SUBCHAPTER I—HOMESTEADS

PART 166—ORIGINAL, ADDITIONAL, SECOND, AND ADJOINING FARM HOMESTEADS, AUTHORIZED BY THE GENERAL PROVISIONS OF THE HOMESTEAD LAWS

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SOURCE: §§ 166.1 to 166.87 appear at 19 F. R. 8966, Dec. 23, 1954, except as otherwise noted.

CROSS REFERENCES: For applications and entries, see Parts 101 to 108 of this chapter. For enlarged homesteads, see Part 167 of this chapter. For homesites or headquarters, Alaska, see Part 64 of this chapter. For homesteads, Alaska, see Part 65 of this chapter. For homesteads on coal, oil, and gas lands, Alaska, see Part 66 of this chapter. For Indian allotments and Indian lands, see Parts 176, 177 of this chapter. For Indians and Eskimos, Alaska, see Part 67 of this chapter. For Kinkaid homesteads, see Part 169 of this chapter. For land classifications, see Part 296 of this chapter. For national forest homesteads, see Part 170 of this chapter. For soldiers' and sailors' homestead and preference rights, see Part 181 of this chapter. For stock-raising homesteads, see Part 168 of this chapter. For surveys, Alaska, see Part 78 of this chapter. For surveys and resurveys, see Parts 280, 281 of this chapter.

GENERAL REGULATIONS

AUTHORITY: §§ 166.1 to 166.14 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.1 Examination of land by applicant; information as to available land.[1]

(a) 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

[1] 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.

make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

(b) As each applicant is required to state 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 statement 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.

[19 F.R. 8966, Dec. 23, 1954, as amended, Circ. 2085, 27 F.R. 8545, Aug. 25, 1962]

§ 166.2 Kind of land subject to homestead entry.[1]

All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character, 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, sodium, sulphur, or asphaltic minerals), are made subject to the particular requirements of the laws under which such lands are opened to entry.

CROSS REFERENCE: For lands in Alaska, see Parts 51, 52, 60–82, of this chapter. For lands occupied for purposes of trade or manufacturing, Alaska, see Part 81 of this chapter. For agricultural entries on mineral lands, see Part 102 of this chapter. For lands within abandoned military reservations, see Part 116 of this chapter. For national forest homestead entries, see Part 170 of this chapter. For ceded Indian lands, see Parts 176, 177 of this chapter. For mineral land regulations, see Parts 185, 187, 191–198 of this chapter. For regulations relating to reclamation, see Parts 230–234 of this chapter.

[1] Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to homestead settlement or entry until such appropriation is authorized by classification. See Part 296 of this chapter.

§ 166.3 Ways in which claims may be initiated; area enterable.[1]

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

(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.

§ 166.4 Homestead qualifications and disqualifications.

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

(a) Married women, except as stated in § 166.5.

(b) Persons who have already made homestead entry, except as stated in §§ 166.67–166.85.

(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.

(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.

§ 166.5 Conditions under which married woman may make homestead entry.

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

(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 1 year next before the marriage and neither one abandons the land prior to filing application for entry.

§ 166.6 Entry by widow.

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.

§ 166.7 Entry by Indians.

The act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190) expressly states that no fees or commissions shall be charged on account of Indian homestead entries, and a patent different in character from the citizen homestead patent is issued on entries made under said act or the act of March 3, 1875 (18 Stat. 420; 43 U.S.C. 189).

CROSS REFERENCES: For Indians and Eskimos, Alaska, see Part 67 of this chapter. For Indian allotments and Indian lands, see Parts 176, 177 of this chapter.

§ 166.8 Payments required at the time of entry and proof; form of remittances.

(a) When a homesteader applies to make entry he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C. 185), as amended, must pay, as a cancellation service charge, an additional $10, which is not returnable. On all final proofs made before the manager, or before any other officer authorized to take proofs, the claimant must pay to the manager the costs of reducing the testimony to writing, as determined by the manager. No proof shall be accepted or approved until all charges have been paid.

(b) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

[Circ. 2085, 27 F.R. 8545, Aug. 25, 1962]

CROSS REFERENCES: For general regulations involving applications and entries, see Part 101 of this chapter. For proofs, see Part 106 of this chapter. For railroad grants, see Part 273 of this chapter.

§ 166.9 Receipts for payment; notice to applicant.

A receipt for the money tendered in connection with an application to enter 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.

§ 166.10 Alienation of all or part of claim; mortgages; relinquishments.

(a) 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 (43 U.S.C. 174), 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.

(b) 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. A mortgagee who files notice of his interest in the land office becomes entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting the land which is required to be given the original entryman or claimant.

(c) 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 Department of the Interior 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 (43 U. S. C. 164), 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.

(d) Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of a filing or entry.

§ 166.11 Liability of claim for debts of homesteader.

