

**SUGGESTIONS TO HOMESTEADERS AND PERSONS DESIRING TO  
MAKE HOMESTEAD ENTRIES.**

[Circular No. 541.]

[In this revision of the Suggestions to Homesteaders changes were made in the following paragraphs from the form in which they appeared in the revision of April 6, 1917, Circular No. 541 (unpublished): 5, 6, 8, 9, 17, 27, 28, 30, 32, 35, 36, 37, 43, 45, 47, 50, and 51.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., January 16, 1922.*

1. Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

As each applicant is required to swear that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the affidavit that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

Information as to whether a particular tract of land is subject to entry may be obtained from the register or receiver of the land district in which the tract is located, either through verbal or written inquiry, but these officers must not be expected to give information as to the character and quality of unentered land or to furnish extended lists of lands subject to entry, except through plats and diagrams which they are authorized to make and sell as follows:

For a township diagram showing entered land only.....	\$1.00
For a township plat showing form of entries, names of claimants, and character of entries.....	2.00
For a township plat showing form of entries, names of claimants, character of entry, and number.....	3.00
For a township plat showing form of entries, names of claimants, character of entry, number, and date of filing or entry, together with topography, etc.....	4.00

Purchasers of township diagrams are entitled to definite information as to whether each smallest legal subdivision, or lot, is vacant public land. Registers and receivers are therefore required in case of an application for a township diagram showing vacant lands to plainly check off with a cross every lot or smallest legal subdivision in the township which is not vacant, leaving the vacant tracts unchecked. There is no authority for registers and receivers to charge

and receive a fee of 25 cents for plats and diagrams of a section or part of a section of a township.

If, because of the pressure of current business relating to the entry of lands, registers and receivers are unable to make the plats or diagrams mentioned above, they may refuse to furnish the same and return the fee to the applicant, advising him of their reason for not furnishing the plats requested; that he may make the plats or diagrams himself or have same made by his agent or attorney; and that he may have access to the plats and tract books of the local land office for this purpose, provided such use of the records will not interfere with the orderly dispatch of the public business.

A list showing the general character of all the public lands remaining unentered in the various counties of the public-land States on the 30th day of the preceding June may be obtained at any time by addressing "The Commissioner of the General Land Office, Washington, D. C."

All blank forms of affidavits and other papers needed in making application to enter or in making final proofs can be obtained by applicants and entrymen from the land office for the district in which the land lies.

2. *Kind of land subject to homestead entry.*—All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character and are not occupied for the purposes of trade or business and have not been embraced within the limits of any withdrawal, reservation, or incorporated town or city; but homestead entries on lands within certain areas (such as lands in Alaska, lands withdrawn under the reclamation act, certain ceded Indian lands, lands within abandoned military reservations, agricultural lands within national forests, lands in western and central Nebraska, and lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, or asphaltic minerals) are made subject to the particular requirements of the laws under which such lands are opened to entry. None of these particular requirements are set out in these suggestions, but information as to them may be obtained by either verbal or written inquiries addressed to the register and receiver of the land office of the district in which such lands are situated.

#### HOW CLAIMS UNDER THE HOMESTEAD LAW ORIGINATE.

3. (a) Claims under homestead laws may be initiated either by settlement on surveyed or unsurveyed lands of the kind mentioned in the foregoing paragraph, or by the filing of a soldier's or sailor's declaratory statement, or by the presentation of an application to enter any surveyed lands of that kind.

(b) Under the law relating to ordinary lands a homestead entry is limited to 160 acres, but this area may sometimes be slightly exceeded where the tract is made up of irregular subdivisions. However, an entry of land which has been designated under one of the enlarged-homestead acts may contain 320 acres (see par. 43), and an entry of land designated under the stock-raising act may contain 640 acres. In western Nebraska 640 acres may be entered under the Kinkaid Act (explained in a special circular) without any designation of the land.

4. (a) Settlement is initiated through the personal act of the settler placing improvements upon the land or establishing residence thereon; he thus gains the right to make entry for the land as against other persons. A settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section, but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter he should define his claim by placing some improvements on each of the smallest subdivisions claimed. When settlement is made on unsurveyed lands the settler must plainly mark the boundaries of all lands claimed. Within a reasonable time after settlement actual residence must be established on the land and continuously maintained. Entry should be made within three months after settlement upon surveyed lands or within that time after the filing in the local land office of the plat of survey of lands unsurveyed when settlement was made. Otherwise, the preference right of entry may be lost. Under the act of August 9, 1912 (37 Stat., 267), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon. A settlement right on not exceeding 640 acres of unsurveyed land designated as subject to the stock-raising act may be obtained by establishment and maintenance of residence thereon, provided the boundaries of the tract claimed are plainly marked on the ground.

(b) Where a settlement claim has been duly initiated upon a tract of unsurveyed, unreserved, unappropriated public land by a person qualified to make homestead entry therefor, the settler is entitled to one or two leaves of absence during each residence year, aggregating not more than five months in each year after establishment of residence, in the same manner and upon the same conditions as persons having entries of record, as explained in paragraph 26. Detailed information regarding such leaves of absence is given in a special circular.

5. Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any persons who have been honorably discharged after 90 days' service in the Army or Navy of the United States during the War of the Rebellion or during the Spanish-American War or the Philippine insurrection. Declaratory statements of this character may be filed either by the soldier or sailor in person or through his agent acting under a proper power of attorney, but the soldier or sailor must make entry of the land in person, and not through his agent, within six months from the filing of his declaratory statement, or he may make entry in person without first filing a declaratory statement if he so chooses. Such declaratory statements may also be filed in person by those who have been honorably discharged after 90 days' service in the Army, Navy, or Marine Corps during the operations on the Mexican border or in the war with Germany, but they can not file such statements by agent. If a declaratory statement is filed by a

soldier or sailor in person, it must be executed by him before one of the officers mentioned in paragraph 16, in the county or land district in which the land is situated; if filed through an agent, the affidavit of the agent must be executed before one of the officers above mentioned, but the soldier's affidavit may be executed before any officer using a seal and authorized to administer oaths and not necessarily within the county or land district in which the land is situated. If the soldier dies without having filed application for entry following his declaratory statement, such entry may be made by his widow, or in case of her death or remarriage by his minor orphan children, but *not* by his heirs or devisees.

#### BY WHOM HOMESTEAD ENTRIES MAY BE MADE.

6. Homestead entries may be made by any person who does not come within either of the following classes:

- (a) Married women, except as hereinafter stated.
- (b) Persons who have already made homestead entry, except as hereinafter stated.
- (c) Foreign-born persons who have not declared their intention to become citizens of the United States.
- (d) Persons who are the owners of more than 160 acres of land in the United States.
- (e) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs, as hereinafter mentioned; or minors who served in the Army or Navy during the World War, who may make entry under section 8 of the act of August 31, 1918 (40 Stat., 954).
- (f) Persons who have acquired title to or are claiming, under any of the agricultural public-land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. Exception is made, however, as to an entry under one of the enlarged homestead acts, which may be allowed provided applicant's claims under the timber and stone, desert land, and preemption laws do not make up approximately 320 acres, and do not with the homestead claim aggregate more than 480 acres; also, as to an entry under the stock-raising law, which may be allowed, provided its area does not make up with such other claims more than 800 acres, and that said claims do not contain as much as 320 acres. The rules as to limitation on the area of additional entries under the last-mentioned act are set forth in the special circular issued thereunder.

#### EFFECT OF MARRIAGE ON WOMEN'S RIGHTS.

7. A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following conditions:

- (a) Where she has been actually deserted by her husband.
- (b) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.
- (c) Where the husband is confined in a penitentiary and she is actually the head of the family.

(d) Where the married woman is the heir of a settler or contestant who dies before making entry.

(e) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage; and this last condition does not apply if each party has had compliance with the law for one year next before the marriage and neither one abandons the land prior to filing application for entry.

8. The marriage of an entrywoman will not defeat her right to acquire title to the land if she continues to reside thereon and otherwise comply with the law; but ordinarily the failure of her husband to live upon the homestead with her is treated as an evidence of bad faith, requiring testimony for its rebuttal. Husband and wife can not maintain separate residences on their respective homestead entries, and if at the time of marriage each is holding an unperfected entry on which residence must be had in order to acquire title, they can not hold both entries unless they are entitled to the benefits of the act of April 6, 1914, as amended by the act of March 1, 1921 (41 Stat., 1193), explained in the next paragraph.

9. Where a homestead entryman or settler and a homestead entrywoman or settler intermarry after each has fulfilled the requirements of the law for one year, the husband may (under the provisions of the act mentioned, Appendix No. 18) elect on which of the entries the home shall be made, after which their residence there shall constitute compliance with the residence requirements as to both homesteads. Instructions regarding the method of procedure under the act are found in a special circular.

10. Where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than one year, she may, under the provisions of the act of October 22, 1914 (Appendix No. 20), submit proof (by way of commutation or otherwise) on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made, either by herself or by her husband. As to the method of procedure under that act, a special circular is issued.

11. A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

#### ENTRIES BY SOLDIERS AND SAILORS.

12. A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing on the lands applied for, and the application and accompanying affidavits may be executed before the officer commanding the branch of the service in which he is engaged.

#### ADDITIONAL ENTRIES.

13. (a) Regardless of the question whether the land involved has been designated as subject to the enlarged-homestead act or the stock-raising homestead law, any person otherwise qualified who has made

final proof on an entry for less than 160 acres under the homestead laws may make an additional entry for such an amount of public lands as will, when added to the amount for which he has already made proof, not exceed in the aggregate 160 acres; the applicant therefor must give such data as will serve to identify his first filing. Residence, cultivation, and improvement must be performed as in the case of an original entry.

(b) Regardless, also, of designation of the land involved, an additional homestead entry may be made by a person for such an amount of public lands adjoining lands then owned and occupied by him under his original entry as will, when added to such adjoining lands, not exceed in the aggregate 160 acres. An entry of this kind may be made by any person who has not acquired title to and is not, at the date of his application, claiming under any of the agricultural public-land laws, through settlement or entry made since August 30, 1890, any other lands which, with the land then applied for, would exceed in the aggregate 320 acres, but the applicant will not be required to show any of the other qualifications of a homestead entryman. In connection with such an entry, all residence and cultivation may be had (before or after its date) on the original tract, provided the entryman continues to own it during the period in question.

