

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1764]

PART 257—LEASE OR SALE OF SMALL TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL, OR BUSINESS SITES

This part is completely revised as follows, effective 60 days after date of issuance hereof by the Secretary of the Interior:

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AUTHORITY: §§ 257.1 to 257.20 issued under 52 Stat. 609, as amended; 43 U. S. C. 682a.

§ 257.1 *Statutory authority; lands which may be leased or sold.* (a) The act of June 1, 1938 (52 Stat. 609), as amended by the act of July 14, 1945 (59 Stat. 467; 43 U. S. C. 682a) authorizes the Secretary of the Interior, in his discretion, to lease or sell a tract, not exceeding 5 acres in reasonably compact form, of any vacant, unreserved, surveyed public land, or surveyed public land withdrawn or reserved by the Secretary of the Interior for any purposes, or surveyed lands withdrawn by Executive Orders Nos. 6910 of November 26, 1934, and 6964 of February 5, 1935, for classification, which the Secretary may classify as chiefly valuable as a home, cabin, camp, health, convalescent, recreational, or business site. The act is applicable to lands in such areas as grazing districts, but is not applicable to lands withdrawn by the Secretary solely under delegated authority (e. g., under Executive Order No. 9337, of April 24, 1943),

or to land in such reservations as national forests, national parks or national monuments, or to the revested Oregon and California Railroad or the reconveyed Coos Bay Wagon Road grant lands, in Oregon. The lands may not be leased or sold until classified for small tract purposes; and may not be occupied until a lease is executed and delivered to the lessee.

(b) The act applies to public lands in Alaska, and permits employees of the Department of the Interior stationed in Alaska, in the discretion of the Secretary, to purchase or lease one tract in Alaska for any purpose under the act, except as a business site.

§ 257.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional administrator" means the proper regional administrator, Bureau of Land Management.

(d) "Manager" means manager of the land office for the district where the land is situated. Where there is no land office, it means the regional administrator.

(e) "The act" means the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended.

(f) Sites: (1) A "home site" is a site suitable for a permanent, year-round residence for a single person or a family.

(2) A "cabin site" is a site suitable for a summer, week-end, or vacation residence.

(3) A "camp site" is a site suitable for temporary camping and for the erection of simple or temporary structures and shelters, such as tents, tent platforms, etc.

(4) A "health site" is a site suitable for the temporary or permanent residence of a single person or of a family for the prevention or cure of disease or illness.

(5) A "convalescent site" is a site suitable for residence of a single person or family for the purpose of recuperation from a disease or illness.

(6) A "recreational site" is a site chiefly suitable for noncommercial outdoor recreation.

(7) A "business site" is a site suitable for some form of commercial enterprise.

§ 257.3 *Policy.* (a) It is the policy of the Secretary in the administration of the act of June 1, 1938, to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end offers to lease sites will be considered in the light of their effect upon the conservation of natural resources and upon the welfare not only of the offerors themselves but of the communities or areas in which they propose to settle. Leases will not be awarded, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to public use. Nor will isolated or scattered settlement be permitted which would impose heavy burdens upon State or local governments for roads, schools, and police, health, and fire protection. Types of settlements or businesses which might create "eyesores" along public highways and parkways will be guarded against, and lands will not be leased or sold under the act if such action would unreasonably interfere with the use of water for grazing purposes or unduly impair the protection of watershed areas.

(b) No direct sale of lands will be made under the act. Use and improvement of the land under lease will be required before it may be purchased. Leases of lands which are classified for lease and sale will contain an option permitting the lessee to purchase as provided in § 257.13. Lands classified for lease only will not be sold and the option to purchase clause will not apply to such lands.

§ 257.4 *Classification of land.* (a) The regional administrator may classify lands under the act either on his own motion or upon the filing of an offer to lease, but no lease will be issued or sale authorized prior to classification of the land for such disposal. If the offer is in proper form and the status of the land warrants its consideration for classification under the act, the regional administrator upon receipt of the offer will proceed to make a determination whether the land should be classified for small tract purposes. If the tract is not suitable for such purposes, the offer to lease will be denied. Where the land has been withdrawn under the statutory powers of the Secretary, the concurrence of the bureau or agency having supervision over the land must be obtained prior to classification.