Under section 2296, Revised Statutes and Public Resolution No. 53, approved April 28, 1922 (42 Stat. 502; 43 U.S.C. 175), lands acquired under the provisions of the homestead laws and laws supplemental thereto and amendatory thereof do not become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

§ 166.12 Completion of claim, where woman marries subsequent to entry.

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; 43 U. S. C. 167), explained in § 166.62. (38 Stat. 312, 41 Stat. 1193; 43 U. S. C. 167).

§ 166.13 Requirements of office holders.

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 office, the duties of which require their residence elsewhere than on the homesteads. This also applies to civil-service employees.

§ 166.14 Requirements when entrymen become insane.

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 3 years after the date of the entry, he is required to re-establish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

Settlement Claims

Authority: §§ 166.15 and 166.16 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.15 Initiation of settlement claims.

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 3 months after settlement upon surveyed lands or within that time after the filing in the land office of the plat of survey of lands unsurveyed when settlement was made. Otherwise, the preference right of entry may be lost.

§ 166.16 Application for survey of settlement claims.[1]

Application for the survey of unsurveyed lands may be addressed to the Area Administrator having local jurisdiction by any settler or settlers who can show the necessary qualifications. The applicant must show the location of the township by giving its approximate number, range, and meridian; that he is a bona fide settler therein; under what law he wishes to acquire the land; what the character of the land is, and for what it is suitable; the number of the settlers residing upon the land desired to be surveyed; when his residence began and to what extent he has cultivated and improved the land claimed; that his application for survey of the lands described is made in good faith and not at the instance or in the interest or for the benefit of any other person.

CROSS REFERENCES: For surveys, Alaska, see Part 78 of this chapter. For surveys and resurveys, generally, see Part 280, 281 of this chapter.

HOMESTEAD APPLICATIONS

AUTHORITY: §§ 166.17 to 166.21 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.17 Execution of application.

(a) A homestead application for public lands in the continental United States must be prepared on blank forms prescribed for that purpose. The applicant must sign the application in the district embracing the land sought and state in the application that it was so signed.

(b) An application must be filed in the proper land office in the State or Territory, or if the lands are in a State in which there is no land office, must be filed with the Bureau of Land Management in Washington, D. C., except that applications for lands in North or South Dakota, must be filed in the land office at Billings, Montana; applications for land in Nebraska or Kansas must be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. An application is not acceptable if signed more than 10 days before being deposited in the mails for filing in the appropriate office.

[1] 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.

§ 166.18 Showing required of applicant.

Each application to enter and the statements 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.

§ 166.19 Certificate required of Indian applicant, under act of July 4, 1884.

(a) The manager will require an Indian homestead applicant under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), to submit a certificate from the Commissioner of Indian Affairs that he is entitled, as an Indian, to make such an entry.

(b) When such an application is presented without this certificate the manager will suspend the same and notify the applicant that 90 days are allowed within which to submit such certificate as to the right to allotment, and that upon failure to submit the same within the time allowed the application will be rejected.

(c) Where an Indian has filed an allotment application and the application has been rejected for the reason that the applicant is not entitled as an Indian to an allotment, such action will not prejudice the right of such applicant to file a homestead application, provided that a

certificate from the Commissioner of Indian Affairs, showing that the applicant is entitled to the benefits of the said act of July 4, 1884, is presented.

§ 166.20 Requirements where Indian makes entry as citizen.

(a) A certificate from the Commissioner of Indian Affairs that the applicant is entitled, as an Indian, to make a homestead entry, should be required only of applicants under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), from whom no fee or commissions are required.

(b) If an Indian making application under the general homestead act states that he is a citizen of the United States, the manager will allow such an Indian, if otherwise qualified, to make entry under that act, without further questioning and without requiring any certificate from the Commissioner of Indian Affairs.

§ 166.21 Showing required with applications by settlers, widows, devisees, or heirs.

All applications by persons claiming as settlers must, in addition to the facts required in § 166.18, 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.

RESIDENCE, CULTIVATION, AND IMPROVEMENTS REQUIRED FOR 3-YEAR AND COMMUTATION PROOFS

AUTHORITY: §§ 166.22 to 166.25 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.22 Residence required for 3-year proof.

With the exception of adjoining farm homestead entries and entries allowed under certain laws not requiring residence, a homestead entryman must establish residence upon the tract entered within 6 months after date of the entry, unless an extension of time is allowed, as explained in § 166.26, and must maintain residence therefor a period of 3 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 § 166.36.

§ 166.23 Cultivation required for 3-year proof.

(a) Cultivation of the land for a period of at least 2 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.

(b) 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. The required area of cultivation may be reduced, under certain conditions, as set forth in § 166.40. Moreover, the requirements as to cultivation have been eliminated as to certain homestead claims initiated prior to February 5, 1937, as set forth in §§ 166.41–166.43.

§166.24 Habitable house required for 3-year proof.

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.

§ 166.25 Requirements for commutation proof; contests after 14 months' residence.

