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Revised as of January 1, 1963

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SUBCHAPTER A—ALASKA

**PART 51—PUBLIC LAND LAWS
APPLICABLE TO ALASKA****§ 51.1 Governing laws prior to the admission of Alaska to the Union.¹**

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

¹ *Governing laws effective upon the admission of Alaska to the Union.* Alaska was admitted to the Union January 3, 1959, by Presidential Proclamation No. 3269, January 5, 1959, 24 F.R. 81, 73 Stat. c16. Section 8(d) of the Alaska Statehood Act (Act of July 7, 1958, P.L. 85-508; 72 Stat. 339), provides as follows: "Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act."

Section 8(d) was intended (1) to provide for the continuation of the Territorial laws until the legislature of the State of Alaska could enact a body of laws for its government, (2) to make applicable to the new State the Federal laws applicable elsewhere in the United States, and (3) to provide for the continuation of certain Federal laws, other than Territorial laws, which were applicable to Alaska at the time of Statehood.

made provision for a civil government for Alaska.

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

(c) In an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), the Attorney

"Territorial laws" continuing in full force and effect by virtue of this section are of two types:

(1) Laws enacted by the Territorial Legislature of Alaska.

(2) Laws or parts thereof enacted by the Congress, the validity of which is dependent solely upon the authority of the Congress to provide for the Government of Alaska as a Territory prior to the admission of the State of Alaska into the Union. This second type of Territorial law may be said to include those laws or parts thereof enacted by Congress for the internal operation of the government of Alaska, which, had Alaska then been a State, the Congress would not have had the power to control. To express it another way, this type of Territorial law refers to those Federal laws, the continued operation and effect of which would be inconsistent with the sovereignty of the State and would, unless continued by the new State, cease to have any force and effect after the admission of the State to the Union.

These Territorial laws are continued in effect except as modified by the Statehood Act, the constitution of the State, "or as thereafter modified or changed by the legislature of the State."

The term "laws of the United States" includes all general laws that apply throughout the other States. In addition, it includes all laws or parts of laws enacted by the Congress which, at the time of admission of the State, applied to or within the Territory of Alaska, provided such laws are not "Territorial laws" as defined in section 8(d) and are not in conflict with any other provision of the Statehood Act. "Laws of the United States" may be categorized as follows:

(1) Laws generally applicable to the United States but which were not applicable to Alaska prior to Statehood.

(2) Laws equally applicable to the United States and its Territories and possessions (including Alaska) or to the Territory of Alaska specifically.

(3) Laws applicable to the United States and its Territories and possessions generally, and which accord the Territories and possessions more or less favorable treatment than is accorded the several States.

General had occasion to consider the effect of the act of August 24, 1912, in respect to extending certain public-land statutes to Alaska, and, in this connection, he stated: "The express exception of the public land laws, found in the earlier organic acts, is here omitted; all the laws of the United States are to operate in Alaska save only such as may be locally inapplicable."

(d) It follows, therefore, that whether or not any particular public land statute is applicable in the State depends on whether or not it may operate therein consistently with special legislation and with local conditions.

(R. S. 2478; 43 U. S. C. 1201) [19 F. R. 8846, Dec. 23, 1954]

PART 52—OATHS, AFFIRMATIONS, AND ACKNOWLEDGMENTS

§ 52.1 Officers qualified to administer oaths.

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

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

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

(R. S. 2478; 43 U. S. C. 1201) [19 F. R. 8847, Dec. 23, 1954]

PART 60—APPLICATIONS AND ENTRIES

EXECUTION AND FILING OF APPLICATIONS

Sec.

60.1 Applications shall not be rejected because executed more than 10 days prior to filing.

ENTRIES SUBJECT TO SECTION 24 OF FEDERAL POWER ACT

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

60.5 Joint action to acquire public lands in Alaska.

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

SOURCE: §§ 60.1 to 60.5 appear at 19 F. R. 8847, Dec. 23, 1954.

CROSS REFERENCE: For applications and entries, general regulations, see Parts 101-103 of this chapter.

