestic purposes.

§ 79.2 *Free use privilege; cutting by agent.* The only timber which may be cut under these regulations for free use in Alaska is timber on vacant public lands in the Territory not reserved for national forest or other purposes. The timber so cut may not be sold or bartered. The free use privilege does not extend to associations or corporations, except churches, hospitals, and charitable institutions. Any applicant entitled to the free use of timber may procure it by agent, if desired, but no part of the timber may be used in payment for services in obtaining it or in manufacturing it into lumber. Timber may not be cut by an applicant hereunder after the land has been included in a valid homestead settlement or entry or other claim, except that any applicant for the free use of timber who has been granted a permit to cut as hereinafter provided, will have the right to cut the timber while the permit remains in force as against a subsequent applicant who may wish to obtain the same timber by purchase.

Free use permits will not be issued where the applicant owns or controls lands having an adequate supply of timber to meet his needs.

§ 79.3 *Free use of timber for Government purposes.* Persons contracting with Government officials to furnish firewood or timber for United States Army posts or for other authorized Government purposes may procure it from the vacant and unreserved public lands in Alaska free of charge, provided the contracts do not include any charge for the value of the firewood or timber. Where it is desired to procure timber for such use an application for permit in triplicate must be filed as in other cases, and a copy of the contract must be attached to the application.

§ 79.4 *Application for permit.* (a) Before timber is cut for free use, an application for permit in triplicate must be filed in the district land office for the district in which the lands to be cut over are situated.

(b) The application must be executed in triplicate on Form 4–023f, copies of which may be obtained, on request, from any district land office in Alaska, or from the Regional Administrator, Anchorage, Alaska, and must contain the following information:

(1) The name, address, and business or occupation of the applicant.

(2) A description of the land from which the cutting is to be done, by legal subdivision, section, township and range numbers, if surveyed, or by metes and bounds, with reference to some permanent natural landmark, if unsurveyed. The cutting area must be restricted to the smallest area possible necessary to produce the kind and quantity of timber applied for.

(3) The amount and kind of the timber applied for.

(4) The proposed use of the timber and the place in Alaska at which it is to be used.

(5) A description by section, township and range, if surveyed, or by metes and bounds, if unsurveyed, of lands owned and controlled by applicant, and a statement of the quantity and species of timber growing on such lands and the reasons why this timber is not used.

(6) The name and address of the person who is to do the cutting.

(7) Facts as to the status of the land known to the applicant.

(8) The method to be utilized by the applicant in disposing of brush, tops, and lops, so as to minimize fire hazard and insect and fungus infestation, which must be in compliance with the Territorial laws, or in the absence of such laws, such disposition must conform to proper forestry practices.

(9) Facts as to any other application or permit to cut timber for free use, under §§ 79.1–79.13, filed by the applicant within the preceding 12 months.

(c) The right to cut timber under a permit will expire at the end of 12 months from the date of the issuance of the permit.

§ 79.5 *Action by manager on application.* (a) Upon receipt of the application for permit the manager will give it a serial number and will note a reference to it on his tract book.

(b) The manager will acknowledge receipt of the application and will advise the applicant that his application will be forwarded to the Regional Administrator, Anchorage, Alaska, for appropriate action of which he will be duly notified. He will also advise the applicant whether the land is covered by any other application or permit or by any entry or selection, or whether it is reserved for national forest or other purposes, as shown by his records, and if the lands are not subject to timber cutting he will reject the application. No timber shall be cut until a permit is received and the manager will so advise the applicant.

(c) The manager will then check the description of land owned or controlled by the applicant and set forth in his application with the records of the district land office noting status thereof on the application, and will promptly forward the application in triplicate to the Regional Administrator, Anchorage, Alaska, in charge of the issuance of free use timber permits in Alaska. He will also furnish such officer a copy of his statement to the applicant, together with any other relevant data shown by his records or known to him pertinent to the issuance or denial of the permit.

§ 79.6 *Issuance of permit; cutting and removal of timber.* (a) The officer designated by the regional administrator shall promptly pass upon the application and issue permit should the application appear regular in all respects, subject to field investigation or the furnishing of additional information by the applicant, should either be deemed necessary before issuance of the permit.

(b) The permit, when issued, shall be by endorsement upon the application with date of issuance, and a copy shall be promptly sent to the applicant. When deemed necessary for the protection of the remaining timber, or in the best interests of the United States, the representative of the regional administrator issuing the permit shall incorporate in the approval of the permit the provisions under which the cutting of the timber and disposition of tops and lops shall be governed. The failure to observe such stipulations by the permittee shall constitute a trespass, and may bar him from securing other permits.

(c) Upon allowance of a permit the manager shall be notified in order that he may note the permit on the tract book. No timber shall be cut until permit is issued.

§ 79.7 *Amount of timber which may be cut.* During each calendar year each applicant entitled to the benefits of the act may take a total of 100,000 feet board measure or 200 cords in saw logs, piling, cordwood or other timber. This amount may be taken in whole in any one of such classes of timber or in part of one kind and in part of another kind or other kinds. Where a cord is the unit of measure, it shall be estimated in relation with saw timber in the ratio of 500 feet board measure to the cord. Permits to take timber in excess of the amount stated may be granted to churches, hospitals, and charitable institutions upon a showing of special necessity therefor, and with the approval of the regional administrator where the stumpage value does not exceed $500.00, or in larger quantities, by the Director of the Bureau of Land Management.

§ 79.8 *Notice of completion of timber cutting operations.* Upon completion of

the cutting, and the removal of the timber, the permittee must notify the manager, stating when the work was completed, the land from which the timber was taken, the amount and kind of timber which was cut and removed, and the use to which the timber was put. The manager will note his records to show the facts and will forward the notice to the regional administrator.

§ 79.9 *Field examination.* Field examination of timber cutting operations under free use permits will be made when deemed necessary by the regional administrator.

§ 79.11 *Timber on school sections and on withdrawn lands.* Sections 79.1–79.13 are not applicable to timber upon sections 16, 33, and 36, which were reserved to the Territory for educational uses by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354). Sections 79.1–79.13 are also inapplicable to timber upon withdrawn areas, unless the order of withdrawal permits or the cutting is authorized by the Director of the Bureau of Land Management.

CROSS REFERENCE: For sales of timber on school sections and withdrawn lands, see § 79.29.

§ 79.12 *Rules to be observed in cutting timber.* (a) Immature trees or trees other than of the size, kind and maturity necessary to furnish the class of timber desired are not to be cut and cordwood is not to be cut from trees suitable for saw logs or from spruce trees of a size exceeding 10 inches in diameter at the stump.

(b) All stumps are to be cut as close to the ground as conditions will permit and each tree is to be utilized to a diameter at the top sufficiently small to prevent unnecessary waste.

(c) Tops, lops, and necessarily cut underbrush are to be disposed of in such manner as will insure the least danger of the spread of forest fires and insect or fungus infestation, and under the supervision of the proper official of the Bureau of Land Management, who may determine in the permit the manner of disposal of tops, lops, and brush. Every possible precaution to prevent forest fires is to be taken and assistance in suppressing such fires when discovered is to be rendered. If the applicant fails properly to dispose of tops, lops, and underbrush, he will be liable for any expense necessarily incurred by the Department in properly disposing of the debris. He shall also be chargeable for damages to timber or property by fire arising through his negligence or that of his employees.

§ 79.13 *Trespass; penalty for unauthorized cutting of timber.* The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and the regulations of the Department of the Interior, will render the persons responsible liable to the United States in a civil action for trespass, and such persons may be prosecuted criminally under 18 U. S. C. 1852.

§ 79.13a *Appeals.* A party aggrieved by any action involving his application may appeal to the Director of the Bureau of Land Management, and the Secretary of the Interior, pursuant to Part 221 of this chapter.

FREE USE OF TIMBER BY OIL AND GAS CLAIMANTS

§ 79.14 *Governing regulations.* The free use of timber upon oil and gas leases by lessees, authorized by the Secretary of the Interior under authority of section 32 of the act of February 25, 1920 (41 Stat. 450; 30 U. S. C. 189), is governed by §§ 284.42–284.53 of this chapter.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189, 221) [Circ. 491, Feb. 24, 1928]

SMALL SALES OF TIMBER FOR USE IN ALASKA

AUTHORITY: §§ 79.15 to 79.33 issued under sec. 11, 30 Stat. 414, as amended; 48 U. S. C. 421.

SOURCE: §§ 79.15 to 79.33 contained in circular 1393, June 20, 1936, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

§ 79.15 *Statutory authority.* Section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 421) provides that the Secretary of the Interior may cause to be appraised the timber or any part thereof upon the public lands in Alaska, and sell such timber in such quantities as actually is needed for consumption in Alaska from year to year.

§ 79.16 *Timber which may be sold.* The only timber which may be sold under §§ 79.15–79.33 is timber on the vacant public lands in Alaska, not reserved for national forest or other purposes. Such sales may be made to individuals, associations and corporations. Sales will be made only in such quantities as are

actually needed for use in the Territory within 2 years from the date of the filing of the application.

§ 79.17 *Application.* (a) Persons wishing to purchase timber must make application therefor, accompanied by a deposit, as required by § 79.19 to the district land office for the district in which the lands to be cut over are situated.

(b) The application must be made on Form 4–023 and must contain the following information:

(1) The name, address, and business or occupation of the applicant, or such information for each applicant, if more than one.

(2) A description of the land from which the cutting is to be done, by legal subdivision, section, township and range numbers, if surveyed, or by metes and bounds, with reference to some permanent natural landmark, if unsurveyed. The cutting area must be restricted to the smallest area possible necessary to produce the kind and quantity of timber applied for. If an exclusive right to cut the timber is desired, the applicant must request such right and must show that the timber is not needed by persons entitled to the free use of timber under section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 423), if such is the case.

(3) The amount and kind of the timber applied for.

(4) The proposed use of the timber and the place in Alaska at which it is to be used within 2 years from the date of the filing of the application.

(5) The name and address of the person who is to do the cutting.

(6) The amount of money transmitted with the application and the form of remittance.

(7) Facts as to the status of the land, known to the applicant.

(8) Facts as to any other application to purchase timber under §§ 79.15–79.33 filed by the applicant within the preceding 12 months.

(c) The application must be witnessed by the signatures of two persons.

§ 79.18 *Minimum prices for timber.* The minimum rates at which any timber will be appraised or sold are as follows: For Sitka spruce, hemlock and red cedar, $1 per 1,000 feet b. m.; for yellow cedar, $2.50 per 1,000 feet b. m.; for piling 50 feet or less in length up to a top diameter of 7 inches, one-half cent per linear foot; for piling between 50 and 80 feet in length up to a top diameter of 8 inches, three-fourths of a cent per linear foot; for piling over 80 feet in length, up to a top diameter of 8 inches, 1 cent per linear foot; for shingle bolts and cooperage stock, 50 cents per cord; and for wood suitable only for fuel or mine lagging, 25 cents per cord.

§ 79.19 *Cash deposit to be made; disposition thereof.* Each application must be accompanied by a deposit in the sum of $50, in cash, postoffice money order or certified check, where the stumpage value of the timber applied for, at the minimum rate, equals or exceeds that amount, or in a sum representing the full stumpage value, at the minimum rate, where such value is less than $50. If afterwards a permit is issued, the deposit will be applied to the purchase price of the timber. If no permit is issued under the application and no timber is cut thereunder, the deposit will be returned.

§ 79.20 (a) *Action by manager on application.* Upon receipt of an application for timber on land from which it may properly be cut with the required deposit, the manager will give it a serial number and note a reference thereto on his tract book. He will acknowledge receipt of the application and advise the applicant that no timber may be cut until receipt of a permit from the officer in charge of timber cutting operations in Alaska. If the required deposit does not accompany the application, or the land is embraced in an entry or selection or is not of the character described in § 79.16, from which timber may be cut, he will suspend action on the application and call on the applicant to make the required payment, or to amend the application as the case may be.

(b) When the application is proper, the manager will promptly forward it to the regional administrator. The application will be accompanied with a statement indicating whether or not the records of the district land office show any objection to the cutting of the timber aplied for.

[Circ. 1503, 7 F. R. 2157]

§ 79.21 *Conditions precedent to cutting and removal of timber.* (a) The applicant may cut the timber applied for,

under the following conditions, if the land is subject to timber cutting under this part:

(1) After he has filed his application to purchase in the district land office, with the required deposit.

(2) After he has posted notice of his application on Form 4–023c in a conspicuous place on the land.

(3) After he has received from the regional administrator a permit authorizing the cutting of the timber applied for.

(b) Land which is occupied or improved by an Indian or Eskimo, or which is included in a homestead settlement claim, or in a mining or other claim initiated under the public land laws, is not subject to timber cutting hereunder, notwithstanding that the facts as to such claim may not be shown by the records of the district land office.

(c) An applicant will be allowed 12 months from the date of the filing of his application in the district land office within which to cut the timber applied for. The right to cut such timber will expire at the end of such time. No timber may be removed from the land before a permit authorizing its removal has issued or before the applicant has made payment in full for all timber cut, as provided in §§ 79.22–79.28.

[Circ. 1393, June 20, 1936, as amended by Circ. 1503, 7 F. R. 2157]

§ 79.22 *Exclusive right to cut timber.* An application to purchase timber will give the applicant an exclusive right to take it as against persons entitled to the free use of timber in Alaska under section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 423), if such exclusive right is requested and granted, but not otherwise. Where such request is made, the applicant must show that the timber applied for is not needed by persons entitled to such free use. Further, in order to claim such exclusive right, the applicant to purchase timber will be required to show in his posted notice on Form 4–023c that such right has been granted, and, if the land is unsurveyed, the boundaries thereof must be blazed or otherwise marked on the ground, sufficiently to identify them.

§ 79.23 *Subsequent claim subject to timber application.* When a homestead, mining or other claim is initiated subsequent to the filing in the district land office of an application to purchase timber, and the posting of notice on the land, such subsequent claimant must take the claim subject to the right of the timber applicant to cut and remove the timber applied for.

§ 79.24 *Issuance of permit.* (a) A permit to cut and remove the timber applied for will be issued by the regional administrator without awaiting a field examination and appraisal of the timber, in the absence of objection appearing. If any objection is known to such officer, he will suspend the application for permit until a field examination has been made.

(b) Where conditions warrant the regional administrator will reject the application, stating his reasons for such action. The officer will insert in all permits issued by him such conditions and provisions respecting the cutting and removal of the timber as in his opinion are required by the public interests. Any person who is adversely affected by the action taken on his application may secure a review thereof by making request therefor to the Director, Bureau of Land Management.

[Circ. 1393, June 20, 1936, as amended by Circ. 1503, 7 F. R. 2157]

§ 79.25 *Field examination and appraisal of timber.* As soon as practicable after the filing of the application, or at such time or times as the regional administrator may deem most advantageous, a field examination or field examinations will be made and the timber will be appraised. The field officer who makes the appraisal will advise both the applicant and the manager thereof.