(c) Where a person is entitled to make additional entry, as explained in paragraph 13 (a), he may enter land which has been designated under the enlarged-homestead act of an area double that to which he would be otherwise entitled. (Appendix No. 13.)

(d) A person who has perfected a homestead entry for land of the character contemplated by the enlarged-homestead acts, or who has a pending entry for such land, may make an additional entry for land of like character, as explained in paragraphs 47 and 48.

(e) A person who has perfected a homestead entry for land of the character contemplated by the stock-raising act, or who has a pending entry for such land, may make an additional entry for land of like character to make up in the aggregate not more than 640 acres, as explained in a special circular issued under said act. See paragraph 51.

#### SECOND ENTRIES.

14. (a) Where a person commuted a homestead entry before June 5, 1900, or paid the Indian price of the land entered before May 17, 1900, his homestead right is restored. See acts of June 5, 1900, and May 22, 1902 (Appendix No. 4), and the act of May 17, 1900 (Appendix No. 3).

(b) Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the act of Congress of September 5, 1914, which provides that the applicant must show to the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. A special circular is issued regarding the procedure under said act.



(c) Where a person before February 20, 1917, made entry for land embraced in a ceded Indian reservation, and has at any time submitted proof thereon and has paid the full price of the land, being \$4 or more per acre for the tract, he is entitled to make a second homestead entry. (Appendix No. 5.)

(d) Where a person's homestead right is restored under the conditions mentioned in this paragraph, he may make an entry under the general law, under the enlarged-homestead act, or under the stock-raising law, at his option.

#### ADJOINING FARM HOMESTEAD.

15. An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. In connection with an entry of this character, there must be shown the required amount of residence and cultivation after the date thereof, but both residence and cultivation may be had on the original tract.

#### HOW HOMESTEAD ENTRIES ARE MADE.

16. A homestead entry may be made by the presentation to the land office of the district in which the desired lands are situated of an application properly prepared on blank forms prescribed for that purpose and sworn to before either the register or the receiver, or before a United States commissioner, or the judge or clerk of a court of record in the county or parish in which the land lies, or before any officer of the classes named who resides in the land district and nearest or most accessible to the land, although he may reside outside of the county in which the land is situated. An application is not acceptable if executed more than 10 days before its filing at the land office.

17. Each application to enter and the affidavits accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make, any

agreement or contract in any way or manner with any person or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself. Additional statements as to the character of the land must be made in applications under the enlarged-homestead acts and under the stock-raising law; but in the latter case, as the mineral in the land is reserved to the Government, no allegation as to same is made, but claimant must state that no part of the land is claimed, occupied or being worked under the mining laws.

18. All applications by persons claiming as settlers must, in addition to the facts required in paragraph 17, state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens, but they are not required to state facts showing any other qualifications of a homestead entryman, and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

19. All applications by soldiers, sailors, or their widows, or the guardians of their minor children should be accompanied by proper evidence of the soldier's or sailor's service and discharge and of the fact that the soldier or sailor had not, prior to his death, made an entry in his own right. The application of the widow of the soldier or sailor must also show that she is unmarried and that the right has not been exercised by any other person. Applications for the children of soldiers or sailors must show that the father died without having made entry, that the mother died or remarried without making entry, and that the person applying to make entry for them is their legally appointed guardian.

20. Applications for entry must be accompanied by the proper fee and commissions. (See par. 41.) A receipt for the money is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

#### RIGHTS OF WIDOWS, HEIRS, OR DEVISEES UNDER THE HOMESTEAD LAWS.

21. If a homestead settler dies without having filed application for entry, the right to enter the land covered by his settlement passes to his widow. If there be no widow, said right passes to his heirs or devisee. See paragraph 4 for the general rules regarding settlement claims.

22. If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be none, then to his heirs or devisees. However, if all the heirs be



minor children of the entryman or entrywoman, and their other parent be dead, the entry is not subject to devise. In such a case the right to a patent vests in the children at once upon proof only of the death of both parents and that they are the only children of the homesteader, provided, as to a male homesteader, that there be no widow. The law provides, in the alternative, that the executor, administrator, or guardian may, within two years after the death of the surviving parent, sell the land for the benefit of the children, in accordance with the law of the State where they are domiciled. In such cases it is required that there be furnished record evidence of an order for the sale made by a court of competent jurisdiction. In any event, publication and posting of notice of intention to submit proof or to ask issuance of patent to the purchaser is required.

23. If a contestant dies after having secured the cancellation of an entry, his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancellation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case, to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

24. The unmarried widow, or, in case of her death or remarriage, the minor children of soldiers and sailors who were honorably discharged after 90 days' actual service during the War of the Rebellion, the Spanish-American War, or the Philippine insurrection may file a declaratory statement in the manner explained in paragraph 5 and make entry as such widow or minor children, if the soldier or sailor died without making entry or failed to perfect an entry and was, at the time of his death, qualified to make another. The minor children must make a joint entry through their duly appointed guardian. If the widow files a declaratory statement and dies without having applied for entry, entry may be made on behalf of the minor children, but *not* by her devisees or other heirs.

