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Regulations pertaining to:

OCCUPANCY on the PUBLIC LANDS

Homesteads

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PART 2210—OCCUPANCY

Subpart 2211—Homesteads

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AUTHORITY: The provisions of this Subpart 2211 issued under R.S. 2478; 43 U.S.C. 1201, except as noted following sections affected.

§ 2211.0-6 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 §§ 2211.4 to 2211.5.

(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 women 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 reestablish 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.

§ 2211.0–7 Lands subject to entry.

All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character, 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.

NOTE: 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.

§ 2211.0–8 Initiation of claims.

(a) *Ways in which claims may be initiated; area enterable.* (1) 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.

(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) *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.

(c) *Application for survey of settlement claims.* 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 REFERENCE: For Surveys in Alaska, and surveys and resurveys, generally, see Part 9180 of this chapter.

(d) *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 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.

(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 fail.

(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.

(e) *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.

§ 2211.0–9 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 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.

(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.

§ 2211.1 Procedures.

§ 2211.1–1 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.

(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.

§ 2211.1–2 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.* (i) 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.

(ii) 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.

(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.* (i) 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.

(ii) 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.

(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 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).

(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.

§ 2211.1–3 Payments; form of remittances; 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 (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.

CROSS REFERENCE: 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 2224 of this chapter.

(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.

§ 2211.1–4 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.

CROSS REFERENCE: For equitable adjudication, see Subpart 2011 of this chapter.

(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 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.

(2) 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 § 1824.4 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 manager 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 §§ 2211.0–6, 2211.1–4(d)(4)(i) and 2211.3–2(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 set-

tler 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 subdivision (i) of this subparagraph, 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:

(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 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.

(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 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 Parts 1840 and 1850 of this chapter pertaining to contests.

(vii) 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.

(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.

§ 2211.1–5 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 2226.1–6(a) and on the prescribed form, insofar as the same are applicable. A supple-

mental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCE: For desert-land entries, see Subpart 2226 of this chapter.

§ 2211.2 Requirements for proof.

§ 2211.2–1 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.

§ 2211.2–2 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)(i) 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 § 2211.2–3(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 § 2211.2–3(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 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.

(2) *To 6 months in each year.* (i) 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.

(ii) 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.

(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.* (i) 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.* (i) 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 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.

(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.

CROSS REFERENCE: For soldiers' and sailors' homestead and preference rights, see Subpart 2033 of this chapter.

(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.* (i) 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.

(ii) *On unsurveyed land.* 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.

(iii) *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.

(2) *For 1 year.* (i) 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.

(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 communication 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.

§ 2211.2–3 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 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.

(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 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.

(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 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.

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

(c) *Elimination of requirements.* (1) 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 subparagraph (3) of this paragraph, 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.

(2) 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 Subpart 1824 of this chapter.

(3) The law does not apply to homestead entries made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), and amendment thereof, known 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.

§ 2211.2–4 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.

CROSS REFERENCE: For agricultural entries on mineral lands, see Subpart 2023 of this chapter.

§ 2211.3 Rights of widows, heirs or devisees.

§ 2211.3–1 On death of settler.

(a) 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.

(b) 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.

§ 2211.3–2 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 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.

§ 2211.3–3 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 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.

§ 2211.4 Additional entries.

§ 2211.4–1 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 managers final receipt 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.

(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 § 2211.1. 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 of the issuance of the final receipt thereon. He is not required to show that he is still the owner or occupant of the land originally entered.

(c) *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 resi-

dence and cultivation as in other homestead cases.

§ 2211.4–2 For land contiguous to original entry (act of April 28, 1904 as amended).

(a) *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.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 2 of the act of April 28, 1904, must comply with the provisions of § 2211.1–1. In addition, he must file with the prescribed form or forms a reference to the act of April 28, 1904, and a description by number, section, township, and range of his original entry. He must also show that he owns and resides upon the land embraced in his original entry.

(c) *Final proof.* Before proof may be submitted 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 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.

(d) *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.

§ 2211.5 Second entries.

§ 2211.5–1 Former entry lost, forfeited or abandoned (act of September 5, 1914).

(a) 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.

(b) 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.

(c) 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:

(1) 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.

(2) 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.

(3) 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.

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

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

(6) 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.

(d) 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.

§ 2211.5–2 By person who paid price for land ceded by Indians (act of June 21, 1934).

(a) Statutory authority. (1) 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.

(2) 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.

(b) *Showing 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.

(c) *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.

(d) *Laws under which second entry rights 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 § 2211.6.

(e) *Land not subject 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.

§ 2211.5–3 After commutation or payment of Indian price (acts of June 5, 1900, May 17, 1900 and May 22, 1902).

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).

§ 2211.6 Enlarged homesteads.

§ 2211.6–1 General regulations.

(a) *States affected; character of land.* (1) The act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218) (extended by later legislation to additional States), and the act of June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), provide for the making of homestead entries for areas of not exceeding 320 acres of public land in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming designated by the Secretary of the Interior as nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be "arid."

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

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

(4) A tract included in an entry under the Enlarged Homestead Acts or in any entry under the general law, and an additional entry under said acts, should be in compact form, and such claim may not be permitted to entirely surround a subdivision of unappropriated lands subject to entry under said acts.

(5) An original entry under the Enlarged Homestead Acts may not exceed one and one-half miles in extreme length (47 L.D. 370).

(b) *Initiation of settlement claims under enlarged homestead law.* Under the act of August 9, 1912 (37 Stat. 267; 43 U.S.C. 166, 223), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon.

§ 2211.6–2 Petitions and applications.

(a) A person who desires to enter public lands under the enlarged homestead laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands have been already classified and opened to entry under the enlarged homestead laws, only an application should be filed. The documents must be filed in the proper land office in the State, except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana, and petitions for lands in Kansas must be filed in the land office at Cheyenne, Wyoming.

(b) Any person qualified to make an original homestead entry for 160 acres is qualified to make entry under the Enlarged Homestead Acts for 320 acres.

(c) 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 nonrefundable cancellation service charge, an additional $10. 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 can be accepted or approved until all charges have been paid.

(d) 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.

§ 2211.6–3 Application to enter with petition for designation.

(a) *Act of March 4, 1915.* (1) Under the act of March 4, 1915 (38 Stat. 1162; 43 U.S.C. 220), a person may file an application for entry under the Enlarged Homestead Act of a tract of surveyed land which has not been designated thereunder, accompanied by a petition for its designation, or he may file application for additional entry though part of the land involved has not been designated, accompanied by like petition. He thus secures a preference right of entry if the land be thereafter designated. An additional entry cannot be allowed unless the tract first entered, as well as the one sought to be added, is designated, and therefore petitions should in all cases cover so much of both tracts as has not already been designated.

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

(3) The act of March 4, 1915, applies to cases where the party is seeking to make an original entry and to all cases where he seeks to make additional entry, regardless of the question whether proof has or has not been already submitted on his original filing.

(b) *Execution of application.* (1) Where a preference right under the act of March 4, 1915, is sought there must be filed at the proper land office the usual application for entry, original or additional, as the case may be, signed by the applicant and two witnesses, and the fee and commissions must be then paid; it must be accompanied by the applicant's statement, executed in duplicate and corroborated by at least two witnesses, setting forth the character of the land involved, both tracts, if additional entry is sought.

(2) This statement which will be entitled "Petition for Designation," must give the name and post-office address of the applicant and a description by legal subdivisions of all the land involved; in case of additional applications it should give the serial number (or numbers) of the old claim.

(3) In case of applications for entry under sections 1 to 5, commonly known as the general provisions of the Enlarged Homestead Act, the statement should set forth fully the conditions governing the irrigability of the land. If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given.

(i) The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon, such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and

reclaim the tract, or if it had been included in a desert-land entry, the reasons for lack of success should be stated.

(ii) The statement should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(4) In cases of applications for entry under section 6 of the Enlarged Homestead Acts, applicable to Utah and Idaho, the statement should give information regarding the possibility of securing on the land a supply of water suitable for domestic use. If there are on the tract, or in its immediate vicinity springs or streams which would furnish such supply, a complete statement should be made as to the quantity, quality, and availability of the water. A statement should also be made as to the location, depth, elevation of water plane relative to the surface, depth at which water was first obtained, and other pertinent facts as to wells situated either in the vicinity of the tract or nearest thereto, and as to the relation of the tract thereto. If unsuccessful attempts have been made to secure a domestic water supply on the land itself, the facts concerning them should be set forth.

(i) If the tract has not theretofore been designated under sections 1 to 5 of the act, applicants for designation under section 6 thereof should, in addition to the above, furnish the information required of applicants for designation under sections 1 to 5, as explained in this section.