§ 79.26 *Removal of timber.* Timber cut in accordance with §§ 79.15–79.33 under an application on which a permit has been issued may be removed from the land, provided the applicant first transmits to the proper district land office, by registered mail, or furnishes the field officer who appraises the timber, his signed statement showing the serial number of his application, the amount and kind of the timber cut, the lands from which it was cut and the value of the timber at the appraised price, and provided further, the applicant first makes payment for all timber cut, if any, over and above the amount for which the payment has been made. If the timber has not been appraised, it may be removed, provided the applicant first transmits such statement to the manager, by reg-

istered mail, with payment for such excess timber, if any, at the minimum stumpage price.

§ 79.27 *Payment.* (a) Where payment is made to a field officer, he will give the applicant a memorandum receipt therefor and a further receipt will later be issued by the manager. If timber is removed after the issuance of a permit but in advance of a field examination and it is subsequently found that more timber has been cut and removed than has been paid for at the minimum price, the applicant will be required to pay for such excess.

(b) The manager will advise the regional administrator as to all moneys received in connection with applications to purchase timber giving the serial numbers of the cases and other necessary information. The moneys will be held as "unearned" pending receipt of a report from such officer. The regional administrator will account to the manager for all moneys received by him or by the examiners, and he will advise the manager when moneys on deposit should be covered into the Treasury or returned.
[Circ. 1393, June 20, 1936, as amended by Circ. 1503, 7 F. R. 2157]

§ 79.29 *Timber on school sections and on withdrawn lands.* (a) The act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353), provides that timber on the lands reserved to the Territory of Alaska, for educational uses, by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354), may be sold by the Secretary of the Interior under the provisions of section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 421), and appropriates and sets apart the entire proceeds from the sale of timber on such reserved lands as permanent funds in the Territorial treasury. In accordance with such provisions, §§ 79.15–79.33, are hereby made applicable to timber upon the Sections 16, 33, and 36, to which the Territorial rights have attached under the reservation made to the Territory, for educational uses, by the act of March 4, 1915. Where such sale is made, the proceeds shall be deposited in the Treasury under the receipt title "146035, Deposits, income and proceeds, Alaska school lands." The regulations are inapplicable to timber upon withdrawn areas unless the order of withdrawal permits.

(b) The surveyed Sections 16, 33, and 36, described in the act of March 4, 1915, to which the Territorial rights have not attached because of their known mineral character at the date of acceptance of the survey thereof by the Director of the Bureau of Land Management, are also subject to the provisions of the act of May 14, 1898, for the sale of timber thereon, the proceeds therefrom to be deposited in the Treasury under the same receipt title as above indicated.

(c) Although the provisions of section 11 of the act of May 14, 1898, for the sale of timber, are applicable to the unsurveyed lands in Sections 16, 33, and 36 in Alaska, there is no provision of law for appropriating the proceeds from such sale as permanent funds in the Territorial treasury.
[Circ. 1477, 5 F. R. 3394]

§ 79.30 *Rules to be observed in cutting timber.* (a) Immature trees or trees other than of the size, kind and maturity necessary to furnish the class of timber desired are not to be cut and cordwood is not to be cut from trees suitable for saw logs or from spruce trees of a size exceeding 10 inches in diameter at the stump.

(b) All stumps are to be cut as close to the ground as conditions will permit and each tree is to be utilized to a diameter at the top sufficiently small to prevent unnecessary waste.

(c) Tops, lops, and necessarily cut underbrush are to be disposed of in such manner as will insure the least danger of the spread of forest fires. Every possible precaution to prevent such fires is to be taken and assistance in suppressing such fires when discovered is to be rendered. If applicant fails properly to dispose of tops, lops, and underbrush, he will be liable for any expense necessarily incurred by the Department of the Interior.

§ 79.31 *Revocation of permit.* Any permit issued under §§ 79.15–79.33 may be revoked for failure of the applicant to comply with the conditions in the permit or with the regulations in §§ 79.15–79.33. If cutting is being done in violation of the terms of the sale, any officer of the Department of the Interior who is authorized to act in timber cutting cases may stop the cutting, revoke the permit and collect such additional payment as may be due the Government for the timber.

§ 79.32 *Trespass; penalty for unauthorized cutting of timber.* The cutting of timber from the vacant and unreserved public lands in Alaska, other than

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in accordance with the terms of the law and the regulations of the Department of the Interior will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under 18 U. S. C. 1852.

§ 79.33 *Forms.* Copies of any of the forms referred to in this part may be obtained, on request, from any district land office in Alaska.

SALE OF DEAD, DOWN, OR DAMAGED TIMBER

§ 79.34 *Governing regulations.* The sale of dead or down timber or timber killed or seriously damaged by forest fires, authorized by the act of July 3, 1926 (44 Stat. 890; 16 U. S. C. 614, 615), which amended the act of March 4, 1913 (37 Stat. 1015; 16 U. S. C. 614, 615), is governed by §§ 284.1–284.22.

(Sec. 1, 37 Stat. 1015, as amended; 16 U. S. C. 614) [Circ. 491, Feb. 24, 1928]

SALE OF TIMBER FOR EXPORTATION FROM ALASKA [1]

AUTHORITY: §§ 79.35 to 79.43 issued under 44 Stat. 242; 16 U. S. C. 616.

§ 79.35 *Statutory authority.* Authority for the exportation of timber from Alaska when lawfully cut, if in the judgment of the Secretary of the Interior the supply of timber for local use will not be endangered thereby, is contained in the act of April 12, 1926 (44 Stat. 242; 16 U. S. C. 616)

[Circ. 491, Feb. 24, 1928]

§ 79.36 *Small-quantity sales.* Sales of timber to be cut for export may be made pursuant to the procedure and under the conditions set forth in §§ 79.15–79.33, where quantities are such as will be disposed of from year to year, and the purchases are made by those who do not contemplate large-scale production and an expenditure of large sums of money for developing enterprises for the exportation of such timber.

[Circ. 491, Feb. 24, 1928]

§ 79.37 *Large-quantity sales.* Sales of timber suitable for manufacturing purposes are hereby authorized in quantities, if found available, sufficient to supply a mill or proposed mill for a period of as much as 20 years, when it is satisfactorily shown that the purchaser in good faith intends to develop an enterprise for the cutting of this class of timber for export from Alaska and the sale does not endanger the supply of such timber for local use. The amount of timber that any one purchaser will be permitted to purchase under this provision and the period of the contract will be governed by the capacity of the mill and the estimated quantity that it will be capable of producing during the period covered by the contract of sale. When a 20 years' supply is sold the period within which the same must be cut (20 years) will begin to run from the time that the contract of sale is executed, if the manufacturing plant has been built, or from the time that the mill has been constructed and ready to begin operations if it is to be built, but in no case will more than 2 years be allowed for construction: *Provided, however,* That if operations have not ben commenced within three years from the date of the execution of the contract the Secretary of the Interior, upon a satisfactory showing, may in his discretion excuse the delay. Commencement of operations in this sense will be construed as a bona fide commencement of actual cutting of timber in quantity sufficient to show that it is the purpose of the purchaser to fulfill the conditions of the contract and that it was not entered into merely for speculative purposes.

[Circ. 1198, Aug. 5, 1929, as amended by Circ. 1644, 12 F. R. 2315]

§ 79.38 *Applications to purchase; deposit.* Applications to purchase timber for export from Alaska pursuant to the act of April 12, 1926, must be filed in duplicate in the land office for the district wherein the lands to be cut over are situated and should show: (a) Name, postoffice address, residence, and business location of applicant; (b) amount or approximate amount of board feet of timber that the applicant desires to purchase; (c) a description by legal subdivision or subdivisions, if surveyed, or by metes and bounds with reference to some permanent natural landmark, if unsurveyed, and the area or approximate area of the land from which the timber is to be cut, and if the lands are within the area (Alaskan Timber Reserves) withdrawn

[1] Sections 79.35 to 79.43 govern sales of timber for exportation from Alaska where the quantity involved exceeds 15,000,000 feet, board measure. Where the quantity is 15,000,000 feet, board measure, or less, sales may be made by the regional administrator "in accordance with applicable regulations and procedures," as provided in Order No. 337 of Sept. 21, 1948 (13 F. R. 5615).

pursuant to the act of March 12, 1914 (38 Stat. 305; 48 U. S. C. 301, 302, 303–308), in aid of the construction of the Alaskan Government-owned railroads it should be so stated, and evidence of consent previously obtained from The Alaska Railroad should be filed with the application; (d) whether or not the applicant is prepared to commence cutting immediately, and if not, approximately how long before timber cutting operations will be commenced; (e) the estimated annual capacity of the mill or proposed mill, and the amount of money invested or to be invested in the establishment of the enterprise, accompanied by evidence as to the financial standing of the applicant and a statement showing the general plan of operation and the purpose for which the timber is to be used. A minimum sum of $200 must be deposited with each application, as an evidence of good faith and for the purpose of helping to defray the cost of appraisal. The sum of such deposit may be increased when, in the opinion of the Secretary of the Interior, the interests of the Government require that a larger amount be deposited. If the sale is consummated, the amount of the deposit will be credited on the purchase price without deduction for the cost of appraisal. All remittances must be in cash or by certified check or postal money order.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1184, Mar. 20, 1929]

§ 79.39 *Publication and posting; marking of land.* Immediately upon the filing of an application to purchase timber under § 79.37 a notice shall be published at the expense of the applicant in a newspaper designated by the manager, published in the vicinity of the land from which the timber is to be cut and most likely to give notice to the general public, once a week for a period of five consecutive weeks, in accordance with § 106.18 of this chapter. The description of the land in the notice must be identical with the description in the application. The manager will post a copy of said notice in a conspicuous place in his office during the period of publication. Upon the execution of a contract, the purchaser shall, if the lands from which the timber is to be cut are unsurveyed, cause the boundaries to be blazed or otherwise marked as provided in the contract. This requirement has been adopted in order that others who may subsequently desire to purchase timber or to settle upon or enter the land may have notice that the timber has been applied for.

[Circ. 1644, 12 F. R. 2315]

§ 79.40 *Action by manager on application; field report and appraisal necessary.* The manager will make appropriate notations upon the records of his office and transmit the application to the Director of the Bureau of Land Management, and at the same time transmit the duplicate to the Regional Administrator at Anchorage, Alaska, or to an examiner located in the particular land district who shall have been designated by the regional administrator to make appraisals. Upon receipt of the application the regional administrator or his representative will without delay cause the timber applied for to be examined and appraised. The appraisal rates will be based upon a fair stumpage rate taking into consideration the quality of the timber and its accessibility to market. In no event will any timber suitable for manufacturing purposes be appraised at less than $1 per thousand feet, board measure. After an examination and appraisal has been made the regional administrator will at once submit his report and recommendation to the Director of the Bureau of Land Management, together with a statement of facts showing whether such sale would endanger the supply of timber for local use. The Government reserves the right to reappraise the remaining standing timber at the expiration of 5 years from the date of commencement of the timber cutting period as set forth in § 79.37 and at intervals of 5 years thereafter, but in no instance shall the appraisal be at more than double the rate of the original appraisal.

[Circ. 1644, 12 F. R. 2315]

§ 79.41 *Execution of contract; bond required.* Upon receipt of a report that such sale appears warranted, the Director of the Bureau of Land Management, if he agrees, will offer the timber for sale by competitive bidding in such newspapers and publications and for such period of time as he may designate. The successful bidder will be notified that he will be allowed 30 days from receipt of such notice within which to enter into a contract with the Government through the Director of the Bureau of Land Management as its agent to purchase the timber offered for sale pursuant to the rules and

regulations of the Department of the Interior pertaining thereto, and shall execute and file therewith a bond in a sum not less than 50 percent of the stumpage value of the estimated amount of timber to be cut during each year of the contract. The said bond must have as surety a bonding company shown on an approved list issued by the Treasury Department, and it shall be conditioned on the payment for the timber in accordance with the terms of the contract and to the faithful performance of the contract in other respects and to observance of the rules and regulations pursuant to which the sale is made. Contracts and bonds hereunder will be executed on forms 4–030 and 4–030a, respectively.
[Circ. 1644, 12 F. R. 2315]

§ 79.42 *Renewals of contract.* At the expiration of a contract a new contract may, in the discretion of the authorized officer, be entered into for a period of not to exceed 20 years, where there is sufficient timber available to warrant it. Prior good faith of the purchaser and substantial compliance with the conditions of the expired contract will be given consideration with reference to awarding a new contract. A new appraisal shall be made at that time for the purpose of fixing the stumpage price.
[Circ. 1198, Aug. 5, 1929, as amended and redesignated by Circ. 1644, 12 F. R. 2315]

§ 79.43 *Lands from which timber may not be sold.* The rules and regulations in §§ 79.35–79.43, governing the sale of timber for export, are not applicable to timber on national forests, Indian or Eskimo claims, or lands otherwise appropriated, reserved, or withdrawn, for any purpose, except where the terms of the reservation or withdrawal order permit.
[Circ. 491, Feb. 24, 1928, as amended and redesignated by Circ. 1644, 12 F. R. 2315]

Part 80—Town Sites

TOWN SITES RESERVED BY THE PRESIDENT

CROSS REFERENCES: For Annette Islands Reserve, Alaska, Metlakahtla Indians and other natives, see 25 CFR Part I. For Indians and Eskimos, see Part 67 of this chapter. For town sites, generally, see Part 255 of this chapter.

TOWN SITES RESERVED BY THE PRESIDENT

§ 80.1 *Statutory authority.* Town sites in Alaska may be reserved by the President and sold as provided for in sections 2380 and 2381 of the Revised Statutes; 43 U. S. C. 711, 712. The regulations governing these town sites are contained in §§ 255.1–255.9 of this chapter.
(R. S. 2381; 43 U. S. C. 712) [Circ. 491, Feb. 24, 1928 as amended by Circ. 1122, Apr. 27, 1927, 52 L. D. 106]

TOWN SITES ENTERED BY TRUSTEE

AUTHORITY: §§ 80.2 to 80.17 issued under sec. 11, 26 Stat. 1099; 48 U. S. C. 355.

SOURCE: §§ 80.2 to 80.17 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see items 3 of Note following table of contents of chapter.

§ 80.2 *Statutory authority.* The entry of public lands in Alaska for town

site purposes, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, is authorized by section 11 of the act of March 3, 1891.

§ 80.3 *Survey of exterior lines; exclusions from town site survey.* If the land is unsurveyed the occupants must, by application to the public survey office, obtain a survey of the exterior lines of the town site which will be made at Government expense. There must be excluded from the tract to be surveyed and entered for the town site any lands set aside by the district court under section 31 of the act of June 6, 1900 (31 Stat. 332; 48 U. S. C. 40), for use as jail and courthouse sites, also all lands needed for Government purposes or use, together with any existing valid claim initiated under Russian rule.

