Job. No. 356

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington

CODE OF FEDERAL REGULATIONS
TITLE 43 - PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT
PART 232 - DESERT-LAND ENTRIES



AUTHORITY: Sections 232.1 to 232.64 issued under R.S. 453, 2478; 43 U.S.C. 2, 1201.

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Section 232.1 Purpose of statutes. It is the purpose of the statutes governing desert land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the western states through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply; more elaborate and expensive systems of irrigation works are required, the cost of water rights is correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character. /Par. 1, Circ. 474, Dec. 18, 1928/

Entry

232.2 States in which desert-land entry may be made. The Act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321-323), as amended by the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 321, 323, 325, 327-329), provides for the making of desert-land entries in the States of Arizona, California, Colorado, Utah, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Washington, and Wyoming. /Par. 2, Circ. 474, Dec. 18, 1928/

232.3 Land that may be entered as desert land. As the desert land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, nonmineral (except lands withdrawn, classified or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in Part 102), nontimbered, and such as will not without artificial irrigation, produce any reasonably remunerative agriculture crop by the usual means or methods of cultivation. In this latter class are those lands which, 1 year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L.D. 522 and 42 L.D. 524).

Applications to make desert-land entries of lands embraced in applications, permits, or leases under the Act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with sec. 102.34-102.38. Applications to make desert-land entries of lands within

a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands. [Par. 3, Circ. 474, Dec. 18, 1928]

232.4 Who may make desert-land entry. Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States and who can truthfully make the statements specified in sec. 232.10, 232.11 can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

The citizenship of a married woman must be shown, as required by sec. 137.4.

At the time of making final proof claimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry. [Par. 4, Circ. 474, Dec. 18, 1928; Circ. 1689, July 28, 1948]

232.5 Quantity of lands that may be entered. Under the Act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the Act of March 3, 1891, the maximum area that may be embraced in a desert entry was reduced to 320 acres. This limitation must, however, be read in connection with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 212), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws, and the amendment thereof by the Act of February 27, 1917 (39 Stat. 946; 43 U.S.C. 330), allowing one who has entered 320 acres under the enlarged homestead laws to make a desert-land entry. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, or 320 acres under the Enlarged Homestead Act, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, may, if otherwise qualified, enter 160 acres of land under the desert land laws. In other words, he may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres. It is to be noted also that the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area, and that a like restriction is made by the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123), as supplemented by the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124) with reference to desert-land entries made for land withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable for those deposits.

Entry of lands within an irrigation district which the Secretary of the Interior has approved under the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), is limited to 160 acres. [Par. 5, Circ. 474, Dec. 18, 1928]

232.6 Second entry. A person's right of entry under the desert land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except, however, that under the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted thereafter to make another entry or to take one or any part thereof by assignment. Applications to make second entry must not be allowed by the managers, but must be forwarded by them, with appropriate recommendations, to the regional administrator in accordance with sec. 232.7, accompanied by the applicant's statement giving data from which his former application, or applications, entry, or entries may be identified (preferably its series and number, as well as a description of the tract by section, township, and range), and showing (a) what examination of the land and what inquiries as to its character he made prior to filing his previous application or applications for entry, and what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation; (b) what improvements he made upon the land, describing in detail their nature and cost, the date of his abandonment of the claim or claims and the reason therefor, and whether he ever executed a relinquishment of the entry or entries; and (c) what consideration, if any, he received for abandoning or relinquishing the entry or entries, and whether he sold the improvements thereon, giving full details as to such sale, if any, including the date thereof and the consideration received. This statement must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts; or, there may be several witnesses, each testifying on some material point. If the regional administrator should find that the applicant is qualified to make a second entry, the application will be returned to the manager for appropriate action in accordance with sec. 232.15 /Par. 5, Circ. 474, Dec. 18, 1928; Circ. 1689, July 28, 1948; Circ. 1712, Dec. 21, 1948/

232.7 Report on application for second desert-land entry. An application for desert-land entry, accompanied by a showing for second entry on Form 4-007c, will be transmitted by the manager to the regional administrator for consideration. If upon examination of the application and second entry showing it appears that a field examination as to the applicant's qualifications to make second desert-land entry should be made, such examination will be directed. /Circ. 1474, July 8, 1940; Circ. 1535, May 26, 1943; Circ. 1712, Dec. 21, 1948; Circ. 1718, Dec. 28, 1948/