(5) The filing of a statement, as above indicated, will not be conclusive as to the character of the land therein described, and the applicant may be required by the State Director to furnish additional evidence with regard thereto. Moreover, the filing of an application and petition does not give the party the right to fence the land or place other improvements thereon, and the erection of improvements will not confer upon him any right to equitable consideration of the application in the event the land is found not to be of the character contemplated by those provisions of the Enlarged Homestead Act under which the claim is filed.

(c) *Segregative effect of application.* No other appropriation of the land will be allowed before the application has been finally disposed of. Prior to final action on the application the party's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

§ 2211.6–4 Additional entry for contiguous lands.

(a) *Before proof on original claim.* (1) Under section 3 of the Enlarged Homestead Acts a person who has entered less than 320 acres of land which is of the character described therein, and which has been designated for entry under those acts, may make entry of adjoining lands, also so designated, which will not, together with the tract first entered, exceed 320 acres in area. Where proof has not already been submitted on the original claim at the time application for additional entry is filed, residence upon and cultivation of the tract first entered will be accepted as equivalent to residence upon and cultivation of the additional. Credit for compliance with the law as to additional entry may be allowed from the date of the filing of the application to enter.

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

(3) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivated, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for 1 year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in § 2211.2–3 (b) of this chapter are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(4) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for 1 year, increased to one-eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If culti-

vation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i.e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than 7 years from the date of the original entry.

CROSS REFERENCE: For proofs, see Subpart 1824 of this chapter.

(b) *After proof on original claim (act of March 3, 1915).* (1) The act of March 3, 1915 (38 Stat. 956; 43 U.S.C. 218, 219), amends sections 3 and 4 of the Enlarged Homestead Acts of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), and June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), so as to permit an additional entry thereunder to be made, though proof has already been submitted on the original, provided the applicant still owns and occupies the tract first entered, and it defines the residence and cultivation required in connection therewith.

(2) *Who may make additional entry; additional information required.* The act of March 3, 1915, confers the right of entry only upon one who "still owns and occupies the land" first entered; it is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. It should be observed that no change has been made in the requirement of the law that the tracts be contiguous; and this would not be fulfilled by the fact that they corner on each other. Where a person desires to make an entry under the Act of March 3, 1915, he must file in addition to the form or forms required by § 2211.6–2 (a) and (b) a statement showing continued ownership and occupancy of the land first entered, and a statement setting forth the character of the land in both tracts. These statements together with the required forms will be considered as a petition for designation under the enlarged homestead laws.

(3) *Residence.* The claimant is allowed credit for residence on the original tract and can not, in any event, be required to show residence continued for a greater period than is prescribed by section 2291 of the Revised Statutes. In other words, if the proof on the original entry has been accepted as sufficient under either the 5-year or the 3-year act, no further residence is needed; but, if the proof was by way of commutation, claimant must show such further residence, before or after the date of the additional entry, as will make up the aggregate amount required by the provisions of the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218).

(4) *Cultivation.* The law regarding cultivation, with reference to additional entries made before submission of proofs on the originals, has no application to the entries allowed under the act of March 3, 1915. The claimant is required to show cultivation of the additional tract itself, to the extent and for the period required by the act of June 6, 1912, that is, one-sixteenth of its area during the second year of the entry, and one-eighth during the third and until submission of proof, which must occur within 5 years after the date of the additional entry.

CROSS REFERENCE: For cultivation requirements, see §§ 2211.2–1 to 2211.2–2 and 2211.2–3(b) and (c).

§ 2211.6–5 Additional entries for incontiguous lands.

(a) *Acts of July 3, 1916 and Sept. 5, 1916.* Under section 7 of the Enlarged Homestead Acts, added thereto by the act of July 3, 1916 (39 Stat. 344; 43 U.S.C. 218), and the act of September 5, 1916, (39 Stat. 724; 43 U.S.C. 219), a person who has submitted final proof on a homestead entry for less than 320 acres of land of the character contemplated by said acts, has the right to enter sufficient land of similar character, not contiguous to his first entry, to make up therewith not more than 320 acres. He is required to have the same residence and cultivation and a habitable house on the additional entry as though it were an original filing, except where the second tract is within 20 miles of the first, in which case residence and a habitable house on either tract will be accepted.

(b) *20 Mile Limitation.* A qualifed person who owns and continues to reside on his original entry may make entry for two or more incontiguous tracts within 20 miles of his original entry, if unable to secure in one tract the entire area he is entitled to enter; but one who no longer owns his original entry, or

who seeks land not within 20 miles therefrom, can not be allowed to enter incontiguous tracts under this act.

(c) *Conditions under which additional entry may be made.* Section 7 of the Enlarged Homestead Acts has no application unless the first entry was made in one of the States where the Enlarged Homestead Act is in force, and the additional entry can not be allowed until both tracts shall have been designated thereunder. However, in considering allowance of the entry it is not material whether the applicant owns or occupies the original tract. A person whose two incontiguous entries do not make up 320 acres, who has submitted proof on the first and occupies his unperfected second claim, may amend the latter by adding land contiguous thereto, so as to aggregate that area, subject to the requirements of this act respecting residence and cultivation. Also the benefits of this act may be claimed by a person who has made and perfected more than one homestead entry, but the aggregate area of the land thus acquired with that applied for is limited to 320 acres.

(d) *Qualifications required of applicant.* The only qualifications required of an applicant under section 7 of the Enlarged Homestead Acts are that he has not already made an additional entry thereunder, and that the tract applied for will not, with other lands which he has entered and acquired title to under any of the nonmineral public land laws, or which he is then claiming thereunder, make an aggregate of more than 480 acres.

(e) *Designation of original and additional tracts.* It is not necessary that any of the land be designated under the Enlarged Homestead Act when the application for additional entry is filed. The applicant must state that both tracts have been so designated, or he must file petition for designation of the undesignated land, as provided by the act of March 4, 1915 (38 Stat. 1162; 43 U.S.C. 220), and separate petitions must be filed for the different tracts if both be undesignated.

(f) *Showing required for proof.* (1) There must be shown in proof on the entry the usual residence and cultivation and the existence of a habitable house upon the land entered, exception to these rules being made only where said tract is within 20 miles of that embraced in the original entry and the entryman is residing on the latter. In that event the homesteader need not reside on the additional entry nor have a habitable house thereon, if he owns and resides upon the original tract when applying for said entry, and continues both ownership and residence until submission of proof.

(2) In the proof, to be submitted within 5 years after the date of additional entry, there must be shown residence on the additional tract, or on the original, if permitted under the 20-mile exception above explained, for not less than 3 years, subject to the privilege of being absent 5 months in each year, as provided by the 3-year homestead law; also cultivation of not less than one-sixteenth of the additional tract during the second year after the date of the entry, and of not less than one-eighth of its area during the third year and until submission of proof; but residence and cultivation for the requisite period after the date of the application and until the submission of proof will be accepted. Credit for military service will be allowed as in other cases.

(g) *Showing required in petition for designation.* (1) As in other cases, a petition for designation, filed in connection with an entry under section 7 of the Enlarged Homestead Acts, must consist of a statement, signed in duplicate by the applicant and at least two witnesses, setting forth a description by legal subdivisions of all the land involved, its character, and the conditions governing the irrigability of both tracts.

(2) If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given. The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either

ordinary or artesian wells on the land, should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated. The petition should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(h) *Entries under section 6 of Enlarged Homestead Act.* The provisions of the acts of July 3 and September 5, 1916, do not apply to entries under section 6 of the Enlarged Homestead Act.

§ 2211.6–6 Additional entry for double the area of the additional rights.

(a) *Act of February 20, 1917.* The act of February 20, 1917 (39 Stat. 925; 43 U.S.C. 215), permits a person who has perfected a homestead entry for less than 160 acres and is entitled to an additional entry for sufficient land to make that area, to enter under the Enlarged Homestead Act a tract designated thereunder of an amount double that which he would be entitled to appropriate of land not so designated.

(b) *Designation required of additional tract.* The act of February 20, 1917, permits an additional entry under the Enlarged Homestead Act to be made for a tract designated as subject thereto, although the land included in the applicant's perfected entry be not thus designated; it is immaterial whether he owns the original tract, and the additional tract may be contiguous thereto or at any distance therefrom.

(c) *Description required of all former entries.* The application must contain a description of all entries theretofore made by the applicant or such data as will serve to identify them.

(d) *Area of additional right.* Under section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), a person who has partially exhausted his homestead right through a perfected entry is entitled to make an additional entry for so much land as will with the area of the completed entry make 160 acres. The act of February 20, 1917, supplements that legislation by providing that the additional land, if designated under the Enlarged Homestead Act, shall be estimated at only one-half its actual area in the calculation under the act of March 2, 1889. To illustrate: If the person has obtained title to 40 acres, he may make additional entry for not exceeding 240 acres of enlarged homestead land, that is, twice 120; if he has had 80 acres, he may still take 160 acres of such land; if he has had 120 acres, he may now take an additional 80 acres.