(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 show that 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 on the claim and cultivation of the area commuted to the extent required under the ordinary homestead laws, that is, cultivation of one-sixteenth of the area during the second year of the entry, and one-eighth during the third entry year and until final commutation proof. However, the proof may be accepted where actual residence on the land for the required period of 14 months 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 Bureau of Land Management be fully satisfied of entryman's good faith, and provided no contest or adverse proceedings shall have been initiated for default in residence, or other good cause, prior to filing of such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions explained in § 166.23, as to 3-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 (43 U. S. C. 164, 169), 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 (25 Stat. 854; 43 U. S. C. 234), 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 5 months of which he had given notices as provided by the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164).

(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 3-year proof.

(g) The provisions of law explained in § 166.40 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; 43 U. S. C. 224), known as the Kinkaid Act; entries under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 372 et seq.); entries under the Enlarged Homestead Act (35 Stat. 639; 43 U. S. C. 218); entries allowed on coal lands under the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213); second entries allowed under the act of June 5, 1900 (31 Stat. 269; 43 U. S. C. 217); second entries allowed under the act of May 22, 1902 (32 Stat. 203; 25 U. S. C. 423); when the former entry was commuted; or entries within forests under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509).

EXTENSION OF TIME TO ESTABLISH RESIDENCE

§ 166.26 Application for extension of time.

(a) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence cannot be established on the land within 6 months after the date of the entry, additional time, not exceeding 6 months, may be allowed. An application for such extension must include the statements of the entryman, and two witnesses acquainted with the facts. 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.

(b) 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 6 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.

(c) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(R. S. 2478; 43 U.S.C. 1201) [19 F.R. 8966, Dec. 23, 1954, as amended, Circ. 2001, 23 F.R. 3385, May 20, 1958]

REDUCTION IN RESIDENCE REQUIREMENTS BECAUSE OF CLIMATIC CONDITIONS

AUTHORITY: §§ 166.27 to 166.35 issued under 38 Stat. 704, as amended; 43 U. S. C. 231.

§ 166.27 Statutory authority.

The act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), authorizes the manager of the 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, but less than 5 of which shall be in each year and proof must be submitted within 5 years.

§ 166.28 Reduction of residence requirements to 6 months in each year.

(a) An entryman desiring to avail himself of the privilege accorded by the act of February 25, 1919, must, within 1 year after the allowance of his entry, file in the land office an application (preferably on the approved form) corroborated by two witnesses, setting forth the climatic conditions which would render it a hardship to reside upon the land for as much as 7 months in each year, and stating whether he wishes the requirement in his case to be fixed at 6 months' residence in 4 successive years or at 5 months' residence in 5 successive years. The statement of claimant and the witnesses need not be sworn to. If the showing is satisfactory, the manager will allow it. If it is not satisfactory, he will reject the application, subject to the usual right of appeal, and all appeals will be forwarded promptly.

(b) If the application requests a reduction to 5 months' residence in each year, the manager may, if proper, grant partial relief; that is, fix the residence period at 6 months in each year, his decision being subject to review by the Bureau of Land Management on appeal from his decision, of which the party will be notified with all promptness.

(c) All applications must be accompanied by an application service fee of $5 which will not be returnable.

[19 F.R. 8966, Dec. 23, 1954, as amended, Circ. 2001, 23 F.R. 3385, May 20, 1958]

§ 166.29 Reduction of residence requirements to 5 months in each year.

(a) Where a homesteader has secured a reduction of the residence requirements to 6 months in each year, he may, at or before the termination of the second year of his entry, file application for further reduction; that is, to 5 months in each of 5 years.

(b) All applications must be accompanied by an application service fee of $5 which will not be returnable.

[19 F.R. 8966, Dec. 23, 1954, as amended, Circ. 2001, 23 F.R. 3385, May 20, 1958]

§ 166.30 Conditions under which residence requirements will be reduced.

To entitle a homesteader to the benefits of the act of February 25, 1919, he must show that the climatic conditions in the vicinity of the land entered are ordinarily, not in exceptional years, such as would render it a hardship for him to reside there for a greater part of each year than for 5 or for 6 months, as the case may be.

§ 166.31 Residence each year required in one continuous period.

Under this provision of the act of February 25, 1919, there is no authority to allow two absence periods, but the 5 months' residence or the 6 months' residence, as the case may be, must be in one continuous period.

§ 166.32 Statutory period for making proof.

Proof on an entry must be made within 5 years after its allowance, notwithstanding the fact that relief may have been granted under the act of Feb-

ruary 25, 1919, but the homesteader need not wait until the termination of his fifth residence year before submitting proof, provided he has had the last required period of residence.