232.8 Land entered must be in compact form. Land entered under the desert land laws should be in compact form, which means that it is impracticable, on account of the previous appropriation of adjoining lands

or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location and character of the land sought to be entered and the surrounding tracts should be stated, in order that the Bureau of Land Management may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entrymen should make a complete showing in this regard and should state the facts and not the conclusions they derive from the facts, as it is the province of the Bureau of Land Management to determine whether or not, from the facts stated, the entry should be allowed. Under no circumstances, however, can one entry be made for two or more separate tracts or for two tracts which touch each other at only a single point. /Par. 6, Circ. 474, Dec. 18, 1928/

232.9 Entries restricted to surveyed lands since March 28, 1908; claims on unsurveyed lands. Prior to the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), a desert-land entry could embrace unsurveyed lands, but since the date of that Act desert-land entries may not be made of unsurveyed lands. This Act provides, however, that any individual qualified to make entry of desert lands under the desert land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said Acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the district land office. 2/

To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land, as required under the homestead law, are not necessary, the possession and improvements must be such as to conform to the requirements of the desert land law and must evidence good faith on the part of the claimant. /Par. 7, Circ. 474, Dec. 18, 1928/

232.10 Application for desert-land entry. 3/ A person who desires to make entry under the desert-land laws must file with the manager of the proper land office an application, in duplicate, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is a bona fide resident of the State in which the land sought to be entered is located, except in the State of Nevada, where the qualification as to citizenship is that of the United States only (41 Stat. 1086; 43 U.S.C. 323, 325). He also must state that he has not previously exercised the right of entry under the

2/ Unsurveyed public land has not been subject to appropriation under the desert land acts since withdrawal by Executive order 6910 of November 26, 1934, or Executive order 6964 of February 5, 1935.

3/ Title 18, U.S.C. sec. 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.

desert-land laws by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural land laws, to lands which, together with the land applied for, will exceed in the aggregate 320 acres, or 480 acres in case he has made an enlarged homestead for 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon within four years from the date of his application. The application must contain a description of the land by legal subdivisions, section, township, and range. If the application is made for lands, withdrawn or classified as coal lands or for lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable therefor, the applicant also must state in his application that the same is made in accordance with and subject to the Act of June 22, 1910 (36 Stat. 583), or the Act of July 17, 1914 (38 Stat. 509), as the case may be. [Circ. 1474, July 8, 1940; Circ. 1689, July 28, 1948; Circ. 1718, Dec. 28, 1948]

232.11 Showing required in application as to character of land. Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The showing which is made a part of the application, may not be made by an agent or upon information and belief, and the manager must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge, obtained from a personal examination of the land. The blank spaces in the application must be filled in with a complete statement of the facts showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the statements of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry.

The statements in the blank form of declaration and accompanying statements as to present character of the land may be modified so as to show the facts in any case wherein application is made for entry of lands reclaimed or partially reclaimed, by applicant, before survey, under the provisions of the Act of March 28, 1908; as to a former application or entry, in case application is made for a second entry under the provisions of the Act of September 5, 1914; as to the character of the land with respect to coal deposits in case application is made under the provisions of the Act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal; and with respect to phosphate, nitrate, potash, sodium, sulphur, oil, gas, and asphaltic minerals in case application is made under the provisions of the Act of July 17, 1914, for lands withdrawn, classified, or reported as containing those substances, or valuable therefor. [Par. 9, Circ. 474, Dec. 18, 1928; Circ. 1689, July 28, 1948]

232.12 Post-office addresses of applicants and witnesses. Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants

that upon changing their post-office addresses they promptly notify the manager of such change, for in case of failure to do so their entries may be cancelled upon notice sent to the address of record but not received by them. The manager will be careful to note the post-office address on his records. [Par. 10, Circ. 474, Dec. 18, 1928]

232.13 Officers qualified to administer oaths; time for filing of applications. All proofs, affidavits, and oaths of any kind whatsoever required by law to be made by applicants and entrymen and their corroborating witnesses may be executed before any officer authorized to administer oaths in public land cases, as explained in sec. 210.1.