(e) *Petition for designation.* In connection with an application pursuant to the provisions of the act of February 20, 1917, a petition for designation of the land sought may be filed as provided in other cases of applications under the Enlarged Homestead Act, and the proceedings with relation to the application and petition will be as in other cases.

(f) *Right to additional area, when application cannot be allowed under section 3 or 7 of Enlarged Homestead Act.* Where an application is filed for additional entry under either section 3 or section 7 of the Enlarged Homestead Act, and the Secretary of the Interior or other authorized officer refuses to designate thereunder the tract included in the original perfected entry, the application may be allowed for so much of the land sought as the claimant is entitled to enter under the act of February 20, 1917, provided said land be designated as subject to the Enlarged Homestead Act.

(g) *Showing required for proof.* In proof on an entry allowed pursuant to the provisions of the act of February 20, 1917, there must be shown the existence of a habitable house upon the land entered and the usual residence and cultivation. Residence must be for not less than 3 years, subject to the privilege of being absent 5 months in each year, in two periods if desired. There must be cultivation of not less than one-sixteenth of the land entered during the second year after the date of the entry, and not less than one-eighth of its area during the third year and until submission of proof. However, credit for military service will be allowed as in other cases. Proof must be submitted within 5 years after the date of the entry.

§ 2211.6–7 Designation of national forest lands as basis for additional entries.

(a) *Act of March 4, 1923.* By act of March 4, 1923 (42 Stat. 1445; 43

U.S.C. 222), provision has been made whereby the Secretary of the Interior may designate under the Enlarged Homestead Act national forest lands embraced in subsisting or perfected homestead entries of 160 acres or less so that such forest homestead entries may be the basis for additional entries under said act.

(b) *Intent and purpose of act of March 4, 1923.* The intent and purpose of the act of March 4, 1923, is to permit persons holding existing or perfected homestead entries for lands within national forests of a character subject to designation which the applicant owns and on which he resides, to make additional entries for such a quantity of land outside of the national forest and within 20 miles of the original entry as when added to the area of the original entry will not exceed 320 acres, if under section 1 thereof.

(c) *Procedure for entry and proof.* The procedure in making and perfecting an entry under section 1 of the act of March 4, 1923, will be in all respects similar to that explained in §§ 2211.6–1 to 2211.6–4, covering additional entries under the Enlarged Homestead Acts, the only difference being that at the time of making the entry hereunder after proof on an original entry, the applicant must show ownership of and residence on the land in the original entry, instead of ownership and occupancy, and an additional hereunder may be made for land not adjourning that in the original entry. Residence on the original entry may be credited on both entries, but cultivation of the land in the additional entry must be as indicated in § 2211.6–4(a).

§ 2211.6–8 Nonresidence homesteads.

(a) *In Utah.* (1) The sixth section of the act of February 19, 1909 (35 Stat. 640; 43 U.S.C. 218), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands need not reside thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act.

(2) During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. This requirement is made by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 218). Proof may be submitted on entries of this class within 7 years after their dates.

(3) The rules relating to petitions for designation of lands apply to section 6 of the enlarged Homestead Act.

(b) *In Idaho.* The sixth section of the act of June 17, 1910 (36 Stat. 531, as amended by the act of August 10, 1917 (40 Stat. 275; 43 U.S.C. 219), provides that 1,000,000 acres of land in the State of Idaho which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon them possible, may be designated by the Secretary as subject to entry thereunder, without the necessity of residence upon such lands, by the entryman. One: sixteenth of the cultivatable area of the entry must be cultivated during the first year of the entry, one-eighth of the area during the second year, and one-fourth of the area during the third and each succeeding year. Under the act as amended it is required that "after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho."

§ 2211.6–9 Lands subject to Kinkaid entry.

(a) *Size of entry.* (1) It is directed by the act of April 28, 1904 (33 Stat. 547; 43 U.S.C. 24) commonly known as the Kinkaid Act, that in that portion of the State of Nebraska lying west and north of the line described therein, upon and after June 28, 1904, except for such lands as might be thereafter and prior to said date excluded under the proviso contained in the first section thereof, homestead entries may be made for and not to exceed 640 acres, the same to be in as nearly a compact form as possible, and must not in any event exceed 2 miles in extreme length.

(2) While the Kinkaid Homestead Act authorizes original homestead entries for not exceeding 640 acres, and additional entries for an area sufficient with the area of the originals to make

up 640 acres, the maximum area of land withdrawn by E. O. 6964, Feb. 5, 1935 which may be entered under said act and section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f) is 320 acres. See Subpart 2411 of this chapter.

(b) *Additional entry contiguous to original; ownership and occupancy of original required.* (1) Under the provisions of the second section of the act of April 28, 1904, as amended by section 7 of the act of May 29, 1908 (35 Stat. 466; 43 U.S.C. 224), a person who within the described territory has made entry prior to May 29, 1908, under the homestead laws of the United States, and who owns and occupies the lands theretofore entered by him, and is not otherwise disqualified, may make an additional entry of a quantity of land contiguous to his said homestead entry, which, added to the area of the original entry, shall make an aggregate area not to exceed 640 acres; and he will not be required to reside upon the additional land so entered, but residence continued and improvements made upon the original homestead entry subsequent to the making of the additional entry will be accepted as equivalent to actual residence and improvements on the land covered by the additional entry. But residence either upon the original homestead or the additional land entered must be continued for the period of 3 years from the date of the additional entry, except that entrymen may claim and receive credit on that period for the length of their military service, not exceeding 2 years.

(2) Such additional entry must be for contiguous lands, and the tracts embraced therein must be in as compact a form as possible; and the extreme length of the combined entries must not in any event exceed 2 miles.

(3) In accepting entries under the act of April 28, 1904, compliance with the requirements thereof as to compactness of form should be determined by the relative location of the vacant and unappropriated lands, rather than by the quality and desirability of the desired tracts.

(c) *Additional entry contiguous or incontiguous to original; ownership and occupancy of original not required.* By the first proviso of section 3 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224), any person who made a homestead entry either within the Kinkaid territory or elsewhere prior to his application for entry under this act, if no other disqualification exists, will be allowed to make an additional entry for a quantity of land which, added to the area of the land embraced in the former entry, shall not exceed 640 acres, but residence upon and cultivation of the additional land will be required to be made and proved as in ordinary homestead entries. But the application of one who has an existing entry and seeks to make an additional entry under said proviso can not be allowed unless he has either abandoned his former entry or has so perfected his right thereto as to be under no further obligation to reside thereon; and his qualifying status in these and other respects should be clearly set forth in his application.

(d) *Second entry.* Under the act of April 28, 1904, no bar is interposed to the making of second homesteads for the full allowable area by parties entitled thereto under existing laws, and applications therefor will be considered under the instructions of the respective laws under which they are made.

(e) *Proof*—(1) *Time.* A person who has a homestead entry upon which final proof has not been submitted, and who makes additional entry under the provisions of section 2 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224), will be required to submit his final proof on the original entry within the statutory period therefor, and final proof upon the additional entry must also be submitted within the statutory period from date of that entry.

(2) *Improvements required.* Upon final proof, which may be made after 3 years and within 5 years from date of entry, the entryman must prove affirmatively that he has placed upon the lands entered permanent improvements of the value of not less than $1.25 per acre for each acre, and such proof must also show residence upon and cultivation of the land for the 3-year period as in ordinary homestead entries, but credit for military service may be claimed and given.

(3) *Form.* In the making of final proofs the homestead-proof form will be used, modified when necessary in case of additional entries made under the provisions of section 2 of the act of April 28, 1904 (33 Stat. 548; 43 U.S.C. 224).

(4) *Payments required; form of remittances.* (i) 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 nonrefundable cancellation service charge, an additional $10. 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.

(ii) 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.

(f) *Commutation prohibited.* Entries under the act of April 28, 1904, are not subject to the commutation provisions of the homestead law.

§ 2211.7 Reclamation homesteads.

§ 2211.7-1 Entries on reclamation withdrawals.

(a) *Effect of reclamation withdrawals.* (1) Section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), provides for the withdrawal of lands from all disposition other than that provided for by said act. Since the passage of the act of June 25, 1910 (36 Stat. 835; 43 U.S.C. 436, 437), lands withdrawn as susceptible of irrigation are open to settlement or entry only when approved farm-unit plats have been filed and water is ready to be delivered to the land in said farm units or some part thereof and such fact has been announced by an authorized officer, except as provided by the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437). Where settlements had been effected in good faith prior to June 25, 1910, on lands embraced within second-form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law. The Reclamation Act of June 17, 1902, and acts amendatory thereof or supplementary thereto are hereinafter referred to generally as the reclamation law.