(b) Land may be classified as suitable for one or more of the types of sites specified in § 257.2, for disposal in tracts of 5 acres or less, depending on the character of the land, and either for lease and

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sale, or for lease only, as specified in the classification order. Lands may be classified for lease and sale where found to be primarily suitable for use in accordance with the act, and where the disposal will not interfere with the use of private lands or with the administration of other Federal lands.

§ 257.5 Qualifications of lessees; restrictions on lease. (a) An offer to lease may be made by any person who is a citizen of the United States, or has declared his or her intention to become a citizen, who is 21 years of age or more, or, if under that age, is the head of a family. Unless warranted by special circumstances, where a husband and wife are living together, only one of them may acquire a tract under the act. Employees of the Department of the Interior stationed in Alaska may lease or purchase one tract in Alaska for any purpose under the act except business.

(b) Generally, no person will be permitted to hold, by lease or purchase, more than one tract under the act. Where more than one tract is needed, however, except as otherwise authorized by the regional administrator, each tract must be the subject of a separate offer to lease, complete in itself, and must be accompanied by a satisfactory showing that the allowance of more than one lease is warranted by the circumstances. In each offer to lease the offeror must furnish data sufficient to identify all other offers or applications under the act, if any, filed by him or by any member of his family residing with him. Such data should include the serial number of each such offer or application, the land office where filed, and the name and relationship to offeror.

§ 257.6 Preference rights of offerors; veterans' preference. (a) Where an offer to lease a tract is filed prior to the receipt by the manager of notice from the regional administrator that the area is under consideration for small tract classification, a preference right to lease will be accorded the offeror only if the land is thereafter classified for the type of site for which the offer was made, and the offeror agrees to conform his offer to the area and dimensions of the tract as specified in the classification order. An offer to lease, filed subsequent to the receipt by the manager of notice of contemplated classification and prior to issuance of the order, will not be accorded such preference right, but the offer will be retained by the manager pending classification of the land. If the land is classified for disposal under the act, the offer will be considered as a filing during an applicable period for simultaneous filings, provided the offer covers a tract subsequently established by the classification order, or the offeror conforms his offer thereto. If, however, the classification order provides for the use of the special procedure pursuant to § 257.8, such offer will be returned to the offeror, and will be accompanied by Form 4-775, "Drawing Entry Card", where it appears from the offer that the offeror, because of veterans' preference, is entitled to participate in the drawing under the special procedure.

(b) Where, prior to September 27, 1954, land is classified by the regional administrator on his own motion or the classification order embraces additional land, other than the tract for which a preference right is accorded under paragraph (a) of this section, veterans of World War II only and other persons entitled to credit for service of veterans of World War II, in accordance with 43 CFR 181.40 and 181.41, will have a preference right, for 90 days after the effective date of the classification of the lands, to file an offer to lease any of the remaining tracts (sec. 4, act of September 27, 1944; 58 Stat. 748; 43 U. S. C. 282). This preference right does not apply to veterans of World War I or other wars of the United States.

(c) Upon the expiration of the veterans' preference period, referred to in paragraph (b) of this section, any lands in the classification order not disposed of or embraced in pending valid offers to lease will become subject to filing of offers to lease by the public generally.

§ 257.7 Offer to lease; general procedure. (a) An offer to lease a site under the act must be filed on Form 4-776, "Offer to Lease and Lease under Small Tract Act", and in conformity with the instructions therein. Copies of the form may be obtained from the manager or the Director; and must be completed and filed in duplicate (in triplicate, if for a business site), with the manager or, if there is no land office in the State, with the Director. The duplicate forms need not be executed under oath but they must be signed by the offeror.¹ The offeror's signature to the offer will also constitute his signature to the lease, when the offer is accepted and executed by the proper officer on behalf of the United States.

(b) If the land has not been classified under this act, the offeror should describe the desired tract, not to exceed five acres, by aliquot parts of a legal subdivision. Where the land has been classified, the offeror should describe the selected tract in accordance with the classification order or plat of survey. In such cases the offeror may also indicate that in the event the selected tract is not available for lease to him, he is willing to accept a lease for any other available tract described in the classification order, which the manager may allocate to him.