An application to make desert land entry is not acceptable if dated more than 10 days before its filing at the district land office. [Par. 11, Circ. 474, Dec. 18, 1928]

232.14 Evidence of water rights required with application. No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. All applications not accompanied by the evidence above indicated will be rejected. [Par. 12, Circ. 474, Dec. 18, 1928]

232.15 Plan of irrigation and payment; reports. At the time of filing the application with the manager, the applicant also must file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, i.e., reservoirs for storage, canals, flumes, or other methods by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs, whether perennially flowing or intermittent. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a statement must accompany the application, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the Department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells or by pumping from non-artesian under-ground sources of water supply, a statement must be submitted as to the existence of such water supply upon or near the land

involved, including information as to other wells theretofore sunk and affording a water supply to adjoining or near-by lands.

With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, the approximate irrigable area of each legal subdivision, and the position and direction of the proposed permanent main and lateral ditches on the land, and that the land is of such contour that it can be irrigated from the proposed system. The map required to be filed by section 4 of the Act of March 3, 1877, as amended by section 2 of the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 327), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The manager will carefully examine the evidence submitted in such applications, and either reject defective applications or require additional evidence to be filed.

At the time of filing his application, plans, and the statements submitted therewith the applicant must pay the manager the sum of 25 cents per acre for the lands therein described, the application to be given its proper serial number at that time. No rights to the land are initiated by the filing of an application unless this sum is paid or tendered. The manager will issue a receipt for the money, and, after proper notations have been made on the records of the district land office, will transmit the originals of all of the papers to the regional administrator for preliminary consideration, together with report in duplicate, as to any conflicts of record.

The regional administrator will cause a field examination to be made; if necessary, as to the sufficiency of the alleged water supply and the feasibility of the proposed plans. [Circ. 1474, July 8, 1940; Circ. 1535, May 26, 1943; 1946 Reord. Plan No. 3, sec. 403, eff. July 16, 1946, 60 Stat. 1100; Circ. 1689, July 28, 1948; Circ. 1712, Dec. 21, 1948; Circ. 1718, Dec. 28, 1948]

Assignment

232.16 Lands which may be assigned. By the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 329), assignments of desert-land entries were recognized. The Act of March 28, 1908 provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous. [Par. 14, Circ. 474, Dec. 18, 1928]

Cross Reference: For assignment of desert-land entries within Government reclamation projects, see sec. 230.121.

232.17 Qualifications of assignees. The Act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under the Act of September 5, 1914, to make a second entry, he can not take such an entry by assignment. The language of the Act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and

this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second entry. The right of entry under the desert land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking one by assignment, unless such entry be subsequently lost, forfeited, or abandoned because of matters beyond the claimant's control.

A person who has the right to make a second desert-land entry under the Act of September 5, 1914, may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned. The right to make a second desert-land entry, however, is not possessed by any person who has assigned some former entry or part thereof.

The Act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized. [Par. 15, Circ. 474, Dec. 18, 1928]

232.18 Showing required of assignees; recognition of assignments. As evidence of the assignment there should be transmitted to the manager the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer, who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

An assignee must file with his deed of assignment a statement (Form 4-274c), showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status, in accordance with Part 137 of this chapter. If the assignee is a woman, she should in all cases state whether she is married, and if so, she must make the showing required by Part 137. In short, the assignee must prove that he possesses all the qualifications necessary to enable him to make a desert-land entry for the land proposed to be assigned were it subject to entry. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L.D. 541, 33 L.D. 152). An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L.D. 383). The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an asignee. (29 L.D. 453). The assignor of a desert-land entry may

execute the assignment before any officer authorized to take acknowledgments of deeds. The assignee must furnish a statement as to his qualifications on Form 4-274c.

No assignments of desert-land entries or parts of entries are conclusive until examined in the district land office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert land law, and to whom, therefore, recognition of the assignment is refused by the manager, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L.D. 90 and 48 L.D. 519. /Par. 16, Circ. 474, Dec. 18, 1928; Circ. 1689, July 28, 1948/

Sale, Taxation and Mortgage

232.19 When lands may be sold, taxed, or mortgaged. After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so obtained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), may be taxed and otherwise dealt with as provided by said Act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the Act of June 13, 1930 (46 Stat. 581; 43 U.S.C. 455, 455a-455c).