EXECUTION AND FILING OF APPLICATIONS

§ 60.1 Applications shall not be rejected because executed more than 10 days prior to filing.

Section 101.1 of this chapter directs managers to reject all applications to make entry which are executed more than 10 days prior to filing.

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

ENTRIES SUBJECT TO SECTION 24 OF FEDERAL POWER ACT

§ 60.2 Governing regulations.

Applications involving lands in Alaska, for other than power purposes which conflict in whole or in part with lands reserved or classified as power sites, or covered by power applications under the act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791-823), known as "The Federal

Power Act," will be acted upon and disposed of in accordance with Part 103.

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

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

§ 60.3 Metes and bounds description to be omitted.

(a) The requirements with reference to publication of proof notices in homestead cases in Alaska, where a special survey has been made, are set forth in § 65.25. The requirements of the law with reference to publication are contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 359). These requirements are applicable to homestead entries, soldiers' additional entries, and trade and manufacturing sites.

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

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

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

(c) In the cases referred to, as a means of identification of the land, the manager will cause each notice issued to give the survey number and area of the claim, with a statement as to the general location of the land. If the survey is not tied to a corner of the rectangular system of the public-land surveys the notice should give the name and number of the

location monument to which some corner of the survey is tied, and the course and distance from the location monument to such corner, with approximate latitude and longitude. If the survey is tied to a corner of the rectangular system of the public-land surveys, such corner should be identified by section, township, and range. The statement as to general location will identify the land as shown on the plat of survey or otherwise as the manager may deem best. The statement, where possible, should refer to the land in connection with some well-known topographical point or natural object or monument, river, trail, town, mining camp, etc.

PATENTS ON ENTRIES

§ 60.4 Reservations in patents.

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

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

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

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

§ 60.5 Joint action to acquire public lands in Alaska.

(a) Ten or more persons may file in the proper district land office applications in a single group under any one or more of the laws relating to the acquisition of lands in Alaska, including the Homestead Laws (30 Stat. 409; 32 Stat. 1028; 48 U. S. C. 371), Small Tract Laws (52 Stat. 609, 59 Stat. 467; 43 U. S. C. 682a), Home-Site Law (48 Stat. 809; 48 U. S. C. 461) and Town-Site Laws (R. S. 2380-2389, as amended, 43 U. S. C. 711-722; 26 Stat. 1099; 48 U. S. C. 355). Each application must be complete in itself except that information common to

more than one application in a group need not be duplicated at length but may appear in or as an appendix to one such application and be adopted by reference made in the other applications.

(b) All claims to specified tracts of land must be initiated in the manner required by law. Where certain requirements must be met before an application to enter or purchase may be filed, a statement of intention to meet such requirements, signed by each prospective applicant, must be submitted in lieu of an application. Upon compliance with applicable requirements as to residence or otherwise, each such person must file an actual application as required by law.

(c) Each group of applications filed hereunder should be accompanied by two copies of a diagram showing the plan of development contemplated by the applicants. Each such application may describe the land covered by it in terms of a lot or tract as set forth in such diagram or the preliminary diagram specified in this paragraph. The diagram should include specific information as to the relative location and areal extent of each tract or site which it is contemplated will be devoted to school and other municipal or common purposes, to stores or other commercial enterprises, to housing and to agriculture and grazing. Assistance in the preparation of a preliminary diagram, which need not pertain to a particular tract of land, may be obtained by communicating in person or by mail with the United States Department of the Interior, Washington 25, D. C. Such preliminary diagram may be used as the basis for the diagram to be filed with the group of applications and which must relate to specific land.

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

(e) If any of the applications involve unsurveyed public lands, such applications may also be accompanied by a petition, either joint or several, for the withdrawal of the lands in behalf of specified applicants, the survey, and, in appropriate cases, the classification under the Small Tract Law, of such lands. The filing of such applications confers of itself no right upon the applicants. If the withdrawal is made, and the land classified, applicants shall have the first

right to acquire the interests for which they have applied, to the extent permitted by statute. Any application, entry or withdrawal made pursuant to this section shall be subject to all valid prior claims.