§ 80.4 *Petition for trustee and for survey of lands into lots, blocks, etc.* When the survey of the exterior lines has been approved, or if the town site is on surveyed land, a petition to the Secretary of the Interior, signed by a majority of occupants of the land, will be filed in the district office for transmittal to the Bureau of Land Management requesting the appointment of trustee and the survey of the town site into lots, blocks, and municipal reservations for public use, the expense thereof to be paid from assessments upon the lots, as provided in § 80.10.
[Circ. 1467, 5 F. R. 733]

§ 80.5 *Designation of trustee; payment required; area enterable.* If the petition be found sufficient, the Secretary of the Interior will designate a trustee to make entry of the town site, payment for which must be made at the rate of $1.25 per acre. If there are less than 100 inhabitants the area of the town site is limited to 160 acres; if 100 and less than 200, to 320 acres; if more than 200, to 640 acres, this being the maximum area allowed by the statute.

§ 80.6 *Filing of application; publication and posting; submission of proof.* The trustee will file his application and notice of intention to make proof, and thereupon the manager will issue the usual notice of making proof, to be posted and published at the trustee's expense, for the time and in the manner as in other cases provided, and proof must be made showing occupancy of the tract, number of inhabitants thereon, character of the land, extent, value, and character of improvements, and that the town site does not contain any land occupied by the United States for school or other purposes or land occupied under any existing valid claim initiated under Russian rule.

§ 80.7 *Expense money to be advanced by lot occupants.* The occupants will advance a sufficient amount of money to pay for the land and the expenses incident to the entry, to be refunded to them when realized from lot assessments.

§ 80.8 *Contests and protests.* Applications for entry will be subject to contest or protest as in other cases.

§ 80.9 *Subdivision of land and payment therefor.* After the entry is made, the town site will be subdivided by the United States into blocks, lots, streets, alleys, and municipal public reservations. The expense of such survey will be paid from the appropriation for surveys in Alaska reimbursable from the lot assessments when collected.
[Cir. 1467, 5 F. R. 733]

§ 80.10 *Lot assessments.* The trustee will assess against each lot, according to area, its share of the cost of the subdivisional survey. The trustee will make a valuation of each occupied or improved lot in the town site and assess upon such lots, according to their value, such rate and sum in addition to the cost of their share of the survey as will be necessary to pay all other expenses incident to the execution of his trust which have accrued up to the time of such levy. More than one assessment may be made if necessary to effect the purpose of the act of March 3, 1891, and §§ 80.2–80.17.
[Cir. 1467, 5 F. R. 733]

§ 80.11 *Award and disposition of lots after subdivisional survey.* On the acceptance of the plat by the Bureau of Land Management, the trustee will publish a notice that he will, at the end of 30 days from the date thereof, proceed to award the lots applied for, and that all lots for which no applications are filed within 120 days from the date of said notice will be subject to disposition to the highest bidder at public sale. Only those who were occupants of lots or entitled to such occupancy at the date of the approval of final subdivisional town site survey, or their assigns thereafter, are

entitled to the allotments herein provided. Minority and coverture are not disabilities.

§ 80.12 *Applications for deeds.* Claimants should file their applications for deeds, setting forth the grounds of their claims for each lot applied for, which should be corroborated by two witnesses.

§ 80.13 *Issuance of deeds; procedure on conflicting applications.* Upon receipt of the patent and payment of the assessments the trustee will issue deeds for the lots. The deeds will be acknowledged before an officer duly authorized to take acknowledgements of deeds at the cost of the grantee. In case of conflicting applications for lots, the trustee, if he considers it necessary, may order a hearing, to be conducted in accordance with the Rules of Practice, Part 221 of this chapter.

No deed will be issued for any lot involved in a contest until the case has been finally closed. Appeals from any decision of the trustee or from decisions of the Bureau of Land Management may be taken in the manner provided by the Rules of Practice, Part 221 of this chapter.

§ 80.14 *Public sale of unclaimed lots.* After deeds have been issued to the parties entitled thereto the trustee will publish or post notice that he will sell, at a designated place in the town and at a time named, to be not less than 30 days from date, at public outcry, for cash, to the highest bidder, all lots and tracts remaining unoccupied and unclaimed at the date of the approval of final subdivisional town-site survey, and all lots and tracts claimed and awarded on which the assessments have not been paid at the date of such sale. The notice shall contain a description of the lots and tracts to be sold, made in two separate lists, one containing the lots and tracts unclaimed at the date of the approval of final subdivisional town-site survey and the other the lots and tracts claimed and awarded on which the assessments have not been paid. Should any delinquent allottee, prior to the sale of the lot claimed by him, pay the assessments thereon, together with the pro rata cost of the publication and the cost of acknowledging deed, a deed will be issued to him for such lot, and the lot will not be offered at public sale. Where notice by publication is deemed advisable the notice will be published once a week for 5 consecutive weeks in accordance with § 106.18 of this chapter prior to the date of sale, and in any event copies of such notice shall be posted in three conspicuous places within the town site. Each lot must be sold at a fair price, to be determined by the trustee, and he is authorized to reject any and all bids. Lots remaining unsold at the close of the public sale in an unincorporated town may again be offered at a fair price if a sufficient demand appears therefor.

§ 80.15 *Final report of trustee; disposition of unexpended moneys and unsold lots.* After the disposal of a sufficient number of lots to pay all expenses incident to the execution of the trust, including the cost of the subdivisional survey, the trustee will make and transmit to the Bureau of Land Management his final report of his trusteeship, showing all amounts received and paid out and the balance remaining on hand derived from assessments upon the lots and from the public sale. The proceeds derived from such sources, after deducting all expenses, may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated such remaining proceeds may be turned over to the municipality for the use and benefit thereof. After the public sale and upon proof of the incorporation of the town, all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipalty in trust for the public purposes for which they were reserved.

[Circ. 1467, 5 F. R. 733]

§ 80.16 *Records to be kept by trustee.* The trustee shall keep a tract book of the lots and blocks, a record of the deeds issued, a contest docket, and a book of receipts and disbursements.

§ 80.17 *Disposition of records on completion of trust.* The trustee's duties having been completed, the books of accounts of all his receipts and expenditures, together with a record of his proceedings as provided in § 80.16, with all papers, other books, and everything pertaining to such town site in his possession and all evidence of his official acts shall be transmitted to the Bureau of Land Management to become a part of the records thereof, excepting from such papers,

however, in case the town is incorporated, the subdivisional plat of the town site, which he will deliver to the municipal authorities of the town, together with a copy of the town site tract book or books, taking a receipt therefor to be transmitted to the Bureau of Land Management.

INDIAN POSSESSIONS IN TRUSTEE TOWNS; NATIVE TOWNS

AUTHORITY: §§ 80.18 to 80.27 issued under 44 Stat. 630; 48 U. S. C. 355d.

SOURCE: §§ 80.18 to 80.27 contained in Circular 1082a, 3 F. R. 1653, except as noted following section affected.

§ 80.18 *Statutory authority.* The act of May 25, 1926 (44 Stat. 629; 48 U. S. C. 355a–355d), provides for the town-site survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee town sites in Alaska and for the survey and disposal of the lands occupied as native towns or villages.

§ 80.19 *Administration of Indian possessions in trustee towns.* As to Indian possessions in trustee town sites in Alaska established under authority of section 11 of the act of March 3, 1891 (26 Stat. 1009; 48 U. S. C. 355), and for which the town-site trustee has closed his accounts and been discharged as trustee, and as to such possessions in other trustee town sites in Alaska, such person as may be designated by the Secretary of the Interior will perform all necessary acts and administer the necessary trusts in connection with the act of May 25, 1926.

§ 80.20 *Survey and disposal of Indian or Eskimo possessions.* (a) Where the matter of surveying and disposing of Indian or Eskimo possessions in trustee town sites is taken up for consideration, the town-site trustee will submit a report to the Director of the Bureau of Land Management showing whether or not it would be of interest to the Indian or Eskimo occupants of the land to extend the established streets and alleys of the town site upon and across the tract, and whether or not subdivisional surveys should be made. The report will be examined and considered by the Director of the Bureau of Land Management, and will be referred to the Commissioner of Indian Affairs for consideration before transmittal to the Secretary with appropriate recommendations.

(b) Before directing the survey and disposal of such Indian or Eskimo possessions under authority of the act of May 25, 1926, the Secretary of the Interior will determine whether or not the patent which issued for the town-site tract includes the tract designated as "Indian possessions". If it does not, a supplement patent will be issued, to accompany the departmental order for survey and disposal.

§ 80.21 *Sale of land for which restricted deed has issued.* (a) When a native possessing a restricted deed for land in a trustee town site, issued under authority of the act of May 25, 1926 (44 Stat. 629; 48 U. S. C. 355a–355d), desires to sell the land, he and the proposed vendee should execute a contract of sale prepared for the approval of the Secretary of the Interior and send it to the General Superintendent, Alaska Native Service, Juneau, Alaska. The General Superintendent will cause a field investigation to be made, if deemed necessary, and will make a report and recommendation to the Commissioner of Indian Affairs as to the advisability of approving the proposed sale. The report and recommendation will be routed to the Commissioner of Indian Affairs through the Town Site Trustee in Alaska, for his concurrence or comment.

(b) Upon consideration of the report and recommendations of the General Superintendent, and any comment thereon made by the Town Site Trustee, the Commissioner of Indian Affairs will submit a recommendation to the Secretary of the Interior, as to the approval or disapproval of the proposed sale, routing the recommendation to the Secretary through the Director, Bureau of Land Management for his concurrence or comment.

[Circ. 1621, 11 F. R. 9037]

§ 80.22 *Administration of native towns.* The trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of the said act of May 25, 1926 (44 Stat. 630; 48 U. S. C. 355c), will take such action as may be necessary to accomplish the objects sought to be

accomplished by that section. In any case in which he thinks it would be of advantage to the Indian or Eskimo occupants to have the lands occupied and claimed by them surveyed as town or village, he should bring the matter to the attention of the Director of the Bureau of Land Management with appropriate recommendation.

§ 80.23 *No payment, publication or proof required on entry for native towns.* In connection with the entry of lands as a native town or village under section 3 of the said act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee town sites will not be required.

§ 80.24 *Provisions to be inscrted in restricted deeds.* The town-site trustee will note a proper reference to the act of May 25, 1926, on each deed which is issued under authority of that act and each such deed should provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts, or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the town site have been extended upon and across the tract, that there is reserved to the town site the area covered by such streets and alleys as extended. The deed should further provide that the approval by the Secretary of the Interior of a sale by the Indian or Eskimo transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

§ 80.25 *Unrestricted deeds not to be issued.* The trustee shall not issue other than restricted deeds to Indians or other Alaskan natives.

§ 80.26 *Native towns occupied partly by white occupants.* (a) Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the act of March 3, 1891 (26 Stat. 1095, 1099), and the act of May 25, 1926 (44 Stat. 629).

(b) In each case of this kind the town site trustee will report the facts to the Director of the Bureau of Land Management, showing the name and location of the town, the number of Indian or Eskimo lot occupants and the number of white lot occupants, the amount of land used or claimed by each and the approximate periods for which it has been used or claimed, the value of the improvements on the lands and by whom owned, and such other facts as he may deem appropriate.

(c) Upon receipt of such report, special instructions will be issued as to the procedure which should be followed with respect to the survey, entry, and disposal of the lands, assessment of costs, etc.

§ 80.27 *Forms.* The following forms have been issued for use in connection with the regulations under the act of May 25, 1926: (a) Application for deed by native Indian or Eskimo of Alaska, Form 4–231; (b) trustee's deed to native Indian or Eskimo of Alaska, Form 4–232; and (c) deed of native Indian or Eskimo of Alaska, Form 4–232a.

Part 81—Trade and Manufacturing Sites

SALE OF PUBLIC LANDS FOR TRADE AND MANUFACTURING SITES

Sec.

AUTHORITY: §§ 81.1 to 81.10 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 81.1 to 81.10 contained in Circular 491, February 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.

§ 81.1 *Statutory authority.* Section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 461) authorizes the sale at the rate of $2.50 per acre of not exceeding 80 acres of land in Alaska possessed and occupied in good faith as a trade and manufacturing site.

§ 81.2 *Execution of application.*[1] Application for a trade and manufacturing site should be executed in duplicate and should be filed in the proper district land office. It need not be sworn to, but it must be signed by the applicant and must be corroborated by the statements of two persons.

§ 81.3 *Qualifications of applicant.* An application must show that the applicant is a citizen of the United States and 21 years of age, and that he has not theretofore applied for land as a trade and manufacturing site. If such site has been applied for and the application not completed, the facts must be shown. If the application is made for an association of citizens or a corporation, the qualifications of each member of the organization must be shown. In the case of a corporation, proof of incorporation must be established by the certificate of the officer having custody of the records of incorporation at the place of its formation and it must be shown that the corporation is authorized to hold land in Alaska.

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

§ 81.5 *Form of entry.* Claims initiated by occupancy after survey must conform thereto in occupation and application, but if the public surveys are extended over the lands after occupancy and prior to application, the claim may be presented in conformity with such surveys, or, at the election of the applicant, a special survey may be had.

§ 81.6 *Facts to be shown in application.* The application to enter must show:

(a) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry, when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 461).

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

(c) That the land does not abut more than 80 rods of navigable water.

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

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

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

[Circ. 491, Feb. 24, 1928, modified to conform to E. O. 5106, May 3, 1929, as amended by Circ. 1700, 13 F. R. 6006]

§ 81.7 *Action on application by manager; report by regional administrator.* (a) Upon receipt of the application, the manager will note its filing, assign a current serial number thereto and transmit the original copy, unallowed, together with the accompanying papers, to the regional administrator. The manager

[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.

will forward the duplicate copy of the application to the Bureau of Land Management. With each copy the manager will report the status of the land as shown by his records.

(b) The report of the regional administrator will be made to the manager 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]

§ 81.8 *Application for survey; instructions.* If the land applied for be unsurveyed and no objection to its survey is known to the manager, he will furnish the applicant with a certificate stating the facts, and, after receiving such certificate, the applicant may make application to the 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 regional administrator for such action as may be deemed proper. The instructions governing survey in connection with applications for soldiers' additional homestead entries, as set forth in §§ 61.13, 61.14 of this chapter, will be followed in connection with trade and manufacturing sites.

§ 81.9 *Publication and posting; adverse claim.* The instructions given in § 61.15 of this chapter, relative to publication and posting, adverse claims and proof of publication and posting in connection with applications for soldiers' additional homestead entries will be followed in connection with trade and manufacturing sites.

§ 81.10 *Entry and final certificate.* The application and proofs filed therewith will be carefully examined by the regional administrator, and, if all be found regular, the manager will be instructed to allow the application and to issue final certificate thereunder, upon payment for the land being made at the rate of $2.50 per acre, and in the absence of objections shown by his records.