A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortagees, or other encumbrancers may file in the proper district land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry. /Par. 16, Circ. 474, Dec. 18, 1928/

232.20 Showing required. In order to test the sincerity and good faith of claimants under the desert land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention to reclaim them, Congress, in the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 327, 328) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said Act, however, authorizes the submission of final proof at an earlier date than four years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made.

Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made. [Par. 17, Circ. 474, Dec. 18, 1928]

232.21 Acceptable expenditures. Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district, through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended, nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L.D. 106). [Par. 18, Circ. 474, Dec. 18, 1928]

232.22 Expenditures not acceptable. Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences

or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the Act of September 5, 1914, can not receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L.D. 601 and 42 L.D. 523).

Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as railing the land, will not be accepted.

No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof. [Par. 18, Circ. 474, Dec. 18, 1928]

232.23 Action by manager. Managers are instructed to examine carefully all annual proof filed and are authorized to suspend them, with notice to claimants to cure defects within 30 days, or to reject them, subject to the usual right of appeal to the Director, Bureau of Land Management. However, no annual proof which alleges an expenditure for stock or interest in an irrigation company should be rejected merely because the expenditure was of that character unless such rejection be warranted under instructions issued by the Director, Bureau of Land Management in acting upon the report on the particular company in question. If no such instructions have been issued, and the company referred to in the annual proof be one on which the manager has not previously requested a report from the proper regional administrator, the manager will immediately call for such report and advise the Director thereof. The manager will endorse the fact and date of the call upon the margin of the annual proof. [Par. 18, Circ. 474, Dec. 18, 1928]

232.24 Procedure where proof is not made when due. Managers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendency of a Government proceeding initiated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice more secure to the

contestant a preference right in event the entry be canceled for default under said notice. [Par. 18, Circ. 474, Dec. 18, 1928]

232.25 Extensions of time.[4] The law makes no provision for extensions of time in which to file annual proof becoming due subsequent to December 31, 1936 on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose can not therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L.D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof. [Par. 18, Circ. 474, Dec. 18, 1928]

232.26 Submission of proof before due dates. Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required. [Par. 19, Circ. 474, Dec. 18, 1928]

Final Proof

232.27 General requirements. The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with. [Par. 20, Circ. 474, Dec. 18, 1928]

232.28 Notice of intention to make final proof. When an entryman has reclaimed the land and is ready to make final proof, he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an endorsement specifically

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4/ Extensions of time for making desert-land proofs were authorized by the Acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such Acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this Chapter. The regulations were issued as Circs. 1311, 1365, and 1432, respectively.

indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witness persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice. [Par. 20, Circ. 474, Dec. 18, 1928]

232.29 Publication of final proof notice. The manager will report promptly to the regional administrator the receipt of a notice of intention to make desert-land proof and withhold the issuance of notice for publication until the mineral or nonmineral character of the land has been determined and he has been instructed as to further action which should be taken. When instructed to do so, the manager will issue the usual notice of publication. This notice must be published once a week for 5 successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L.D. 131; 43 L.D. 216), and must also be posted in a conspicuous place in the district land office for the same period of time. The claimant must pay the cost of the publication, but it is the duty of managers to procure the publication of proper final-proof notices, and managers should accordingly exercise the utmost care in that behalf. (40 L.D. 459). The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by some one authorized to act for him. The manager will certify to the posting of the notice in the district land office. [Par. 21, Circ. 474, Dec. 18, 1928; Circ. 1547, May 29, 1943]

232.30 Submission of final proof. On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law, or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in sec. 210.1. [Par. 22, Circ. 474, Dec. 18, 1928]

232.31 Showing as to irrigation system. The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated. [Par. 23, Circ. 474, Dec. 18, 1928]

232.32 Showing as to lands irrigated and reclaimed. While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L.D. 420). The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L.D. 269). [Par. 24, Circ. 474, Dec. 18, 1928]

232.33 Showing as to tillage of land. As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L.D. 456). In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation. [Par. 25, Circ. 474, Dec. 18, 1928]

232.34 Showing as to water right. In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been

evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the water courses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L.D. 305).