#### RESIDENCE AND CULTIVATION REQUIRED UNDER THE HOMESTEAD LAWS.

25. With the exception of adjoining farm homestead entries and additional entries allowed under certain conditions pursuant to the general law, the enlarged homestead acts and the stock-raising law, a homestead entryman must establish residence upon the tract entered within six months after date of the entry, unless an extension of time is allowed, as explained in paragraph 35, and must maintain residence there for a period of three years. However, he may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him or included in an entry against which he had initiated a contest resulting afterwards in its cancellation. Moreover, he may absent himself for a portion or portions of each year after making entry and establishing residence, as more fully explained in paragraph 26.

When proof is submitted it must be shown that the homesteader is a citizen of the United States, provided, however, that a homestead entrywoman who is a citizen when she makes her filing and thereafter marries an alien need not show that her husband is an American citizen, but must show that he is entitled to become one.

26. During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for not more than two periods, aggregating as much as five months. In order to be entitled to such absences the entryman need not file applications therefor, but must each time he leaves the land file at the local land office (by mail or otherwise) notice of the time of leaving; and upon his return to the land he must notify said office of the date thereof. If he has returned after an absence of less than five months and filed notice of his return, he may, without any intervening residence, again absent himself—pursuant to new notice—for the remaining part of five months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than five months.

27. (a) Cultivation of the land for a period of 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 the same as to homesteads under the general law and under the enlarged homestead acts, and the years in question begin to run, not from the establishment of residence, but from the date of the entry. A larger amount of cultivation is required on entries under section 6 of the enlarged homestead acts (see paragraphs 49 and 50), and the above-mentioned rules are not applicable to entries under the reclamation act. No cultivation whatsoever is required under the so-called Kinkaid Act, which affects only Nebraska, while the stock-raising homestead law requires no specific area of cultivation, only that the land has been actually used for raising stock and forage crops, and that it has been improved under certain conditions.

(b) The Secretary of the Interior is authorized to reduce the requirements as to cultivation. This may be done if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. An application for reduction upon the grounds indicated must be filed at the proper local land office on the form prescribed therefor, and should set forth in detail the special physical conditions of the land on which claimant bases his right to a reduction.

A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but notice of the misfortune and of its nature must be submitted to the register of the local land office, under oath, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

No reduction in area of cultivation will be permitted on account of expense in removing the standing timber from the land. If lands are so heavily timbered that the entryman can not reasonably clear and cultivate the area prescribed by the statute, such entries will be considered speculative and not made in good faith for the purpose of obtaining a home. The foregoing applies to lands containing valuable or merchantable timber and will not preclude the reduction of area of cultivation on proper showing in cases where the presence of stumps, brush, lodge pole pine, or other valueless or nonmerchantable timber prevents the clearing and cultivation of the prescribed area.

(c) The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

#### CREDIT ON ACCOUNT OF MILITARY SERVICE.

28. (a) A soldier or sailor of one of the classes mentioned in paragraph 5 who makes entry must begin his residence and cultivation of the land entered by him within six months from the date of filing his declaratory statement, but if he makes entry without filing a declaratory statement he must begin his residence within six months after the date of the entry. Thereafter he must continue both residence and cultivation for such period as will, when added to the time of his military or naval service (under enlistment or enlistments covering war periods), amount to three years; but if he was discharged an account of wounds or disabilities incurred in the line of duty, credit for the whole term of his enlistment may be allowed; however, no patent will issue to such soldier or sailor until there has been residence and cultivation by him for at least one year, nor until a habitable house has been placed upon the land.

(b) In each year of residence required of the soldier he is entitled to the same absence privilege as is enjoyed by other homesteaders.

(c) If the soldier's military service was sufficient in duration to require only one year's residence and improvement upon the claim, the entryman must perform such an amount of cultivation as to evidence his good faith as a homestead claimant. A soldier with 19 months' or more military service will be required to reside on the land at least 7 months during the first entry year; with more than 12 and less than 19 months, he must reside on the land 7 months during the first year and such part of the second year as, added to his excess over 12 months' service, will equal 7 months, and must cultivate one-sixteenth of the area the second year; with 7 and not

more than 12 months, he must reside upon the land 7 months during each of the first and second years, and cultivate one-sixteenth of the area the second year; with 90 days and less than 7 months, he must reside upon the land 7 months during each year for the first and second years, and such part of the third year as, added to his service, will equal 7 months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation. If he delays the submission of proof beyond the period of residence required, the cultivation necessary for the years elapsing before the submission of proof must be shown. He may apply for and receive a reduction in the area to be cultivated, in the same manner and under the conditions required of other applicants. Where the entry is made under the stock-raising provisions of the homestead law, the above rule with respect to residence will be applicable, but the soldier must make the improvements on the land required of other persons under that law, and show in lieu of cultivation that he actually used the land for raising stock and forage crops during the period that he was required to reside on the land. He must show, in any entry under the homestead laws, that he had a habitable house on the land at the date of submitting proof. These rights are conferred by section 2305 of the United States Revised Statutes as amended by act of June 6, 1912 (37 Stat., 123), and act of February 25, 1919 (40 Stat., 1153).

