

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

Group 2000—Land Resource Management; General

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation and Opening of Lands

Sec.

- 2091.0-1 Purpose.
- 2091.0-3 Authority.
- 2091.0-5 Definitions.
- 2091.0-7 Principles.
- 2091.1 Action on applications and mining claims.
- 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.
 - 2091.2-1 Segregation.
 - 2091.2-2 Opening.
- 2091.3 Segregation and opening resulting from a proposal or application.
 - 2091.3-1 Segregation.
 - 2091.3-2 Opening.
- 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.
 - 2091.4-1 Segregation and opening: Desert-land entries and Indian allotments.
 - 2091.4-2 Segregation and opening: Airport leases and grants.
 - 2091.4-3 Segregation and opening: Carey Act.
- 2091.5 Withdrawals.
 - 2091.5-1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.
 - 2091.5-2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.
 - 2091.5-3 Segregative effect and opening: Emergency withdrawals.
 - 2091.5-4 Segregative effect and opening: Water power withdrawals.
 - 2091.5-5 Segregative effect and opening: Federal Power Act withdrawals.
 - 2091.5-6 Congressional withdrawals and opening of lands.
- 2091.6 Opening of withdrawn lands: General.
- 2091.7 Segregation and opening of lands classified for a specific use.
 - 2091.7-1 Segregative effect and opening: Classifications.
 - 2091.7-2 Segregative effect and opening: Taylor Grazing Act.
- 2091.8 Status of gift lands.
- 2091.9 Segregation and opening resulting from laws specific to Alaska.
 - 2091.9-1 Alaska Native selections.
 - 2091.9-2 Selections by the State of Alaska.

2091.9-3 Lands in Alaska under grazing lease.

Subpart 2094—Special Resource Values; Shore Space

- 2094.0-3 Authority.
- 2094.0-5 Definitions.
- 2094.1 Methods of measuring; restrictions.
- 2094.2 Waiver of 160-rod limitation.

AUTHORITY: 43 U.S.C. 1740.

Subpart 2091—Segregation and Opening of Lands

SOURCE: 52 FR 12175, Apr. 15, 1987, unless otherwise noted.

§ 2091.0-1 Purpose.

The purpose of this subpart is to provide a general restatement of the regulatory provisions in title 43 of the Code of Federal Regulations dealing with the segregation and opening of public lands administered by the Secretary of the Interior through the Bureau of Land Management and summarize the existing procedures covering opening and closing of lands as they relate to the filing of applications. The provisions of this subpart do not replace or supersede any provisions of title 43 covering opening and closing of public lands.

§ 2091.0-3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 *et seq.*), the Act of March 3, 1877 (43 U.S.C. 321-323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327-329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339-340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power

§ 2091.0-5

43 CFR Ch. II (10-1-11 Edition)

Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) and the Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*).

[52 FR 12175, Apr. 15, 1987, as amended at 58 FR 60917, Nov. 18, 1993]

§ 2091.0-5 Definitions.

As used in this subpart, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) *Land* or *public lands* means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) *Mineral laws* means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) *Public lands records* means the Tract Books, Master Title Plats and Historical Indices maintained by the Bureau of Land Management, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may include, but is not limited to, withdrawals, restorations, reservations, openings, classifications applications, segregations, leases, permits and disposals.

(f) *Opening* means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if appropriate, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals, reservations, classifications, and management decisions. Depending on the language in the opening order, an opening may restore the lands to the operation of all or some of the public land laws.

(g) *Opening order* means an order issued by the Secretary or the authorized officer and published in the FEDERAL REGISTER that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) *Public land laws* means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) *Revocation* means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) *Secretary* means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the *Secretary*.

§ 2091.07 Principles.

(a) Generally, segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to the operation of the discretionary mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing

Bureau of Land Management, Interior

§ 2091.2-2

rights and is, in most cases, for a limited period which is specified in regulations or in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, except those that apply to selections made by the State of Alaska under section 906(e) of the Alaska National Interest Land Conservation Act and selections made by Alaska Native Corporations under section 3(e) of the Alaska Native Claims Settlement Act, when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision applicable to the lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classifications existing under appropriate law;

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action previously published in the FEDERAL REGISTER under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date

and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

§ 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

§ 2091.2-1 Segregation.

The publication of a Notice of Realty Action in the FEDERAL REGISTER segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869-4), for a period of 18 months (See part 2740 and subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See part 2710). The sales provisions of section 43 CFR 2711.1-2(d) provide for a segregation period, not to exceed two years unless, on a case-by-case basis, the BLM State Director determines that the extension is necessary and documents, in writing, why the extension is needed. Such an extension will not be renewable and cannot be extended beyond the additional two years.

[52 FR 12175, Apr. 15, 1987, as amended at 58 FR 60917, Nov. 18, 1993; 71 FR 67068, Nov. 20, 2006]

§ 2091.2-2 Opening.