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

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

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

(Sec. 11, 26 Stat. 1099, secs. 1, 10, 30 Stat. 409, 413, as amended; 48 U. S. C. 355, 371, 461)

PART 61—CERTIFICATES AND SCRIP

SOLDIERS' ADDITIONAL HOMESTEAD ENTRIES

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61.2	General information.
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61.6	Description of land in application.
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61.9	Evidence required of validity and ownership of right.

Appeals and Contests (Part 221 of this chapter).

§ 63.51 Trespass.

(a) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in §§ 63.31-63.51, is unlawful and is prohibited.

(b) Any person who willfully violates any of the rules and regulations in §§ 63.31-63.51 of this part shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than \$500.

PART 64—HOMESITES OR HEADQUARTERS

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

- Sec.
- 64.1 Statutory authority.
- 64.2 Purpose of statute.
- 64.3 Notice of initiation of claim.
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PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES, WITHOUT SHOWING AS TO EMPLOYMENT OR BUSINESS

- 64.7 Statutory authority.
- 64.8 Notice of initiation of claim.
- 64.9 Form of notice.
- 64.10 Failure to file notice.
- 64.11 Recording fee.
- 64.12 Form and contents of application.
- 64.13 Applications by veterans of World War II, or of the Korean conflict.
- 64.14 Time for filing application.
- 64.15 Publication and posting.

AUTHORITY: §§ 64.1 to 64.15 issued under sec. 10, 30 Stat. 413, as amended; 48 U. S. C. 461.

SOURCE: §§ 64.1 to 64.15 appear at 19 F. R. 8853, Dec. 23, 1954, except as otherwise noted.

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

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

§ 64.1 Statutory authority.

The act of March 3, 1927 (44 Stat. 1364; 48 U.S.C. 461), as amended, au-

thorizes the sale as a homestead or headquarters of not to exceed five acres of unreserved public lands in Alaska at the rate of \$2.50 per acre, to any citizen of the United States 21 years of age employed by citizens of the United States, association of such citizens, or by corporations organized under the laws of the United States, or of any State or Territory, whose employer is engaged in trade, manufacture, or other productive industry in Alaska, and to any such person who is himself engaged in trade, manufacture or other productive industry in Alaska. The lands must be non-mineral in character except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377), as amended.

[Circ. 2072, 26 F.R. 12126, Dec. 19, 1961]

§ 64.2 Purpose of statute.

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

§ 64.3 Notice of initiation of claim.

A notice of the initiation of a claim under the act of March 3, 1927, must designate the kind of trade, manufacture, or other productive industry in connection with which the claim is maintained or desired, and identify its ownership. The procedure as to notices will be governed in other respects by the provisions of §§ 64.8 to 64.11.

§ 64.4 Use of lands.

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

§ 64.5 Form and contents of applications.¹

Applications under the act of March 3, 1927, must be filed in duplicate in the land office for the district in which

¹Title 18 U.S.C. sec. 101 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 representatives as to any matter within its jurisdiction.

the land is situated, and the claim must be in reasonably compact form.

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

(a) The age and citizenship of applicant.

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

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

(d) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation, is engaged.

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

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

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

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

(i) If the land desired for purchase is surveyed, the application must include a description of the tract by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing and the application will be amended accordingly. Where a supplemental plat is required, to provide a proper descrip-

tion, it will be prepared at the time of approval of the application.

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

(k) All applications must be accompanied by an application service fee of \$10 which will not be returnable.

[19 F.R. 8853, Dec. 23, 1954, as amended, Circ. 1949, 21 F.R. 555, Jan. 25, 1956; Circ. 2001, 23 F.R. 3384, May 20, 1958; Circ. 2072, 26 F.R. 12127, Dec. 19, 1961]

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

§ 64.6 Time for filing application.

Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

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

§ 64.7 Statutory authority.

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

§ 64.8 Notice of initiation of claim.

Any qualified person initiating a claim on or after April 29, 1950, under the act of May 26, 1934, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, such person must file notice of the claim in the proper land office within 90 days from that date.