(d) The act of June 16, 1898 (30 Stat., 473), copied in Appendix No. 21, provides that where a person has settled on the public lands under the homestead laws, his service in the Army, Navy, or Marine Corps during any war in which the United States may be engaged shall be construed as equivalent to residence and cultivation for the same length of time upon the tract entered or settled upon; also that no contest initiated against a homestead entry on the ground of abandonment shall be sustained, unless it be alleged and proved that the settler's alleged absence from the land was not due to his employment in such service.

(e) By the joint resolution of August 29, 1916 (39 Stat., 670), the provisions of said act are made "applicable in all cases of military service rendered in connection with operations in Mexico or along the borders thereof, or in mobilization camps elsewhere, whether such service be in the military or naval organization of the United States or the National Guard of the several States now or hereafter in the service of the United States."

(f) Section 1 of the act of July 28, 1917 (40 Stat., 248), grants credit for constructive residence and cultivation to homesteaders absent because of military or naval service during the World War and protects them from a charge of abandonment during such period; and section 2 of said act provides that where a homestead settler, applicant, or entryman dies while actually engaged in the military or naval service of the United States during any war in which the United States may be engaged, his widow, if unmarried, or in case of her death or marriage, his minor orphan children, or his or their legal representatives may proceed forthwith to make final proof upon the entry or application thereafter allowed, the death of the soldier or sailor while so engaged in the service of the United States being

equivalent to a performance of all requirements as to residence and cultivation upon such homestead.

(g) The act of March 1, 1921 (41 Stat., 1202), authorizes homestead settlers, applicants, or entrymen who enlisted prior to November 11, 1918, in the United States Army, Navy, or Marine Corps during the war with Germany and were honorably discharged or separated because of physical incapacities due to service and for that reason are unable to return to the land, to make proof without further residence, improvements, and cultivation, at such time and place as may be authorized by this office.

(h) The act of September 29, 1919 (41 Stat., 288), grants to persons who after discharge from the military or naval service during the war against Germany are furnished a course in vocational training under the terms of the vocational rehabilitation act approved June 27, 1918 (40 Stat., 617), and who before entering upon such course made settlement, application, or entry under the homestead laws, a leave of absence from the land for the purpose of undertaking training by the Federal Board for Vocational Education, and such absence while actually engaged in such training may be counted as constructive residence on the land, but no patent may be earned by such homesteader until he can show that he has complied with the residence, improvement, and cultivation requirements for a period of at least one year. Homesteaders entitled to the benefits of this act should forward to the local officers notice of their absence from the land and of the fact that they have been admitted to take a course thereunder.

(i) No credit can be allowed for military service where commutation proof is offered.

29. A soldier or sailor making entry during his enlistment in time of peace is not required to reside personally on the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is 3 years old or until it has been commuted; but a soldier or sailor is not entitled to credit on account of his military service in time of peace. If such soldier has no family, there is no way by which he can make entry and acquire title during his enlistment in time of peace.

30. Widows and minor orphan children of soldiers and sailors who make entry based on the husband's or father's military or naval service must conform to the requirements specified for the soldier or sailor in paragraph 28. The widow or minor orphan children have no right to make entry based on service during the World War only.

#### COMPLETION OF ENTRY BY WIDOW OR HEIRS.

31. Persons who make entry as the widows, heirs, or devisees of settlers are not required to reside upon the land entered by them, but they must improve and cultivate it for such period as, added to the time during which the settler resided on and cultivated the land, will make the required period of three years, and the cultivation must be to the extent required by the law under which the proof is offered. Commutation proof may, however, be made upon showing 14 months' actual residence and cultivation had either by the settler or the heirs,



devisee, or widow, or in part by the settler and in part by the widow, heirs or devisee.

32. Persons succeeding as widow, heirs, or devisees to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of three years. They are allowed a reasonable time after the entryman's death within which to begin cultivation, proper regard being had to the season of the year at which said death occurred. 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. They must in all cases show that they are citizens of the United States regardless of the question whether the entryman was himself a citizen. Moreover, the entry may not be completed by the widow, heirs, or devisee of a homestead entryman unless he himself had complied with the law in all respects to the date of his death, and they must also show, at the time of final proof, that there is a habitable house on the land.

#### HOLDERS OF PUBLIC OFFICE.

33. Homestead entrymen are not entitled to any special privileges whatsoever in connection with their claims by reason of the fact that they are appointed or elected to public offices, the duties of which require their residence elsewhere than on the homesteads.

#### ENTRYMEN WHO BECOME INSANE.

34. Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee. However, if the entryman regains his sanity before the expiration of three years after the date of the entry, he is required to reestablish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

#### LEAVES OF ABSENCE.

35. (a) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence can not be established on the land within six months after the date of the entry, additional time, not exceeding six months, may be allowed. An application for such extension must include the affidavits of the entryman, and two witnesses acquainted with the facts, which may be executed before any officer authorized to administer oaths and having a seal of office, through outside of the county or land district where the entry is situated. The application should set forth in detail the grounds upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first six months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made the basis for such an application.

(b) Leave of absence for one year or less may be granted by the register and receiver of the local land office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Application for such leave of absence must be sworn to by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located before an officer authorized to administer oaths and having a seal. It must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable. The period during which a homesteader is absent from his claim pursuant to a leave duly granted can not be counted in his favor.