§ 166.33 **Commutation proof.**

An entry which is otherwise subject to commutation may be commuted, notwithstanding the granting of relief to the homesteader under this provision of law; but the periods of actual residence on the land must aggregate at least 14 months, and cultivation of not less than one-sixteenth of the area during the second year of the entry and one-eighth during the third entry year and until final commutation proof must be shown, unless a reduction has been granted in the requirements in that regard.

§ 166.34 **Credit for military service.**

Credit on account of a period of military service will be allowed as on other entries, but at least 1 year's compliance with the homestead laws must be shown in every case.

CROSS REFERENCES: For soldiers' and sailors' homestead and preference rights, see Part 181 of this chapter.

§ 166.35 **Absence by settlers on unsurveyed lands.**

A homestead settler on unsurveyed lands who makes the showing required by §§ 166.27–166.34, and who gives notice of the approximate location of the lands settled upon and claimed may be granted the benefits of the act of February 25, 1919 (40 Stat. 1153; 43 U. S. C. 231), providing for prolonged absences due to climatic conditions.

LEAVE OF ABSENCE FOR 5 MONTHS EACH YEAR

AUTHORITY: §§ 166.36 to 166.38 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.36 **Absences by homestead entrymen; notice of beginning and termination of absence.**

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 5 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 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 5 months and file notice of his return, he may, without any intervening residence, again absent himself, pursuant to new notice, for the remaining part of 5 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 5 months.

§ 166.37 **Absences by settler on unsurveyed land; notice of beginning and termination of absence.**

Under the act of July 3, 1916 (39 Stat. 341; 43 U.S.C. 232), a settler upon unsurveyed unreserved, and unappropriated public land is entitled to one or two leaves of absence during each residence year, aggregating not more than 5 months in each year, after establishing of residence, in the same manner and upon the same conditions as persons having entries of record. If he has returned after an absence of less than 5 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 5 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 5 months.

§ 166.38 **Notice of settlement claim.**

The act of July 3, 1916, does not authorize the filing of a notice of a settlement claim except as included in a notice of absence from the land; unless the paper tendered shows the beginning or ending of an absence, the manager will decline to receive it.

LEAVE OF ABSENCE FOR 1 YEAR OR LESS, BECAUSE OF FAILURE OF CROPS, SICKNESS, OR OTHER UNAVOIDABLE CASUALTY

§ 166.39 **Application for leave of absence.**

(a) Leave of absence for 1 year or less may be granted by the manager of the 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 signed by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located. 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 cannot be counted in his favor.

(b) All applications for leave of absence for one year or less because of failure of crops, sickness, or other unavoidable casualty must be accompanied by an application service fee of $5 which will not be returnable.

(R.S. 2478; 43 U.S.C. 1201) [19 F.R. 8966, Dec. 23, 1954, as amended, Circ. 2001, 23 F.R. 3385, May 20, 1958]

REDUCTION IN REQUIREMENTS AS TO CULTIVATION

§ 166.40 Conditions under which requirements as to cultivation may be reduced.

(a) The requirements as to cultivation may be reduced 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. When action is taken on an application for a reduction of the required area of cultivation, consideration will be given all the attendant facts and circumstances, and if it appears that at the date of the initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable or that there was a lack of good faith on the part of the claimant in making the entry, the application will be subject to rejection. An application for reduction must be filed at the proper land office on the form prescribed therefor, and should set forth in detail the special conditions on which the claim to a reduction is based.

(b) 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 manager of the land office, 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.

(c) 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 cannot 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.

(d) Applications for reduction in area of cultivation will be acted upon by the manager of the land office, who may in appropriate cases defer action until final proof, but his decision in granting or refusing applications for reduction in area shall be subject to review, upon appeal, by the Director, Bureau of Land Management and by the Secretary of the Interior.

(e) All applications for reduction in area of cultivation must be accompanied by an application service fee of $5 which will not be returnable.

[19 F.R. 8966, Dec. 23, 1954, as amended, Circ. 2001, 23 F.R. 3385, May 20, 1958]

ELIMINATION OF REQUIREMENTS AS TO CULTIVATION, IN CERTAIN CASES

AUTHORITY: §§ 166.41 to 166.43 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.41 Statutory authority.

The act of March 31, 1938 (52 Stat. 149; 43 U.S.C. 237d), amended the act of August 19, 1935 (49 Stat. 659), so as to extend its provisions to applications made prior to February 5, 1935. As amended

the act provides that, with certain specified exceptions, described in § 166.43, the provisions of the homestead laws requiring cultivation of the land entered shall not be applicable to existing homestead entries made prior to February 5, 1935, or thereafter if based upon valid settlement or application made prior to said date, and no patent shall be withheld for failure to cultivate such lands.

§ 166.42 Proofs not to be rejected for failure to show cultivation.

In all cases where said acts apply, no proof shall be rejected solely for failure to show that the cultivation requirements of the homestead laws have been complied with.

CROSS REFERENCE: For proofs, see Part 106 of this chapter.

§ 166.43 Entries to which law does not apply.