§ 64.9 Form of notice.

The notice must be filed on Form 4-1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (a) The name and address of the claimant, (b) age and citizenship, (c) date of settlement and occupancy, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

§ 64.10 Failure to file notice.

Unless a notice of the claim is filed within the time prescribed in § 64.8, no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

§ 64.11 Recording fee.

The notice of the claim must be accompanied by a remittance of \$10.00, which will be applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to the form of disposition specified in the notice.

§ 64.12 Form and contents of application.

Applications under the act of May 26, 1934, must be filed in duplicate, if for surveyed land, and in triplicate, if for unsurveyed land, in the land office for the district within which the land is situated.

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

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

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

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

(d) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied

or claimed by any native of Alaska, or occupied as a townsite, or missionary station, or reserved from sale, and that the tract does not include improvements made by or in the possession of any other person, association, or corporation.

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

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

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

(h) An application for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing, and the application will be amended accordingly. Where a supplemental plat is required to provide a proper description, it will be prepared at the time of approval of the application.

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

(j) All applications must be accompanied by an application service fee of \$10 which will not be returnable.

[19 F.R. 8853, Dec. 23, 1954, as amended, Circ. 1949, 21 F.R. 555, Jan. 25, 1956; Circ. 2001, 23 F.R. 3384, May 20, 1958; Circ. 2072, 26 F.R. 12127, Dec. 19, 1961]

NOTE: See cross references following § 64.5.

§ 64.13 Applications by veterans of World War II or of the Korean conflict.¹

Upon the restoration or opening of surveyed public lands in Alaska with a preference right of application to veterans of World War II or of the Korean conflict, pursuant to section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U. S. C. 282), as amended, such veterans may file applications for home or headquarter sites on such lands under the act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461). Preference right applications filed by such veterans must describe the land desired in terms of the public land surveys and must give all of the information required by § 64.12, except as to the erection of a habitable house on the land and compliance with the law in the matter of residence. No payment will be required until proof of compliance with the residence requirements has been made. Such an applicant will be required to establish residence upon the land in a habitable house within 6 months from the date of the notice of the allowance of his application. An extension of time to establish residence may be granted under the conditions under which it may be granted to a homestead entryman. During the first year after establishing residence the claimant will be required to reside upon the land for a period of at least 5 months. He may claim credit on the period of residence required by the act of May 26, 1934, for military or naval service in like manner as is provided in the case of homestead entries.

§ 64.14 Time for filing application.

Except as provided in § 64.13, application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

§ 64.15 Publication and posting.

In the matter of publication and posting these applications will be governed by the instructions given in connection with applications for soldiers' additional homestead entries as set out in § 61.13 of this chapter.

¹The preference right of application granted by the Act of September 27, 1944 terminated September 27, 1959.

PART 65—HOMESTEADS

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

- Sec.
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 - 65.2 Form of settlement on unsurveyed land.
 - 65.3 Notice of settlement.
 - 65.3a Form of notice.
 - 65.3b Failure to file notice.
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 - 65.5 Form of application.
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 - 65.9 Area subject to appropriation.
 - 65.10 Limitation of acreage.
 - 65.11 Qualifications required.
 - 65.12 Second entries.
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 - 65.14 Law under which homestead must be perfected.
 - 65.15 Establishment of residence.
 - 65.16 Leave of absence.
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HOMESTEADS SUBJECT TO MORTGAGE LOANS

- 65.29 Mortgage loans on existing homestead entries; allowance on homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.
- 65.30 Mortgage liens.

AUTHORITY: §§ 65.1 to 65.30 issued under R. S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U. S. C. 1201, 48 U. S. C. 371.

SOURCE: §§ 65.1 to 65.30 appear at 19 F. R. 8855, Dec. 23, 1954; Circ. 1971, 22 F. R. 1431, Mar. 7, 1957, except as otherwise noted.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For applications and entries, general, see Parts 101–108 of this chapter. For home and industrial sites in Alaska, see 36 CFR 251.7. For home sites or headquarters, Alaska, see Part 64 of this chapter. For homestead regulations, general, see Part 186 of this chapter. For homesteads on coal, oil, and gas lands, Alaska, see Part 66 of this chapter.