Part 82—Waters

LANDS CONTAINING HOT OR MEDICINAL SPRINGS

USE OF LANDS WITHDRAWN AS PUBLIC WATER RESERVES

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

AUTHORITY: §§ 82.1 to 82.4 issued under R. S. 2478; 43 U. S. C. 1201.

LANDS CONTAINING HOT OR MEDICINAL SPRINGS

§ 82.1 *Withdrawal of lands.* Every smallest legal subdivision of the public land surveys in Alaska which is vacant, unappropriated and unreserved public land and contains hot springs, or a spring the waters of which possess curative properties; and all land in the Territory within one-quarter of a mile of every such springs located on unsurveyed public land were, as of August 20, 1947, withdrawn from settlement, location, sale or entry and reserved for lease under the provisions of the act of March 3, 1925 (43 Stat. 1133), subject to valid existing rights.[1]

[Circ. 1661, 12 F. R. 7141]

§ 82.2 *Showing required as to springs.* An applicant to enter or select public lands in Alaska situated outside of national forests must furnish a duly corroborated statement as to hot or medicinal springs, in accordance with § 292.8 of this chapter.

[Circ. 1661, 12 F. R. 7141]

USE OF LANDS WITHDRAWN AS PUBLIC WATER RESERVES

§ 82.3 *Governing regulations.* Permission may be obtained to use or im-

[1] The lands were withdrawn and reserved as stated by Public Land Order No. 399 of August 20, 1947. Prior to that time the public lands in Alaska were affected by Executive Order No. 1324½ of March 28, 1911, as amended by Executive Order No. 1883 of January 24, 1914, which withdrew from settlement, location, sale or entry all tracts of public land in Alaska upon which are located hot springs or other springs, the waters of which possess curative medicinal properties, to the extent of 160 acres surrounding each spring, in rectangular form, with side and end lines equidistant, as near as may be from such spring or group of springs. See §§ 292.6, 297.9 and 297.19 of this chapter.

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

[Circ. 491, Feb. 24, 1928]

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

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

[Circ. 491, Feb. 24, 1928]

SUBCHAPTER B—APPLICATIONS AND ENTRIES

Part 101—General Regulations Involving Applications and Entries

EXECUTION AND FILING OF APPLICATIONS

Sec.

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

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

EXECUTION AND FILING OF APPLICATIONS

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

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

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

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

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

SEGREGATION OF LAND UNDER APPLICATION

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

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

(b) The minimum fee, as in the case of all other fees, must be in the form prescribed by § 216.30 of this chapter.

[Circ. 1158, Aug. 1, 1928]

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

NOTATION OF RIGHTS-OF-WAY

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

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

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

§ 101.4 *When notation is required.* The manager will make notations of rights-of-way on entry papers, only where his records show that the land involved, or some part of it, is covered by an approved application for right-of-way. In this connection, attention is directed to the decision of the United States Supreme Court in the case of Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. Doughty (208 U. S. 251, 52 L. ed. 474). Applicants to enter public lands that are affected by a mere pending application for right-of-way, should be verbally informed thereof by the manager, and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine

[Circ. 78, Feb. 2, 1912]

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

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

[Reg. Nov. 27, 1896]

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

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

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

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

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

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

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

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

[Reg. Nov. 3, 1909]

[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.

APPLICATION IN CONFLICT WITH RESERVOIR SITES

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

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

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

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

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

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

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

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

with a prior application of such classes, but will suspend it and will attach to the original and each copy a memorandum stating the facts as to the conflict. The manager will forward the original and copies of such applications as directed by the governing regulations.
[Circ. 1384a, May 25, 1938]

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

NAMES OF CLAIMANTS

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

(b) An application to enter public land will not be rejected, however, on the ground that the applicant did not sign his name in full.
[Circ. 378, Jan. 29, 1915]

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

ENTRIES FOR LANDS IN MORE THAN ONE LAND DISTRICT

§ 101.11 *Governing regulations.* Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by §§ 101.12 to 101.18.
[Circ. 505, Sept. 22, 1916]

§ 101.12 *Applications and fees to be filed in each office.* Complete applications must be filed in each office, together with the usual fee and commissions payable for the land in each land district, besides any other payment required by law. Each application should contain a proper reference to the other application.
[Circ. 505, Sept. 22, 1916]

§ 101.13 *Only one proof and publication necessary; separate final certificates to issue.* In submitting proof, the two entries should be treated as one, and the published notice of intention should describe all the land and specify in which land district each part of the claim is located. The notice must be posted in each office, a copy thereof being forwarded to the other office by the office issuing the notice. If the notice is published and posted correctly and the proof is satisfactory, the manager who issued the notice for publication will issue final certificate for the portion within his land district on payment of the testimony fees and payment of the commissions and (if required) the purchase money due for the land in his district. He will then advise the manager of the district wherein the remainder of the claim is located, who will, on receipt of the final commissions and purchase money (if any) due for the part in his district, issue final certificate for that portion without further proof.
[Circ. 505, Sept. 22, 1916]

§ 101.14 *Appeal or further showing, when proof is rejected.* Should a proof be rejected by the office from which the notice of intention is issued, the other office should be so advised, but the appeal or further showing must be filed in the office which rejected the proof.
[Circ. 505, Sept. 22, 1916]

§ 101.15 *Annual proofs on desert-land entry.* When a desert-land entry embraces land in more than one district, the required annual proofs may be filed in either district, provided proper reference is made to the portion of the entry in the adjoining district, and the entryman must notify the manager of the adjoining district by letter of the date when the annual proof is filed.
[Circ. 505, Sept. 22, 1916]

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

§ 101.16 *Mining claims.*[1] In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, the proceedings in each office shall be conducted in all respects in conformity with law. A full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Notice of application for patent should be posted in each office and remain posted for the period required by law. However, only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the state-

[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.

ments as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land and posting in office will be further governed by the provisions of § 101.13.

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

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

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

[Circ. 505, Sept. 22, 1916]

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

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

[Circ. 505, Sept. 22, 1916]

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

APPLICATIONS FOR LANDS CONTAINING RANGE OR OTHER IMPROVEMENTS

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

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

OATHS

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

(b) Unsworn statements in public land matters are subject to 18 U. S. C. 1001.

[Circ. 1689, 13 F. R. 4637; see also item 3 of Note to chapter]

Part 102—Agricultural Entries on Mineral Lands

PROTECTION OF SURFACE RIGHTS OF NONMINERAL ENTRYMEN OF LANDS WHICH SUBSEQUENT TO ENTRY, ETC. ARE CLAIMED, CLASSIFIED, OR REPORTED AS VALUABLE FOR COAL

Sec.

AGRICULTURAL ENTRIES ON COAL LANDS

AUTHORITY: §§ 102.1 to 102.43 issued under R. S. 2478, sec. 32, 41 Stat. 450; 43 U. S. C. 1201, 30 U. S. C. 189.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For homesteads on coal, oil, and gas lands, Alaska, see Part 66 of this chapter. For leases on mineral lands, Alaska, see Parts 70, 71 of this chapter. For mineral leases, generally, see Parts 191–198 of this chapter.

PROTECTION OF SURFACE RIGHTS OF NONMINERAL ENTRYMEN OF LANDS WHICH SUBSEQUENT TO ENTRY, ETC. ARE CLAIMED, CLASSIFIED, OR REPORTED AS VALUABLE FOR COAL

§ 102.1 *Statutory authority.* (a) The act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81) protects persons who, in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed, or reported as being valuable for coal by providing a means whereby such persons may at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein. It applies alike to locations, selections, and entries made prior to its passage and those made subsequently thereto.

(b) The act also provides for the disposal, under the exlsting coal land laws, of the coal contained in such lands and gives the patentees of such lands the right to mine coal for domestic purposes prior to disposal thereof by the United States.

[Reg. Sept. 7, 1909]

§ 102.2 *Election to take patent with reservation to United States of the coal deposits.* All persons who, in good faith, locate, select, or enter, under the nonmineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed, or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions and limitations imposed by the act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as provided for in §§ 102.3 to 102.6.

[Reg. Sept. 7, 1909]

§ 102.3 *Procedure where final proof has not been submitted.* (a) Managers will promptly advise, by registered mail, each nonmineral claimant to land which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the act of March 3, 1909.

(b) In the event of election to receive such a patent, no further inquiry will be necessary respecting the coal character of the land.

(c) In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation, unless it shall be shown that the land is chiefly valuable for coal.

(d) The claimant may, after determination at final proof that the lands are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

[Reg. Sept. 7, 1909]

§ 102.4 *Notiee to regional administrator when coal character of land is contested.* Where the nonmineral claimant indicates his intention to contest the alleged coal character of the land involved, the regional administrator must be advised sufficiently in advance of the date fixed for the taking of the final proof to enable him to be prepared to represent the Government at the time such final proof is made.

[Reg. Sept. 7, 1909]

§ 102.5 *Action by manager after hearing as to coal character of land.* In every case where there is controversy as to the coal character of the land, and evidence is offered thereon, the manager will forward the testimony and other papers to the proper officer, with appropriate recommendation, notice of which should be given the claimant.

[Reg. Sept. 7, 1909]

§ 102.6 *Procedure when final proof has been submitted.* Where satisfactory final proof has been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, the entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

[Reg. Sept. 7, 1909]

§ 102.7 *Disposal of the coal deposits.* Where election to accept patent with the prescribed reservation has been made by the nonmineral claimant, coal deposits in the land may be leased or otherwise disposed of, as provided for by the act of February 25, 1920 (41 Stat. 437; 30 U S. C. 181 et seq.), as amended.

[Reg. Nov. 21, 1912]

AGRICULTURAL ENTRIES ON COAL LANDS

§ 102.8 *Statutory authority.* (a) Section 1 of the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83) provides that from and after its passage, the unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws, by actual settlers only, the desert land law, selection under section 4 of the act approved August 18, 1894, known as the Carey Act (28 Stat. 422; 43 U. S. C. 641), and to withdrawal under the act approved June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.), known as the Reclamation Act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; but that no desert-land entry made under the provisions of this act shall contain more than 160 acres, and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the act approved

February 19, 1909 (35 Stat. 639; 43 U. S. C. 218), entitled "An act to provide for an enlarged homestead." The act of February 19, 1909, was amended by the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218).

(b) In the proviso to section 1 (36 Stat. 583; 30 U. S. C. 83) it is enacted that those who had initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or classified as coal lands, may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

(c) Section 2 of the act (36 Stat. 584; 30 U. S. C. 84) provides that any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section 4 of the act of August 18, 1894, known as the Carey Act, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions of this act.

(d) The act of April 30, 1912 (37 Stat. 105; 30 U. S. C. 90) authorizes the selection of unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, by the several states within whose limits the lands are situated, under grants made by Congress, and the offering at public sale, in the discretion of the Secretary of the Interior, of isolated or disconnected tracts of coal lands, which are so withdrawn, classified or valuable, with a reservation of the coal deposits to the United States and otherwise subject to all the conditions and limitations of the act of June 22, 1910.

[Reg. Sept. 8, 1910, as amended by Circ. 1707, 13 F. R. 7383]

CROSS REFERENCES: For original, additional, second, and adjoining farm homesteads, authorized by the general provisions of the homestead laws, see Part 166 of this chapter. For enlarged homesteads, see Part 167. For desert land entries, see Part 232 of this chapter. For Carey Act selections, see Part 272 of this chapter. For entries in reclamation projects, see Part 230 of this chapter.

§ 102.9 *Purposes of acts of March 3, 1909 and June 22, 1910 distinguished.* The act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85) was not designed to operate as an implied repeal of any provision of the act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81). There is no inconsistency between the two acts, and both of them may have harmonious operation within their proper spheres. The earlier law provides a remedy in those cases in which entries, locations, and selections have been or may be made for lands which, subsequently to entry, location, or selection, have been, or may be, claimed, classified, or reported as being valuable for coal, while the later act permits certain dispositions to be made of lands valuable for coal, notwithstanding that they may have been previously withdrawn, or classified as such. The proviso to section 1 of the later act also affords relief to those persons who, prior to June 22, 1910, in good faith made entries, locations, or selections of lands which, at the date of such entries, locations, or selections, had been withdrawn or classified, as valuable for coal.

[Reg. Sept. 8, 1910]

§ 102.10 *Requirements to complete homestead entries.* The act of February 19, 1909, as amended by the act of June 6, 1912 (subject to which, as to residence and cultivation, such homestead entries must be made), provides that "no entry made under this act shall be commuted" (35 Stat. 639; 43 U. S. C. 218). This, then, requires a residence for the full period of 3 years to entitle the homesteader to patent thereunder. The enlarged homestead act, as amended, also provides that in addition to the proofs and affidavits required under section 2291 of the Revised Statutes (43 U. S. C. 164) the entryman shall prove by two credible witnesses that at least one-sixteenth of the area embraced in his entry was continuously cultivated to agricultural crops, other than native grasses, beginning with the second year of the entry, and that at least one-eighth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

[Reg. Sept. 8, 1910]

§ 102.11 *Lands on which entries may be made.* The act of June 22, 1910 applies to unreserved public lands of the United States, exclusive of the Territory of Alaska, which have been withdrawn as coal lands and not released therefrom,

or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified.
[Reg. Jan. 23, 1911; see also item 3 of Note to chapter]

§ 102.12 *Notice to regional administrator and forest officers.* The manager will forward to the proper regional administrator, and the proper officers in charge of the national forest (if in such a forest) a copy of all applications to make final proof, final entry, or to purchase public lands, for indorsement, except that where the only charge against the same in the office of the said regional administrator is that the land is coal in character, it will be unnecessary for him to protest same or make investigation, in view of the provisions of the act of June 22, 1910.
[Reg. Sept. 8, 1910]

§ 102.13 *Application for reclassification of land; hearing.*[1] (a) The last proviso to section 3 of the act of June 22, 1910 (36 Stat. 584; 30 U. S. C. 85) provides that nothing in the act contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

(b) Except in the case of those who present applications under section 2 of the act (36 Stat. 584; 30 U. S. C. 84), the manager will advise any person presenting a nonmineral application or filing for lands classified as coal lands that he will be allowed 30 days in which to submit evidence, preferably the statements of experts or practical miners, that the land is in fact not coal in character, together with an application that the same be reclassified, and that in the event of failure to furnish said evidence within the time specified the application will be rejected. Such applications will be given proper serial numbers and notation thereof made upon the records, and when accompanied by the necessary evidence they will be forwarded to the proper officer by the manager for action, where, if upon the showing made, and such other inquiry as may be deemed proper, the land is classified as agricultural land, the nonmineral application, in the absence of other objections, will be returned for allowance. If reclassification be denied, the applicant may, within 30 days from receipt of notice, apply for a hearing, at which he may be afforded an opportunity for showing that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, his application to enter or file will be finally rejected. The rejection of such application, however, does not preclude the person from filing another application pursuant to section 2 of the act.
[Reg. Sept. 8, 1910; see also item 3 of Note to chapter]

§ 102.14 *Patent with reservation of coal deposits; disposal of coal deposits.* By section 3 of the act of June 22, 1910, it is provided that upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the land so patented, together with the right to prospect for, mine, and remove the same; and that the coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Said section 3 also provides that any person qualified to acqire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this act, for the purpose of prospecting for coal thereon upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting; and that any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages

[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.

caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages.
[Reg. Sept. 8, 1910]

§ 102.15 *Prospecting for reserved coal deposits.* As a condition precedent to the exercise of the right mentioned in the act of June 22, 1910, to prospect for coal on public land which has been entered or patented with a reservation of the coal deposits as provided by that act, the person desiring to so prospect must file a bond in the sum of $1,500, apply for and obtain a coal prospecting permit, and otherwise comply with the regulations relating to coal prospecting permits contained in Part 193 of this chapter.
[Circ. 1707, 13 F. R. 7383]

§ 102.16 *Notations on applications; reservations in certificates and patents.* (a) (1) Entries and selections under the provisions of the act of June 22, 1910, must have noted across the face of the application for entry or selection, before such application for entry or selection is signed by the applicant and presented to the manager, the following:

Application made in accordance with and subject to the provisions and reservations of the act of June 22, 1910 (36 Stat. 583).