The law does not apply to homestead entries made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), and amendments thereof, know as the reclamation law; or under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), and amendments thereof, known as the law providing for entry of agricultural lands within national forests; or to homestead entries in the State of Alaska.

CROSS REFERENCES: For homestead entries, Alaska, see Part 65 of this chapter. For entry of agricultural lands within national forests, see Part 170 of this chapter. For homestead entries subject to the reclamation law, see Part 230 of this chapter.

PROCEDURE GOVERNING SUBMISSION OF FINAL OR COMMUTATION PROOF

AUTHORITY: §§ 166.44 to 166.50 issued under 20 Stat. 472; 43 U. S. C. 251.

§ 166.44 When proof may be made.

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 5 years. Failure to submit proof within the proper period is ground for cancelation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued.

CROSS REFERENCE: For equitable adjudication, see §§ 107.1 and 107.2 of this chapter.

§ 166.45 Officers qualified to take proof; notice of intention to make proof.

Final or commutation proofs may be made before any of the officers mentioned in § 210.1 of this chapter as being authorized to administer oaths.

Any person desiring to make homestead proof should first forward a written notice of his desire to the manager 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.

§ 166.46 Publication of proof notice.

(a) The manager 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 manager. The publication must be made once a week for five consecutive weeks, in accordance with § 106.14 of this chapter.

(b) 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 manager will be responsible for the correct preparation of the notice.

(c) 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.

§ 166.47 Submission of proof in accordance with published notice.

Final proofs in all cases where the same are required by the general land laws or regulations of the Department, should be taken in accordance with the published notice; *Provided, however,* That such testimony may be taken within 10 days following the time advertised

in cases where accident or unavoidable delays have prevented the applicant or his witnesses from making such proof on the day specified.

§ 166.48 Citizenship requirements.

(a) 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 (38 Stat. 740; 43 U. S. C. 168).

(b) In all cases of applications for entry or proofs in support of entries by married women otherwise duly qualified to make such entry or proof, a showing must be made of the facts concerning the marital status and citizenship in accordance with Part 137 of the chapter.

§ 166.49 Evidence of citizenship.

Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of foreign-born applicants should be received only when made in accordance with Part 137 of this chapter.

§ 166.50 Who may submit proof.

(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 §§ 166.14, 166.55, 166.64. 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.

Proofs by Homesteaders Who Intermarry

Authority: §§ 166.51 to 166.54 issued under 38 Stat. 312, as amended; 43 U.S.C. 167.

§ 166.51 Conditions under which claims may be completed by residence on either entry.

Where a homestead entryman or settler and a homestead entrywoman or settler intermarry after each has fulfilled the requirements of the law for 1 year, the husband (under the provisions of the act of April 6, 1914 (38 Stat. 312) as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U. S. C. 167)) may 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.

§ 166.52 Entries and settlement claims affected.

The act of April 6, 1914, as amended, applies to entries and settlement claims initiated before or after its date, and before or after the date of the amendatory act; to become entitled to its benefits, it is required that each of the parties shall have complied with the requirements of the homestead laws for not less than 1 year next preceding their marriage. It is not necessary that either the husband or the wife shall have had an entry placed of record before the marriage.

§ 166.53 Husband entitled to elect on which claim family shall reside.

The law confers upon the husband the privilege of electing on which of the two entries the family shall reside. His election must be supported by the statements of both the parties, describing their entries and showing the facts as to the residence, cultivation, and improvements already had in connection therewith. Only in cases where the tracts involved are situated in different districts will it be necessary that the election and statements be executed in duplicate; then copies of all papers must be filed in each office.

§ 166.54 Requirements for proofs.

(a) Though the election be accepted, proofs on the entries will be submitted separately, as in other cases; it will be necessary to show residence on the selected homestead from approximately the date of the marriage, and on the entries of the respective parties before that time. The act of April 6, 1914, as amended, makes no change whatever in the requirements as to cultivation or improvements, as the case may be, or as to the necessity of having a habitable dwelling on the land; compliance with the homestead law in these regards must be shown as to each entry, precisely as though the marriage had not taken place. In no case can proof be made on a claim before an entry for the land involved shall have been duly placed of record in accordance with an approved survey.

(b) If proof be made on the entry selected as the home before title to the other is earned, residence may neverthe-

less be continued on the perfected entry and credited to the other. However, the act has no application to cases where the requirements of law have been fulfilled, and proof made, as to one of the entries prior to the marriage.

PROOF BY DESERTED WIFE ON HUSBAND'S ENTRY IN HER OWN NAME

AUTHORITY: §§ 166.55 to 166.61 issued under 38 Stat. 766; 43 U. S. C. 170.

§ 166.55 Conditions under which deserted wife may make proof.

The act of October 22, 1914 (38 Stat. 766; 43 U.S.C. 170), provides 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 1 year, she may 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.

§ 166.56 Summons to homestead entryman.