(2) Under the provisions of the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437), the prohibition contained in section 5 of the act of June 25, 1910, forbidding settlement on or entry of lands reserved for irrigation purposes prior to the approval of farm-unit plats and the announcement of the fact that water is ready to be delivered to the land, is set aside as to lands included in entries made prior to June 25, 1910, where such entries have been or may be relinquished in whole or in part.

(b) *Provisions governing reentries.* (1) Settlement and entry of such lands will be allowed subject to the provisions of the homestead law and the reclamation law in the same manner as for other lands subject to entry within reclamation projects except that the certificate of the official in charge of the project that water-right application has been made and charges deposited, which must be filed in the ordinary case, is not required. See paragraph (c) of this section. The lands must have been covered by a valid entry prior to June 25, 1910, and shall only be subject to entry under the provisions of the present act in cases where a relinquishment of the former entry has been or shall be filed.

(2) Entries are permitted under the act of February 18, 1911, as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437), upon the relinquishment of an entry made prior to June 25, 1910, and the right to enter such land is not limited to one or more entries or entrymen.) Lena Hektner, 42 L.D. 462.) This act has no application where the cancellation of the entry made prior to June 25, 1910, was the result of a contest or of a relinquishment resulting from the same. (Fred V. Hook, 41 L.D. 67.) The act is also inapplicable in the case of lands withdrawn under the first form and has reference only to lands covered by second-form withdrawals. (Annie G. Parker, 40 L.D. 406.)

(c) *Homestead entries in reclamation projects.* Homestead entries of lands platted to farm units and covered by public notice are made practically in the same manner as the ordinary homestead entry and managers will allow

homestead applications for such lands, if found regular, and accompanied by a certificate of the official in charge of the project showing that water-right application has been filed and the proper water-right charges deposited and that the applicant has qualified under subsection C of section 4 of the act of December 5, 1924 (43 Stat. 702; 43 U.S.C. 433). No application to make homestead entry of lands within a reclamation project and covered by public notice will be received unless accompanied by such certificate of the official in charge. Where under the reclamation law lands within the reclamation project are subject to entry notwithstanding public notice covering said lands has not yet issued, such certificate of the official in charge is not required, and in such cases the application, if otherwise regular, will be received and entry allowed. The manager will immediately notify the official in charge of each entry allowed, stating whether the entry was allowed with or without the certificate of the official in charge above referred to.

CROSS REFERENCE: For lands in State irrigation districts, see Subpart 2253 of this chapter.

(d) *Subdivision of farm unit.* (1) An entry may be made of part of an established farm unit (a) when the remaining portion of said unit is also desired for entry simultaneously by another person and is, in the judgment of the official in charge of the project, sufficient, if carefully managed, to return to the reclamation fund the charges apportioned to the irrigable area thereof, or (b) can be advantageously included as part of an established farm unit, or (c) can in combination with existing farm units be advantageously replatted into new farm units, each sufficient, if carefully managed, to support a family and return to the reclamation fund the charges apportioned to the irrigable area of the several new farm units.

(2) Where it is desired to make entry of part only of a farm unit, an application for the amendment and subdivision of such unit should be filed with the official in charge of the project. If such subdivision is rectangular and survey is not required to determine the division of the irrigable area of the farm unit as proposed to be divided, no charge will be made. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit or the division of the irrigable area, the official in charge will proceed as directed in § 2211.7-4(a)(4). Upon such application being filed, the official in charge will either approve or disapprove the same, and, if approved, proceed as directed in § 2211.7-4(a)(5).

(3) The farm units may be as small as 5 acres where the lands are suitable for fruit raising, etc., but as a rule they are fixed at from 40 to 160 acres each. These areas are announced on farm-unit plats, and public notice stating the amount of the charges and other details concerning payment is issued by the authorized officer. Until this public notice is issued it is impossible in most respects to give definite information as to any particular tract or as to the details intended to be covered by such notice.

(e) *Additional entries.* A person who has made homestead entry for any area within a reclamation project, cannot make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry within a reclamation project, as every entry within a project is either made for or is subject to conformation to a farm unit, which is the equivalent of a homestead entry of 160 acres of land outside of a reclamation project. (38 L.D. 58.)

(f) *Notices to project managers.* Notice of all action in the land office or in the Bureau of Land Management regarding any entry for which water-right application has been made, or may be made, whether subject to the reclamation law or not, shall be given immediately by the manager to the official in charge of the project by the forwarding of copy of decision in the case. The official in charge shall advise the manager of all action regarding any water-right application or contract by the Bureau of Reclamation affecting the status or validity of the homestead or desert-land entry covering the land. Among the several actions of which the manager is especially directed to notify the official in charge, are:

(1) Allowance of entries.

(2) Conformation of entries to farm units.

(3) Cancellation of entries.

(4) Applications for reinstatement of entries.

(5) Acceptance of final proof.

(6) Issuance of final certificate.

(7) Issuance of patent.

(8) Acceptance or rejection of assignments under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441).

(9) Contest against entries, granting leave of absence, death or disability of entryman, or any other actions materially affecting the entry, or affecting land under reclamation withdrawal.

(g) *Contests*—(1) *Rights of successful contestants.* An entry embracing lands included within a first- or second-form reclamation withdrawal, whether such entry was made before or after the date of such withdrawal, may be contested and canceled because of entryman's failure to comply with the law or for any other sufficient reason, except that for failure to pay for construction charges or charges for operation and maintenance no contest will lie, and any contestant who secures the cancellation of such entry and pays the land-office fees occasioned by his contest will be awarded a preferred right of making entry. Should the land embraced in the contested entry be within a reclamation withdrawal at time of successful termination of the contest, the preferred right may prove futile, for it cannot be exercised as long as the land remains so withdrawn, but should the lands involved be restored to the public domain or a farm-unit plat be approved for the lands and announcement made that water is ready to be delivered, the preference right may be exercised at any time within 30 days from notice of the restoration or the establishment of farm units. It should be the duty, however, of such contestant to keep the manager advised respecting his residence to which notice may be sent him of his preference right of entry in event of successful contest, when the land is subject to entry, and a notice mailed to his address, shown by the records of the land office at the time of the mailing of the notice of preference right, will be held to meet the requirements of the act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 185). No contest can be allowed, however, against any qualified entryman who prior to June 25, 1910, made bona fide entry upon lands proposed to be irrigated and who established residence in good faith upon the lands entered by him for failure to maintain residence or to make improvements upon his land prior to the time when water is available for its irrigation.

(2) *When contests are allowable.* Under the regulations in subparagraph (1) of this section and in this subparagraph, the filing of contests will be allowed against homestead entries made subject to the reclamation law in the following cases:

(i) Where the entry was made on or after June 25, 1910.

(ii) Where the entry was made prior to June 25, 1910, and it is alleged that the entryman failed to establish residence in good faith upon the lands entered by him.

(iii) Where the entry was made prior to June 25, 1910, and a period of 90 days has elapsed since the issuance of public notice under section 4 of the Reclamation Act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 419), fixing the date when water will be available for irrigation of the land.

(iv) Where the entry was made prior to June 25, 1910, for any causes other than "failure to maintain residence or make improvements upon the land prior to the time when water is available."

(h) *Exchanges*—(1) *Applications for exchange.* The act of March 4, 1915 (38 Stat. 1215; 43 U.S.C. 447), provides for the exchange of lands included in pending entries, for other lands in the same project, under certain conditions. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must refer to the serial number and give the description of the former entry, and must be accompanied by a relinquishment of the former entry and a statement by the applicant showing the facts upon which he claims to be entitled to the provisions of this act.

(2) *Conditions permitting exchange; act of March 4, 1915.* The act of March 4, 1915, permits a new entry only where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land

has been designated as a farm unit. Any such farm unit entered under this act will be subject to conformation to a new farm unit, in the discretion of the Department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat. 388), and acts supplemental thereto and amendatory thereof.

(3) *Conditions permitting exchange; other acts.* Other exchanges within reclamation projects under certain conditions, have been authorized, as indicated below:

(i) The act of August 13, 1953 (67 Stat. 566; 43 U.S.C. secs. 451–451k), provides for the exchange of certain unpatented farm units or private lands on a Federal irrigation project, for farm units available on the same or any other such project, and the amendment of farm units by the addition of contiguous or noncontiguous land on the same project. For the regulations under this act see Part 406, Chapter II, of this title.

(ii) Section 44 of the act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c) authorizes exchanges of unpatented entries and private lands for other public lands within the same project or any other Federal reclamation project.

(iii) Departmental orders of May 10, 1922 and July 31, 1924, permit the exchange of unpatented and patented land and water-right entries under the act of January 25, 1917 (39 Stat. 868) in Part One, Mesa Division, Yuma Irrigation Project, Arizona.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–2 Loans.