(c) The act of February 25, 1919 (40 Stat., 1153), authorizes the register and receiver of the local land office to grant to such homesteaders as make proper showing in their applications that the climatic conditions make residence on the homestead for 7 months in each year a hardship a reduction in the terms of residence to 6 months in each year over a period of 4 years, or to 5 months in each year over a period of 5 years; but the total residence required need not exceed 25 months, not less than 5 of which shall be in each year and proof must be submitted within 5 years. Instructions under said act are printed in Circular No. 636.

#### COMMUTATION OF HOMESTEAD ENTRIES.

36. (a) All original, second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

(b) The entryman, or his statutory successor, must, as a general thing, show substantially continuous residence upon the land, was maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house upon the claim and cultivation of not less than one-sixteenth of its acreage. However, the proof may be accepted where actual residence for the required period is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Land Department be fully satisfied of entryman's good faith, and provided no contest or adverse proceeding shall have been initiated for default in residence, or other good cause, prior to

filing such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions, explained in paragraph 25, as to three-year proof.

(c) Where a contest is initiated against an entry, prior to filing of notice to submit commutation proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended, and the homesteader's absence will not be excused upon the ground that he has complied with the law for 14 months and is under no obligation to further reside upon the land. However, a contest for abandonment can not be maintained if the absence after the 14 months' residence is pursuant to a leave of absence regularly and properly granted under the act of March 2, 1889, or under conditions which would have entitled the entryman to such leave upon formal application therefor, and such absence will not prevent the submission of acceptable commutation proof.

(d) An entryman submitting commutation proof may add together, to make up the 14 months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding five months of which he had given notices as provided by the act of June 6, 1912.

(e) A person submitting commutation proof must, in addition to certain fees, pay the price of the land; this is ordinarily \$1.25 per acre, but is \$2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

(f) The claimant must show full citizenship, as in case of three-year proof.

(g) The provisions of law explained in paragraph 27 (f) apply to commutation proof also.

(h) Commutation proof can not be made on homestead entries allowed under the act of April 28, 1904 (33 Stat., 547), known as the Kinkaid Act; entries under the reclamation act of June 17, 1902 (32 Stat., 388); entries under the enlarged-homestead acts (post, par. 43 et seq.); entries allowed on coal lands under the act of June 22, 1910 (36 Stat., 583), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat., 527, Appendix No. 4); second entries allowed under the act of June 5, 1900 (31 Stat., 267; Appendix No. 4); second entries allowed under the act of May 22, 1902 (32 Stat., 203; Appendix No. 4), when the former entry was commuted; entries within forests under the act of June 11, 1906 (34 Stat., 233); or entries under the stock-raising act of December 29, 1916 (39 Stat., 862).

#### WHEN PROOF MAY BE SUBMITTED.

37. Either final or commutation proof may be made at any time when it can be shown that there is a habitable house upon the land and that the required residence and cultivation have been had. Proof must be submitted within five years. Failure to submit proof within the proper period is ground for cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued, and the case referred to the board of equitable adjudication for confirmation.

### WHO MAY SUBMIT PROOF.

38. (a) Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in paragraphs 10, 22, and 34. Final proof can be made only by citizens of the United States.

(b) Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

### HOW PROOFS MAY BE MADE.

39. Final or commutation proofs may be made before any of the officers mentioned in paragraph 16 as being authorized to administer oaths to applicants.

Any person desiring to make homestead proof should first forward a written notice of his desire to the register and receiver of the land office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

40. The register will issue a notice naming the time and place for submission of proof and cause same to be published at entryman's expense for 30 days preceding submission of proof in the newspaper designated by the register. If this be a daily paper, the publication must be inserted in 30 consecutive issues; if daily except Sunday, in 26; if weekly, in 5; and if semiweekly, in 9 consecutive issues.

The first day of publication must be at least 30 days before the date set for proof, and a copy of the notice must be posted in a conspicuous place in the office of the register for at least 30 days before said date.

The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The register will be responsible for the correct preparation of the notice.

On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is possible to do so, appear on the day mentioned in the notice.

### FEEES ON ENTRIES AND FINAL PROOFS.

41. *Fees and commissions.*—When a homesteader applies to make entry he must pay in cash to the receiver a fee of \$5 if his entry is for less than 81 acres, or \$10 if he enters 81 acres or more. And in addition to this fee he must pay, both at the time he makes entry and final proof, a commission of \$1 for each 40-acre tract entered

outside of the limits of a railroad grant and \$2 for each 40-acre tract entered within such limits. Fees under the enlarged-homestead act and under the stock-raising homestead act are the same as above, but the commissions are based upon the area of the land embraced in the entry. (See par. 43.) Where an entry is commuted no commissions are payable, except in connection with certain ceded Indian lands, as to which inquiry must be made specifically at the proper local land offices. On all final proofs made before either the register or receiver, or before any other officer authorized to take proofs, the register and receiver are entitled to receive 15 cents for each 100 words reduced to writing, and no proof can be accepted or approved until all fees have been paid.

