

(5) Expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

PART 2470—POSTCLASSIFICATION ACTIONS

Subpart 2470—Opening and Allowance

- Sec.
2470.1 Opening of lands to disposal.
2470.2 Allowance and entry.

SOURCE: The provisions of this Part 2470 appear at 35 F.R. 9565, June 13, 1970, unless otherwise noted.

§ 2470.1 Opening of lands to disposal.

After lands have been classified for disposal, the authorized officer shall, at the appropriate time, open the lands to those forms of disposal consistent with the classification.

§ 2470.2 Allowance and entry.

(a) After lands are classified pursuant to the regulations of this part, and opened for entry or other disposal, all the laws and regulations governing the particular kind of entry, location, selection, or other disposal must be complied with in order for title to vest or other interests to pass.

(b) After lands are classified for disposal under the regulations of this Subpart, the lands shall be offered for sale or other disposal consistent with the classification. If a petitioner-applicant does not have a preference right under § 2450.8, the lands shall be opened on an equal-opportunity basis.

Group 2500—Disposition; Occupancy and Use

PART 2510—HOMESTEADS

Subpart 2511—Original Homesteads

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Subpart 2511—Original Homesteads

AUTHORITY: The provisions of this Subpart 2511 issued under R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

SOURCE: The provisions of this Subpart 2511 appear at 35 F.R. 9565, June 13, 1970, unless otherwise noted.

§ 2511.0-7 Cross references.

(a) For surveys in Alaska, and surveys and resurveys, generally, see Part 9180 of this chapter.

(b) For general regulations involving applications and entries, see Subpart 1823 of this chapter. For proofs, see Subpart 1824 of this chapter. For railroad grants see Subpart 2630 of this chapter.

(c) For equitable adjudication, see Subpart 1870 of this chapter.

(d) For desert-land entries, see Subpart 2620 of this chapter.

(e) For soldiers' and sailors' homestead and preference rights, see Subpart 2096 of this chapter.

(f) For proofs, see Subpart 1824 of this chapter.

(g) For agricultural entries on mineral lands, see Subpart 2093 of this chapter.

(h) For enlarged homesteads, see Subpart 2514.

§ 2511.0-8 Lands subject to entry.

The laws relating to homesteads provide that homestead entry may be made on unappropriated surveyed public lands which are adaptable to agricultural use, with the following exceptions:

(a) Public lands are not subject to homestead entry if they are mineral or saline in character. However, public lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, sodium, or asphaltic minerals may be subject to homestead entry if the requirements of Subpart 2093 of this chapter are met.

(b) Public lands are not subject to homestead entry if they are occupied for purposes of trade or business.

(c) Public lands are not subject to homestead entry if they are within the limits of any withdrawal, reservation, or incorporated town or city. However, public lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, as amended, or Executive Order 6964 of February 5, 1935, as amended, or by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315), are subject to homestead entry if they are so classified pursuant to Group 2400 of this chapter.

§ 2511.0-9 Mortgage loans.

(a) *Mortgage loans on existing homestead entries.* (1) 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.

(2) 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.

(3) 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.

(4) Decisions canceling homestead entries subject to such mortgage liens for defaults on the mortgage or for non-compliance 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.

(5) 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.

(b) *Mortgage loans on enlarged homesteads.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b), should proceed in accordance with paragraph (a) of this section.

(c) *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.

§ 2511.1 Applicants.

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

(2) 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.

(b) *Qualifications and disqualifications.* Homestead entries may be made by any person who does not come within any one of the following classes:

(1) Married women, except as stated in paragraph (c) of this section.

(2) Persons who have already made homestead entry, except as stated in Subparts 2512 and 2513.

(3) Foreign-born persons who have not declared their intention to become citizens of the United States.

(4) Persons who are the owners of more than 160 acres of land in the United States.

(5) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs.

(6) 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.

(c) *Married women.* 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:

(1) Where she has been actually deserted by her husband.

(2) 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.

(3) Where the husband is confined in a penitentiary and she is actually the head of the family.

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

(5) 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.