(a) *Mortgage loans on existing reclamation homestead entries.* (1) A reclamation homestead entryman or a recognized assignee thereof desiring a loan on an existing reclamation 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 and the Bureau of Reclamation of the Department of the Interior.

(2) Where a reclamation 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 would be subject to reclamation 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. An applicant for such land should first consult the Farmers Home Corporation and the Bureau of Reclamation. Such a reclamation homestead application must not be filed in the land office until the applicant has been selected by the Farmers Home Corporation and the Bureau of Reclamation, and he has been directed by the Farmers Home Corporation to file the application.

(3) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the reclamation 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 arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(4) Decisions canceling reclamation homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the reclamation or 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 reclamation 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 reclamation homestead entry was closed, the land will become subject to disposition by the Secretary of Agriculture.

(b) *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.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–3 Leave of absence.

(a) *Showing required.* (1) Applications for leave of absence should be duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set

forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirements of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof. The statement regarding the availability of water for irrigation must be corroborated by certificate of the official in charge of the project, to be filed with the application for leave.

(2) All applications for leave of absence within Federal irrigation projects under the act of June 25, 1910, must be accompanied by an application service fee of $5 which will not be returnable.

(b) *Period of leave.* When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry.

(c) *Effect of granting leave.* Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this act is to protect the entry from contest for abandonment, and by the necessary implication of the act the period within which the entryman is required to submit final proof will be extended and the entry will not be subject to cancellation for failure to submit proof until the expiration of the period allowed in which to submit final proof, exclusive of the period for which leave of absence may be granted. Under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U.S.C. 445), no qualified entryman for lands within a reclamation project whose entry was made prior to June 25, 1910, and who established residence in good faith upon the lands so entered shall be subject to contest for failure to maintain residence or make improvements upon his land prior to the time public notice is issued fixing the water-right charges and announcing that water is available for the irrigation of the land embraced in his entry. Within 90 days after the issuance of public notice under section 4 of the act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 419), fixing the water-right charges and announcing the date when water will be available for irrigation, the entryman must file water-right application for the irrigable land in his entry in conformity with the public notice and farm-unit plate, and must file in the land office a statement showing that he has reestablished his residence on the land with the intention of maintaining the same for a period sufficient to enable him to make final proof.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–4 Assignments, mortgages.

(a) *Assignments*—(1) *When assignments may be made.* The act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), authorizes persons who have made or may make homestead entries subject to the reclamation law to assign their entries in whole or in part at any time after filing in the appropriate land office satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law.

(2) *Farm units.* (i) In cases where the entry involves all or parts of two or more farm units, the entryman may file an election as to which farm unit he will retain and he may assign and transfer to a qualified assignee any farm unit or units or parts of such units which he does not elect to retain. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

(ii) Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit must be filed with the official in charge of the project, together with the showing required by paragraph (a)(4) of this section. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the agent cashier, Bureau of Reclamation, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after com-

pletion of the survey, and they will also be required to make good any deficiency in their deposit.

(3) *Limitations and conditions.* (i) The law expressly makes assignments "subject to the limitations, charges, terms, and conditions of the Reclamation Act," which, among other things, limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all construction or building and betterment charges.

(ii) Assignments must be an absolute sale, divesting the assignor of all interest in the premises assigned. Assignments may be effected by quitclaim or warranty deed or by any other form of conveyance in general use in the State in which the land is located, but a quitclaim or warranty deed is preferred.

(iii) Assignees must be more than 21 years of age and must not own, hold, or claim any other farm unit or entry under the reclamation law or one or more parcels of private land up to the limit of single ownership fixed for the project receiving water from the project system upon which all installments of construction or building or betterment charges have not been paid in full. If the assignee is a married woman, she must purchase the assignment with her own separate money, in which her husband has no interest or claim (39 L.D. 504 and 43 L.D. 364). If the assignment involves a partial farm unit which an entryman does not elect to retain in accordance with paragraph (a)(2)(i) of this section the assignee must also have an entry or an assignment covering the remainder of such unit.

(4) *Showing required.* Whenever assignments are presented to the land office in accordance with paragraph (a)(5) of this section they must be accompanied by the following:

(i) A showing that the assignment and the assignee meet the requirements of paragraph (a)(3) of this section.

(ii) The original instrument of assignment, or where the instrument is recorded, a copy thereof certified by the officer who has custody of the record, or where the original instrument of assignment is presented to an officer having an official impression seal, a copy of the instrument certified by such officer if accompanied by satisfactory evidence of compliance with the documentary stamp tax provisions of the internal revenue law.

(iii) A certificate by the official in charge of the project that water-right application therefor is not receivable or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment.

(iv) Where not all the predecessors in interest to an assignee have had their assignments approved by the land office, such assignee, in addition to the showings required by subdivisions (i), (ii) and (iii) of this subparagraph, must submit satisfactory evidence of title to the land consisting of either the recorded deed or deeds in the chain of title from the original entryman, an abstract of title, or a certificate of title issued by a qualified title company which is acceptable to the Department of the Interior.

(v) A service fee of $5 which will not be returnable.

(5) *When showing is required.* The showing required by subparagraph (4) of this paragraph is required whenever an assignment is presented to the appropriate land office for filing. All assignments should be presented for filing. They must be presented, however, when:

(i) The assignments involve, under paragraph (a)(2)(i) of this section all or part of farm units which an entryman does not elect to retain, or under paragraph (a)(2)(ii) of this section, parts of established farm units.

(ii) The assignee desires to make proof of full compliance with the reclamation law with the view of receiving patent for the land.

(6) *Requirements for patent.* Upon the approval of an assignment, the assignee will become entitled to a patent upon payment of the water-right charges and submittal of satisfactory proof of reclamation as would have been required of the original entryman, and after proof of compliance with the law.

(b) *Mortgages*—(1) *Notice of interest by mortgagees.* (i) Mortgages of lands embraced in homestead or desert-land entries within reclamation projects may file in the land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entry-

man in connection with such proceedings, and a like notice of mortgage interest may be filed with the official in charge of the project in case of any lands, whether or not water-right application has been filed under the provisions of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), including homestead entries, desert-land entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by an authorized officer against such lands and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied against such lands.

(ii) All notices of mortgage interest on homestead or desert land entries filed in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

(2) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest filed as provided in the preceding section must be forthwith noted upon the records of the official in charge of the project and of the land office, and be promptly reported to the Commissioner of the Bureau of Reclamation, where like notations will be made. Relinquishment of a homestead or desert-land entry or part thereof, within a reclamation project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein; nor will an assignment of such a homestead entry or part thereof under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), nor an assignment of a mortgaged desertland entry where the records show the land to have been mortgaged, be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(3) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the lands at foreclosure sale, such mortgagee-purchaser, whether a nonresident or corporation, may, at any time within 1 year after the end of the statutory period of redemption, if there be such statutory period, and if not, at any time within 1 year after such foreclosure sale, make proof of cultivation and reclamation of the land under section 1 of the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), and receive final water-right certificate, provided such mortgagee-purchaser is otherwise qualified so to do. Water will be furnished said land, and no steps will be taken to cancel the water-right application on account of the holdings by the same mortgagee-purchaser of lands in excess of 160 acres, or the limit per single ownership of private land as fixed by an authorized officer for which a water right may be purchased, until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of the foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of such mortgagee-purchaser. To secure the benefits hereof the mortgagee purchasing the land at foreclosure sale must give notice thereof to the manager of the land office and to the officer in charge of the project within 60 days after such purchase.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7–5 Rights of widows and heirs of entryman.

(a) *Completion of entries.* The widows or heirs of persons who make entries under the reclamation law will not be required both to reside upon and cultivate the lands covered by the entries of the persons from whom they inherit, but they must reclaim the land as required by the reclamation law, and make payment of all unpaid charges when due.

(b) *Minor heirs.* Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See Heirs of Frederick C. DeLong, 36 L.D. 332.) If in such case the land has been divided into farm units, the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will be required to conform the entry to one farm unit in the same manner as an original entryman by amending the former entry, relinquishing to the United States or assigning to a duly qualified assignee the lands embraced in the entry in excess of the farm unit he elects to

retain. The purchaser and his assignees take, subject to the payment of the water-right charges authorized by the reclamation law and regulations thereunder, and must reclaim the land as required by said law, but are not required otherwise to comply with the homestead law. Should the land not be sold for the benefit of the minor heirs, but retained by them, they will be required to show compliance with the requirements of law as to reclamation and payment of the charges.

CROSS REFERENCE: For regulations relating to the payment of water-right charges, see §§ 2211.7-6(b)(1) and 2226.4-8.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.7-6 Final proof; final certificates; patents.