HOMESTEADS UNDER THE ACT OF MAY 14, 1898, AS AMENDED¹

§ 65.1 Lands subject to settlement and homestead entry.¹

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

§ 65.2 Form of settlement on unsurveyed land.

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

¹The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 371), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 48 U. S. C. 371), July 8, 1916 (39 Stat. 352; 48 U. S. C. 373-375, 378), June 28, 1913 (40 Stat. 632; 48 U. S. C. 373-375, 378), April 13, 1926 (44 Stat. 243; 48 U. S. C. 379, 380, 380a), and July 11, 1956 (70 Stat. 528; 48 U. S. C. 371c and 375).

§ 65.3 Notice of settlement.

(a) A person making settlement on or after April 29, 1950 on unsurveyed land, in order to protect his rights, must file a notice of the settlement for recordation in the land office for the district in which the land is situated, and post a copy thereof on the land, within 90 days after the settlement. Where settlement is made on surveyed lands, the settler, in order to protect his rights, must file a notice of the settlement for recordation, or application to make homestead entry, in the land office for the district in which the land is located within 90 days after settlement.

(b) Any person maintaining a settlement claim on April 29, 1950, on surveyed or unsurveyed public land, shall file notice of the initiation of the claim in the land office for the district in which the land is situated, (1) within 90 days from that date, if the notice of location had not theretofore been filed in the recording district, or (2) within two years from April 29, 1950, if notice of the location had theretofore been filed in the recording district.

§ 65.3a Form of notice.

The notice must be filed on Form 4-1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed and shall contain: (a) The name and address of the settler, (b) age and citizenship; (c) date of settlement, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

§ 65.3b Failure to file notice.

Unless a notice of the claim is filed within the time prescribed in § 65.3, no credit shall be given for residence and cultivation had prior to the filing of notice or application to make entry, whichever is earliest.

[Circ. 1971, 22 F. R. 1431, Mar. 7, 1957]

§ 65.3c Recordation fee.

The notice of settlement claim must be accompanied by a remittance of \$10.00 which will be applied as a service charge for recording the notice and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to homestead settlement.

§ 65.4 Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.

(a) A settler on unsurveyed land is required to mark the claim by permanent monuments at each corner, in order to establish the boundaries thereof.

(b) Settlement on any part of a surveyed quarter-section subject to homestead entry gives the right to enter all of the quarter section; but if a settler desires to initiate a claim to surveyed tracts which form part of more than one technical quarter-section, he should define the claim by placing some improvements on each of the smallest subdivisions claimed.

§ 65.5 Form of application.²

Application to make homestead entry for lands in Alaska should be presented on Form 4-007, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U.S.C. 161, 171).

§ 65.6 Showings to accompany application.

Each application on the prescribed form should be accompanied by a corroborated statement showing:

(a) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived or should be waived. (See § 77.4 (b) of this subchapter.)

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

[19 F.R. 8855, Dec. 23, 1954, as amended, Circ. 1949, 21 F.R. 555, Jan. 25, 1956]

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

§ 65.8 Applications for entry.

(a) A homestead application must describe the lands desired, if surveyed, according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restric-

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

tion as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

(b) A homestead application must describe the lands desired, if unsurveyed, by metes and bounds with relation to some natural or permanent monuments, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of the land claimed, a full explanation must be given of the reason for such deviation. A homestead application for unsurveyed lands must be accompanied by the settler's final or commutation homestead proof.

[Circ. 1971, 22 F. R. 1431, Mar. 7, 1957]

§ 65.9 Area subject to appropriation.

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

§ 65.10 Limitation of acreage.

The act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 212), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead

laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

§ 65.11 Qualifications required.

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

§ 65.12 Second entries.