In all cases where lands are entered under the homestead laws in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming the commissions due to the register and receiver on entries and final proofs, and the testimony fees under final proofs, are 50 per cent more than those above specified, but the entry fee of \$5 or \$10, as the case may be, is the same in all the States.

Remittances of moneys to the local land offices must be made in cash or currency; but certified checks when drawn in favor of the receiver of public moneys on National and State banks and trust companies, which can be cashed without cost to the Government, can be used. Likewise, United States post-office orders are acceptable when they are made payable to the receiver and are drawn on the post office at the place where the receiver is located.

#### ALIENATION OF LAND BY HOMESTEADER.

42. The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (see Appendix No. 1), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned.

*Alienation after proof and before patent.*—The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Land Department subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes, and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.



## ENLARGED HOMESTEADS.

43. The acts of February 19, 1909 (extended by later legislation to additional States), and of June 17, 1910 (Appendix No. 13), provide for the making of homestead entries for areas of not exceeding 320 acres of public land in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, designated by the Secretary of the Interior as nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be "arid."

The terms "arid" or "nonirrigable" land, as used in these acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Lands containing merchantable timber, or valuable minerals other than coal, phosphate, nitrate, potash, oil, gas, or asphaltic minerals, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these acts. Entry may be allowed for the surface only of lands containing any of the minerals named. A legal subdivision will not be regarded as irrigable and excluded from designation under these acts because a minor portion of it is susceptible of irrigation unless said portion is at least one-eighth thereof. Where there is an application for additional entry after submission of final proof on the original the land covered by the original will not be regarded as irrigable, and excluded from designation, upon the ground that more than one-eighth of any subdivision is irrigable, unless said original embraces the equivalent of 20 or more acres of land in a reasonably compact body that can be thoroughly irrigated and reclaimed.

## DESIGNATION OF LANDS—PETITIONS.

44. From time to time lists designating the lands which are subject to entry under these acts are sent to the registers and receivers in the States affected, and they are instructed immediately upon the receipt of such lists to note the same upon their tract books. In the order of designation, a date is fixed on which it will become effective, and at that time the land becomes subject to entry under the act.

Under the act of March 4, 1915 (38 Stat., 956, Appendix No. 17), a person may file an application for entry under the enlarged-homestead act of a tract of surveyed land which has not been designated thereunder, accompanied by a petition for its designation, or he may file application for additional entry, though part of the land involved has not been designated, accompanied by like petition. He thus secures a preference right of entry if the land be thereafter designated. Attention is directed to the fact that an additional entry can not be allowed unless the tract first entered, as well as the one sought to be added, is designated, and therefore petitions should in all cases cover so much of both tracts as has not already been designated.

Instructions prescribing the procedure under the act mentioned are found in a special circular; the act itself is copied in Appendix No. 17.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above acts the designation may be canceled; but where an entry is made in good faith under the provisions of these acts, such designation will not thereafter be modified to the injury of anyone who in good faith has acted upon such designation. Each entryman must furnish affidavit as required by section 2 of the acts.

#### COMPACTNESS—FEES.

45. A tract included in an entry under the enlarged-homestead act or in an entry under the general law, and an additional under said act, should be in compact form, and such claim may not be permitted to entirely surround a subdivision of unappropriated lands subject to entry under said act.

The acts provide that the fees shall be the same as those now required to be paid under the homestead laws; therefor, while the fees may not in any one case exceed the maximum fee of \$10 required under the general homestead law, the commissions will be determined by the area of the land embraced in the entry. See paragraph 41.

#### FILING OF APPLICATIONS.

46. Applications to make entry under these acts must be submitted on forms prescribed by the General Land Office; in case of an original entry, Form 4-003, and of an additional entry, Form 4-004.

The affidavit of an applicant as to the character of the land must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavit should be modified accordingly.

The affidavit of the witnesses, as well as that of the applicant, must be executed before an officer authorized to administer oaths in homestead cases. See paragraph 16.

#### ADDITIONAL ENTRY FOR CONTIGUOUS LAND.

47. (a) Under section 3 of the enlarged-homestead acts a person who has entered less than 320 acres of land which is of the character described therein, and which has been so designated by the Secretary of the Interior, may make entry of adjoining lands, also so designated, which will not, together with the tract first entered, exceed 320 acres in area. Where proof has not already been submitted on the original claim at the time application for additional entry is filed, residence upon and cultivation of the tract first entered will be accepted as equivalent to residence upon and cultivation of the additional.

(b) Where a person makes entry under the general provisions of the homestead laws, and before submission of proof on said entry makes an additional entry under said section 3, the following rules govern the requirements as to the cultivation and residence to be shown by him on submission of proof:

(c) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivated, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for one year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in paragraph 27 (b) are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(d) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for one year, increased to one-eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If cultivation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i. e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than seven years from the date of the original entry.

(e) In instances where proof is first made on the original entry meeting the requirement of the homestead law respecting residence, no further showing in this particular will be exacted in making proof upon the additional entry; neither will a period of residence be exacted in proof upon the combined entry in excess of that required under the original entry.