Upon the wife's filing notice of intention to submit proof, together with a statement alleging desertion, as stated in § 166.55, and all information in her possession as to the entryman's whereabouts, including his last known post-office address and the address near the land where he received his mail, the manager will prepare and issue a summons in substantially the following form and deliver it to the wife for service:

To [here insert name] homestead entryman:

You are hereby notified that [here insert name], claiming that she is your wife, and that you have abandoned and deserted her for more than one year last past, has filed application to be allowed to submit proof upon your homestead entry, serial No. ——, for [here insert description of the land], to the end that patent for the land may issue in her name. This proceeding is authorized by the provisions of an act of Congress approved October 22, 1914, and you will be allowed 30 days after notice hereof within which to file in this office your denial of the charges. If such denial be filed, you may, at the time to be set for taking of proof or on a date to be then fixed, offer testimony in support of such denial.

§ 166.57 Personal service of summons.

Personal service of the summons must be made if possible; such service may be made by any person over the age of 18 years, or by registered mail. When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing delivery of the letter to the entryman; where service is made otherwise than by mail, proof thereof must be by written acknowledgment of the entryman, or by statement of the person serving the summons, showing its delivery to the entryman. If personal service can not be made, the summons must be sent by registered mail to the last known address of entryman and to the post office nearest the land, or to that near the land named by the wife in her preliminary statement; proof of such attempted service shall be by a statement of the person mailing the letter, to which should be attached the postmaster's receipts therefor.

§ 166.58. Answer to summons.

Within 30 days after service of summons, the entryman may file his statement denying the charge of abandonment and desertion. The denial must bear evidence that a copy thereof has been served on the wife.

§ 166.59 Notice for publication.

After the expiration of 30 days from personal service of the summons, or 40 days from the date of mailing, unless a denial by entryman be sooner filed, the manager will issue notice of intention to submit proof. The form in general use must be modified to show that the proof is to be submitted by the deserted wife, and must contain a paragraph as follows:

The entryman [here insert name] is notified that, by submission of said proof, his wife [here insert name] seeks to obtain patent for the land in her own name.

§ 166.60 Hearing on charges of desertion.

If the entryman shall have filed denial of the alleged desertion and abandonment, and appears, in person or by agent or attorney, on the day set for the taking of proof, testimony may be submitted to determine the facts relative to the alleged desertion, and the final proof testimony will be taken in accordance with existing regulations. But the manager, for any reason deemed sufficient, may continue the hearing to a later date.

(a) At the hearing on the denial of desertion the entryman must pay the costs of taking the testimony.

(b) All hearings and subsequent proceedings shall be in accord with Appeals and Contests, Part 221 of this chapter, pertaining to contests.

§ 166.61 Issuance of final certificate.

If entryman fails to deny the charge of desertion, or if same be sustained and the case closed, final certificate shall issue in the name of the deserted wife, provided the proof be in all respects sufficient.

HOMESTEAD RIGHTS OF WIDOWS, HEIRS, OR DEVISEES

AUTHORITY: §§ 166.62 to 166.66 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.62 Right of entry on death of settler.

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 devisees.

§ 166.63 Requirements of those who sncceed to rights of settlers.

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 3 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.

§ 166.64 Right under entry on death of entryman.

If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be none, and the children if any are not all minors, 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.

§ 166.65 Requirements of those who succeed to rights of entrymen.

Persons succeeding as widow, heirs, or devises 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 3 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.

§ 166.66 Rights of heirs of contestants.

If a contestant dies after having secured the cancelation 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 cancelation 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.

ADDITIONAL ENTRY AFTER PROOF ON ORIGINAL CLAIM; SECTION 6, ACT OF MARCH 2, 1889

AUTHORITY: §§ 166.67 to 166.69 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.67 Statutory authority.

Section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), permits the entry, by a person otherwise qualified, who prior to the date of his application for additional entry has made homestead entry, submitted final proof thereon, and received receiver's final receipt,[3] for a quantity of land less than 160 acres, of so much additional land, either contiguous or noncontiguous to the land originally entered by him, as shall not with it exceed a total of 160 acres.

§ 166.68 Application; showing required.

Applicants for additional homestead entries under section 6 of the act of March 2, 1889 must file applications to enter on the proper homestead form so modified as to describe, by number, section, township, and range, the original entry and give the date of issuance of register's (or manager's) final receipt thereupon. They are not required to show that they are still the owners or occupants of the land originally entered.

§ 166.69 Residence, cultivation and proof required.

Upon allowance of the additional entry, entrymen will be required within the period prescribed by the homestead laws and regulations to establish residence upon the land entered and to reside upon and cultivate the land for the period required by the homestead laws, and within the period prescribed by statute, to submit proof of such residence and cultivation as in other homestead cases.

CROSS REFERENCE: For rules relating to the residence period prescribed by the homestead laws and regulations, see §§ 166.22 to 166.39.