(2) Like notation will be made by the manager across the face of the notice of allowance (Form 4–279) issued on applications to enter or select lands under the provisions of this act.

(3) The Secretary of the Interior in withdrawing, under the Reclamation Act, lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, will state in the notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of the act of June 22, 1910.

(b) (1) The manager will cause to be stamped on the final certificate issued to nonmineral claimants under this act:

Patent to contain provisions, reservations, conditions, and limitations of act of June 22, 1910 (36 Stat. 583).

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

Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions and subject to the provisions and limitations of the act of June 22, 1910 (36 Stat. 583).

(3) Immediately upon the notation upon the district land office records of the filing and allowance of an entry, Carey Act selection, or a reclamation withdrawal under section 2 of the act of June 22, 1910 (36 Stat. 584; 30 U. S. C. 84), and upon the ascertainment (which will be noted of record), that the nonmineral entryman, selector, or locator mentioned in and protected by the proviso in section 1 of the act shall receive the limited patent prescribed therein, the manager will stamp on the tract book, on the same line with the entry and as near the descriptions as practicable, "Coal reserved to the United States, act of June 22, 1910." The manager will also write on the margin of the plat under the heading "Coal reserved to the United States, act of June 22, 1910," the description of the land in which the coal deposit has been reserved.
[Reg. Sept. 8, 1910]

HOMESTEAD ENTRY OF COAL LANDS IN ALABAMA

§ 102.17 *Statutory authority.* The act of April 23, 1912 (37 Stat. 90; 30 U. S. C. 77) makes unreserved public lands containing coal, in Alabama, which were withheld from homestead entry under the act of March 3, 1883 (22 Stat. 487; 30 U. S. C. 171), subject to homestead entry with a reservation of the coal deposits to the United States, as provided by the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85).
[Circ. 119, May 24, 1912]

§ 102.18 *Lands to which applicable.* The lands referred to in the act of April 23, 1912, include all tracts which were prior to March 3, 1883, reported as containing valuable coal, and which were not under the provisions of the act of March 27, 1906 (34 Stat. 88; 30 U. S. C. 172), classified as agricultural in character.
[Circ. 119, May 24, 1912]

§ 102.19 *Procedure to be followed.* Sections 102.8 to 102.16, under the act of June 22, 1910, will govern proceedings with reference to these lands so far as applicable.
[Circ. 119, May 24, 1912]

§ 102.20 *Notation on application prior to execution.* Prior to execution of a

homestead application it must bear across its face the notation provided by § 102.16. This notation may not be placed upon the application after its execution without applicant's consent. In the absence of the notation the application will be treated as incomplete, and the applicant will be allowed the usual time to perfect same.
[Circ. 119, May 24, 1912]

§ 102.21 *Claimants not entitled to protest coal character of land.* The second proviso to section 3 of the act of June 22, 1910 (36 Stat. 584; 30 U. S. C. 85), has no application to the Alabama lands, and claimants are not, therefore, entitled to contest the classification of the land and disprove its coal character.
[Circ. 119, May 24, 1912]

AGRICULTURAL ENTRY OF LANDS WITHDRAWN, CLASSIFIED OR VALUABLE FOR PHOSPHATE, NITRATE, POTASH, OIL, GAS, ASPHALTIC MINERALS, SODIUM AND SULPHUR

§ 102.22 *Statutory authority.* (a) Section 1 of the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121), authorizes the appropriation, location, selection, entry, or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made. The only exception is that no desert land entry made under the act shall contain more than 160 acres.

(b) The term "person" used in this act will be interpreted as covering a State (see ex parte, Utah, 38 L. D. 245), or other corporation, or an association when duly qualified.

(c) Under the proviso in section 2 of the act (38 Stat. 509; 30 U. S. C. 122) applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservations; also, claimants for lands withdrawn or classified for the specified minerals subsequent to location, selection, entry, or purchase have the privilege of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are in fact nonmineral in character.

(d) Under the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124), lands withdrawn, classified, or reported as valuable for sodium and/or sulphur are subject to entry, filing, or selection, if otherwise available, and subject to the reservations, provisions, limitations and conditions of the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), sulphur lands being limited to the States of Louisiana and New Mexico, pursuant to the act of July 16, 1932 (47 Stat. 701; 30 U. S. C. 271, 276).
[Circ. 393, Mar. 20, 1915, as amended by Circ. 1303, June 13, 1933]

§ 102.23 *Lands to which act of July 17, 1914 is applicable.* The act of July 17, 1914 is general and comprehensive and operates in all the States containing public lands of the character specified. It does not apply to lands in the Territory of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special acts of August 24, 1912 (37 Stat. 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stat. 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general act, July 17, 1914, will be treated as within the scope of the latter act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general act.
[Circ. 393, Mar. 20, 1915]

§ 102.24 *Practice and procedure.* The act of July 17, 1914 in many respects resembles that of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), which provides for the protection of the surface rights of entrymen upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these acts as set forth in §§ 102.1 to 102.16 and 270.21 of this chapter may be followed, so far as applicable, in matters of practice and procedure.
[Circ. 393, Mar. 20, 1915]

§ 102.25 *Procedure on reports as to oil and gas, involving nonmineral entries, prior to proof, or after proof and prior to patent.* (a) Where the Geological Survey reports that land embraced in a nonmineral entry or claim on which final proof has not been submitted or which has not been perfected is in an area in which valuable deposits of oil and gas may occur because of the absence of reliable evidence that the land is affected by geological structure unfavorable to oil and gas accumulation, the entryman or claimant will be allowed 30 days from notice to furnish consent under the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), or to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in event reclassification is denied, or to appeal. He must be advised that if a hearing is ordered the burden of proof will be upon him, and also that if he shall fail to take one of the actions indicated, his entry or claim will be canceled.

(b) In a case where acceptable final proof has been submitted, or a claim has been perfected, and the Geological Survey thereafter makes report, as in the above or similar form, such report will not be relied upon as basis for adverse proceedings against the entry or claim unless the Government is prepared to assume the burden of proving, prima facie, that the land was known to be of mineral character, at the date of acceptable final proof or when the claim was completed, according to the established criteria for determining mineral from nonmineral lands, among which may be those recognized by the Supreme Court in the case of United States v. Southern Pacific Company et al. (251 U. S. 1, 64 L. ed. 97). If the Government is thus prepared to assume such burden of proof, the Bureau of Land Management will institute adverse proceedings against the entry or claim, making a charge to that effect, giving the entryman or claimant the option of refuting the charge in accordance with Part 222 of this chapter or of consenting to the reservation of the oil and gas to the United States, and thereby avoiding the expense of litigation. The entryman or claimant will be advised that in the event hearing is had, the burden of proof will be upon the Government; also, that if he shall fail to make answer or to exercise the option offered him within the time allowed, the entry or claim will be canceled without further notice.
[Circ. 1344, Jan. 19, 1935]

CROSS REFERENCE: For Geological Survey, classification of public coal lands, see 30 CFR Part 201.

§ 102.26 *Patent with reservation.* Section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U. S. C. 123) is both retrospective and prospective, and under it any person who prior to the act, had applied, or who after the passage of the act, shall apply for lands which are subsequently withdrawn, classified or reported as being valuable for the specified minerals, and which are otherwise available, may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular the statute is quite similar to that of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), and the disposition of such cases will follow the practice under that act insofar as the same is applicable.
[Circ. 393, Mar. 20, 1915]

§ 102.27 *Notations on applications; statements in orders of withdrawal.* (a) All applications to locate, select, enter, or purchase lands under the act of July 17, 1914, before being accepted and filed by the manager, must have written, stamped, or printed upon their face the following:

Application made in accordance with, and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

(b) Like notations will be made by managers upon the face of the notices of allowance issued on applications filed under this act.

(c) Orders of withdrawal under the Reclamation Act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing

title to the same in accordance with the terms of this act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the act of July 17, 1914.
[Circ. 393, Mar. 20, 1915]

§ 102.28 *Reservations in final certificates and patents.* (a) Final certificates issued to nonmineral claimants under this act will contain the following provision, which the manager will cause to be written or stamped thereon:

Patent to contain provisions, reservations, conditions, and limitations of the act of July 17, 1914 (38 Stat. 509).

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

Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914 (38 Stat. 509).

[Circ. 393, Mar. 20, 1915]

§ 102.29 *Notations to be made on district land office records.* Upon the acceptance by the manager of any filing under the act of July 17, 1914, he will make appropriate notation on his records to show that the filing was made under the provisions thereof; and upon the ascertainment (which will be noted of record) that the nonmineral locator, selector, entryman, or purchaser whose filing falls within the provisions of section 3 of the act (38 Stat. 510; 30 U. S. C. 123), shall receive the limited patent prescribed therein, he will cause to be written or stamped on his tract books, in line with the notation of the entry and as near the description as practicable that the mineral deposits (phosphate, oil, etc., as the case may be) are reserved to the United States, act of July 17, 1914. He will make a similar notation on the margin of the township plat, giving description of the land in which the deposits have been reserved.
[Circ. 393, Mar. 20, 1915]

§ 102.30 *Disposition of reserved deposits; protection of surface claimant.* The act of July 17, 1914, provides that the deposits reserved in agricultural patents issued thereunder shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." Provisions are made in the act for the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits.
[Circ. 393, Mar. 20, 1915]

§ 102.31 *Restricted patent to issue or entry will be canceled.* Nonmineral claimants who are or may be affected by withdrawals or classifications made or which shall be made, subsequent to their locations, selections, entries, or purchases, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral, shall be entitled to the patent authorized to be issued by section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U. S. C. 123) upon the filing of an application therefor. Such claimant will be notified of his right to such a patent, and upon failure to file within 30 days his application therefor or to apply for a classification of the land as nonmineral, the entry will be canceled.
[Circ. 481, June 27, 1916]

§ 102.32 *Applications to disprove classification of land; hearing thereon.*[1] (a) (1) The proviso to section 2 of the act of July 17, 1914 (38 Stat. 509; 30 U. S .C. 122), allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the statements of experts or practical miners, of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

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

(2) Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the act (38 Stat. 509; 30 U. S. C. 121), and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by the manager and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

(3) Such applications will be given proper serial numbers, noted upon the district land office records, and forwarded, together with the request for classification and the evidence submitted therewith, to the proper office for action.

(4) If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be returned for allowance.

(5) If the application be denied, the manager will be so notified and the applicant may, within 30 days from notice of such denial, apply to the district land office for a hearing to disprove the classification. When a hearing is applied for, the manager will notify the proper regional administrator, and proceed therewith under the Rules of Practice, Part 221 of this chapter. If the applicant fails to apply for a hearing within the time allowed, the application to locate, select, enter or purchase will be finally rejected.

(6) The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter or purchase the land in accordance with and subject to the provisions and reservations of said act.

(b) (1) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

(2) Claimants to whom this provision is applicable may, therefore, file in the proper district land office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification, whereupon the same will be forwarded to the proper office for action. If as a result thereof the land be restored to entry, if withdrawn, or classified as nonmineral, if classified, the manager will be so informed, in order that he may note his records and advise the claimant. If the application be denied, the manager will be advised thereof, and the claimant allowed 30 days from notice of such denial within which to make application to this district land office for a hearing to establish the nonmineral character of the land. When a hearing is applied for the manager will notify the proper regional administrator, and proceed therewith under the Rules of Practice, Part 221 of this chapter.

[Circ. 393, Mar. 20, 1915; see also item 3 of Note to chapter]

§ 102.33 *Burden of proof.* (a) Where application is made to enter, locate, or select lands withdrawn or classified as valuable for or on account of any of the minerals specified in the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123) as supplemented by the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124), the burden of proof to show that said lands are not of the character of those intended to be withdrawn or that the classification as such was and is erroneous and improper in point of fact will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

(b) A withdrawal or classification will be deemed prima facie evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has preceded the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended to be included in the withdrawal. Where

the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land, which subsequent thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral in character and was so known at the date of final completion and perfection of the claim. (See Charles W. Pelham (39 L. D. 201).)

[Circ. 393, Mar. 20, 1915]

CONDITIONS GOVERNING THE ALLOWANCE OF NONMINERAL APPLICATIONS FOR LANDS EMBRACED IN MINERAL PERMITS OR LEASES, OR CLASSIFIED, WITHDRAWN OR REPORTED AS VALUABLE FOR ANY MINERAL SUBJECT TO LEASE

SOURCE: §§ 102.34 to 102.38 contained in Circular 1674, 13 F. R. 1629.

§ 102.34 *Disposition of surface discretionary as to lands embraced in mineral permits and leases or classified, withdrawn, or reported as valuable for any mineral subject to lease.* Section 29 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449; 30 U. S. C. 186) and the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124) grant the Secretary of the Interior complete discretion to determine whether the surface of public lands embraced in mineral permits or leases, or in applications for such permits or leases, or classified, withdrawn, or reported as valuable for any leasable mineral, or lying within the geologic structure of a field, should be disposed of. Accordingly, where a nonmineral application is filed, in the continental United States,[1] for any of such described lands, the nonmineral application may be allowed only if it is determined by the proper officer, with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts. Appeals from any decision of the Director, Bureau of Land Management, or other officer, may be taken by any affected party in accordance with the Rules of Practice Part 221 of this chapter.

§ 102.35 *Definition of prior mineral claim.* As used in §§ 102.36 to 102.38, inclusive, a mineral claim is "prior" where an application for a mineral permit or lease has been filed before either the filing of a complete nonmineral application for part or all of the same land, or before the classification of that land for the purposes requested by that nonmineral applicant: *Provided,* That the nonmineral application is not either for:

(a) A State exchange under section 8 of the Taylor Grazing Act (48 Stat. 1269; 43 U. S. C. 315g), as amended, filed prior to such mineral claim; or

(b) A reclamation homestead under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.) for lands applied for by a mineral claimant under the Leasing Act after withdrawal for reclamation purposes.