No showing is required of an applicant for 160 acres in Alaska as to a former homestead entry outside of the State, but if the applicant has made homestead entry or filed a location notice of a settlement in the State and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the State, make the showing required by the act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182), explained in §§ 166.74–166.77 of this chapter.

§ 65.13 Additional entries.

Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 214) for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 166.67–166.73 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

§ 65.14 Law under which homestead must be perfected.

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

§ 65.15 Establishment of residence.

Residence must be established upon the claim within 6 months after the date of the entry or the recording of the location

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

§ 65.16 Leave of absence.

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

§ 65.17 Period of residence and amount of cultivation required.

(a) A homestead entryman must show residence upon his claim for at least 3 years; however, he is entitled to absent himself during each year for not more than two periods making up an aggregate of 5 months, giving written notice to the proper land office of the time of leaving the homestead and returning thereto.

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

§ 65.18 Effect of transfer of land before proof.

In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the State transfers for church, cemetery, or school purposes to the extent of 5 acres and for railroad rights of way across the land having an extreme width of 200 feet are permitted.

§ 65.19 Commutation of entries.

To the extent of not more than 160 acres an entry may be "commuted" after not less than 14 months' residence upon the land, cultivation of the area commuted to the extent required under the ordinary homestead laws and payment

of \$1.25 per acre; that is, the claimant must show the existence of a habitable house on the land at the time of final commutation proof, that residence for the period of not less than 14 months was actual and substantially continuous, and cultivation of one-sixteenth of the area during the second year of the entry, and, if commutation proof is submitted after the second entry year, one-eighth of the area the third entry year and until the submission of final commutation proof. In such cases the homesteader is entitled to a 5 months' leave of absence in each year, but cannot have credit as residence for such period, since actual presence on the land for not less than 14 months is required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506-509), is not subject to commutation.

§ 65.20 Survey without expense to settler.

The land included in a settlement claim may be surveyed without expense to the settler, provided he submits, within five years from the date of the filing of notice of settlement claim in the land office, an application to enter on Form 4-007 and acceptable final or commuted homestead proof as required by § 65.23. [Circ. 1971, 22 F. R. 1431, Mar. 7, 1957]

§ 65.21 Survey at expense of settler.

A settler who wishes to secure earlier action in the matter of survey may have a survey made at his own expense by a deputy surveyor appointed by the authorized officer of the Bureau of Land Management.

[Circ. 1971, 22 F. R. 1431, Mar. 7, 1957]

§ 65.22 Application to enter land included in special survey.

After a special survey has been made, in accordance with § 65.21, application to enter should be made as in the case of other settlements on surveyed lands.

[Circ. 1971, 22 F. R. 1431, Mar. 7, 1957]

§ 65.23 Submission of proof.

(a) Proof may be submitted without previous notice of intention by publication.

(b) Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the manager of the land

office for the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the proper land office.

[19 F.R. 8855, Dec. 23, 1954, as amended, Circ. 1971, 22 F.R. 1431, Mar. 7, 1957]

§ 65.24 Payments required at the time of entry and proof; form of remittances.

(a) When a homesteader applies to make entry he must pay an application nonrefundable service charge of \$25. In addition, he must pay with his final proof, a nonrefundable service charge of \$25. A successful contestant for the lands, pursuant to the Act of May 14, 1880 (21 Stat. 143; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional \$10. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(b) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

[Circ. 2085, 27 F.R. 8545, Aug. 25, 1962]

§ 65.25 Publication and posting.

(a) Where a special survey has been made, the notice of proof must give the survey number of the land, and other information required by § 60.3 of this chapter and it must be published once a week for nine consecutive weeks, in accordance with § 106.14 of this chapter, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(b) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 106.14 of this chapter. The manager must cause a

tion and fire protection by the Alaska Railroad prior to August 31, 1921.

(b) As to the lots within said town site which have been forfeited for failure to pay such assessments, upon which valuable improvements have been placed, the provisions of said order regarding the collection of the unpaid assessments remain effective.