[3] This receipt now is issued by the manager.

ADDITIONAL ENTRY FOR LAND CONTIGUOUS TO ORIGINAL ENTRY

AUTHORITY: §§ 166.70 to 166.73 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.70 Statutory authority.

Section 2 of the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), as amended by the act of August 3, 1950 (64 Stat. 398; 43 U.S.C. 213) authorizes any person who theretofore entered, or might thereafter enter, less than 160 acres of land under the homestead laws who has not perfected the entry, or, if proof has been made, who still owns and occupies the land, to enter other and additional lying contiguous to the original entry which, with the land first entered and occupied will not in the aggregate exceed 160 acres. Section 3 of the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), prohibits the submission of commutation proof of an entry made under that act.

§ 166.71 Application; evidencc required.

Applicants for additional entries under section 2 of the act of April 28, 1904, will be required to produce evidence that they own and reside upon the land embraced in their original entries, which shall be described by legal subdivisions and by reference to the number and date of the original entry, the evidence to consist of their own statements corroborated by the statements of two disinterested witnesses, signed in such cases in the county, parish, or land district in which the land applied for is situated. These statements and the homestead application and statements required to be made in connection therewith may be upon Form No. 4–018.

§ 166.72 Final proof.

Before proof may be sumitted as a basis for patent under the act of April 28, 1904, as amended, the entryman must show that he has cultivated an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and until the submission of final proof thereon. The cultivation may be performed on the original entry, on the additional entry, or on both, but where it is performed on the original entry it must be shown at the time of submission of final proof on the additional entry that the entryman still owns and occupies the

the original entry, and the cultivation must be in addition to that required and relied upon in making final proof on the original entry. No proof of residence will be required with respect to the additional entry.

The act of April 28, 1904, as amended, provides that final proof for the additional entry may be submitted only at the time of final proof for the original entry, or subsequent thereto, but it must be submitted within five years after the additional entry is made.

§ 166.73 Cancellation of original entry.

An additional entry under the act of April 28, 1904, as amended, cannot be based on an original entry which has been canceled. If for any reason an original entry is canceled after the additional has been allowed, the additional will be canceled also.

Second Entry by Person Whose Former Entry Was Lost, Forfeited, or Abandoned

Authority: §§ 166.74 to 166.77 issued under R.S. 2478; 43 U.S.C. 1201.

§ 166.74 Statutory authority.

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 September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) 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.

§ 166.75 Date of first entry immaterial; good faith of the applicant to be passed upon.

The question whether the first entry, or entries, were made before or after the passage of the act of September 5, 1914 is entirely immaterial. Moreover, it will be seen that the act imposes upon the Bureau of Land Management the duty of passing upon the good faith of the applicant, there being no hard and fast provision, as in the act of February 3, 1911 (36 Stat. 896) limiting its benefits to a clearly defined class of persons.

§ 166.76 Showing required of applicants.

In order that the Bureau of Land Management may properly pass upon the right of an applicant for second entry, he must (besides filing in the proper land office an application to enter a specific tract) furnish his statement showing the following facts:

(a) Data from which his first entry (or entries) may be identified, preferably its series and number, as well as a description of the tract by section, township, and range.

(b) What examination of the land and what inquiries as to its character he made prior to filing his previous application (or applications) for entry and, in case of desert-land entries, what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation.

(c) With reference to a homestead entry, whether he established residence upon the tract, and, if so, how long he lived there and what cultivation he effected; as to a desert-land entry, whether he took possession of the tract, and, if so, how long he continued to exercise acts of ownership thereover.

(d) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(e) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(f) What consideration, if any, he received for abandoning or relinquishing the entry; also whether he sold the improvements on the tract, giving full details as to said sale, if any, including the date thereof and the consideration received.

Cross Reference: For second desert-land entries, see §§ 232.6, 232.7 of this chapter.

§ 166.77 Statement of applicant; corroboration required.

The statement described in the preceding section must be signed by the applicant and must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts, or there may be several witnesses, each testifying on some material point; statements of witnesses must be signed by them. Appropriate blank forms will be furnished by the managers.

SECOND ENTRY BY PERSON WHO PAID INDIAN PRICE OF $1.25 PER ACRE, OR MORE, FOR LAND IN PRIOR ENTRY

AUTHORITY: §§ 166.78 to 166.83 issued under R. S. 2478; 43 U. S. C. 1201.

§ 166.78 Statutory authority.

Under the act of June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871a), any person who theretofore had made entry under the homestead laws on any lands embraced within any reservation ceded to the United States by the Indian tribes, and had paid for his land the sum of at least $1.25 per acre, upon proof of such facts, if otherwise qualified, is entitled to the benefit of the homestead law as though such former entry had not been made. The provisions of said act do not apply to any person who has failed to pay the full price for his former entry or whose former entry was canceled for fraud. In making any new homestead entry as authorized by said act or the prior similar acts of February 20, 1917 (39 Stat. 926), and February 25, 1925 (43 Stat. 981; 43 U.S.C. 187), such entry may not include any land to which the Indian title has not been fully extinguished.

