

these applications will be governed by the instructions given in connection with applications for soldiers' additional homestead entries as set out in § 61.15 of this chapter.

[Circ. 1342, Nov. 23, 1934, as amended by Circ. 1455, 4 F. R. 1102; see also item 3 of Note to chapter]

§ 64.10 *Payment and final certificate.*

If, on examination of the application by the regional administrator, all be found regular, the manager will be directed to issue a final certificate, upon payment for the land, and in the absence of objections shown by his records.

[Circ. 1342, Nov. 23, 1934]

## Part 65—Homesteads

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

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#### NATIONAL FOREST HOMESTEADS

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**AUTHORITY:** §§ 65.1 to 65.29 issued under R. S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U. S. C. 1201, 48 U. S. C. 371.

**SOURCE:** §§ 65.1 to 65.29 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

**CROSS REFERENCES:** For applications and entries, Alaska, see Part 60 of this chapter. For applications and entries, general, see Parts 101–108 of this chapter. For home and industrial sites in Alaska, see 36 CFR 251.7. For home sites or headquarters, Alaska, see Part 64 of this chapter. For homestead regulations, general, see Part 166 of this chapter. For homesteads on coal, oil, and gas lands, Alaska, see Part 66 of this chapter.

### HOMESTEADS UNDER THE ACT OF MAY 14, 1898, AS AMENDED<sup>1</sup>

§ 65.1 *Lands subject to settlement and homestead entry.*<sup>1</sup> All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

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

<sup>1</sup> The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 371), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 48 U. S. C. 371), July 8, 1916 (39 Stat. 352; 48 U. S. C. 373–375, 378), June 28, 1918 (40 Stat. 632; 48 U. S. C. 373–375, 378) and April 13, 1926 (44 Stat. 243; 48 U. S. C. 379, 380, 380a).

tended in any such manner as will be productive of long narrow strips of land departing materially from the compactness of the tract as a whole.

§ 65.3 *Notice of settlement.* In addition to marking the claim by permanent monuments at each corner, the settler, in order to protect his claim, must post a notice of the location on the land and must, within 90 days after the settlement, file a copy of the notice for record with the commissioner of the recording district in which the land is situated. The location notice should contain the name of the settler, the date of the settlement, and such description of the land claimed by reference to some natural object or permanent monument as will serve to identify it.

§ 65.4 *Settlement on surveyed lands; time of filing application.* 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. As to such claims no posting or recording of a location notice is required, but an application for entry must be filed at the proper district land office within 3 months after the date of settlement in order to preserve the preference right of entry as against subsequent settlers.

§ 65.5 *Form of application.*<sup>2</sup> Application to make homestead entry for lands in Alaska should be presented on Form 4-007, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U. S. C. 161, 171).

§ 65.6 *Showing to accompany application.* Each application on the prescribed form should be accompanied by a corroborated statement showing:

(a) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such

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

water from any homestead or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration based on an equitable claim is filed with the application, or the land has been restored from the reservation.

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

[Circ. 491, Feb. 24, 1928; modified to conform to E. O. 5106, May 4, 1929, as amended by Circ. 1700, 13 F. R. 6006]

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

§ 65.8 *Description and contiguity of lands.* A homestead application must describe the lands desired according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

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

§ 65.10 *Limitation of acreage.* The act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 212), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

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

§ 65.12 *Second entries.* No showing is required of an applicant for 160 acres in the Territory as to a former homestead entry outside of the Territory, but if the applicant has made homestead entry or filed a location notice of a settlement in the Territory and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the Territory, make the showing required by the act of September 5, 1914 (38 Stat. 712; 43 U. S. C. 182), explained in §§ 166.86-166.92 of this chapter.

§ 65.13 *Additional entries.* Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854; 43 U. S. C. 214), for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 166.79-166.85 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

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

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

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

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

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

§ 65.18 *Effect of transfer of land before proof.* In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the Territory transfers for church, cemetery, or school purposes to the extent

of 5 acres and for railroad rights of way across the land having an extreme width of 200 feet are permitted.