(6) 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 cannot 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 cannot 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).

(d) *Widows.* 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.

(e) *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.

(f) *Insanity of entryman.* 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.

(g) *Adjoining farm entry.* 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.

§ 2511.2 Initiation of claims.

(a) *Ways in which claims may be initiated; area enterable.* (1) **Claims in Alaska 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 presentation of an application to enter.**

(2) 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.

(b) *Alienation of all or part of claim; mortgages; relinquishments.* (1) The alienation of all or any part of the land embraced in a homestead prior to mak-

ing 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.

(2) 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.

(3) 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 fall.

(4) 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

§ 2511.3 Procedures.

§ 2511.3-1 Petitions and applications.

(a) A person who desires to enter public lands outside of Alaska must file an application together with a petition on forms approved by the Director. However, if the lands described in the application have been already classified and opened to homestead entry under the provisions of this part, no petition is

required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter. (See subpart 2450.)

(b) Applications for public lands in Alaska subject to entry under the regulations of this part must be filed with the proper land office on a form approved by the Director.

§ 2511.3-2 Showing required of applicant.

(a) *General requirements.* 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.

(b) *Indian applicants*—(1) *Certificate required under act of July 4, 1884.* (1) The authorizing officer 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.

(ii) When such an application is presented without this certificate the authorizing officer 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.

(iii) 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.

(2) *Where Indian makes entry as citizen.* If an Indian makes application under the general homestead act, the authorizing officer 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.

(3) *Charges, patents.* The act of July 4, 1884 (23 Stat. 6; 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 non-Indian 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).

(c) *Settlers, widows, devisees, or heirs.* All applications by persons claiming as settlers must in addition to the facts required in paragraph (a) of this section 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.

§ 2511.3-3 Payments; form of remittance; receipts; notice.

(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, as amended (21 Stat. 141, 43 U.S.C. 185) must pay, as a cancellation service charge, an additional \$10, which is not returnable. On all final proofs made before the authorizing officer, or before any other officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the authorizing officer the costs of reducing the testimony to writing, as determined by the authorizing officer. No proof shall be accepted 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.

(c) 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.

§ 2511.3-4 Proof.

(a) *Time for making.* (1) 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 cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued.

(2) 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 that applicant or

his witnesses from making such proof on the day specified.

(b) *Officers qualified to take proof.* Final or commutation proofs may be made before any of the officers mentioned in § 1821.3-2 of this chapter as being authorized to administer oaths.

(c) *Notice; publication.* (1) Any person desiring to make homestead proof should first forward a written notice of his desire to the authorizing officer of the proper 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.

(2) The authorizing officer 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 § 1824.3 of this chapter.

(3) 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 authorizing officer will be responsible for the correct preparation of the notice.

(4) 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.

(d) *Who may submit proof—(1) General requirements.* 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 section 2511.1 and paragraphs 2511.3-4(d)(4)(i) and 2511.5-1(a). Final proof can be made only by citizens of the United States.

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

(3) *When homesteaders intermarry.*

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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 on record in accordance with an approved survey.

(v) If proof be made on the entry selected as the home before title to the other is earned, residence may nevertheless 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.

(4) *Deserted wife.* (i) 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.

(ii) Upon the wife's filing notice of intention to submit proof, together with a statement alleging desertion, as stated in (i) of this paragraph, and subparagraph, 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 authorizing officer 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:

(iii) 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 cannot 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.

(iv) 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.

(v) 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 authorizing officer 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.

(vi) 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 authorizing officer, 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 Parts 1840 and 1850 of this chapter pertaining to contests.

(vii) If entryman falls 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.

(e) *Citizenship requirements.* (1) 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).

(2) 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 Subpart 1811 of the chapter.

(3) 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 Subpart 1811 of this chapter.

§ 2511.3-5 Amendments; exercise of equitable powers.

Applications for amendment presented pursuant to § 1821.6-5(a) will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be

made under §§ 1821.6 and 2521.7(a) and on the prescribed form, insofar as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

§ 2511.4 Requirements for proof.