§ 257.8 Special procedure; drawing; notice. (a) The special procedure provided in this section will be used whenever, in the opinion of the regional administrator or of the Director, a multiplicity of filings by those entitled to claim veterans' preference for service in World War II is anticipated during a simultaneous filing period to be provided for in an order of classification, in excess of the number of tracts available for lease, necessitating a drawing to determine priority. In such event, the classification order will state that the

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

special procedure will be used and that a drawing, limited to persons claiming veterans' preference, will be held; it will indicate the number of small tracts available for lease; it will set out the minimum requirements, including veterans' credit for service in World War II; and other information, including the amount of rental and filing fees to be paid by those successful in the drawing.

(b) Any person who believes he has the necessary qualifications, including veterans' preference, upon request to the manager or the Director designating the classification order by number, may obtain Form 4-775, "Drawing Entry Card." The entry card, completely filled out in accordance with the accompanying instructions, must be returned within the filing period specified in the classification order in order to be eligible to participate in the drawing; it should not be accompanied by any payment of filing fee or rental. An entrant may file only one entry card under each classification order; if more than one card is filed, the entrant shall be ineligible to participate in the drawing or to obtain a lease under the classification order. A drawing of all properly filed cards will be held on the day stated in the classification order to establish an adequate list of eligibles and of alternates to whom will be allocated, in consecutive order, the available tracts.

(c) The successful entrants, to whom a tract has been awarded in the drawing, will be furnished in duplicate Form 4-776, "Offer to Lease and Lease", bearing the description of the tract allocated to the entrant. The forms must be completely filled out, signed and returned, accompanied by the proper rental and filing fees and evidence of qualification, within the time allowed by the manager. Where an entrant does not sign the lease forms or he was not qualified to enter the drawing, or for any reason fails to comply with the requirements within the time allowed, the award will be withdrawn and canceled upon the records, and the lot will become available to the alternate next in line of drawing.

(d) Entrants who are unsuccessful in the drawing and to whom no lot was allocated will be informed thereof by the return of their respective drawing-entry cards carrying a notation to that effect. After the lots have been awarded and leases executed, the entry cards of the remaining unsuccessful alternates will be returned to them.

§ 257.9 Filing fee. Every offer to lease a small tract must be accompanied by a filing fee of \$10. No fee is required for the filing of a "Drawing Entry Card" or with an application for purchase, or for renewal of a lease, based on an outstanding lease. The filing fee will be retained in all cases, except where for any reason no lease is awarded to the offeror and no tract is allocated to him in accordance with § 257.7 (b).

§ 257.10 Rental payment. (a) If the land has been classified, the offer to lease must also be accompanied by the rental, as specified in the classification order, for the entire lease period. If, for any reason, a lease is not issued, the rental payment will be returned.

(b) Unless otherwise provided in the classification order, land classified for lease and sale will be leased for a three-year term with a rental of \$15; land classified for lease only, except a business site lease, will be for a five-year term with a rental of \$25 for the lease period. For a business site lease for five years the minimum rental is \$100 for the lease period; the annual rental, however, will be based on percentages of the gross income as specified in the lease, Form 4-776.

Where the land has not yet been classified, an offer to lease a tract, for other than a business site, must be accompanied by a minimum rental payment of \$15, and for a business site, \$100. If the rental provided in the subsequent order of classification is greater than the rental payment accompanying the offer to lease, the deficiency must be paid before the lease will issue.

(c) If an offer to lease is not properly executed or is not accompanied by the required filing fee and rental payment or is otherwise irregular, it will not be accepted but will be returned to the offeror in the form received.

§ 257.11 Issuance of lease. The manager may issue leases for not to exceed five years, upon lands classified for lease only, and for not to exceed three years upon lands classified for lease and sale: *Provided*, (a) The offeror upon issuance of the lease will have only one tract under the act, and (b) the offer covers a tract established by the classification order. All other leases will be issued by the regional administrator. The lease, part of Form 4-776, will issue and be valid when executed by the proper officer on behalf of the United States. The lease will contain provisions relating to the improvements to be placed on the lands and such other conditions of occupancy as are set forth in the order of classification, including an appropriate set-back of the improvements from the boundaries of the leased tract. Plans for improvements may be submitted to the regional administrator for approval in advance of construction.