It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172). The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of

preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, can not be viewed as meeting the requirements of the desert land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question. /Par. 26, Circ. 474, Dec. 18, 1928/

232.35 Showing where water supply is derived from irrigation project. Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer, either with his final proof or subsequently, such evidence as he can tending to support his contentions.

Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the manager will endorse the name and address of the project upon the copy of the notice to be forwarded to the regional administrator. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the manager will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default

of any action by him within the specified time they will reject the proof; subject to the usual right of appeal. If application for hearing be filed, the manager will transmit one copy thereof to the proper regional administrator. [Par. 27, Circ. 474, Dec. 18, 1928]

232.36 Final proof expiration notice. Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the manager should send the claimant a notice, addressed to him at his post-office address of record, informing him that he will be allowed 90 days in which to submit final proof; or if the death of the claimant of record be suggested, such notice should also be addressed to the claimant at the post office nearest the land. (44 L.D. 364).

Should no action be taken within the time allowed, the entry will be canceled. The notice provided for in this section must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted. [Par. 28, Circ. 474, Dec. 18, 1928]

232.37 Requirements where township is suspended for resurvey. No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L.D. 223). This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township. If submitted, the final proof will be received by the manager, who will pursue the same course in regard thereto that would have been pursued in the absence of the suspension. Should final certificate be issued on any such proof it will describe the entered land in terms of the original survey with reference to the plat of such survey and to the fact of a pending resurvey, as follows:

In accordance with official plat of survey approved _____; resurvey now pending under Group No. _____B.L.M.; authorization dated_____
[Par. 28, Circ. 474, Dec. 18, 1928]

Cross Reference: For resurveys, see Part 281.

Extensions of time for Final Proofs; Acts of March 28, 1908, April 30, 1912, and February 25, 1925

232.38 General Acts authorizing extensions of time.[5] There are five

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[5] In addition to the Acts cited in this section, extensions of time for making desert-land proofs were authorized by the Acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C., 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such Acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this Chapte The regulations were issued as Circs. Nos. 1311, 1365, and 1432, respectively.

general Acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said Acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U.S.C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U.S.C. 333); April 30, 1912 (37 Stat. 106; 43 U.S.C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161; 43 U.S.C. 335); and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336). The Act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388). For regulations governing extensions under said Act of June 27, 1906, see sec. 230.113-230.119. The Act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this Act denies any extension under its terms to claimants who can obtain such benefit under prior Acts. [Par. 29, Circ. 474, Dec. 18, 1928]

Cross Reference: For regulations under the Act of March 4, 1915, see sec. 232.41-232.43.

232.39 When extensions of time may be granted. Under the provisions of the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 333), the period of 4 years may be extended, in the discretion of the regional administrator, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. The statute authorizes the proper officer to grant the extension, in his discretion, for such a period as he may deem necessary for the completion of the reclamation, not exceeding 3 years, but applications for extension under said Act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L.D. 332). It must also appear that he has complied with the law as to annual expenditures and proof thereof.

Under the provisions of the Act of April 30, 1912 (37 Stat. 106; 43 U.S.C. 334), the Secretary of the Interior may, in his discretion, in addition to the extension authorized by previous legislation, grant to any entryman under the desert land laws a further extension of time for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension cannot be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the Act of March 28, 1908, should file with the

manager a statement setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts; and the manager, after carefully considering all of the facts, will forward the application to the proper regional administrator with appropriate recommendation.

The manager is required to suspend any application for extension of time if he considers the statement defective in form or substance, allowing the applicant a reasonable time to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made, and advising the applicant that upon his failure to take any action within the time specified appropriate recommendations will be made. After the expiration of the time thus granted, the original application and the amended statements or exceptions, as the case may be, together with proper report and recommendations of the manager, will be transmitted to the regional administrator.

Applications for further extension of time under the Act of April 30, 1912, and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336), may be made in the same manner, and the same procedure will be followed with respect to such applications as under the Act of March 28, 1908, and the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335), as amended. [Par. 30, Circ. 474, Dec. 18, 1928; 1946 Reorg. Plan No. 3, sec. 403, eff. July 16, 1946, 60 Stat. 1100; Circ. 1635, May 26, 1943; Circ. 1689, July 28, 1948]

232.40 Procedure on applications for extensions of time, where contest is pending. A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L.D. 603).