(a) *Requirements for issuance.* (1) The act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), expressly requires reclamation of one-half of the irrigable area of the entry as finally adjusted before final certificate and patents may issue thereunder, and, therefore, the act does not authorize the issuance of final certificate on homestead entries made subject to the reclamation law, prior to the establishment by an authorized officer of farm units, and the conformation of the entry to an approved unit, for the reason that prior to that time the entry is still subject to adjustment in area, and it can not be determined what area must be ultimately reclaimed under the provisions of the act.

(2) The act of Congress of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541) amends the proviso to section 1 of the act of August 9, 1912 (37 Stat. 265), to read as follows:

Provided, That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate.

(3) Under the provisions of this act patents may issue on reclamation entries where all water-right charges due at the time the entryman submits proof of reclamation of one-half of the irrigable area of the land embraced in his entry have been paid, regardless of the fact that other water-right charges may accrue and be unpaid prior to the issuance of patent.

(4) All persons who make entry of lands within the irrigable area of any project commenced or contemplated under the reclamation law will be required to comply fully with the homestead law as to residence, cultivation, and improvement of the lands, except that where entries were made prior to the issuance of public notice announcing the availability of water for the irrigation of the land and prior to June 25, 1910, in which case, under the departmental decision in the case of ex parte J. H. Haynes (40 L.D. 291), and under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U.S.C. 445), the submission of final proof is not required within the period during which proof must be submitted under the ordinary provisions of the homestead law.

(b) *Commutation not allowed; conformation to farm units.* Reclamation entries are not subject to the commutation provisions of the homestead law, and on the determination by an authorized officer of the Department of the Interior that the proposed irrigation project is practicable, the entries made prior to June 25, 1910, and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the authorized officer, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas.

(c) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as stated in Subpart 2033 of this chapter will be allowed to claim such credit in connection with entries made under the reclamation law, but will not be entitled to receive final certificate or patent until the waterright charges due have been paid and the requirements as to reclamation have been met.

(d) *Reclamation required.* (1) All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period

required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forefeiture, whether water-right application has been made or not.

CROSS REFERENCE: For cultivation requirements of the homestead laws, see §§ 2211.2-2(b) and 2211.2-3 (b) and (c) of this chapter.

(2) Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead law and have submitted proof which has been found satisfactory but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units have not been established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry, as finally adjusted to an approved farm unit, and payment of all charges due under the public notices and orders issued in pursuance of the reclamation law.

(e) *Requirements of reclamation proof.* Homestead and desert-land entrymen, in making proof of compliance with the reclamation law as to reclamation and payment of reclamation charges due, must submit such proof, duly corroborated by two witnesses, in duplicate, to the official in charge of the project showing these facts. Thereupon it shall be the duty of the official in charge to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of the Bureau of Reclamation and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not yet been accomplished as required he will forward the proofs to the manager of the land office for the district in which the land is situate, with his report or findings thereon, for appropriate action. If the proof be rejected by the manager, appeal will lie to the Director, Bureau of Land Management, as in other cases provided, it being the purpose to issue final certificate upon any such entry only after a final determination that all water charges due on account thereof have been paid and that reclamation has been accomplished as required by the reclamation law. Where prior to issuance of public notice water has been furnished on a water-rental basis to reclamation entrymen or others, and by means whereof reclamation sufficient to obtain patent or water-right certificate under the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen or others desiring to obtain patent or water-right certificate under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by an authorized officer. In such cases reclamation homestead entries must be conformed to farm units as established by an authorized officer. If not theretofore created, farm units may be established upon application.

(f) *Certifications by superintendents or other officers of irrigation districts and water users' associations.* (1) On a reclamation project (other than the Salt River Valley Project) or part thereof operated and maintained by an irrigation district or water users' association, the certifications as to the cultivation of, reclamation of, and payments from lands within the boundaries of the irrigation district or within the general territory of the water users' association may be made by the superintendent or other appropriate officers of the district or association, under the seal of the district or association, and when so made will be accepted and given the same force and effect as certifications made by a Government project superintendent: *Provided, however,* That when the certificate relates to payments made by the

entryman, and the district or association is delinquent in the payment of charges due from the district or association to the United States, the certificate shall show that the Government charges paid by the entryman to the district or association were paid over to the Government by or on behalf of the district or association.

(2) By Departmental telegram, dated Nov. 26, 1917, the register at Phoenix, Arizona, was instructed to return to the Salt River Valley Water Users' Association for report, recommendation, and forwarding by association to Commissioner, Bureau of Reclamation, all assignments, reclamation homestead entries and certificates of final proof under the reclamation law offered to or filed in his office and that applications to make homestead entries in the Salt River Reclamation project should be noted on his records and forwarded to Commissioner-Bureau of Reclamation for consideration and recommendation.

(g) *What constitutes reclamation and cultivation.* To comply with the provisions of the reclamation law as to reclamation and cultivation, the land must be cleared of brush, trees, and other encumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the official in charge of the project of proof of reclamation, except as prevented by hailstorm or flooding, satisfactory crops must be grown on at least one-half of the irrigable area thereof. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover; or (c) a season's growth of orchard trees or vines of which 75 percent shall be in a thrifty condition. The crop production requirements of this section affecting lands embraced in reclamation homestead entries made after January 1, 1949, must be performed and met by the entryman personally, by members of his immediate family residing with him, or by persons employed under his direction, supervision, and management. The crop production requirements of this section shall be applicable to entryman's successors in interest.

(h) *Time for reclaiming certain lands.* As to all lands subject to the Reclamation Extension Act of August 13, 1914 (38 Stat. 686; 43 U.S.C. 440), at least one-quarter of the irrigable area thereof shall be so reclaimed within three full irrigation seasons after entry or making water-right application, and at least one-half of the irrigable area thereof so reclaimed within five full irrigation seasons after entry or making water-right application, except that the first full irrigation season affecting such land for which water-right application shall have been made prior to May 3, 1915, shall be the irrigation season of 1915. All land thus reclaimed and cultivated shall continue to be so reclaimed and cultivated until after final proof is made and accepted or patent or final water-right certificate issued. Failure to so reclaim lands subject to the said Reclamation Extension Act renders the entry, or, in case of private land, the water-right application therefor, subject to cancellation.

(i) *Liens for unpaid charges*—(1) *On entries under the reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912, as amended by the act of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541), and in the act of August 26, 1912 (37 Stat. 610; 43 U.S.C. 547), in case of homestead entries under the reclamation law, on ceded Indian lands entered under the Reclamation Act, and in case of desert-land entries within the exterior limits of any land withdrawal or irrigation project under the Reclamation Act, if final proof of compliance with the homestead or desert-land law, as the case may be, has been previously submitted and has been accepted, or if such final proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation the manager will issue final certificate on the entry. The final certificate so issued must be stamped by the manager when issued as follows: "Subject to the provisions of the act of August 9, 1912 (37 Stat. 265)." The entry, if found to be regular, will be approved by the manager for patent under said act of August

9, 1912, or August 26, 1912 (37 Stat. 610), and patent issued reserving the lien and containing other provisions as in said acts provided.

(2) *On entries other than those under reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges, as provided in the act of August 9, 1962, as amended, in the case of homestead entries, other than those under the Reclamation Act, where a water-right application has been filed by the entryman, and the manager has been notified by the official in charge of the project of the acceptance of such application, if final proof has been accepted on the entry, or final proof is submitted at the time of the receipt of such reclamation proof and is found to be sufficient on examination in the land office, the manager will issue final certificate of compliance with the homestead law. The entry, if found to be regular, will be approved by the manager for patent and final water-right certificate will be issued by the project official in charge, reserving a lien to the Government and its successor for the charges due or to become due.

(3) *Act of May 15, 1922.* Sec. 2 of the act of May 15, 1922 (42 Stat. 542; 43 U.S.C. 512) provides in part as follows:

> That patents and water-right certificates which shall hereafter be issued under the terms of the Act entitled "An Act providing for patents on reclamation entries, and for other purposes," approved August 9, 1912 (37 Stat. 265), for lands lying within any irrigation district with which the United States shall have contracted, by which the irrigation district agrees to make the payment of all charges for the building of irrigation works and for operation and maintenance, shall not reserve to the United States a lien for the payment of such charges; * * *. (Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2211.8 Flathead Irrigation District, Montana.

§ 2211.8–1 Authority.

The Flathead irrigation project was constructed within the Flathead Indian Reservation under the provisions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and supplemented by the act of May 10, 1926 (44 Stat. 464), and other acts. Only those lands designated as farm units on farm-unit plats approved by the Secretary of the Interior or under his specific authority and those lands irrigable from the project embraced in Indian allotments are within the Flathead irrigation project. The designation of any tract or tracts of land as a farm unit or farm units includes those lands in the Flathead project, and the cancellation of any farm unit or farm units eliminates the lands formerly designated as such farm unit or farm units from the project.