(a) The segregative effect of a Notice of Realty Action automatically terminates either:

(1) At the end of the periods set out in § 2091.2-1 of this title (See part 2740); or

(2) As of the date specified in an opening order published in the FEDERAL REGISTER; or

§ 2091.3

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) [Reserved]

[52 FR 12175, Apr. 15, 1987, as amended at 58 FR 60917, Nov. 18, 1993; 65 FR 70112, Nov. 21, 2000]

§ 2091.3 Segregation and opening resulting from a proposal or application.

§ 2091.3-1 Segregation.

(a) If a proposal is made to exchange public lands administered by the Bureau of Land Management or lands reserved from the public domain for National Forest System purposes, such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation (See 43 CFR 2201.1-2 and 36 CFR 254.6).

(b) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See subparts 2621 and 2622)

(c) The filing of an application and publication of the notice of the filing of an application in the FEDERAL REGISTER for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the publication of the notice of filing of the application with the authorized officer. (See part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211-213), or the filing of a request for an airport conveyance under the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215), segregates the lands as of the date of filing with the authorized officer. (See part 2640 and subpart 2911)

(e)(1) The Bureau of Land Management may segregate, if it finds it to be necessary for the orderly administration of the public lands, lands included in a right-of-way application for the generation of electrical energy under 43 CFR subpart 2804 from wind or solar sources. In addition, the Bureau of Land Management may also segregate

43 CFR Ch. II (10-1-11 Edition)

lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources. Upon segregation, such lands will not be subject to appropriation under the public lands laws, including location under the General Mining Law, but not the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The Bureau of Land Management will effect such segregation by publishing a FEDERAL REGISTER notice that includes a description of the lands covered by the segregation. The Bureau of Land Management may impose a segregation in this way on both pending and new right-of-way applications.

(2) The effective date of segregation is the date of publication of the notice in the FEDERAL REGISTER, and the date of termination of the segregation is the date that is the earliest of the following:

(i) Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period provided for in the FEDERAL REGISTER notice initiating the segregation, without further action by the authorized officer; or

(iii) Upon publication of a FEDERAL REGISTER notice of termination of the segregation.

(3) The segregation period may not exceed 2 years from the date of publication of the FEDERAL REGISTER notice initiating the segregation.

(4) The effective period of this subsection of this part will not exceed two years from the date of its publication in the FEDERAL REGISTER.

[52 FR 12175, Apr. 15, 1987; 52 FR 13563, Apr. 23, 1987, as amended at 58 FR 60917, Nov. 18, 1993; 76 FR 23204, Apr. 26, 2011]

EFFECTIVE DATE NOTE: At 76 FR 23204, Apr. 26, 2011, § 2091.3-1 was amended by adding paragraph (e), effective from April 26, 2011 through April 26, 2013.

§ 2091.3-2 Opening.

(a) If a proposal or an application described in § 2091.3-1 of this part is not denied, modified, or otherwise terminated prior to the end of the segregative periods set out in § 2091.3-1 of this

Bureau of Land Management, Interior

§ 2091.5-1

part, the segregative effect of the proposal or application automatically terminates upon the occurrence of either of the following events, whichever occurs first:

(1) Issuance of a patent or other document of conveyance to the affected lands; or

(2) The expiration of the applicable segregation period set out in § 2091.3-1 of this part.

(b) If the proposal or application described in § 2091.3-1 of this part is denied, modified, or otherwise terminated prior to the end of the segregation periods, the lands shall be opened promptly by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

(c) Subject to valid existing rights, non-Federal lands acquired through exchange by the United States shall be segregated automatically from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title. (See 43 CFR 2201.9(b))

[58 FR 60917, Nov. 18, 1993, as amended at 65 FR 70112, Nov. 21, 2000]

§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.

§ 2091.4-1 Segregation and opening: Desert-land entries and Indian allotments.

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See parts 2520 and 2530).

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the FEDERAL REGISTER of an opening order which specifies the date and time of opening. (See parts 2520 and 2530).

§ 2091.4-2 Segregation and opening: Airport leases and grants.

(a) The issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands. (See part 2640 and subpart 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the FEDERAL REGISTER of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, but are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See part 2640 and subpart 2911).

§ 2091.4-3 Segregation and opening: Carey Act.

(a) For lands covered by a Carey Act grant, publication of a notice in the FEDERAL REGISTER that a contract has been signed segregates the lands described in the contract, as of the date of publication of a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See part 2610).

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the FEDERAL REGISTER of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of subpart 2613 of this title.

§ 2091.5 Withdrawals.

§ 2091.5-1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.

(a) Publication in the FEDERAL REGISTER of a notice of an application or proposal for withdrawal, as provided in subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative

§ 2091.5-2

effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Segregations resulting from applications and proposals filed on or after October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication in the FEDERAL REGISTER of the notice of the filing of an application or proposal for withdrawal;

(2) Upon the publication in the FEDERAL REGISTER of a Public Land Order effecting the withdrawal in whole or in part;

(3) Upon the publication in the FEDERAL REGISTER of a notice denying the withdrawal application or proposal, in whole or in part, giving the date and time the lands shall be open; or

(4) Publication in the FEDERAL REGISTER of a notice of request for cancellation of a withdrawal application or proposal, in whole or in part, giving the date and time the lands are open.