§ 2511.4-1 Habitable house.

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.

§ 2511.4-2 Residence.

(a) *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 paragraph (c) of this section and must maintain residence there for 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 paragraph (e) (1) (1) of this section.

(b) *For commutation proof.* (1) 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.

(2) 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 paragraph 2511.4-3(a), as to 3-year proof.

(3) 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).

(4) 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.

(5) The claimant must show full citizenship, as in case of 3-year proof.

(6) The provisions of law explained in paragraph 2511.4-3(b) apply to commutation proof also.

(7) 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).

(c) *Extension of time to establish*
(1) 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.

(2) 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.

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

(d) *Reduction in requirements*—(1) *Authority.* The act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), authorizes the authorizing officer of the proper 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.

(2) *To 6 months in each year.* (1) 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 proper 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 satis-

factory, the authorizing officer 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.

(ii) If the application requests a reduction to 5 months' residence in each year, the authorizing officer 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.

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

(3) *To 5 months in each year.* (1) 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.

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

(4) *Conditions warranting reduction.* 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.

(5) *Residence each year 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.

(6) *Time for making proof.* (1) 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 February 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.

(ii) 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 dur-

ing 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.

(7) *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.

(8) *Absence by settlers on unsurveyed lands.* A homestead settler on unsurveyed lands who makes the showing required by subparagraphs (1) to (7) of this paragraph 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.

(e) *Absences*—(1) *Up to 5 months* 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 proper 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.

(2) *For 1 year.* (i) Leave of absence for 1 year or less may be granted by the authorizing officer of the proper 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.

(ii) 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.

(f) *Contest.* 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 cannot 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.

§ 2511.4-3 Cultivation.

(a) *For 3-year proof.* (1) Cultivation of the land in a manner reasonably calculated to produce profitable results is required for a period of at least 2 years. This must consist of actual breaking of the soil, followed by planting, sowing of seed, tillage for a crop other than native grasses, and, in areas where rainfall is inadequate, the application of such amounts of water as may reasonably be required to produce a crop. 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.

(2) 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 paragraph (b) of this section. Moreover, the requirements as to cultivation have been eliminated as to certain homestead claims initiated prior to February 5, 1937, as set forth in subparagraphs (1) to (3) of paragraph (b) of this section.

(b) *Reduction of requirements.* (1) 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 office on the form prescribed therefor, and should set forth in detail the special conditions on which the claim to a reduction is based.

(2) 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 be submitted to the authorizing officer of the proper 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.

(3) 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.

(4) Applications for reduction in area of cultivation will be acted upon by the authorizing officer of the proper 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.

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

§ 2511.4-4 Agricultural entries of withdrawn coal lands.

The act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) is for the protection of surface rights of nonmineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), provides for the allowance of certain nonmineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain nonmineral entries, and the act of June 25, 1910, was not intended to repeal said acts. Therefore, where applications are presented to make final proof on nonmineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the act of March 3, 1909, and as to such lands certain nonmineral entries may be allowed, as provided for by the

act of June 22, 1910, notwithstanding their withdrawal under act of June 25, 1910.

§ 2511.4-5 Noncompliance.

Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

§ 2511.5 Rights of widows, heirs, or devisees.

§ 2511.5-1 On death of entryman.

(a) 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.

(b) Persons succeeding as widow, heirs, or devisees to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of 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.

§ 2511.5-2 Heirs of contestants.

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

Subpart 2512—Additional entries

SOURCE: The provisions of this Subpart 2512 appear at 35 F.R. 9571, June 13, 1970, unless otherwise noted.

§ 2512.1 After proof; on original claim (act of March 2, 1889).

(a) *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 the authorizing officer's final receipt for a quantity of land less than 160 acres, of so much additional land, either contiguous or noncontiguous to the land original entered by him, as shall not with it exceed a total of 160 acres.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 6 of the Act of March 2, 1889, must comply with the provisions of § 2511.3. In addition, he must file with the prescribed form or forms a reference to the Act of March 2, 1889, and a description, by number, section, township, and range of his original entry, together with the date