§ 102.36 *Notation in notice of allowance of nonmineral application.* Wherever the mineral claim is "prior", the following notation will be made in the notice of allowance of the nonmineral application, as well as on the original copy of that nonmineral application:

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

§ 102.37 *Notation on final certificate and patent.* (a) Wherever a nonmineral application, which is affected by the notation described in § 102.36, proceeds to issuance of final certificate and patent, and at the time of such issuance there is outstanding a mineral lease, permit, or application therefor, based on a "prior" mineral claim, such final certificate and patent will indicate that they are subject to the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124).

(b) Such final certificate and patent will indicate that they are also subject to the provisions and limitations of section 29, act of February 25, 1920 (41 Stat. 449; 30 U. S. C. 186), if, when the final certificate or patent issues, there is outstanding a mineral lease or permit based on a "prior" mineral claim.

[1] Sections 102.34 to 102.38, apply to all public land States, including, though not limited to, those States which are specifically excepted by statute from the operation of the mining laws, but which are covered by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181) (48 L. D. 629, Apr. 8, 1922). Sections 102.34 to 102.38 do not apply, however, to public domain lands in Alaska, which are governed by § 66.2 of this chapter.

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§ 102.38 *Compensation for damages by mineral claimant.* In any case where there is no "prior" mineral claim, any person obtaining authority to prospect for, mine or remove the reserved mineral deposits will be liable to the entryman, selector or patentee of the surface for any damages to crops or improvements which may result from his prospecting or mining operations on the land.

FISSIONABLE MATERIALS

§ 102.43 *Reservation of fissionable materials in patents and conveyances.* Any patents or conveyances of public lands based upon rights acquired on or after August 1, 1946, under which there might result the extraction of any uranium, thorium or other materials which are or may be determined to be peculiarly essential to the production of fissionable materials, shall contain a reservation to the United States, pursuant to the provisions of the act of August 1, 1946 (60 Stat. 755; 42 U. S. C. 1801 et seq.) of all such materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine and remove the same. [Circ. 1620, 11 F. R. 8904]

CROSS REFERENCE: For reservation of fissionable materials in leases and permits, see § 184.1 of this chapter.

Part 103—Entries Subject to Section 24 of Federal Power Act

APPLICATIONS AND ENTRIES CONFLICTING WITH LANDS RESERVED OR CLASSIFIED AS POWER SITES, OR COVERED BY POWER APPLICATIONS

GENERAL DETERMINATION UNDER SECTION 24 OF FEDERAL POWER ACT AS TO LANDS APPLIED FOR, OCCUPIED, AND USED FOR TRANSMISSION LINE PURPOSES

AUTHORITY: §§ 103.1 to 103.8 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 103.1 to 103.8 contained in Circular 729, Nov. 20, 1920, except as noted following sections affected. For editorial changes not otherwise indicated, see item 8 of Note following table of contents of chapter.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For rights of way for power projects and for power transmission lines, see Part 245 of this chapter. For Federal Power Commission, see Conservation of Power, 18 CFR Chapter I. For rights of way over Indian lands; power projects; see Indians, 25 CFR 256.42–256.44.

APPLICATIONS AND ENTRIES CONFLICTING WITH LANDS RESERVED OR CLASSIFIED AS POWER SITES, OR COVERED BY POWER APPLICATIONS

§ 103.1 *Statutory authority.* Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 49 Stat. 846; 16 U. S. C. 818), provides that any lands of the United States included in an application for power development, under said act, shall be reserved from entry, location, or other disposal under the laws of the United States, until otherwise directed by the Federal Power Commission or by Congress. It also provides that whenever the said Commission shall determine that the value of any lands withdrawn or classified for power purposes will not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any or all of such lands for power purposes.

§ 103.2 *Action on application, in case of total conflict.*[1] The manager will at once reject, subject to appeal, any application filed which is wholly in conflict with lands reserved or classified as power sites, or covered by a power application under this act, except:

(a) (1) A homestead application predicated upon settlement prior to the reservation, classification, or filing of the

[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.

power application, and accompanied by corroborated statement of such prior settlement.

(2) An application of this character should be received, noted in pencil on the district land office records, and transmitted to the regional administrator for consideration, without allowance.

(b) Any application which, were it not for the reservation, classification, or power application, would be allowable, wherein claim is made by way of corroborated statement, that applicant has acquired equitable rights antedating the withdrawal. Such applications should be received for transmission to the proper officer for consideration, but should not be allowed by the manager.

§ 103.3 *Action on application, in case of partial conflict.* Where any such application is only partially in conflict with lands reserved or classified as power sites, the manager will allow it only as to the subdivisions not in conflict.

§ 103.4 *Action on application conflicting with transmission line withdrawal.* Where any application is presented which conflicts with a transmission line withdrawal of a strip of land crossing the land applied for, the manager will, if otherwise regular, allow the entry, but will note upon the face of the entry papers, and upon his records, the following:

Made in accordance with and subject to the provisions and reservations of sec. 24 of the Federal Power Act, June 10, 1920 (41 Stat. 1063), as amended August 26, 1935 (49 Stat. 846), as to that portion of the _____ _____ lying within _____ feet of the center line of the transmission line right of way of the _____ _____.

§ 103.5 *Application for restoration of withdrawn lands.* Whenever the manager finds it necessary to reject an application, in carrying out these instructions, such officer should inform the applicant that he is at liberty to file an application for the restoration of such withdrawn lands, under the provisions of section 24 of the Federal Power Act, but that favorable action upon such application will not give the applicant any preference right, or right to preferential treatment if or when the lands are finally restored.

§ 103.6 *Rights to withdrawn lands which may be recognized.* (a) Withdrawn public lands are not subject to lease, or other disposition, other than such as is specifically recognized by the Federal Power Act and there is no way to acquire preference rights, preferential treatment, or equitable or legal preference, excepting where legal or equitable rights were acquired before the withdrawal of the land, and that, in all cases where such rights are claimed, careful investigation as to its bona fides will be made before it is recognized.

(b) While the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143), allows metalliferous mineral explorations and applications based thereon, the act of June 10, 1920 makes no exceptions.

(c) Any mineral application or location, based upon discoveries made subsequent to June 10, 1920, which is in conflict with lands reserved or classified as power sites, will be rejected by the manager, subject to appeal.

(d) If the application alleges a valid location made prior to the date of the act of June 10, 1920, and is accompanied by a corroborated statement attesting the fact, the patent proceedings may be prosecuted to completion. The proof should be considered upon its merits, and, if found regular, final certificate may issue although a protest may have been filed by the regional administrator; but the claimant should be advised in such cases that patent will be withheld by the Bureau of Land Management pending a report by the regional administrator upon the bona fides of the claim; also, that when the case is adjudicated in the Bureau of Land Management determination will be made whether or not the claim is subject to the provisions of section 24 of the act.

(e) Applications for lease under the Oil Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), embracing lands applied for under the Federal Power Act, or reserved or classified as power sites, should be received and transmitted to the Bureau of Land Management. If, upon reference of such an application to the Commission, it shall determine that a lease may be granted without injury to or destruction of the value of the lands for the purpose of power development, the application will be considered and acted upon in the usual way.

[Circ. 729, Nov. 20, 1920, as amended by Circ. 1044, Dec. 14, 1925]

§ 103.7 *Lands occupying status of withdrawn lands.* Lands within final hydroelectric power permits under the

act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), or transmission-line permits or approved rights-of-way, whether under said act of February 15, 1901, or the act of March 4, 1911 (36 Stat. 1253; 16 U. S. C. 5, 420, 523, 43 U. S. C. 961) are deemed "classified as valuable for power purposes," and, whether withdrawn as power-site reserves or not, occupy the status of withdrawn lands.

GENERAL DETERMINATION UNDER SECTION 24 OF FEDERAL POWER ACT AS TO LANDS APPLIED FOR, OCCUPIED, AND USED FOR TRANSMISSION-LINE PURPOSES

§ 103.8 *General determination; exception.* (a) The executive secretary of the Federal Power Commission having called to the attention of the Commission the desirability of making a general determination under the provisions of section 24 of the Federal Water Power Act [2] with respect to lands of the United States theretofore or thereafter reserved or classified as power sites which are applied for, or occupied and used for, transmission-line purposes only, the Commission at its meeting of April 17, 1922, voted as follows:

(1) That where lands of the United States have heretofore been, or hereafter may be, reserved or classified as power sites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes has been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the commission determines that the value of such lands so reserved or classified or so applied for or authorized, will not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Water Power Act.

(2) That when notice is given to the Secretary of the Interior of reservations made under the provisions of section 24 of the Federal Water Power Act, such notice shall indicate what lands so reserved, if any, may, in accordance with the determination of the preceding paragraph, be declared open to location, entry, or selection subject to the reservation of said section 24.

(b) Where the Bureau of Land Management finds that lands applied for are occupied in trespass, the application will be referred to the Federal Power Commission for such action as it deems to be appropriate to the particular circumstances existing in the case.

[Reg. Apr. 29, 1922]

[2] The act of Aug. 26, 1935 (49 Stat. 838; 16 U. S. C. 796 et seq.) amended the Federal Water Power Act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791–823) and changed its short title to the "Federal Power Act."

Part 104—Amendments

Sec.

AUTHORITY: §§ 104.1 to 104.16 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 104.1 to 104.16 contained in Circular 423, July 10, 1915, except as noted following section 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 desert-land entries, see Part 232 of this chapter. For general regulations involving applications and entries, see Part 101 of this chapter. For homesteads generally, see Part 166 of this chapter. For patents, see Part 108 of this chapter. For timber and stone entries, see Part 285 of this chapter.

§ 104.1 *Statutory authority.* Section 2372, United States Revised Statutes, as amended by the act of Congress approved February 24, 1909 (35 Stat. 645; 43 U. S. C. 697), authorizes the amendment of entries and patents for the purpose of correcting errors pertaining to the description of the lands entered and intended to be entered.

§ 104.2 *Application to amend; form; where filed.*[1] Application for amendment must be filed in the district land office having jurisdiction over the land sought to be entered, or in the Bureau of Land Management, if there is no district land office in the state in which the land lies, and should be substantially in accordance with Form 4–005. This form may be used for the amendment of nonmineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be signed by the applicant and corroborating witnesses, and must describe the land erroneously entered, as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it. [Circ. 423, July 10, 1915, as amended by Circ. 1557, 8 F. R. 7709]

§ 104.3 *Nature and source of error; good faith.* The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that proper precaution was taken to avoid error at the time of making the orlginal entry, location, or selection; and where there has been undue delay in applying for amendment, the application will be closely scrutinized, and will not be allowed unless the utmost good faith is shown, and the delay explained to the entire satisfaction of the Director, Bureau of Land Management.

§ 104.4 *Showing required that no timber has been removed, etc.* The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by any adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and in cases of nonmineral claims, the kind and quantity of timber on each legal subdivision applied for must be stated.

§ 104.5 *Showing required as to ownership; deed of reconveyance.*[2] Where no final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the statement of the applicant, corroborated as provided for in § 104.6, will be sufficient; but where final certificate has issued, or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other encumbrance charged against the land. Where patent has been issued, reconveyance of the land embraced in the patent must be made by deed executed by the claimant, and also by his wife, if he be married, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated, such deed to be accompanied by a satisfactory abstract of title or a certificate from the register of deeds in and for the county in which the land is situated, showing the title to be clear and free of encumbrance.

§ 104.6 *Application to be corroborated and verified.* The statement of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. At least one witness must verify the allegations of the application on his personal knowledge of the facts therein stated, so far

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

[2] Where application for issuance of amended patent is made by the transferee of the original patentee, the new patent may be issued in the name of the transferee. (Instr. Nov. 13, 1925, 51 L. D. 281). Similarly, patent may be issued to the transferee of the entryman of an unpatented entry which has been amended after issuance of final certificate but before issuance of patent. (Instr. Jan. 22, 1926, 51 L. D. 335).

as such facts may well be known to anyone other than the applicant, and as to other facts, including those concerning the applicant's intent or purpose, such witness may testify on information and belief.

§ 104.8 *Action by the district land office.* When an application to amend is filed in the district land office, the manager will make proper notations on his records and forward it to the Bureau of Land Management with his regular returns, with appropriate recommendation written at the place indicated in the form, and thereafter he will make no disposition of the land applied for until instructed by the Bureau of Land Management.

§ 104.9 *Action by Bureau of Land Management.* When an application to amend is received in the Bureau of Land Management, together with proper report and recommendation from the manager, it will be considered, and, if found satisfactory, the amendment will be allowed and proper correction made on the records, of which the manager will be duly advised, to the end that the necessary corrections may be made on the records of the district land office and the applicant properly notified. When an application is denied, an appeal may be taken to the Department.

§ 104.10 *Publication of notice; statements of witnesses.* Where amendments are allowed of claims upon which final proof has been submitted and publication or posting of notice is required, republication of notice applicable to the class of entry for which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must submit statements, showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

§ 104.11 *Amendments in exercise of equitable powers.* The statute to which §§ 104.1–104.10 refer does not, in terms, provide for amendment of an entry, selection, or location for the purpose of correcting any error other than such as affects and pertains to the description of the lands entered and intended to be entered. Nevertheless, in the exercise of its equitable power and authority, the Department will grant amendment of an entry, made for the purpose of securing a home upon the public lands, or for the purpose of effecting reclamation in accordance with the provisions of the desert-land law, in any case where it is satisfactorily shown that, through no fault or neglect of the entryman, the land embraced by his entry is so far unfit for, or insusceptible of occupancy, cultivation, or irrigation, as to render it practically impossible to perform the requirements of the law thereon.

§ 104.12 *Amendment to enlarge area of desert-land entry.* Amendment for the purpose of enlarging the area of a desert-land entry will be granted under and in the conditions and circumstances now to be stated.

(a) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that purpose, said lands having since been released from such appropriations.

(b) Where contiguous tracts have been omitted from entry because of entryman's belief, after a reasonably careful investigation, that they could not be reclaimed by means of the water supply available for use in that behalf, it having been subsequently discovered that reclamation thereof can be effectively accomplished by means of a changed plan or method of conserving or distributing such water supply.

(c) Where, at the time of entry, the entryman announced, in his declaration, his purpose to procure the cancellation, through contest or relinquishment, of an entry embracing lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

§ 104.13 *Conditions governing amendments in exercise of equitable powers; amendments involving homestead and desert-land entries of adjoining lands.* Applications for amendment presented

pursuant to § 104.11 will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 104.1 to 104.12 and on the prescribed form, in so far as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCES: For homesteads, generally, see Part 166 of this chapter. For desert-land entries, see Part 232 of this chapter.