(f) As above indicated, persons who have already submitted proof on their original entries are not, for that reason, deprived of the privilege of making additional entries. However, if a person makes entry for a tract contiguous to the one originally entered, he is required to show that he still owns and occupies (not necessarily resides upon) the tract first entered; in submitting proof on the additional filing, he is accorded credit for all residence on either tract, but must show cultivation of the additional tract itself to the extent and for the period (after the date of the additional entry) required by law. A special circular is issued under the act of March 3, 1915, allowing such additional entries (38 Stat., 956, Appendix No. 13).

#### ADDITIONAL ENTRY FOR INCONTIGUOUS LAND.

48. (a) Under section 7 of the enlarged-homestead acts, added thereto by the act of July 3, 1916 (39 Stat., 344), and the act of September 5, 1916 (39 Stat., 724), a person who has submitted final proof on a homestead entry for less than 320 acres of land of the character contemplated by said acts, has the right to enter sufficient land of similar character, not contiguous to his first entry, to make up therewith not more than 320 acres. He is required to have the same residence and cultivation and a habitable house on the additional entry as though it were an original filing, except where the second tract is within 20 miles of the first, in which case residence and a habitable house on either tract will be accepted. A special circular is issued relating to such additional entries. The act of

July 3, 1916 (extended to Idaho by that of Sept. 5, 1916), is printed in Appendix No. 21.

(b) Where a person has perfected a homestead entry for less than 160 acres and is entitled to an additional entry for sufficient land to make that area, he may enter under the enlarged-homestead act a tract designated thereunder of an amount double that which he would be entitled to appropriate of land not so designated. (Act of Feb. 20, 1917, 39 Stat., 925, Appendix No. 13.)

#### ENTRIES NOT REQUIRING RESIDENCE.

49. The sixth section of the act of February 19, 1909 (35 Stat., 639, Appendix No. 15), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands need not reside thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act; and no attempt will be made at this time to determine how far from the land an entryman will be allowed to reside, as it is believed that the proper determination of that question will depend upon the circumstances of each case.

During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. Proof may be submitted on entries of this class within seven years after their dates.

The rules relating to petitions for designation of lands, referred to in paragraphs 44 and 47, apply to section 6 of the enlarged-homestead act; applications to make entry thereunder will not be received until the date fixed in the order designating the land as subject to entry under said section, except when accompanied by petitions for designation, complying with the rules with reference thereto.

50. The sixth section of the act of June 17, 1910 (36 Stat., 531), as amended by the act of August 10, 1917 (40 Stat., 273), provides for the designation of 1,000,000 acres of land in the State of Idaho of the same character contemplated by section 6 of the act of February 19, 1909. One-sixteenth of the cultivable area of the entry must be cultivated during the first year of the entry, one-eighth of the area during the second year, and one-fourth of the area during the third and each succeeding year. Entries made under section 6 of the act prior to August 10, 1917, may be perfected without a showing as to cultivation during the first year, but entryman must show cultivation of one-eighth of the area of the entry during the second year, one-fourth of the area of the entry during the third year and until submission of final proof; but in such cases the entryman must show that he resided within 20 miles from the land in his entry, whereas under the act as amended it is required that "after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho."

### STOCK-RAISING HOMESTEADS.

51. (a) The act of December 29, 1916 (39 Stat., 862), provides that the Secretary of the Interior may designate unappropriated, unreserved public lands as "stock-raising lands," where the surface thereof is, in his opinion, chiefly valuable for grazing and raising forage crops, provided they do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, are of such character that 640 acres are reasonably required for the support of a family, and contain no water holes or other bodies of water needed or used by the public for watering purposes.

(b) Where lands are thus designated, any person qualified to make entry under the homestead laws may make a homestead entry for not exceeding 640 acres thereof, and the fact that the tract sought may be valuable for coal or other minerals is not material, since all minerals are reserved to the United States.

(c) There is required compliance with the provisions of the general law with respect to residence and the erection of a habitable house. No specific amount of cultivation is required, but it must be shown, on submission of proof, that the entryman has made permanent improvements upon the tract, tending to increase its value for stock-raising purposes, of the value of not less than \$1.25 per acre, half of which improvements must be placed there within three years after entry; also that the land has been used for three years for raising stock and forage crops.

(d) Preference right of entry through applications accompanied by petitions for designation may be secured in substantially the same manner as under the enlarged-homestead law.

(e) The act provides for additional entries and for entries conditioned on the surrender of former filings. These matters, as well as the preferential right for additional entry of contiguous lands, are explained in a special circular issued under this act.

WILLIAM SPRY,  
*Commissioner.*

Approved:

E. C. FINNEY,  
*First Assistant Secretary.*

HENRY CHAMBERLAIN.

*Decided January 23, 1922.*

TIMBER AND STONE ACT—OIL AND GAS LANDS—SURFACE RIGHTS—FINAL PROOF—  
PATENT—BURDEN OF PROOF—EVIDENCE.

A complete equitable title becomes vested upon the claimant's full compliance with the law and the final certificate upon a stone entry is *prima facie* evidence of that title, and thereafter such entryman can not be compelled to accept a limited patent pursuant to the act of July 17, 1914, because of a subsequent report that the land is valuable for oil or gas, unless the Government makes the charge and shows upon assumption of the burden of proof that the land was of known mineral character at the date of the perfection of the claim.