(Sec. 15, 35 Stat. 450)

§ 2211.8–2 Requirements and limitations on entries.

(a) *Payment of appraised Indian price of land.* An entrymen for land within the Flathead project, in addition to complying with the ordinary provisions of the homestead laws applicable to his entry, must pay the appraised Indian price of the land. One-third of the appraised value of the land must be paid when entry is made and two-fifteenths of the appraised value, annually thereafter for 5 years beginning 1 year after the date of filing, without interest.

(b) *Acreage limitations.* No person can enter more than one farm unit, regardless of its acreage, nor can he enter a part of a farm unit, nor parts of two or more farm units, nor a farm unit and adjacent lands not designated as a farm unit, and no person can enter a farm unit who is not entitled to enter 160 acres under the homestead laws.

(c) *Payment of costs.* Persons who enter farm units must pay that part of the cost of building, operating and maintaining the irrigation works which is assessed against their tracts, in addition to the Indian price or appraised value of the lands. The building, operation, and maintenance charges against any particular unit or allotment will be based on the number of acres in it which can be irrigated and not on the entire area of the unit, as there will be no building, operation, or maintenance charges against any land in any unit which can not be irrigated. The entire Indian price must be paid for each acre in the units, regardless of the area of them which can be irrigated.

(Sec. 15, 35 Stat. 450)

§ 2211.8–3 Assignment.

(a) *Right to assign.* Under the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441) persons who have made or may make homestead en-

tries subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat. 388), may assign their entries in their entirety, or in part, at any time from and after filing with the Bureau of Land Management of satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extends the provisions of the act of June 23, 1910, supra, of the Flathead project. Assignment of part of an entry within the Flathead project may be made only after the subdivision of the farm units.

(b) *Assignment of part of farm unit.* Where it is desired to assign a part of a farm unit, an application for the amendment, and subdivision, of such unit should be filed with the project engineer. The assignment, with accompanying showing by the assignor and assignee, must also be filed with the project engineer for his consideration.

(c) *Filing of instruments of assignment.* No assignment of a farm unit or any part thereof shall be accepted by the Bureau of Land Management, or recognized as valid for any purpose, until after the filing in the land office of the showings and certificates required by paragraph (d) of this section.

(d) *Showing required.* Assignments under this act are expressly made subject to the limitations, charges, terms, and conditions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and acts supplementary thereto or amendatory thereof, including the act of May 10, 1926 (44 Stat. 464), and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all building and betterment charges, each assignor must present a showing to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing that he does not own or hold, and is not claiming, any other farm unit or entry under the act of April 23, 1904 (33 Stat. 302), and the acts supplementary thereto or amendatory thereof, upon which all installments of building and betterment charges have not been paid in full, and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior, and a further showing, in the form of a certificate of the project engineer, that water-right application therefor is not yet receivable; or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. A married woman whose husband is claiming any farm unit or entry upon which all installments of building and betterment charges have not been paid will not be allowed to take an assignment under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), unless such assignment is purchased with her own money and for her own use and benefit.

(e) *Procedure governing assignments.* Assignments made and filed in accordance with the regulations in paragraph (a) to (d) of this section should be noted on the land office record and, if approved, the assignees in each case will, at the proper time, make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

(Sec. 15, 35 Stat. 450)

§ 2211.8–4 Surveys; plats.

(a) *Cost of survey.* If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special disbursing agent of the project on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

(b) *Amendatory farm-unit plats.* When the plats describing the amended farm units are approved by the project engineer, he will forward two copies of the amendatory plat together with the assignment and accompanying showings to the land office, where the amendatory plat will be treated as an official amendment of the farm-unit plat. A copy of the amendatory plat will also be forwarded promptly by the project engineer to the Area Director, Bureau of Indian

Affairs, Billings, Montana, for formal approval.

(Sec. 15, 35 Stat. 450)

§ 2211.8–5 Mortgages.

(a) *Notice of interest by mortgagees.* Mortgagees of lands embraced in homestead entries within the Flathead project may file in the land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project engineer in case of any lands, whether or not water-right application has been filed, including homestead entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

(b) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest, filed as provided in the preceding section, must be forthwith noted upon the records of the project engineer, and of the land office, and be promptly reported to the Area Director, Bureau of Indian Affairs. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such entry, or part thereof under the act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(c) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the land at foreclosure sale, no steps will be taken to cancel the water-right application, on account of failure of the applicant to maintain residence upon or in the neighborhood of the land, until 1 year after the end of the statutory period of redemption, if there be such statutory period; if not, until 1 year after the foreclosure sale; nor on account of the holdings by the same mortgagee of lands in excess of 160 acres or of the limit per single ownership of private lands as fixed by the Secretary of the Interior for which a water right may be purchased until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of the mortgagee; and also that within such period of 1 year an acceptable water-right application for such land be filed by a qualified person, who, upon submitting satisfactory evidence of transfer of title, shall receive a credit equal to all payments theretofore made on account of the water-right charges for said land. To secure the benefits of this order the mortgagee purchasing land at foreclosure sale hereunder must give notice thereof to the manager of the land office and to the engineer in charge of the project within 60 days thereafter.

(Sec. 15, 35 Stat. 450)

§ 2211.8–6 Widows, heirs or devisees of entrymen.

(a) *Completion of entries by widows, heirs, or devicees.* The widows, heirs, or devisees of persons who make entries within the Flathead project will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes, as required by the law, and make payment of all unpaid charges when due.

(b) *Rights of minor heirs.* Upon the death of a homesteader having an entry within the project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See heirs of Frederick C. DeLong, 36 L.D. 332.) The purchaser and his assignees take subject to the payment of

the water-right charges authorized by law and the regulations thereunder and must reclaim one-half the irrigable area, as required by said law, but are not required otherwise to comply with the homestead law.

(Sec. 15, 35 Stat. 450)

§ 2211.8–7 Proof.

(a) *Commutation permitted.* These entries are subject to the commutation provisions of the homestead law. The irrigable areas are announced on farm-unit plats, and public notice, stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior.

(b) *Requirements of reclamation proof.* Entrymen, in making proof of compliance with the law as to reclamation of one-half of the irrigable area and payment of charges due, must submit a showing duly corroborated by two witnesses, in duplicate, to the project engineer showing those facts. Thereupon it shall be the duty of the project engineer to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct, he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of Indian Affairs, and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not been accomplished as required he will forward the proofs to the manager of the land district in which the land is situated, with his report or findings thereon. Where prior to issuance of public notice water has been furnished to entrymen on a water-rental basis, and by means thereof reclamation sufficient to obtain patent under the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541–546), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen desiring to obtain patent under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by the Secretary.

(c) *What constitutes reclamation and cultivation.* To comply with the provisions of the law requiring the reclamation of one-half the irrigable area of an entry within the Flathead project, the land must have been cleared of brush, trees, and other encumbrances provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the project engineer of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereon. A satisfactory crop during any year shall be any one of the following: (a) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover, or, (c) a season's growth of orchard trees, or vines, of which 75 percent shall be in a thrifty condition.

(d) *Indian charges, testimony fees, and final commissions.* Upon the submission of proof on entries within the Flathead project, managers will accept only the payments of Indian charges and the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable on such entries until proof is received of compliance with the requirements of the law as to reclamation and payment of the charges which have become due.

(e) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as provided in Subpart 2033 of this chapter, will be allowed to claim such credit in connection with entries within the Flathead project, but will not be entitled to receive final certificate or patent until the requirements as to reclamation and payment of the waterright charges have been met.

(Sec. 15, 35 Stat. 450)

§ 2211.8–8 Final certificates.

(a) *Action on proofs; when final certificate may issue.* If such proof showing reclamation and payment of charges is filed, and the proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found, on examination by the manager, to be sufficient, he will issue final certificate on the entry as provided in paragraph (d)(1) of this section.

(b) *Procedure where proof is not acceptable.* If any proof offered under this law be irregular or insufficient the manager will reject it and allow the entryman the usual right of appeal.

(c) *Acceptance of proof of residence, cultivation, and improvement.* Entrymen who have resided on, cultivated, and improved their lands for the time required by the homestead law, and have submitted proof which has been found satisfactory thereunder by the Bureau of Land Management, but who are unable to furnish proof of reclamation because water has not been furnished, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation by one-half of the irrigable area of the entry and payment of all charges due under public notices and orders issued in pursuance of the law.

(d) *Liens*—(1) *Endorsed on final certificate.* (i) Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912 (37 Stat. 265), extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510), if proof of compliance with the homestead law has been previously submitted, and has been accepted, or if such proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation, the manager will issue final certificate on the entry. The final certificate so issued must be endorsed by the manager across the face of each certificate when issued as follows: "Subject to lien, under act of August 9, 1912 (37 Stat. 265), as extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510)."