§ 2091.5-2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.

(a)(1) Lands covered by a withdrawal application or withdrawal proposal filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the FEDERAL REGISTER, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5-1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5-1 of this title.

(b) Segregations resulting from applications filed under this section terminate in accordance with procedures in § 2091.5-1 of this title.

§ 2091.5-3 Segregative effect and opening: Emergency withdrawals.

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise

43 CFR Ch. II (10-1-11 Edition)

be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, and cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration of the withdrawal unless segregation is effected by the publication in the FEDERAL REGISTER of a notice of a withdrawal application or proposal.

§ 2091.5-4 Segregative effect and opening: Water power withdrawals.

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered withdrawn and are segregated from operation of the public land laws, but are not withdrawn and segregated from the operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws after a revocation or cancellation order issued by the Department of the Interior or after a determination to open the lands is made by the Federal Energy Regulatory Commission under section 24 of the Federal Power Act. (See subpart 2320) Mining claims may be located on such lands under procedures in subpart 3730 of this title. These lands are opened by publication in the FEDERAL REGISTER of an opening order specifying the extent, date and time of opening.

§ 2091.5-5 Segregative effect and opening: Federal Power Act withdrawals.

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate.

(2) The issuance of a permit or license for a project by the Federal Energy Regulatory Commission withdraws the lands from the operation of the mining laws. (See part 3730).

(b) Lands withdrawn under section 24 of the Federal Power Act remain withdrawn until the withdrawal is vacated

Bureau of Land Management, Interior

§ 2091.7-2

and the lands opened by proper authority.

(c) After a withdrawal has been vacated, the lands are opened to the operation of the public land laws by notation of the lands records to that effect.

§ 2091.5-6 Congressional withdrawals and opening of lands.

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the withdrawal. If the statute does not specify the date, duration and extent of segregation, the Secretary shall publish in the FEDERAL REGISTER a Public Land Order so specifying.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the FEDERAL REGISTER an opening order so specifying.

§ 2091.6 Opening of withdrawn lands: General.

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the FEDERAL REGISTER of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the FEDERAL REGISTER of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the FEDERAL REGISTER as a separate document. In each case, the opening order specifies the time, date and specific conditions under which the lands are opened. (See subpart 2310.)

§ 2091.7 Segregation and opening of lands classified for a specific use.

§ 2091.7-1 Segregative effect and opening: Classifications.

(a)(1) Lands classified under the authority of the Recreation and the Public Purposes Act, as amended (43 U.S.C. 869-4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act, except as provided in the notice of realty action.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411-18) are segregated to the extent described in the notice of classification.

(b) The segregative effect of the classification described in § 2091.7-1 of this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications; (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2740 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2740 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date on these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classification shall be terminated by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

[52 FR 12175, Apr. 15, 1987; 52 FR 36575, Sept. 30, 1987]

§ 2091.7-2 Segregative effect and opening: Taylor Grazing Act.

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice. The segregative effect for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the FEDERAL REGISTER of an opening order specifying the date and

§ 2091.8

time of opening or upon issuance of a patent or other document of conveyance,

§ 2091.8 Status of gift lands.

Upon acceptance by the United States, through the Secretary of the Interior, of a deed of conveyance as a gift, the lands or interests so conveyed will become property of the United States but will not become subject to applicable land and mineral laws of this title unless and until an order to that effect is issued by BLM.

[62 FR 52036, Oct. 6, 1997]

§ 2091.9 Segregation and opening resulting from laws specific to Alaska.

§ 2091.9-1 Alaska Native selections.

The segregation and opening of lands authorized for selection and selected by Alaska Natives under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), are covered by part 2650 of this title.

§ 2091.9-2 Selections by the State of Alaska.

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by subpart 2627 of this title.

§ 2091.9-3 Lands in Alaska under grazing lease.

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a-316o) are covered by part 4200 of this title.

Subpart 2094—Special Resource Values; Shore Space

AUTHORITY: R.S. 2478, secs. 4, 5, 69 Stat. 444; 43 U.S.C. 1201, 48 U.S.C. 462 note.

SOURCE: 35 FR 9540, June 13, 1970, unless otherwise noted.

§ 2094.0-3 Authority.

Section 1 of the Act of May 14, 1898 (30 Stat. 409) as amended by the Acts of March 3, 1903 (32 Stat. 1028) and August 3, 1955 (69 Stat. 444; 48 U.S.C. 371) provides that no entry shall be allowed extending more than 160 rods along the

43 CFR Ch. II (10-1-11 Edition)

shore of any navigable water. Section 10 of the Act of May 14, 1898, as amended by the Acts of March 3, 1927 (44 Stat. 1364), May 26, 1934 (48 Stat. 809), and August 3, 1955 (69 Stat. 444), provides that trade and manufacturing sites, rights-of-way for terminals and junction points, and homesites and headquarters sites may not extend more than 80 rods along the shores of any navigable water.

§ 2094.0-5 Definitions.

The term *navigable waters* is defined in section 2 of the Act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411), to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark.

§ 2094.1 Methods of measuring; restrictions.

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

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

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