§ 257.12 Assignment of lease; subleasing not permitted. (a) The manager may act upon and approve assignments of leases, except that where the assignee already holds a small tract under the act, approval of the assignment will be in the discretion of the regional administrator. No assignment will be recognized unless and until approved by the appropriate officer. An assignment will not be approved until substantial improvements, suitable to the type of use for which the lease issued, are constructed on the land, except where, upon a showing made by the lessee satisfactory to the regional administrator and corroborated by the statement of at least one witness, the lessee's failure to construct such improvements was caused by unforeseen or unavoidable misfortune.

(b) Proposed assignments of leases must be submitted for approval in duplicate within 90 days from the date of execution. The proposed assignment must contain all the terms and conditions agreed upon by the parties thereto, must be accompanied by the same show-

ing as to qualifications and holdings of the assignee as was required of the lessee in § 257.5, and must be supported by a statement that the assignee agrees to be bound by the provisions of the lease.

(c) The subleasing, in whole or in part, of a tract leased under the act will not be approved, and will constitute a violation of the terms of the lease.

§ 257.13 Option to purchase; sale; patent. (a) Lands will not be sold directly under the act but only on the basis of an outstanding lease, containing an applicable option to purchase clause. The option to purchase will apply only to tracts classified for lease and sale, and will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at or after the expiration of one year from the date the lease issued, provided the improvements required by the lease have been made, and the lessee or his successor in interest has otherwise complied with the terms and conditions of the lease. The option to purchase clause will set forth the appraised value of the unimproved land at the date the lease was issued. The net price at which the land may be purchased will consist of the appraised value plus the cost of survey, if any, necessary to describe the land properly, as provided in § 257.17, and minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of the application to purchase.

(b) An application to purchase should be filed with the manager in duplicate on Form 4-775a during the term of the lease but not more than 30 days prior to the expiration of one year from the date of lease issuance, together with a statement as to the cost, type, and character of the improvements constructed on the land.

(c) If a sale is authorized, the applicant will be allowed 60 days from service of notice thereof to pay the amount required. If the purchase price is \$100 or less, the entire amount must be paid within the 60-day period. If the price is more than \$100 and not more than \$200, at least \$100 must be paid within the 60-day period and the balance within one year after such payment. If the price is more than \$200, at least one-third of the purchase price but not less than \$100 must be paid within the 60-day period, and the balance in two equal installments due, respectively, within one and two years after the date of the first payment.

§ 257.14 Renewal of lease. (a) An offer for the renewal of a lease must be filed not more than six months or less than 60 days prior to the expiration of the lease, and will accord the lessee or his approved successor in interest a preference right to a new lease only if it is determined that a new lease should issue, and upon such conditions and for such duration as may be fixed.

(b) The manager may act upon offers for renewal and issue new leases only if the land was classified for lease only, and the lessee has constructed satisfactory improvements on the tract appropriate to the type of use for which

the lease originally issued, such as a substantial and presentable dwelling suitable for year-round or seasonal use where the land was classified for residence purposes. A lease for land classified for lease only will not be renewed if satisfactory improvements have not been constructed thereon during the lease term.

(c) A lease for land classified for lease and sale is not subject to renewal, except upon a showing satisfactory to the regional administrator, corroborated by the statement of at least one witness, that the lessee's failure to apply for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee.

§ 257.15 Minerals; timber. (a) Any lease or patent issued under the act will reserve to the United States (1) all deposits of coal, oil, gas, or other minerals, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary may prescribe, and (2) all fissionable source materials, together with the right to prospect for, mine, and remove the same in accordance with the act of August 1, 1946 (60 Stat. 755; 42 U. S. C. 1801-1809). Any minerals subject to the leasing laws in the lands patented or leased under the terms of the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal. No provision is made at this time to prospect for, mine, or remove the other kinds of minerals that may be found in such lands; and until rules and regulations have been issued, such reserved deposits will not be subject to prospecting or disposition.

(b) A lessee will not be permitted to cut timber from the leased lands without first obtaining permission from the regional administrator. Such permission will not be granted except where the timber is to be cut to clear the land or to make improvements thereon.