§ 65.19 *Commutation of entries.* To the extent of not more than 160 acres an entry may be "commuted;" that is, the claimant may show 14 months' residence upon the land and cultivation of one-sixteenth of the area commuted and pay \$1.25 per acre therefor, cash certificate thereupon issuing, followed by patent in the usual manner. In such cases, the homesteader is entitled to a 5 months' absence in each year, but cannot have credit as residence for such period, actual presence on the land for 14 months being required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506-508, 509), is not subject to commutation.

§ 65.20 *Survey without expense to settler.* (a) The land included in a settlement claim may be surveyed without expense to the settler provided he has sufficiently complied with the law in the matter of residence, cultivation, and improvements to submit 3-year proof.

(b) Petition for survey should be filed in duplicate in the proper district land office, describing the land settled upon by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. The petition should show the date when the settlement was made, the dates from which and to which the settler has resided upon the land, the number of acres cultivated each year and the results of the cultivation, and the character and value of the improvements on the land. The petition should also show that the land does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homestead or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been re-

stored from the reservation. The petition must be signed by the applicant and should be corroborated by the statements of two persons having knowledge of the facts.

(c) The manager will assign a current serial number to the petition and will transmit the original thereof to the regional administrator, and if the manager finds the showing satisfactory, if no shore-space question is involved, and in the absence of other objection he will send the duplicate copy of the petition to the regional cadastral engineer of the public survey office, who, not later than the next succeeding surveying season will issue instructions for the survey of the land without expense to the applicant.

(d) If deemed advisable the regional cadastral engineer will direct the survey of the land under the rectangular system instead of the survey of the particular claim by metes and bounds.

(e) If a shore-space question is involved, the request for survey should be accompanied by a petition, in duplicate, for the waiver of the restriction as to length of claim or for the restoration of the land from reservation, or both. In such case the manager will send the original of both petitions to the regional administrator and the duplicate of both petitions to the regional cadastral engineer. The former will determine whether or not there is objection to the waiver or restoration requested or to the making of the survey. The determination will be sent to the manager, as in other cases, but the regional administrator will send a copy of the determination to the public survey office at Juneau, Alaska. If a favorable determination is made, the survey may be proceeded with in the public survey office in like manner as though the land had been restored; but the survey will not be accepted by the Bureau of Land Management and an application to enter based thereon will not be entertained unless and until the land is actually restored. In the case of an unfavorable determination by the regional administrator, action on the petition for survey will be suspended until final action has been had on the petition for restoration.

[Circ. 491, Feb. 24, 1928, as amended by Circ. 1700, 13 F. R. 6006]

§ 65.21 *Survey at expense of settler.* A settler who wishes to secure earlier action in the matter of survey, or one

who wishes to submit commutation proof, may have a survey made at his own expense by a deputy surveyor appointed by the regional administrator.

§ 65.22 *Application to enter land included in special survey.* After a special survey has been made, application to enter should be made as in the case of other settlements on surveyed lands.

§ 65.23 *Submission of proof.* (a) Proof may be submitted without previous notice of intention by publication, but it should not be submitted in advance of a special survey.

(b) Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the manager of the land office for the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the district land office.

§ 65.24 *Fees and commissions.* The same payments as fees and commissions are required in connection with homestead entries and proofs in Alaska as must be made in connection with ordinary homestead entries in the State of Oregon. The amounts are set forth in § 166.8 of this chapter.

§ 65.25 *Publication and posting.* (a) The manager will report promptly to the regional administrator the receipt of the application to enter and the proof testimony. He will take no action thereon and withhold the issuance of notice for publication and posting until the mineral or nonmineral character of the land has been determined and he has been instructed as to further action which should be taken. When authorized he will carefully examine the application to enter and the proof testimony and if the required payments have been made, he will allow the application and will issue and transmit to the entryman notice for publication reading as follows:

Final proof testimony on homestead entry  
 ----- embracing -----  
 has been submitted by -----  
 entryman, and his witnesses, -----  
 residing at -----, and  
 residing at -----, and is now in the  
 files of the district land office at -----  
 Alaska, and if no protest is filed in the dis-  
 trict land office at ----- on or before  
 -----, said final proof will be accepted  
 and final certificate issued.