§ 166.79 Showing required as to prior entry.

A person claiming the right of second homestead entry pursuant to the provisions of the act of June 21, 1934, must furnish a description of the land included in his perfected entry or data from which it can be identified, and he must state that he paid $1.25 or more per acre for the tract, but it is not necessary that he name the precise price paid. If the former entry embraced tracts appraised at less than $1.25 per acre and tracts appraised at more than $1.25 per acre, a second entry hereunder is not allowable unless the aggregate sum of the appraised prices of the former entry equals $1.25 per acre or more.

§ 166.80 Requirements as to completion of prior entry.

A second entry is not allowable unless the first entry was made prior to June 21, 1934, and unless satisfactory final proof has been submitted thereon and the entire price of the land included therein has been paid prior to the date of the application for second entry.

§ 166.81 Second entry where prior entry was canceled.

The act of June 21, 1934, has no application if the first entry be canceled. Such cases will be governed by the general statutes allowing second entries.

§ 166.82 Laws under which second entry right may be exercised.

A person who is entitled to the benefits of the act of June 21, 1934, may at his option make second entry under either the general homestead law, or the Enlarged Homestead Act. Compliance with the law must be shown as though it were an original entry.

CROSS REFERENCE: For enlarged homesteads, see Part 167 of this chapter.

§ 166.83 Land not snbject to second entry.

The act of June 21, 1934, prohibits the allowance of any application to make a second homestead entry thereunder or under the act of February 20, 1917, or the act of February 25, 1925, if it includes any land to which the Indian title shall not have been fully extinguished.

SECOND ENTRY AFTER COMMUTATION OR PAYMENT OF INDIAN PRICE OF ORIGINAL CLAIM; ACTS OF JUNE 5, 1900, MAY 17, 1900, AND MAY 22, 1902

§ 166.84 Statutes authorizing second entries.

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 (sec. 2, 31 Stat. 269; 43 U. S. C. 217, and sec. 2, 32 Stat. 203; 25 U. S. C. 423), and the act of May 17, 1900 (31 Stat. 179; 25 U. S. C. 421).
(R. S. 2478; 43 U. S. C. 1201)

ADJOINING FARM HOMESTEADS

§ 166.85 Qualifications of applicants; requirements to complete entries.

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. (R. S. 2478; 43 U. S. C. 1201)

HOMESTEAD SUBJECT TO MORTGAGE LOANS

AUTHORITY: §§ 166.86 and 166.87 issued under R.S. 2478; 43 U.S.C. 1201.

§ 166.86 Mortgage loans on existing homestead entries; allowance of homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.

(a) A homestead entryman desiring a loan on an existing homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b) should consult the Farmers Home Corporation of the Department of Agriculture.

(b) Where a homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land becomes subject to homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished by an applicant who is qualified for an initial loan and who has not exercised his homestead rights. An applicant for such land must first consult the Farmers Home Corporation. Such a homestead application must not be filed in the land office until the applicant has been selected and directed to do so by the Farmers Home Corporation.

(c) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed the arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(d) Decisions canceling homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(e) If the land in a relinquished or canceled homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled homestead entry was closed, the land will become subject to sale by the Farmers Home Corporation.

§ 166.87 Mortgage liens.

A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

PART 167—ENLARGED HOMESTEADS

GENERAL REGULATIONS

Sec.
167.1 States in which enlarged homesteads may be made; character of land subject thereto.

SETTLEMENT CLAIMS

167.2 Initiation of settlement claims under enlarged homestead law.

APPLICATIONS TO ENTER

167.3 Form and execution of applications.
167.4 Compactness; payments, forms of remittance.

APPLICATION TO ENTER WITH PETITION FOR DESIGNATION

167.5 Statutory authority.
167.6 Application authorized for original or additional entry.
167.7 Execution of application to enter and petition for designation; no right to occupy land obtained by filing same.
167.8 Action on applications.
167.9 Segregative effect of application; two applications by same applicant at same time not permitted.

ADDITIONAL ENTRY FOR CONTIGUOUS LANDS, BEFORE PROOF ON ORIGINAL CLAIM

167.10 Who may make additional entry; requirements for proof.

ADDITIONAL ENTRY FOR CONTIGUOUS LANDS, AFTER PROOF ON ORIGINAL CLAIM

167.11 Statutory authority.
167.12 Who may make additional entry.
167.13 Conditions respecting residence.
167.14 Cultivation required.

ADDITIONAL ENTRY FOR INCONTIGUOUS LANDS, AFTER PROOF ON ORIGINAL CLAIM

167.15 Statutory authority.
167.16 Conditions under which additional entry may be made.