§ 257.16 Rectangular survey; supplemental plats; streets and roads. (a) The official township plats ordinarily provide the basis for descriptions of tracts, in compact form, in units of 5 acres or aliquot parts thereof. However, as an aid in the identification of the tracts on the ground, frequently it is desirable to subdivide, by survey, the areas classified for administration as small tracts in order that at least one corner of each such tract be marked on the ground. The condition of the original survey and the ease of identification of the individual tracts on the ground are governing factors in deciding whether additional surveys should be made. Such surveys, made simply for the purpose of marking corners of legal subdivisions of the rectangular surveys, are not considered as "special surveys," and the cost thereof will not enter into the selling price of the land. For convenience in description the tracts may be identified by lot numbers, but only by preparation of an official supplemental plat for that purpose by protraction from the subsisting record or based upon supplemental surveys in the field. Such identification will be effective as of the

date of official filing of the plat in the land office.

(b) Where a tract is situated in the fractional portion of a sectional lotting, a supplemental plat may be required to afford a suitable description. The plat will be prepared at the time the lease issues. If the subdivision of the sectional lotting would result in narrow strips or other areas containing less than 2½ acres, not suitable for sale or lease as separate units, such excess areas, in the discretion of the regional administrator, may be included in the adjoining 5-acre tracts.

(c) Unless otherwise provided in the classification order, the leased land will be subject to a right-of-way of not to exceed 33 feet in width along the boundaries of the tract for street and road purposes and for public utilities. The location of such access streets or roads may be indicated on a working copy of the official plat maintained in the land office; or where the land has been classified for lease and sale, the right-of-way may be definitely located prior or subsequent to the issuance of patents; and an appropriate clause reserving the easement for such right-of-way will be incorporated into each lease or patent.

§ 257.17 *Irregular tracts; cost of special survey.* Where, in the opinion of the regional administrator, the rectangular form is not the most desirable plan for development of an area, tracts irregular in form, not in excess of 5 acres each, may be leased or sold in accordance with the regulations in this part. In this matter the regional administrator may initiate action as an administrative measure, or may act upon an offer to lease. An offer to lease such tract should contain a metes and bounds description sufficiently complete to identify the location and boundaries of the land. A special official survey will be required of an irregular tract for purpose of identification and description in the lease or patent. If the action is initiated upon an offer to lease, the offeror will be required to make an advance payment to the manager, equal to the estimated cost of executing the survey, before the field work will be undertaken; he will be credited with any excess payments prior to the issuance of lease or patent. In the case of special surveys as administrative measures the cost of the survey will be considered as a normal expense under the regular appropriation available for surveying the public lands; and when the tracts are sold, the selling price shall not be less than the cost of survey of the particular tract. If there is a group of contiguous or closely associated tracts to be surveyed at one time, the cost of survey will be prorated among the several tracts on an acreage basis.

§ 257.18 *Tracts on unsurveyed land.* Unserved public lands are not subject to lease or sale under the act. An offer filed for such lands will be rejected. However, if desired, the offeror may file a request for the survey of the lands with the regional administrator. The description must be sufficiently complete to identify the location, boundary, and area of the land. There should also be given, if possible, the approximate description or location of the land by section, township and range. A person who requests the survey of an area acquires no preferential right to apply for the land under the act upon the completion of the survey and the official filing of the plat. After the survey is completed and the official plat is placed on record, the surveyed area will be subject to the provisions of the act and an offer to lease may then be filed.

§ 257.19 *Termination or cancellation: removal of improvements.* (a) The lessee may terminate the lease, if he is not in default thereunder, subject to the consent of the regional administrator, by filing a notice of relinquishment of the lease in the proper land office. The manager may cancel any lease where the lessee has failed to comply with any of the terms, covenants, and stipulations of the lease, or to abide by any of the regulations in this part, and such default has continued for 30 days after written notice thereof.

(b) No refund will be made of rental for the unexpired term of a lease relinquished by the lessee or canceled by the manager for cause.

(c) Upon the termination, cancellation, or expiration of a lease, the lessee will have a period of 90 days within which to remove his improvements from the land or to make other disposition thereof; upon his failure to do so within the time allowed, the improvements will become the property of the United States.

§ 257.20 *Appeals.* An appeal pursuant to the rules of practice, Part 221 of this chapter, may be taken from the decision of any subordinate officer of the Bureau of Land Management to the Director, and from the Director's decision to the Secretary.

Note: The reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 11, 1950.

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