Consideration by the Bureau of Land Management of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal but without prejudice to the contestant's right to amend his charges. [Par. 31, Circ. 474, Dec. 18, 1928]

Relief: Act of March 4, 1915

232.41 General statement. The last three paragraphs of section 5 of the Act of Congress approved March 4, 1915 (38 Stat. 1161), entitled "An Act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," as amended by the Act of March 21, 1918 (40 Stat. 458; 43 U.S.C. 335, 337, 338), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding 3 years from date of its allowance, in which to submit final proof; or that upon certain other conditions he may either complete his

entry in the manner required of a homestead claimant or purchase the land on special terms. [Par. 34, Circ. 474, Dec. 18, 1928]

232.42 Applications for relief. All applications for the benefits of section 5 of the Act of March 4, 1915, as amended, should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered land is situated, to be referred to the regional administrator with appropriate recommendation. They must be supported by the statement of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown.

All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law. [Par. 35, Circ. 474, Dec. 18, 1928; Circ. 1535, May 26, 1943, 8 F.R. 7284]

232.43 Conditions for extensions of time. (a) To entitle an entryman to the benefits of the first of the last three paragraphs of section 5 of the Act of March 4, 1915, as amended, the following conditions must exist: (1) the entry must be a lawful, pending entry made prior to March 4, 1915; (2) the entryman must have complied with the requirements of the desert land law with reference to yearly expenditures and the submission of annual proofs thereof; (3) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law; (4) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (5) there must be established some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

(b) The existence of the first two of these conditions can be determined by examination of the records of the Bureau of Land Management but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land but not used as the basis of annual proof.

The existence of the third, fourth, and fifth conditions must be established in all cases by the statements filed in support of the application for relief.

With regard to the third condition, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured

such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the course of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

If water is to be obtained through an irrigation company, association, or district upon which a favorable report has been made and favorable action on such report has been taken, the existence of the third condition will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

The fourth condition will be satisfied if the case does not come within the terms of any of the other Acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

The extension of time authorized by the Act of March 4, 1915, is applicable only to entries made prior to the date of the Act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where on account of drought of greater or less duration but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the Act of March 4, 1915, as amended by the Act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the Act of June 17, 1902 (32 Stat. 388), and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the Act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448).

No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable

232.46 Notice of allowance of relief; election to purchase. When any application for relief under the second of the last three paragraphs of section 5 of the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337), as amended, shall have been allowed by the manager, notice thereof will be served upon the claimant, advising him that he will be allowed 5 years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the district land office an election to perfect the entry within 5 years by purchase under the third paragraph, and pay to the manager, at time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall be given. The election must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith. [Par. 39, Circ. 474, Dec. 18, 1928]

232.47 Procedure for final proofs in relief cases. In the submission and consideration of final proofs under the last two paragraphs of section 5 of the Act of March 4, 1915, as amended, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase. [Par. 40, Circ. 474, Dec. 18, 1928]

232.48 No assignment allowed after relief has been granted. After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assignment thereof will be allowed, for the reason that the benefits of the last two paragraphs of section 5 of the Act of March 4, 1915, as amended by the Act of March 21, 1918, are not available to assignees under assignments made subsequently to the date of the Act, as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs the same rules will be observed, as to proof of nonalienation, as in homestead cases. [Par. 41, Circ. 474, Dec. 18, 1928]

232.49 Entries perfected by compliance with homestead law. A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the Enlarged Homestead Acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutation proof must pay for the land at the regular "minimum price" of $1.25 per acre.

Failure to submit final proof within the 5-year period allowed by the law will be ground for the cancelation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the Board of Equitable Adjudication for confirmation.

Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public land laws, as in the case of those who make ordinary final proof on desert-land entries. [Par. 42, Circ. 474, Dec. 18, 1928]

232.50 Residence and improvements for homestead proof. If not already residing on his desert-land entry, the claimant must establish residence thereon within 6 months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second of the last three paragraphs of section 5 of the Act of March 4, 1915, as amended, unless such period be extended as permitted by the homestead law.

Residence upon the land must be continuously maintained for a period of 3 years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed 5 months. Actual residence must be maintained for the remaining 7 months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements as to the period of residence and amount of cultivation are those of the Act of June 6 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218), or the "3-year homestead law."