The manager will send a copy of the proof notice to the regional administrator.

(b) Where a special survey has been made, the proof notice must give the survey number of the land, and other information required by § 60.3 of this chapter, and it must be published once a week for nine consecutive weeks, in accordance with § 106.18 of this chapter, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(c) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 106.18 of this chapter. The manager must cause a copy of the notice to be posted in his office during the entire period of publication. [Circ. 491, Feb. 24, 1928, as amended by Circ. 1181, Feb. 19, 1929, Reg. Oct. 19, 1929, Circ. 1455, 4 F. R. 1102, Circ. 1547, 8 F. R. 7508]

§ 65.26 *Adverse claim.* (a) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U. S. C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to, the tract of land or any part thereof sought to be acquired, may file in the land office where the proof is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(b) Where such adverse claim is filed, action on the proof will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(c) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet

title, as stated, and any contest which may be filed will be disposed of by the manager in accordance with the Rules of Practice, Part 221 of this chapter.

§ 65.27 *Proof of publication and posting.* The proof of publication must consist of the statement of the publisher or foreman of the designated newspaper, or some other employee authorized to act for the publisher, that the notice (a copy of which must be attached to the statement) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper and not in a supplement. Proof of posting on the claim must consist of the statements of the applicant and one witness who of their own knowledge know that the plat of survey and proof notice were posted as required and remained so posted during the required period. The manager must certify to the posting of the notice in a conspicuous place in his office during the period of publication.

§ 65.28 *Issuance of certificate.* Upon the expiration of the period allowed for the filing of adverse claims, if all necessary proofs and payments have been made, and in the absence of objection then appearing, the manager will issue final or cash certificate as may be proper.

#### NATIONAL FOREST HOMESTEADS

§ 65.29 *Procedure governing national forest homesteads.* (a) The act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506-508, 509), providing for homestead entries of agricultural lands within national forests applies to such lands in Alaska. The regulations under this act will be found in Part 170.

(b) National-forest entries may be made only after the lands desired have been listed by the Secretary of Agriculture as agricultural in character and after a declaration by the Director, Bureau of Land Management that the listed lands are subject to settlement and entry.

(c) Information as to the boundaries of the forests, the method of applying for listing, etc., may be obtained by addressing the Chief, Forest Service, Washington, D. C., or the Regional Forester, Forest Service, Juneau, Alaska.

(d) Homestead entries in national forests are limited in area to 160 acres and are subject to the general home-

stead laws and regulations, except that no commutation is allowed. Application should be made on Form 4-007, as in other cases.

(e) In the matter of form of entry and direction of boundaries, homestead settlements and entries in national forests in Alaska are subject to the same conditions and provisions as are applicable to other homestead claims in Alaska.

(f) No showing as to shore space, or as to springs or water holes, is required in connection with homestead entries in national forests in Alaska.

CROSS REFERENCE: For prohibition of settlement on forest lands except in accordance with the act of June 11, 1906, see 36 CFR 261.11 (a).

## Part 66—Homesteads on Coal, Oil, and Gas Lands

### INITIATION AND COMPLETION OF HOMESTEAD CLAIMS ON COAL, OIL, AND GAS LANDS

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AUTHORITY: §§ 66.1 to 66.10 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 66.1 to 66.10 contained in Circular 491, Feb. 24, 1928, except as noted following section affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

§ 66.1 *Statutory authority.* (a) The act of March 8, 1922 (42 Stat. 415; 48 U. S. C. 376, 377) provides that upon the unreserved, unwithdrawn public lands in the Territory of Alaska homestead claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits, or which may be, in fact, valuable for the coal, oil, or gas contained therein. Thus, by the class last named, provision is made