§ 104.14 *Evidence of water-right to accompany application to amend desert-land entry.* Application to amend desert-land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by §§ 232.14 and 232.15 of this chapter.

§ 104.15 *Entry improperly allowed not to be amended.* Where entries, selections, or locations are improperly allowed, as where the lands are not subject to such entries, selections, or locations, amendments will not be allowed, because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

§ 104.16 *When amendment becomes effective.* Amendment of an entry becomes effective, by relation, as of the date of the original entry in all cases except where the effect of the amendment is to transfer the entry in its entirety to lands other than those originally selected for entry. In all cases, therefore, where amendment is granted to correct a mistake in description and to effect the entryman's original intention, or to increase merely the area embraced by the entry, such amendment will not be effective to alter the time within which the requirements of the law must be complied with. In other cases, the date of the amendment will be treated as the date of the entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

Part 105—Relinquishments, Cancellations, and Reinstatements

RELINQUISHMENTS

REINSTATEMENT OF CANCELED ENTRIES

RELINQUISHMENTS

§ 105.1 *Acceptance of conditional relinquishments discontinued; exceptions.* (a) The manager will advise all parties that (except as noted in paragraph (b) of this section), the filing of a relinquishment of an entry or claim will be treated as absolute, the cancellation thereof at once noted of record, and the tract embraced therein will be subject to disposition under existing laws.

(b) The only exceptions to this rule are relinquishments of approved rights-of-way, conditioned upon the approval of a subsequent application, filed as an amendment to the approved right-of-way, or as an independent application, but conflicting in whole or in part with the approved right-of-way. Such relinquishments should not be noted by the manager until action on the subsequent application is taken.

(c) Many applications for amendment of entries are accompanied by relinquishments of the tracts sought to be

excluded. This is unnecessary, and the manager should advise such applicants that if the relinquishment is filed it is his duty to at once make the same of record.

(d) This section applies only to cases wherein the entry shall have been relinquished in its entirety. It in no wise modifies § 217.19 of this chapter which relates solely to applications for repayment of moneys paid in connections with commutation entries, final homestead entries, final desert-land entries, and other final certificates where it is the intention of the applicant for repayment to merely suffer cancellation of the final entry, leaving the basic entry intact subject to future compliance with the public land laws.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 81, Feb. 13, 1912, as amended by Circ. 820, Apr. 12, 1922; see also item 3 of Note to chapter]

REINSTATEMENT OF CANCELED ENTRIES

§ 105.2 *Application for reinstatement.*[1] (a) An application for the reinstatement of a canceled entry, while pending, operates to reserve the land covered thereby from other disposition.

(b) Applications for reinstatement of canceled entries must be filed in the proper district land office and must be executed by the entryman, his heirs, legal representatives, assigns, or transferees, as the case may require. If made by other than the entryman, such petition for reinstatement must fully set forth the nature and extent of petitioner's interest in the land, how acquired, and the names and addresses of any other person or persons who have or claim an interest therein. All petitions for reinstatement should set forth all facts and state clearly and concisely upon what grounds reinstatement is urged. Such petition must be signed by the applicant.

(c) Applications for reinstatement of canceled entries executed by agents and attorneys will not be recognized.

(d) Should an application for reinstatement be filed not conforming to the foregoing, the manager will promptly advise the party thereof, calling his attention to the defects and allow 15 days in which to file a proper application.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 889, Apr. 16, 1923; see also item 3 of Note to chapter]

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

Part 106—Proofs

Sec.

AUTHORITY: §§ 106.1 to 106.18 issued under 20 Stat. 472; 43 U. S. C. 251.

SOURCE: §§ 106.1 to 106.18 contained in Regulations, Aug. 11, 1909, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of note following table of contents of chapter.

§ 106.1 *Purpose of publication of final proof notices.* The object of the law requiring publication of notices of intended final proof on entries of public lands is to bring to the knowledge and attention of all persons who are or who might be interested in the lands described therein, or who have information concerning the illegality or invalidity of the asserted

claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the Bureau of Land Management. It is unnecessary to state that this object can not be secured by a notice published in a paper which has no meritorious circulation among the people resident in the locality in which the affected land is situated, and that inattention to or disregard of their duty in this behalf on the part of managers will result in the total subversion of the law and the defeat of its purpose and intent.

§ 106.2 *Qualifications of newspaper as medium of publication.* A notice of intended final proof must be published in a newspaper of established character and of general circulation in the vicinity of the land affected thereby, such paper having a fixed and well-known place of publication. No newspaper shall be deemed a qualified medium of notice unless it shall have been continuously published during an unbroken period of 6 months immediately preceding the publication of the notice, nor unless it shall have applied for and been granted the privilege of transportation in and by the United States mails at the rate provided by law for second-class matter (secs. 519 to 560, inclusive, Postal Laws and Regulations edition of 1940), a privilege available to all newspapers having a legitimate list of subscribers and a known place of publication.

CROSS REFERENCE: For regulations in secs. 519 to 560, inclusive, Postal Laws and Regulations, see 39 CFR 34.29–34.37.

§ 106.3 *Newspaper must be published nearest the lands involved.* The notice must, in all cases, be published in the newspaper which is published at a place nearest to the lands which the notice affects. The word "published" as herein used does not necessarily mean the actual printing of the paper at the place of publication, but the fact that the paper is not printed at the place of publication is a circumstance which may be taken into consideration in determining the efficiency of such newspaper as a medium of publication. By the word "nearest" as here used it is not intended that geographical proximity shall be measured on an air line drawn between the land and the place of publication, but by the length of the shortest and principaliy travelled thoroughfare between such places, being the highway ordinarily used and employed for travel by vehicles of any kind. But this qualification shall not be construed as authorizing any manifest perversion of the spirit of the rule, but simply to dispense with any strict rule based on geographical distance.
[Circ. 1429, June 3, 1937]

§ 106.4 *Newspaper need not be published in same county or land district as lands involved.* It is not necessary that the newspaper nominated as the medium of such notice shall be published in the same county as that in which the land lies, or even in the same land district. On the contrary, a newpaper published in an adjoining county, if its place of publication is nearer to the land than that of any other newspaper, must be designated as the agency of publication, if it is also qualified by reason of its general circulation in the vicinity of the affected lands.

§ 106.5 *Discretion of manager in selecting newspaper; review of such selection.* The law invests managers with discretion in the selection of newspapers to be the media of notice in such cases as are here referred to, but that discretion is official in character, and not a purely personal and arbitrary power to be exercised without regard for the object of the law by which it is conferred. It follows that a manager's action in the exercise of such discretion is subject to review by the Bureau of Land Management in any case where it is sufficiently alleged that the discretion has been abused, meaning thereby that it has been exercised in a manner perversive of the object of the law in requiring such notices to be published. This power of review will ordinarily be exercised and made effective in a proper case by holding the final proof to have been preceded by insufficient notice; but it may be resorted to and exercised, in any case in which it may be shown that a manager is persistently designating a manifestly inefficient medium of notice, by forbidding the further publication of notices in such a newspaper until it shall have acquired and sufficiently established its possession of the requisite qualifications. In other words, where it has once been determined that a newspaper is not a competent medium of notice, it is within the power of the Bureau of Land Management to forbid the continued selection of that newspaper as the means of publication without awaiting repeated abuses of discretion on the part of a manager and a

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determination in each separate instance that the notice was ineffectually published. This course of action will, therefore, be pursued whenever it is shown that a manager is bestowing his patronage upon an alleged newspaper which is not entitled to that character, being merely a private advertising agency or published for some special purpose and not as a general disseminator of news, or where such paper has no actual bona fide or reasonably meritorious circulation, or is not in fact published at its pretended place of publication, but at some other place.

§ 106.6 *Reasonable exercise of discretion by manager will not be disturbed.* Where a manager acts in the reasonable and not manifestly unfair and improper exercise of his discretion his decision will not be interfered with or disturbed by the Bureau of Land Management. The Department of the Interior can not and will not undertake to weigh and nicely calculate the relative efficiency of two or more newspapers published in the same place and alike possessing and enjoying an established character and general circulation; nor will it, as between two papers published at different places, permit any slight and unimportant advantage in the matter of geographical proximity, period of publication, or extent of circulation, possessed by one of such papers over the other, to serve as a sufficient reason for disapproval of the manager's conclusion as to which one of such newspapers should be designated as the means of publication.

§ 106.7 *Discretion of manager when newspaper is nominated by claimant.* Persons seeking to establish their right to a legal title to any public lands are not authorized to interfere with the discretion of the manager in the choice of a newspaper in which to publish notice of their claims; nor will any designation of a newspaper made by a manager, in the reasonable exercise of that discretion, be disturbed on the ground that the claimant recommended another newspaper. All other conditions being equal, it will be entirely proper to accord favorable consideration to a claimant's nomination of a newspaper, though acceptance of such a nomination will not be enjoined upon the manager.

§ 106.8 *Publication of proof notices in timber and stone purchases.* None of the rules in this part respecting the designation of the newspaper are intended to apply to, or govern, publication of notice concerning proof proposed to be offered in support of an application for the purchase of lands chiefly valuable for their timber or stone, under the act of June 3, 1878 (20 Stat. 89; 43 U. S. C. 311–313), as extended by the act of August 4, 1892 (27 Stat. 348; 30 U. S. C. 161, 43 U. S. C. 311). Publication of such notices must be procured by the applicants, in newspapers selected by them, but this privilege does not exempt them from the obligation to select a newspaper published nearest to the lands to which the application relates, and such paper must be in all other respects a competent medium of notice, in accordance with the principles which have been stated. The manager will give to all applicants due counsel and instruction concerning the duty imposed upon them in respect of publication of notice, to the end that they may not ignorantly err in the choice of newspapers through which to communicate such notice.

CROSS REFERENCE: For publication for timber and stone entries, see § 285.21 of this chapter.

§ 106.9 *Protest by editor or proprietor against selection of newspaper.* No appeal will lie from the action of the manager in refusing to name any particular newspaper as an agency for the publication of notices concerning claims to public lands. But any editor or proprietor of a newspaper who believes and desires to charge that a notice of proof in support of any claim to public land has been published in a paper disqualified by the rules and principles stated in this part, to serve as the medium of such notice, may file in the district land office from which such notice emanated a written protest against the acceptance of the proof submitted in accordance with such notice. Such protest should set forth all material and essential facts within the knowledge of the protestant, or of which he has reliable information and which he believes to be true, and which, if duly established by proof, would require a determination that the newspaper in which the notice was published was and is not a reputable and established publication, printed, in good faith, for the diffusion of local and general news; or that it is and was not the paper published nearest to the land affected by said notice, and that there is another newspaper published at a place nearer to said lands, equally well qualified in all

respects to convey notice of the claim thereto asserted; or any other cause of disqualification expressed and defined in and by §§ 106.1 to 106.8.

§ 106.10 *Evidence to accompany protest.* Any such protest must be accompanied by copies of at least three successive editions of the paper against whose efficiency as a means of notice the protest is directed, and by as many like copies of the paper published by protestant, and alleged to have been a more efficient agency of notice than was the paper actually chosen. It should, in addition to other facts hereby made essential, disclose the relative number of actual paying subscribers supporting the said two newspapers; the number of papers actually distributed in the county in which said papers are published and in the county in which the land is situated; and the number of papers mailed to bona fide subscribers at the post office nearest to the land to which such notice relates. It should state the length of time during which each of said newspapers has been actually and continuously published, immediately preceding the date of the protest; and, if either of said papers has been denied, or has never applied for, entry as second-class matter in the post office at the place of publication, that fact should be stated.

§ 106.11 *Action by manager on protest.* Where any protest has been filed in the manner prescribed in this part it shall be the duty of the manager to immediately consider same and to proceed thereon as in other cases of protests against final proofs. If he should conclude that the facts stated in the protest are insufficient to warrant an order for a hearing, he will render decision to that effect and duly notify the protestant thereof, at the same time advising him of his right to prosecute an appeal to the Bureau of Land Management in the manner and within the time prescribed by the Rules of Practice, Part 221 of this chapter. After the expiration of the period during which an appeal may be prosecuted, the manager will, if no such appeal be filed, forward the protest and accompanying exhibits to the Bureau of Land Management, with his decision thereon, as in cases of unappealed contests, together with a separate report concerning the facts within his knowledge, and bearing, in a material manner, on the merits of the question presented by the protest.

§ 106.12 *Extent to which manager's decision dismissing protest is final.* In all cases where no appeal is prosecuted from a decision by the manager dismissing a protest, that decision will be considered final as to the facts; and acquiescence therein by the Bureau of Land Management will be refused only when it is manifest that it was error to determine that no proper ground of protest was sufficiently alleged.

§ 106.13 *Protest by individual against designation of newspaper.* Any person having knowledge of the failure of a manager to designate the proper newspaper for the publication of notice of final proof may file with the proper regional administrator a statement fully setting forth all the facts and circumstances.

[Circ. 310, Apr. 4, 1914]

§ 106.14 *Report to be made to Bureau of Land Management by regional administrator.* On receipt of such statement, the regional administrator shall cause a prompt investigation to be made and submit full report to the Director, Bureau of Land Management, who shall then take such action as the facts may warrant.

[Circ. 310, Apr. 4, 1914]

§ 106.15 *Payment for republication of notice, when necessary because of error of manager or publisher.* (a) The law imposes upon managers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication. Managers should accordingly exercise the utmost care in the examination of such notices and in the comparison thereof with the records of their offices, to the end that they may not go to the printer containing any erroneous description of the entered land, or designating an officer not authorized to receive the proof, or that they shall not be for any other reason insufficient.

(b) It is equally important that a notice correct in all of these particulars shall not be published in a newspaper manifestly disqualified as a means of publication and clearly incapable of bringing the notice to the attention of the people dwelling in the vicinity of the lands to which it relates.

(c) Neglect of the duty defined in paragraphs (a) and (b) of this section, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the manager by whom the publication was procured will be required to effect the necessary republication at his own proper expense. If an error is committed by the printer of the paper in which the notice appears, the manager may require such printer to correct his error by publishing the notice anew for the necessary length of time, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

[Circ. 310, Apr. 4, 1914]

§ 106.16 *Maximum rates allowed for publishing proof notices.* In designating papers in which notices of intention to make final proof under the act of March 3, 1879 (20 Stat. 472; 43 U. S. C. 251) shall be published, the manager shall designate only such reputable papers of general circulation nearest the land applied for, the rates of which do not exceed the rates established by State or Territorial laws for the publication of legal notices.

[Reg. Jan. 30, 1884]

§ 106.17 *Land descriptions to be abbreviated in proof notices.* (a) When the descriptions of legal subdivisions are written out in full instead of being abbreviated, the space occupied and also the cost for the publication are increased.

(b) Therefore, in the notice for publication the manager will use the abbreviations for the descriptions of legal subdivisions such as NE¼ instead of northeast quarter, etc., and instruct all the publishers within his jurisdiction to closely follow the copy.