If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

The claimant must have a habitable house upon the land at the time of submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith. [Par. 43, Circ. 474, Dec. 18, 1928]

Cross Reference: For residence and cultivation requirements under the homestead laws, see sec. 166.24-166.46.

232.51 Cultivation for homestead proof. Cultivation of the land for at least two years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the Act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases,

without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the 3-year homestead law, will be allowed, without regard to the time when it was performed. [Par. 44, Circ. 474, Dec. 18, 1928]

232.52 Homestead proof on entries in Utah and Idaho. If the entry is situated in the State of Utah or Idaho, and the lands involved have been or shall be, designated as being of the character subject to entry under the sixth section of the Act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), as amended, or June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of 4 years. [Par. 45, Circ. 474, Dec. 18, 1928]

232.53 Heirs and devisees; reduction of cultivation. If an entryman dies before being authorized to exercise the rights conferred by the last two paragraphs of section 5 of the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337, 338), as amended, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the beenfits of the said Act of March 4, 1915, may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of 3 years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases. [Par. 46, Circ. 474, Dec. 18, 1928]

232.54 Fees. The same fees, and no others, may be charged by managers upon submission of final proofs under section 5 of the Act of March 4, 1915, as amended, as upon submission of ordinary desert-land proofs. No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office. [Par. 47, Circ. 474, Dec. 18, 1928]

232.55 Entries perfected by purchase. If claimant elects to perfect his entry under the last paragraph of section 5 of the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 338), as amended, he must, within 5 years from the date of his election and payment of the sum of 50 cents per acre make final proof and pay to the manager the further sum

of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre, and that he has a good faith used the land for agricultural purposes for at least 3 years. Under said last paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown. [Par. 48, Circ. 474, Dec. 18, 1928]

232.56 Credit for improvements used as the basis for annual proof. Improvements made during the first 3 years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under the last paragraph of section 5 of the Act of March 4, 1915, as amended, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry. [Par. 49, Circ. 474, Dec. 18, 1928]

232.57 Penalty for failure to make final proof and payment. If a claimant fails to make final proof and payment, as required by the last paragraph of section 5 of the Act of March 4, 1915, as amended, within the 5-year period, all sums theretofore paid by him will be forfeited and the entry canceled. [Par. 50, Circ. 474, Dec. 18, 1928]

232.58 Forms of Proofs. Final proofs under the second of the last three paragraphs of section 5 of the Act of March 4, 1915, as amended, may be made on the forms used in homestead cases. For final proofs to be made under the last paragraph special forms have been provided. [Par. 51, Circ. 474, Dec. 18, 1928]

232.59 Applications for relief; initial payment required. The Act of February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), entitled "An Act to amend an Act approved March 4, 1929 (45 Stat. 1548), entitled 'An Act to supplement the last three paragraphs of section 5 of the Act of March 4, 1915 (38 Stat. 1161), as amended by the Act of March 21, 1918 (40 Stat. 458), '" grants relief to desert-land entrymen, as set forth in sections 232.59 and 232.60.

This Act applies to all pending desert-land entries made prior to July 1, 1925, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this Act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land and where there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land or any legal subdivision thereof.

Desert-land entries made prior to March 4, 1915, and pending February 14, 1934, are entitled to the relief granted by the Act of March 4, 1915, as

amended, or by the provisions of this Act. Desert-land entries made since March 4, 1915, and prior to July 1, 1925, and pending February 14, 1934, are entitled only to the relief provided for in this Act.

In all applications for relief of desert-land entries made prior to March 4, 1915, it should be specifically stated whether the relief is sought under the provisions of the Act of March 4, 1915, or under the provisions of said Act of February 14, 1934.

The showing as to the right to such relief must be the same as that required by sec. 232.42. Applications for relief hereunder must be filed in the land office for the district in which the land embraced in the particular entry is situated, and, after examination by the manager as to statement of facts required by sec. 232.42, and, where necessary opportunity given applicants to supply data to cure defects, referred to the regional administrator for instructions.

When any application for relief under the provisions of this Act shall have been approved by the manager, notice, by registered mail, will be served upon the claimant, of such approval that he will be allowed 90 days from date of receipt of such notice within which to pay to the manager 25 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this Act, and that if he fails within the time allowed to make said initial payment of 25 cents per acre, the entry will be canceled; that he will be allowed one year from the date of the filing of such election to pay the manager the additional amount of 75 cents an acre; and that, in case the final payment be not made within the time prescribed, the entry will be canceled and all money theretofore paid will be forfeited.