(ii) A proviso to the act of May 10, 1926 (44 Stat. 465) provides: That all construction, operation, and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on this project shall be, and are hereby, made a first lien against all lands within the project, which lien upon any particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The contracts executed by such district or districts shall recognize and acknowledge the existence of such lien.

(2) *Release of lien.* The Area Director, Bureau of Indian Affairs, will, upon the full payment of all buildings and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the patent under the act of August 9, 1912.

(Sec. 15, 35 Stat. 450)

§ 2211.8–9 Cancellation of entries.

All homestead entrymen within the Flathead project must, in addition to paying the appraised value of the land and water-right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts authorizing the construction of the Flathead project as to residence, cultivation, improvement, and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due will render such entries subject to cancellation; and upon receipt of a statement from the Area Director, Bureau of Indian Affairs, that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be canceled.

(Sec. 15, 35 Stat. 450)

§ 2211.9 Alaska.

§ 2211.9–1 Homestead settlement entry.

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

(2) The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 371), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 48 U.S.C. 371), July 8, 1916 (39 Stat. 352; 48 U.S.C. 373–375, 378), June 28, 1918 (40 Stat. 632; 48 U.S.C. 373–375, 378), April 13, 1926 (44 Stat. 243; 48 U.S.C. 379, 380, 380a), and July 11, 1956 (70 Stat. 528; 48 U.S.C. 371c and 375).

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

(c) *Notice of settlement.* (1) A person making settlement on or after April 29, 1950 on unsurveyed land, in order to protect his rights, must file a notice of the settlement for recordation in the land office for the district in which the land is situated, and post a copy thereof on the land, within 90 days after the settlement. Where settlement is made on surveyed lands, the settler, in order to protect his rights, must file a notice of the settlement for recordation, or application to make homestead entry, in the land office for the district in which the land is located within 90 days after settlement.

(2) Any person maintaining a settlement claim on April 29, 1950, on surveyed or unsurveyed public land, shall file notice of the initiation of the claim in the land office for the district in which the land is situated, (1) within 90 days from that date, if the notice of location had not theretofore been filed in the recording district, or (2) within two years from April 29, 1950, if notice of the location had theretofore been filed in the recording district.

(3) The notice must be filed on a form approved by the Director, in triplicate if the land is unsurveyed, or in duplicate if surveyed and shall contain: (a) The name and address of the settler, (b) age and citizenship; (c) date of settlement, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(4) Unless a notice of the claim is filed within the time prescribed in paragraphs (e) and (d) of this section, no credit shall be given for residence and cultivation had prior to the filing of notice or application to make entry, whichever is earliest.

(d) *Recordation fee.* The notice of settlement claim must be accompanied by a remittance of $10.00 which will be applied as a service charge for recording the notice and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to homestead settlement.

(e) *Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.* (1) A settler on unsurveyed land is required to mark the claim by permanent monuments at

each corner, in order to establish the boundaries thereof.

(2) Settlement on any part of a surveyed quarter-section subject to homestead entry gives the right to enter all of the quarter section; but if a settler desires to initiate a claim to surveyed tracts which form part of more than one technical quarter-section, he should define the claim by placing some improvements on each of the smallest subdivisions claimed.

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

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–2 Application.

(a) *Form.* Application to make homestead entry for lands in Alaska should be presented on a form approved by the Director, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U.S.C. 161, 171).

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

(1) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived or should be waived. (See § 2024.2 of this subchapter.)

(2) That the land is not within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 2321.1–2(c) of this chapter.

CROSS REFERENCES: For Indian and Eskimo allotments, § 2212.9; for school indemnity selections § 2222.9; for shore space, Subpart 2024; for soldier's additional rights, § 2221.9; for trade and manufacturing sites, Subpart 2213.

(c) *Contents.* (1) A homestead application must describe the lands desired, if surveyed, according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

(2) A homestead application must describe the lands desired, if unsurveyed, by metes and bounds with relation to some natural or permanent monuments, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of the land claimed, a full explanation must be given of the reason for such deviation. A homestead application for unsurveyed lands must be accompanied by the settler's final or commutation homestead proof.

(d) *Service charges.* (1) When a homesteader applies to make entry he must pay an application nonrefundable 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. 143; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. 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.

(2) 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.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–3 Acreage.

(a) *Area subject to appropriation.* A homestead settlement or entry in Alaska is restricted to 160 acres, except in the case of a settlement made before July 8, 1916, or an entry based thereon, which

may include as much as 320 acres, provided notice of the settlement was filed for record in the recording district in which the land is situated within 90 days after the settlement was made and the settlement was duly maintained until the filing of the application for entry and provided the applicant has not exhausted his homestead right in whole or in part in the United States.

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

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–4 Qualifications of entryman.

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

(b) *Second entries.* No showing is required of an applicant for 160 acres in Alaska as to a former homestead entry outside of the State, but if the applicant has made homestead entry, or made an allowable homestead application or filed a location notice of settlement in the State and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the State, make the showing required by the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) explained in § 2211.5–1 (a) to (d) of this chapter.

(c) *Additional entries.* Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214) for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 2211.4–1 and 2211.4–2 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–5 Residence, cultivation requirements.

(a) *Residence*—(1) *Establishment.* Residence must be established upon the claim within 6 months after the date of the entry or the recording of the location notice, as the case may be; but an extension of not more than 6 months may be allowed upon application duly filed, in which the entryman shows by his own statement, and that of two witnesses, that residence could not be established within the first 6 months, for climatic reasons, or on account of sickness, or other unavoidable cause.

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

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

(b) *Cultivation.* There must be shown also cultivation of one-sixteenth of the area of the claim during the second year of the entry and of one-eighth during the third year and until the submission of proof, unless the requirements in this respect be reduced upon application

duly filed. Cultivation, which must consist of breaking of the soil, planting or seeding, and tillage for a crop other than native grasses, must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

(c) *Habitable house.* The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

(d) *Commutation of entries.* To the extent of not more than 160 acres an entry may be "commuted" after not less than 14 months' residence upon the land, cultivation of the area commuted to the extent required under the ordinary homestead laws and payment of $1.25 per acre; that is, the claimant must show the existence of a habitable house on the land at the time of final commutation proof, that residence for the period of not less than 14 months was actual and substantially continuous, and cultivation of one-sixteenth of the area during the second year of the entry, and, if commutation proof is submitted after the second entry year, one-eighth of the area the third entry year and until the submission of final commutation proof. In such cases the homesteader is entitled to a 5 months' leave of absence in each year, but cannot have credit as residence for such period, since actual presence on the land for not less than 14 months is required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506–509), is not subject to commutation.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–6 Surveys.

(a) *Without expense to settler.* The land included in a settlement claim may be surveyed without expense to the settler, provided he submits, within five years from the date of the filing of notice of settlement claim in the land office, an application to enter on a form approved by the Director and acceptable final or commuted homestead proof as required by § 2211.9–7(a).

(b) *At expense of settler.* A settler who wishes to secure earlier action in the matter of survey may have a survey made at his own expense by a deputy surveyor appointed by the authorized officer of the Bureau of Land Management.

(c) *Application to enter land included in special survey.* After a special survey has been made, in accordance with paragraph (b) of this section, application to enter should be made as in the case of other settlements on surveyed lands.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–7 Proof.

(a) *Submission.* (1) Proof may be submitted without previous notice of intention by publication.

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

(b) *Publication and posting.* (1) Where a special survey has been made, the notice of proof must give the survey number of the land, and other information required by § 1824.9–1 of this chapter and it must be published once a week for nine consecutive weeks, in accordance with § 1824.4 of this chapter, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(2) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 1824.4 of this chapter. The manager must cause a copy of the notice to be posted in his office during the entire period of publication.

(c) *Effect of transfer of land before proof.* In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the State transfers for church, cemetery, or school purposes to the extent of 5 acres and for railroad rights of way across the land

having an extreme width of 200 feet are permitted.

(d) *Adverse claim.* (1) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to, the tract of land or any part thereof sought to be acquired, may file in the land office where the proof is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

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

(3) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title, as stated, and any contest which may be filed will be disposed of by the manager in accordance with Parts 1840 and 1850 of this chapter.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

§ 2211.9–8 Loans.

(a) *Mortgage loans on existing homestead entries.* 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 § 2211.0–9(a) of this chapter.

(b) *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.

(R.S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 1201, 48 U.S.C. 371)

This circular supersedes Circulars 1756, 1766, 1793, 1798, 1947, 1952, 1971, 2102, 2107, 2121, 2122, and 2142. Also superseded are portions of the following circulars: 1949 relating to Part 65; 2001 relating to Part 166; 2085 relating to Parts 65, 166, 167, and 169; 2110 relating to Parts 166, 167, and 230; and 2152 relating to Part 2210.