[Circ. 1177, Dec. 4, 1923]

§ 106.18 *Notices to be published weekly only, where not otherwise directed by law.* (a) In many cases it is necessary to designate a daily paper in which to publish the notices of intention to submit final proof required to be given by homestead and desert land entrymen as well as the notices of location of scrip, warrants, certificates, and lieu selections, and other cases.

(b) The expense of publishing such notices for the prescribed period in every issue of a daily paper is often prohibitive, and the object of publication of such notices can be accomplished by a less number of insertions. Therefore, in all cases where the law does not specifically otherwise direct, publication will be made as follows:

(1) Where publication is required for 30 days, if the manager designate a daily paper, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, in five consecutive issues, and if semiweekly, or triweekly, in any one of the weekly issues for five consecutive weeks.

(2) Where publication is required for 60 days, except in mining cases, if the manager designate a daily paper the notice should be published in the Wednesday issue for nine consecutive issues; if weekly in nine consecutive issues; if semiweekly or triweekly in any one of the weekly issues for nine consecutive weeks.

(c) Publication of notice in mining cases must be made in accordance with § 185.58 of this chapter.

[Circ. 1455, 4 F. R. 1101]

Part 107—Confirmations

EQUITABLE ADJUDICATION

PATENT AFTER 2 YEARS, ETC.

EQUITABLE ADJUDICATION

§ 107.1 *Statutory authority.* By the act approved September 20, 1922 (42 Stat. 857; 43 U. S. C. 1161–1163), sections 2453 and 2454, Revised Statutes, were repealed, and sections 2450, 2451, and 2456, Revised Statutes, were amended. Sections 1161–1163 U. S. C., based on the statutes mentioned and section 403 of Reorganization Plan No. 3 of 1946 (60 Stat. 1100), read as follows:

SEC. 1161. The Secretary of the Interior, or such officer as he may designate, is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be approved by the Secretary of the Interior, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patents shall issue upon the same.

SEC. 1162. Every such adjudication shall be approved by the Secretary of the Interior and shall operate only to divest the United

States of the title to the land embraced thereby, without prejudice to the rights of conflicting claimants.

SEC. 1163. Where patents have been already issued on entries which are approved by the Secretary of the Interior, the Secretary of the Interior, or such officer as he may designate, upon the canceling of the outstanding patent, is authorized to issue a new patent, on such approval, to the person who made the entry, his heirs or assigns.

(R. S. 2450, as amended; 43 U. S. C. 1161) [Reg. Oct. 17, 1922; see also item 3 of Note to chapter]

§ 107.2 *Cases subject to equitable adjudication.* The cases subject to equitable adjudication by the Director, Bureau of Land Management, cover the following:

All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not effected within the period authorized by law, or where the final proof testimony, or affidavits of the entryman or claimant were executed before an officer duly authorized to administer oaths but outside the county or land district in which the land is situated, and special cases deemed proper by the Director, Bureau of Land Management, where the error or informality is satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had no control, or any other sufficient reason not indicating bad faith, there being no lawful adverse claim.

(R. S. 2450, as amended; 43 U. S. C. 1161) [Reg. Oct. 17, 1922; see also item 3 of Note to chapter]

PATENT AFTER 2 YEARS, ETC.

§ 107.3 *Entryman entitled to patent after 2 years from date of manager's final receipt.* (a) The decision of the Supreme Court of the United States in Thomas J. Stockley et al., appellants, v. the United States, decided January 2, 1923 (260 U. S. 532, 67 L. ed. 390) holds that after the lapse of 2 years from the date of the issuance of the "receiver's receipt"[1] upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, such entryman is, there being no pending contest or protest against the validity of such entry, entitled to patent under the proviso to section 7 of the act of March 3, 1891 (26 Stat. 1098; 43 U. S. C. 1165), regardless of whether or not the manager's final certificate has issued.

(b) The Supreme Court of the United States in Payne v. U. S. ex rel. Newton (255 U. S. 438, 65 L. ed. 720), decided that Newton was entitled to a patent on his homestead entry under the proviso to section 7 of the act of March 3, 1891, 2 years having elapsed from the date of the issuance of the receiver's final receipt upon final entry, and there being no contest or protest pending against the validity of the entry, but stated that the purpose of the statute was:

To require that the right to a patent which for 2 years has been evidenced by a receiver's receipt, and at the end of that period stands unchallenged, shall be recognized and given effect by the issue of the patent without further waiting or delay, and thus to transfer from the land officers to the regular judicial tribunals the authority to deal with any subsequent controversy over the validity of the entry, as would be the case if the patent were issued in the absence of the statute.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 879, Mar. 9, 1923; see also item 3 of Note to chapter]

[1] The receipts formerly issued by the receivers are now issued by the managers.

Part 108—Patents [1]

Sec.

AUTHORITY: §§ 108.1 to 108.6 issued under R. S. 2478; 43 U. S. C. 1201.

[1] Quitclaim Deeds. Where a conveyance of land is made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands or for any other purpose, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Director, Bureau of Land Management is authorized and directed by section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U. S. C. 872), if the deed of conveyance has been recorded, to execute a quitclaim deed of the conveyed land to the party or parties entitled thereto.

§ 108.1 *Issuance of patents; transmittal to district land office.* (a) Patents for all grants of land shall be issued under the authority of the Director and signed in the name of the United States (act of June 17, 1948, 62 Stat. 476; 43 U. S. C. 15). The patents shall be recorded in the Bureau of Land Management in books kept for that purpose.

(b) Patents for lands entered or located under general laws can be issued only in the name of the party making the entry or location, or, in case of his death before making proof, to the statutory successor making the proof, provided by law.

(c) The recitals and description of land in patents will in all cases follow the manager's certificate of entry or location, as prescribed by law.

(d) When patents are ready for delivery, they will in all cases be transmitted to the district office at which the location or entry was made, where they can be obtained by the party entitled thereto, as provided in § 108.2. Patents based on final certificate or orders issued by the Bureau of Land Management, will be delivered directly to the patentee or his or her recognized agent or successor in interest. Their receipt must be acknowledged.

[Circ. 1687, 13 F. R. 4014]

§ 108.2 *Delivery of patents.* Original patents on file in district land offices, or in the Bureau of Land Management, may be procured, by the parties entitled to receive them, by any one of the following methods:

(a) By surrendering the duplicate final receipt or duplicate certificate of entry.

(b) By filing a statement showing inability to surrender such duplicate, and an abstract of title showing the present ownership of the land, or of a portion thereof, embraced in the patent. (In such cases, the abstract of title will be returned with the patent.)

(c) By filing, on the form printed below, a certificate of the proper recording officer of the county in which the land is located, that there has been deposited with him the necessary fee to pay for the recordation of the desired patent; whereupon it will be transmitted directly to such officer, to be placed on record and thereafter delivered to the proper party.

---------- , 19----.
(Post-office address) (Date)

I hereby certify that there has been deposited with me by ----------
the fee required by law for recording upon the official records of this county ----------
patent No. ---------, for the ----------

----
of section ----------, township ----------,
range -------, and that upon receipt of said patent I will cause same to be duly placed of record.

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

(Official title)

[Form 4–149; see also item 3 of Note to chapter]

§ 108.3 *Delivery of erroneously canceled patents.* (a) The decision of the Supreme Court in case of U. S. ex rel. McBride v. Schurz (102 U. S. 378, 26 L. ed. 166), in effect holds that the patentee of lands takes the title of the Government by matter of record, and that after the record is complete, "there remain" but "the duty simply ministerial, to deliver the patent to the owner."

(b) From the opinion in the case, it clearly appears that the court intended to insist upon the doctrine that, unless manifestly and notoriously void upon its face, the patent of the Government must be from the date of its record treated as the property of the grantee, and beyond the jurisdiction of the Department of the Interior to withhold.

(c) This being so, the question is narrowed to the one inquiry respecting the delivery of those patents withheld and canceled, and the manner in which, precedent to delivery, the effect of the unauthorized cancellation shall be removed from the patent and the record thereof in the Bureau of Land Management.

(d) These patents fall into the same place in the administration of the business of the Bureau of Land Management that they would have held had no proceedings looking to their cancellation been initiated. Those proceedings being entirely extraneous to the jurisdiction, and consequently void, have no effect upon the instrument, and do not vary the rule properly governing its tradition or transmission to the grantee. The

same formalities should be observed as in ordinary cases. The right of the party to its possession must be shown, and the surrender of the usual receipts, or due accounting for their loss, must be required.

(e) To prepare the patents for such delivery, it will be proper to indorse upon them, as they shall be demanded, a memorandum citing the case of McBride and its authority as affecting the validity of the act of cancellation, in order to remove any improper or unauthorized cloud upon the title purporting to be conveyed.

(f) This should be in substantially the following form:

The notation of cancellation of the attached patent issued to_____ on_____ and its mutilation, were without the consent of the grantee and erroneous, and under the decision of the Supreme Court of the United States in Bicknell v. Comstock (113 U. S., 149) do not affect the validity of the patent, which is delivered for recording on the county records pursuant to the decision of the Supreme Court of the United States in United States v. Schurz, (102 U. S., 378).

[SEAL] _____, Director.

_____
(Date)

(g) This indorsement should not be made upon any patent surrendered up to be canceled by consent of the grantee, or the acceptance of which has been refused, nor upon a cancellation by order of a court of competent jurisdiction, nor upon a patent vacated for the mere purpose of correcting a clerical error, or for other like cause—such cases being excepted out by the reasoning of the court from the general doctrine of the decision.

(h) The same indorsement should be made upon the patent record, and appear in its proper connection when officially certified for purposes of evidence.

[Reg. Feb. 28, 1881, 8 Copp's Land Owners 10; Instr. Feb. 2, 1927]

§ 108.4 *Issuance of perfect patent where record does not show that original was signed.* (a) The act of May 10, 1800 (2 Stat. 73), which authorized the President of the United States to issue patents for public lands, provided that said patents should be countersigned by the Secretary of State and recorded in books kept for his office. This record consists of a copy of the entire patent, including the signatures of the officials who signed the original.

(b) The act of April 25, 1812 (2 Stat. 716), provided (sec. 8) that land patents should be signed by the President of the United States and countersigned by the Commissioner of the Generai Land Office.

(c) The acts of July 4, 1836 (5 Stat. 107), and March 3, 1841 (5 Stat. 416), authorized the President to appoint a secretary to sign his name to land patents, and designated the recorder of the General Land Office to countersign them and affix the seal.

(d) In recording many of the patents issued in the early years it was the practice, for some reason not now evident, either to omit altogether from such record the names of the officers whose duty it was to sign and countersign the patents, or to insert merely their initials. In some cases the name or initials of but one of the officers appears in the patent record.

(e) March 3, 1843 (5 Stat. 627), Congress passed an act providing that literal exemplifications of patent records whlch did not contain the full names of the proper officers should be held to be of the same validity as though the names of said officials had been fully inserted in the record. It was the understanding of the General Land Office that the passage of this act cured these defective records, so far as their value as evidence was concerned, until the United States Supreme Court rendered its decision in the case of McGarrahan v. Mining Company (96 U. S. 316, 24 L. ed. 630), at the October term, 1977. The court, in commenting upon the act of March 3, 1843, said:

The record to prove a valid patent must still show that these provisions of the law were complied with. The names need not be fully inserted in the record, but it must appear in some form that the names were actually signed to the patent when it issued. If they are partially inserted in the record it will be presumed that they fully appeared in the patent, but no such presumption will be raised if no signature is shown by the record. Here no signature does appear, and consequently none will be presumed.

The principle thus announced was followed by the court in numerous cases, which it is unnecessary to cite.

(f) Under this decision, therefore, patent records which do not contain at least the initials of the officers whose duty it was to sign and countersign the original patent are not considered legal evidence of the issuance of a patent. If, however, the original patent itself was properly signed and countersigned as required by law, it operated to vest in the patentee title to the land described, notwithstanding the imperfect and incomplete record.

(g) It is the practice of the Bureau of Land Management not to furnish certified copies from such records unless specifically requested to do so. Instead, the owner of at least a portion of the land involved can secure the issuance of a perfect patent, in the name of the original patentee, by filing in the Bureau of Land Management his application therefor, accompanied by evidence of such ownership in the form of a certificate of the recorder of deeds of the county in which the land is located. In his application it must be clearly shown (1) that no patent conveying any portion of the land has ever been recorded in the county in which it is embraced at the date of the application, or in any county in which it has been embraced since the date of the imperfect patent record; (2) that no such patent has ever come into the possession of the applicant, and that he has never been advised of nor had any information concerning the issuance of one; (3) that he has made due and diligent inquiry in all places in which it might be supposed said patent would be found, if it ever existed, and like inquiry of all persons who might be supposed to have knowledge concerning such patent, naming and describing such persons together with their relation to the property, if any, in detail, without obtaining any information concerning it.

(h) Upon receipt of such an application and evidence, if deemed satisfactory and all else be found regular, the Bureau of Land Management will cause a perfect patent to be issued. There is no charge for this, and the perfect patent will be delivered as requested by the applicant.

[Circ. 457, Sept. 2, 1926; see also item 3 of Note to chapter]

§ 108.5 *Issuance of supplemental non-coal patents.* (a) The act of Congress approved April 14, 1914 (38 Stat. 335; 30 U. S. C. 82), authorized and directed the Secretary of the Interior:

In cases where patents for public lands have been issued to entrymen under the provisions of the acts of Congress approved March third, nineteen hundred and nine, and June twenty-second, nineteen hundred and ten, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as non-coal in character, to issue new or supplemental patents without such reservation.

(b) The act is construed to affect all filings, locations, selections, or entries upon which patent or its equivalent had issued, or might thereafter issue, containing a reservation of the coal in the land to the United States under the act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), or the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), such land having subsequently been finally classified as non-coal character. (See § 108.1.)

[Circ. 327, June 3, 1914; see also item 3 of Note to chapter]

§ 108.6 *Limitation on time within which suits may be brought to vacate and annul patents.* (a) It is provided in the act of March 3, 1891 (26 Stat. 1093; 43 U. S. C. 1166), that suits by the United States to vacate and annul any patent previously issued shall only be brought within 5 years from the passage of said act, and suits to vacate and annul patents thereafter issued shall only be brought within 6 years after the date of the issue of such patents.[2]

(b) By act of March 2, 1896 (29 Stat. 42; 43 U. S. C. 900–902), the time within which such suits might be brought, so far as regards patents issued under railroad or wagon-road grant, was extended so as to admit of bringing suit in such cases within 5 years from the passage of the act in cases of patents issued prior thereto, and in cases of patents issued thereafter within 6 years after the date of the issuance of the patents, with a provision protecting the titles of bona fide purchasers of such lands.

[Reg. Jan. 25, 1904]

[2] In cases of fraud, the statute has been construed not to commence to run "until discovery of the fraud." Exploration Co., Limited, et al. v. United States (247 U. S. 435, 62 L. ed. 1200).