Should any claimant fail to pay said 25 cents per acre and file said election within the 90-day period, the entry will be canceled and the case closed without further notice. [Circ. 1323, Apr. 24, 1934, 54 L.D. 429; Circ. 1535, May 26, 1943, 8 F.R. 7284]

232.60 Publication and proof; final payment required. To perfect title to the entry, under the Act of February 14, 1934, the claimant shall file with the manager a notice of intention to do so, and the manager will order the publication thereof in the same manner as to other desert-land cases and in the prescribed form.

Publication, proof thereof and the required additional payment of 75 cents per acre should be made within 1 year from the date of the filing of the election mentioned in the preceding section, it being expressly stated in said Act of February 14, 1934, that said additional payment of 75 cents per acre should be paid within 1 year from the date of the filing of the election to perfect title to the entry under said Act, with the proviso "That in case the final payment be not made within the time prescribed, the entry shall be canceled and all money theretofore paid shall be forfeited." There is no provision of law whereby extension of time to make this payment may be granted.

These acts having been performed, and there being no protest, contest, or other objection, the manager will issue the final certificate and transmit

it to the Bureau of Land Management with the regular returns.

Where relief has heretofore been granted in desert-land entries made prior to March 4, 1915, and such entries are intact upon the records claimants may, if they so desire, take advantage of the provisions of this Act.

Where relief has been granted in desert-land entries under the original Act of 1929 and prior to February 14, 1934, date of passage of Act amendatory thereof, and such entries are intact upon the records of the Bureau of Land Management and all of the payments required to be made by said original Act of 1929 have not been completed prior to the date of said amendatory Act, in all such cases the total amount to be collected of such entrymen as a condition precedent to the patenting of their entries will be at the rate of $1 per acre, instead of $2. [Circ. 1323, Apr. 24, 1934, 54 I.D. 430]

Payments

232.61 Collection of purchase money and fees; issuance of final certificate. At the time of making final proof the claimant must pay to the Manager the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the Act of March 4, 1915 as amended and supplemented. (See sec. 232.49, 232.55). The manager will issue a receipt for the money paid, and if the proof is satisfactory, he will issue a certificate in duplicate and deliver one copy to the claimant and forward the other copy to the Bureau of Land Management with the regular returns.

If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

When final proof is made on an entry made prior to the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the manager will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the manager. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the district land office, the manager will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the Act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries. The manager will then note these adjustments on his tract books and plats and transmit the statements to the Bureau of Land Management with separate reports of all conflicts which may have been developed. He will also report any case in which the claimant has failed,

after due notice, to file the required statement of adjustment.

If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land, and upon receipt of the same the manager will issue final certificate which will be transmitted to the Bureau of Land Management with the regular returns. [Par. 32, Circ. 474, Dec. 18, 1928]

232.62 Amounts to be paid. No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335, 337, 338), or February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making final proof. Where final proofs are made before the manager in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, he will be entitled to receive jointly 22½ cents for each 100 words of testimony reduced to writing; in all other States he will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them. [Par. 33, Circ. 474, Dec. 18, 1928]

Contests and Relinquishments

232.63 Contests. Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancelation of the contested entry, in the same manner as in homestead cases, and the manager will give the same notice and is entitled to the same fee for notice as in other cases. [Par. 52, Circ. 474, Dec. 18, 1928]

Cross Reference: For Rules of Practice governing contests and protests, see Part 221.

232.64 Relinquishments. A desert-land entry may be relinquished at any time by the party owning the same, and when relinquishments are filed in the district land office the entries will be canceled by the manager in the same manner as in homestead, preemption, and other cases under the first section of the Act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 202). Conditional relinquishments will not be accepted. [Par. 53, Circ. 474, Dec. 18, 1928]

(The reporting requirements of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.)

Reprint of Circular No. 474, December 18, 1928, as amended by Circular No. 1474, July 8, 1940, Circular 1535, May 26, 1943, Circular 1689, July 28, 1948, Circular 1712, December 21, 1948 and Circular 1718, December 28, 1948.