(c) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress. [19 F.R. 9163, Dec. 23, 1954, redesignated at 20 F.R. 769, Feb. 4, 1955]

PART 81—TRADE AND MANUFACTURING SITES

SALE OF PUBLIC LANDS FOR TRADE AND MANUFACTURING SITES

- Sec.
81.1 Statutory authority.
81.1a Notice of initiation of claim.
81.1b Form of notice.
81.1c Failure to file notice.
81.1d Recording fee.
81.2 Execution of application.
81.2a Time for filing application.
81.3 Qualifications of applicant.
81.4 Description of land in application.
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81.7 Application for survey; instructions.
81.8 Publication and posting; adverse claim.
81.9 Entry and final certificate.

AUTHORITY: §§ 81.1 to 81.9 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 81.1 to 81.9 appear at 19 F. R. 8886, Dec. 23, 1954; except as otherwise noted.

§ 81.1 Statutory authority.

Section 10 of the act of May 14, 1898 (30 Stat. 413, as amended August 23, 1958 (72 Stat. 730; 48 U.S.C. 461), authorizes the sale at the rate of \$2.50 per acre of not exceeding 80 acres of land in Alaska possessed and occupied in good faith as a trade and manufacturing site. The lands must be nonmineral in character, except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377), as amended, and the regulations of Part 66 of this chapter.

[Circ. 2072, 26 F.R. 12128, Dec. 19, 1961]

§ 81.1a Notice of initiation of claim.

Any qualified person, association, or corporation initiating a claim on or after April 29, 1950, under section 10 of the act of May 14, 1898, by the occupation

of vacant and unreserved public land in Alaska for the purposes of trade, manufacture, or other productive industry, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, association, or corporation, the claimant must file notice of the claim in the proper land office, within 90 days from that date.

§ 81.1b Form of notice.

The notice must be filed on Form 4-1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (a) The name and address of the claimant, (b) age and citizenship, (c) date of occupancy, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude. The notice must designate the kind of trade, manufacture, or other productive industry in connection with which the site is maintained or desired.

§ 81.1c Failure to file notice.

Unless a notice of the claim is filed within the time prescribed in § 81.1a, no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

§ 81.1d Recording fee.

The notice of the claim must be accompanied by a remittance of \$10.00, which will be earned and applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording, because the land is not subject to the form of disposition specified in the notice.

§ 81.2 Execution of application.¹

(a) Application for a trade and manufacturing site should be executed in duplicate and should be filed in the proper land office. It need not be sworn to, but it must be signed by the applicant and

¹ 13 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.

must be corroborated by the statements of two persons.

(b) All applications must be accompanied by an application service fee of \$10 which will not be returnable.

[19 F.R. 8886, Dec. 23, 1954, as amended, Circ. 1949, 21 F.R. 556, Jan. 25, 1956; Circ. 2072, 26 F.R. 12128, Dec. 19, 1961]

§ 81.2a Time for filing application.

Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

§ 81.3 Qualifications of applicant.

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

§ 81.4 Description of land in application.

If the land be surveyed, it must be described in the application 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 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.

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

[19 F.R. 8886, Dec. 23, 1954, as amended, Circ. 1949, 21 F.R. 556, Jan. 25, 1956; Circ. 2072, 26 F.R. 12128, Dec. 19, 1961]

§ 81.7 Application for survey; instructions.

If the land applied for be unsurveyed and no objection to its survey is known to the manager, he will furnish the applicant with a certificate stating the facts, and, after receiving such certificate, the applicant may make application to the State Director officer for the survey of the land. The instructions governing survey in connection with applications for soldiers' additional homestead entries, as set forth in § 61.12 of this chapter, will be followed in connection with trade and manufacturing sites.

§ 81.8 Publication and posting; adverse claim.

The instructions given in § 61.13 of this chapter, relative to publication and posting, adverse claims and proof of publication and posting in connection with applications for soldiers' additional homestead entries will be followed in connection with trade and manufacturing sites.

§ 81.9 Entry and final certificate.

The application and proofs filed therewith will be carefully examined and, if all be found regular, the application will be allowed and final certificate issued upon payment for the land at the rate

of \$2.50 per acre, and in the absence of objections shown by his records.

PART 82—WATERS

NOTE: Provisions contained in this part are now covered by Part 292.

SUBCHAPTER B—APPLICATIONS AND ENTRIES

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

EXECUTION AND FILING OF APPLICATIONS

Sec.

101.1 Time limit for filing applications.

SEGREGATION OF LAND UNDER APPLICATIONS

101.2 Payments required to effect segregation of land.

NOTATION OF RIGHTS-OF-WAY

101.3 Notations to be made on entry papers and notice of allowance.

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OATHS

Sec.

101.18 Elimination of the requirements of oaths on written statements in public land matters.

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101.20 Office hours of land offices; when document is filed.

AUTHORITY: §§ 101.1 to 101.20 issued under R.S. 2478; 43 U.S.C. 1201.

SOURCE: §§ 101.1 to 101.20 appear at 19 P.R. 3837, Dec. 23, 1954 except as otherwise noted.

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

EXECUTION AND FILING OF APPLICATIONS

§ 101.1 Time limit for filing applications.

(a) The manager will reject all applications to make entry which are executed more than 10 days prior to filing.

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

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

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

SEGREGATION OF LAND UNDER APPLICATION

§ 101.2 Payments required to effect segregation of land.

(a) The minimum fees or payments necessary to gain segregative effect for agricultural and other kinds of applications or selections shall be those which are prescribed by existing regulations in

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

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

CROSS REFERENCE: For rule of priority in the case of mineral permits and leases, see § 102.31 of this chapter.

NOTATION OF RIGHTS-OF-WAY

§ 101.3 Notations to be made on entry papers and notice of allowance.

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

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

§ 101.4 When notation is required.

The manager will make notations of rights-of-way on entry papers, only where his records show that the land involved, or some part of it, is covered by an approved application for right-of-way. In this connection, attention is directed to the decision of the United States Supreme Court in the case of *Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. Doughty* (208 U. S. 251, 52 L. ed. 474). Applicants to enter public lands that are affected by a mere pending application for right-of-way, should be verbally informed thereof by the manager, and given all necessary information as to the character and extent of the project

embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine

§ 101.5 When notation is not required.

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

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

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

§ 101.6 Rules to be observed.

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

(a) It must contain a description of the land by metes and bounds, with courses, distances, and reference to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass unless

one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or object need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, water courses, or other natural objects will not be permitted.

(b) The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished; or, if this can not be done, a statement¹ must be filed setting forth a valid reason therefor.

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

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

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

APPLICATION IN CONFLICT WITH RESERVOIR SITES

§ 101.7 Nature of grant for reservoir sites; disposition of applications conflicting with such a grant.

(a) The grant for reservoir sites made by sections 18 to 21, inclusive, of the act of March 3, 1891 (26 Stat. 1101, 1102; 43 U.S.C. 946-949), is an easement only, and not a fee. The act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301-306), authorizes

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 leasing of oil and gas deposits in lands covered by such a grant under certain conditions, to the right-of-way grantee, or his or its successor in interest, as provided in §§ 200.80 to 200.87, inclusive, of this chapter.

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

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

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

For patents, see Part 108 of this chapter.

§ 101.8 Allowance of applications discretionary with the Secretary of the Interior.

The exchange of privately owned lands under section 8(b) of the Taylor Grazing Act approved June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g), the ordering of public sales under section 14 of the act (48 Stat. 1274; 43 U.S.C. 1171), and the issuance of leases under section 15 (49 Stat. 1978; 43 U.S.C. 315m), thereof are within the discretionary power of the Secretary of the Interior.

NAMES OF CLAIMANTS

§ 101.9 Names of claimants.

Full names of claimants should appear in applications, final certificates, and patents.

ENTRIES FOR LANDS IN MORE THAN ONE LAND DISTRICT

§ 101.10 Governing regulations.

Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by §§ 101.11 to 101.17.

§ 101.11 Applications and fees to be filed in each office.

Complete applications must be filed in each office, together with the usual fee and commissions payable for the land in each land district, besides any other payment required by law. Each application